

SETTLEMENT AGREEMENT AND RELEASE

Plaintiffs and Class Representatives Joon Bang, Razvan Victor Bengulescu, Gerald Bezems, Scott Crockett, Rifat Gorener, Christopher LeSieur, Lawrence Marcus, and Mikhail Suleymanov (“Plaintiffs” or “Class Representatives”), by and through their counsel, and Defendants, BMW of North America, LLC (“BMW NA”) and Bayerische Motoren Werke Aktiengesellschaft (“BMW AG”) (BMW NA and BMW AG collectively “Defendants”), by and through their counsel, hereby enter into this Settlement Agreement providing, subject to the approval of the Court, for the settlement of the claims herein described against Defendants (the “Settlement”).

WHEREAS, Plaintiffs filed a putative class action against Defendants in the United States District Court for the District of New Jersey (*Bang v. BMW of North America, LLC and Bavarian Motor Works*, Civil Action No. 2:15-cv-06945-MCA-SCM) on September 18, 2015 (the “Action”); and

WHEREAS, Plaintiffs filed a First Amended Complaint on December 21, 2015; and

WHEREAS, Defendant, BMW NA, filed a Motion to Dismiss the First Amended Complaint on January 27, 2016; and

WHEREAS, the parties entered in to a Stipulation setting a schedule for Plaintiffs filing of a Second Amended Complaint on March 14, 2016; and

WHEREAS, Plaintiffs filed their Second Amended Complaint on March 21, 2016; and

WHEREAS, Defendant, BMW NA, filed a Motion to Dismiss the Second Amended Complaint on April 21, 2016;

WHEREAS, by Decision dated December 1, 2016, the Court denied Defendant BMW NA’s Motion to Dismiss the Second Amended Complaint; and

WHEREAS, Defendant BMW NA filed its Answer to the Second Amended Complaint on January 16, 2017; and

WHEREAS, the Parties exchanged discovery demands and responses, including interrogatory answers and responses to requests for the reproduction of documents; and

WHEREAS, Plaintiffs and Defendants have conducted a thorough examination and investigation of the facts and law relating to the matters in the Action; and

WHEREAS, the parties conducted multiple, full-day settlement negotiations with Mediator Bradley A. Winters, Esq. on August 3, 2017, October 2, 2017, and October 3, 2017; and

WHEREAS, the Parties continued to confer with Mr. Winters towards a potential settlement between and after the respective mediation dates; and

WHEREAS, after extensive, vigorous discussions and arm's-length negotiations, and numerous exchanges of information and settlement proposals, the Parties were able to reach an agreement to resolve the Action and the disputes between them; and

WHEREAS, for purposes of this settlement only, Plaintiffs and Defendants (the "Parties") agree to the certification of a settlement class ("Class" or "Settlement Class"), subject to the Court's approval, defined as follows:

All persons or entities in the United States, the District of Columbia, and Puerto Rico who currently own or lease, or previously owned or leased, model-year 2009 through 2014 BMW 5 Series, 6 Series, 7 Series, X5 or X6 vehicles that contain the N63 engine.

WHEREAS, the Parties agree that the following persons and entities should be excluded from the Class: Defendants, as well as Defendants' affiliates, employees, officers, and directors, attorneys, agents, insurers, third-party providers of extended warranty/service contracts, franchised dealers, independent repair/service facilities, fleet owners and operators, rental companies and vehicles, the attorneys representing Defendants in this case, the Judges and

Mediator to whom this case is assigned and their immediate family members, all persons who request exclusion from (opt-out of) the Settlement, vehicles deemed a total loss, anyone claiming personal injury, property damage other than to a Class Vehicle or subrogation, all persons who previously released any claims encompassed in this Settlement, and vehicles transported outside the United States; and

WHEREAS, Defendants expressly deny any wrongdoing alleged in the pleadings and do not admit or concede any actual or potential fault, wrongdoing, or liability in connection with any facts or claims that have been or could have been alleged against them in the Action. Even though Defendants expressly deny any wrongdoing, Defendants have concluded that settlement is desirable in order to avoid the time, expense, and inherent uncertainties of defending protracted litigation and to resolve, finally and completely, all pending and potential claims of the Plaintiffs and all members of the Class which were or could have been asserted by Plaintiffs and the Class in the Action; and

WHEREAS, Plaintiffs recognize the substantial benefits to Plaintiffs and the Class under the terms of this Settlement Agreement and the costs, risks, and uncertainty of protracted litigation, especially in complex actions such as this, as well as the difficulties and delays inherent in such litigation, and believe that it is in their interest, and the interest of all Class Members, to resolve the Action, and any and all claims asserted in the Action against Defendants, in order to provide effective relief promptly to Plaintiffs and the Class in this Settlement Agreement; and

WHEREAS, the undersigned Parties believe that this Settlement Agreement offers significant benefits to Class Members and is fair, reasonable, adequate, and in the best interest of Class Members; and

WHEREAS, this Settlement Agreement is made and entered into by and among Plaintiffs,

individually and on behalf of the Class, and Defendants;

NOW, THEREFORE, it is hereby stipulated and agreed, by and between the undersigned Parties, as follows:

I. DEFINITIONS

As used in this Settlement Agreement and the attached exhibits (which are an integral part of this Settlement Agreement and are incorporated in their entirety by reference), the following terms will have the meaning set forth below, unless this Settlement Agreement specifically provides otherwise. Where appropriate, terms used in the singular will be deemed to include the plural and vice versa.

A. **Battery Discharge.** “Battery Discharge” means the discharge of the battery less than 2 years after installation.

B. **BMW NA.** “BMW NA” means Defendant BMW of North America, LLC.

C. **BMW AG.** “BMW AG” means Defendant Bayerische Motoren Werke Aktiengesellschaft.

D. **Claim Form.** “Claim Form” means a form in substantially the same form as that attached hereto as Exhibit “A.”

E. **Claims Confirmation Process.** “Claims Confirmation Process” means the process by which properly submitted claims accepted by the Settlement Administrator are reviewed and validated by BMW NA to ensure that (1) the Class Vehicle’s warranty has not been invalidated, (2) the VIN number associated with the Claim matches the Settlement Class Member’s VIN number, (3) BMW NA or a BMW Center has not previously paid for the same claim(s) submitted for reimbursement, (4) the claim is for an item covered under this Settlement Agreement; and (5) the claim has not been fraudulently submitted.

F. **Claims Submission Period.** “Claims Submission Period” means the time period during which Class Members may submit claims which will commence with the mailing of the Settlement Class Notice and will conclude thirty (30) days after the Final Approval Hearing.

G. **Condition Based Service Indicator.** “CBS” means the condition based service indicator, which bases maintenance of the vehicle on, among other things, the specific driving conditions of that vehicle.

H. **Customer Care Program.** “CCP” means the Customer Care Program instituted by BMW NA under SIB 110604.

I. **Settlement Class Counsel.** “Settlement Class Counsel” means McCune Wright Arevalo, LLP and Wagstaff & Cartmell LLP.

J. **Settlement Class Counsel Fees and Expenses.** “Settlement Class Counsel Fees and Expenses” means the reasonable attorneys’ fees and expenses approved by the Court, to be paid by Defendants.

K. **Settlement Class Members or Settlement Class.** “Settlement Class Members” or “Settlement Class” means all current and former owners and lessees of a Class Vehicle in the United States, including the District of Columbia and Puerto Rico. Excluded from this definition are Defendants, as well as Defendants’ affiliates, employees, officers, and directors, attorneys, agents, insurers, third-party providers of extended warranty/service contracts, franchised dealers, independent repair/service facilities, fleet owners and operators, rental companies and vehicles, the attorneys representing Defendants in this case, the Judges and Mediator to whom this case is assigned and their immediate family members, all persons who request exclusion from (opting-out of) the Settlement, vehicles deemed a total loss, anyone claiming personal injury, property damage other than to a Class Vehicle or subrogation, all persons who previously

released any claims encompassed in this Settlement, and vehicles transported outside the United States.

L. **Settlement Class Notice.** “Settlement Class Notice” means the Court-approved form of notice to current and former owners and lessees of Settlement Class Vehicles, in substantially the same form as that attached hereto as Exhibit “B,” informing them of, among other things, the (i) preliminary approval of the Settlement; (ii) scheduling of the Final Approval Hearing; (iii) opportunity to submit a claim; (iv) opportunity to submit an objection; and (v) opportunity to request exclusion.

M. **Settlement Class Representatives.** “Settlement Class Representatives” means Joon Bang, Razvan Victor Bengulescu, Gerald Bezems, Scott Crockett, Rifat Gorener, Christopher LeSieur, Lawrence Marcus, and Mikhail Suleymanov.

N. **Settlement Class Vehicles.** “Settlement Class Vehicles” means US specification model years 2009 through 2014 BMW 5 Series, 6 Series, 7 Series, X5 and X6 vehicles that contain the N63 engine distributed for sale, and registered and operated in the United States, including the District of Columbia and Puerto Rico.

O. **Court.** “Court” means the United States District Court for the District of New Jersey, the Honorable Madeline C. Arleo presiding, or her duly appointed successor.

P. **Defendants.** “Defendants” means BMW AG and BMW NA, as well as its and their predecessors, successors, assigns, parents, affiliates, directors, officers, agents, attorneys, representatives, and employees.

Q. **Defendants’ Counsel.** “Defendants’ Counsel” means Buchanan Ingersoll & Rooney PC.

R. **Effective Date.** “Effective Date” means the earliest of the following: (1) the date

on which the time for appeal from the Final Judgment approving the settlement has elapsed without any appeals being filed; or (2) the date on which all appeals from the Final Judgment approving this Settlement or from any appellate court decisions affirming the Final Judgment have been exhausted, and no further appeal may be taken.

S. **Final Approval Hearing.** “Final Approval Hearing” means the hearing at which the Court will consider and finally decide whether to enter the Final Approval Order.

T. **Final Approval Order.** “Final Approval Order” means the Court order that approves this Settlement Agreement and makes such other final rulings as are contemplated by this Settlement Agreement.

U. **Objection Deadline.** “Objection Deadline” means the date agreed upon by the Parties or otherwise ordered by the Court in the Preliminary Approval Order by which any Class Members who wish to do so must object to the Settlement Agreement’s terms or provisions and submit any required statements, proof, or other materials and/or argument.

V. **Excess Oil Consumption.** “Excess Oil Consumption” means the use by a Class Vehicle of more engine oil than customary and expected.

W. **Opt-Out Deadline.** “Opt-Out Deadline” means the date agreed upon by the Parties or otherwise ordered by the Court in the Preliminary Approval Order, by which any Settlement Class Members who do not wish to be included in the Settlement Class and participate in the Settlement Agreement must complete the acts necessary to properly effect such election.

X. **Oil Service.** “Oil Service” means replacement of oil filter and the draining and refilling of the engine with new engine oil.

Y. **Oil Consumption Test.** “Oil Consumption Test” means a test to determine how much oil the engine is consuming within a 1,000 miles by first draining the engine oil, refilling it

and having the vehicle driven for 1,000 miles, then draining and measuring the remaining oil to see whether the amount of oil used falls within BMW's established acceptable parameters of consuming 1qt/750 miles.

Z. **Opt-Out List.** "Opt-Out List" means a written list prepared by Settlement Class Counsel or the Settlement Administrator of all Settlement Class Members who submit timely Requests for Exclusion.

AA. **Parties.** "Parties" means the Plaintiffs and Defendants.

BB. **Plaintiffs.** "Plaintiffs" means the Settlement Class Representatives, Joon Bang, Razvan Victor Bengulescu, Gerald Bezems, Scott Crockett, Rifat Gorener, Christopher LeSieur, Lawrence Marcus, and Mikhail Suleymanov.

CC. **Preliminary Approval Order.** "Preliminary Approval Order" means the order of the Court preliminarily approving this Settlement Agreement, a proposed version of which is attached hereto as Exhibit "C."

DD. **Release.** "Release" means the release and waiver set forth in Section VII of this Settlement Agreement and in the Final Approval Order.

EE. **Request for Exclusion.** "Request for Exclusion" means any request by any Settlement Class Member for exclusion from (opt-out of) the Settlement.

FF. **Settlement.** "Settlement" means the agreement by the Parties to resolve the Action, the terms of which have been memorialized and provided for in this Settlement Agreement and all the exhibits attached hereto.

GG. **Settlement Administrator.** "Settlement Administrator" means the third party entity who has been selected by and will be paid for by Defendants to administer the Settlement and the claims process.

HH. **Settlement Agreement.** “Settlement Agreement” means this Settlement Agreement and all the exhibits attached hereto.

II. **Settlement Class.** “Settlement Class” means all current and former owners and lessees in the United States (including the District of Columbia and Puerto Rico) of a Settlement Class Vehicle as defined above. Excluded from the Settlement Class are Defendants, Defendants’ employees, Defendants’ attorneys, the judges assigned to this matter, and the mediator, as well as all persons making claims for property damage or personal injury.

JJ. **Settlement Class Members.** “Settlement Class Members” means all Settlement Class Members who do not affirmatively exclude themselves (*i.e.*, “opt out”) from the Settlement as approved by the Court.

KK. **Special Master.** “Special Master” means Bradley A. Winters, Esq. If the designated Special Master is unable or unwilling to serve in this capacity in the future for any reason, the Parties will jointly agree upon a replacement Special Master. The costs associated with the use of the Special Master in this regard will be borne equally (50/50) by the Plaintiffs and Defendants (unless otherwise ordered by the Special Master).

LL. **VIN.** “VIN” means Vehicle Identification Number.

MM. **Warranty Period.** “Warranty Period” means four years or 50,000 miles from the date the Settlement Class Vehicle is first placed into service, whichever comes first, as provided in BMW NA’s New Passenger Vehicle Limited Warranty.

II. **REQUIRED EVENTS**

A. Promptly after execution of this Settlement Agreement by all Parties:

1. Settlement Class Counsel and Defendants' Counsel will take all reasonable and necessary steps, subject to the Court's availability, to obtain entry of the Preliminary Approval Order and the Final Approval Order as expeditiously as possible.

2. The Parties will seek entry of a Preliminary Approval Order in substantially the same form as that attached hereto as Exhibit "C." The Preliminary Approval Order will, among other things:

a. Certify a nationwide (United States, District of Columbia, and Puerto Rico) settlement-only class; approve Joon Bang, Razvan Victor Bengulescu, Gerald Bezems, Scott Crockett, Rifat Gorener, Christopher LeSieur, Lawrence Marcus, and Mikhail Suleymanov as Settlement Class Representatives; and appoint their counsel as Settlement Class Counsel, pursuant to Fed. R. Civ. P. 23;

b. Preliminarily approve the Settlement;

c. Require the dissemination of Settlement Class Notice within sixty (60) days of the date of the Preliminary Approval Order and the taking of all necessary and appropriate steps to accomplish this task;

d. Determine that the Settlement Class Notice complies with all legal requirements, including, but not limited to, the Due Process Clause of the United States Constitution;

e. Schedule a date and time for a Final Approval Hearing, not less than one hundred and twenty (120) days after the date of the Preliminary Approval Order, to determine whether the Settlement should be finally approved by the Court;

f. Require Settlement Class Members who wish to exclude themselves to submit an appropriate and timely written request for exclusion by a date certain as specified in

the Notice that shall be within forty-five (45) days after dissemination of the Settlement Class Notice and advise that a failure to do so will bind those Settlement Class Members who remain in the Settlement Class;

g. Require Settlement Class Members who wish to object to the Settlement Agreement to submit an appropriate and timely written statement by a date certain as specified in the Notice that shall be within forty-five (45) days after dissemination of the Settlement Class Notice;

h. Require Settlement Class Members who wish to appear to object to the Settlement Agreement to submit an appropriate and timely written statement by a date certain as specified in the Notice that shall be within forty-five (45) days after dissemination of the Settlement Class Notice;

i. Require attorneys representing objecting Settlement Class Members, at the time the objection is filed, at the objecting Settlement Class Members' expense, to file a notice of appearance by a date certain as specified in the Notice that shall be within forty-five (45) days after dissemination of the Settlement Class Notice;

j. Appoint the Settlement Administrator; and

k. Issue other related orders as necessary to effectuate the preliminary approval of the Settlement Agreement.

3. After the Preliminary Approval Hearing, the Parties will seek to obtain from the Court a Final Approval Order in a form to be agreed upon by the Parties. The Final Approval Order will be determined by the Court but is expected to, among other things:

a. Find that the Court has personal jurisdiction over all Settlement Class Members, subject-matter jurisdiction over the claims asserted in the Action, and that venue

is proper;

- b. Approve the Settlement Agreement, pursuant to Fed. R. Civ. P. 23;
- c. Finally certify the Settlement Class for settlement purposes only;
- d. Find that the Settlement Class Notice complied with all laws, including, but not limited to, the Due Process Clause of the United States Constitution;
- e. Determine and award reasonable and agreed upon attorneys' fees and costs to be paid to Settlement Class Counsel;
- f. Dismiss the Action with prejudice;
- g. Incorporate the Release set forth in the Settlement Agreement and make the Release effective as of the date of the Final Approval Order;
- h. Authorize the Parties to implement the terms of the Settlement Agreement;
- i. Retain jurisdiction relating to the administration, consummation, enforcement, and interpretation of the Settlement Agreement, the Final Approval Order, and for any other necessary purpose; and
- j. Issue any related orders necessary to effectuate the final approval of the Settlement Agreement and its implementation.

4. The Parties will use their best efforts, consistent with the terms of this Settlement Agreement, to promptly obtain a Final Approval Order.

5. If the Court fails to issue the Preliminary Approval Order, or fails to issue the Final Approval Order, the terms of this Settlement Agreement are voidable by either Party. However, the Parties agree to use their best efforts, consistent with this Settlement Agreement, to cure any defect(s) identified by the Court.

6. The Parties acknowledge that prompt approval, consummation, and implementation of the Settlement set forth in this Settlement Agreement are essential. The Parties will cooperate with each other in good faith to carry out the purposes of and to effectuate this Settlement Agreement, will promptly perform their respective obligations hereunder, and will promptly take any and all actions and execute and deliver any and all additional documents and all other materials or information reasonably necessary or appropriate to carry out the terms of this Settlement Agreement and the transactions contemplated hereby.

7. Upon Entry of the Final Approval Order, the Action will be dismissed, on its merits and with prejudice, subject to the continuing jurisdiction of this Court, and Settlement Class Members will be forever barred and enjoined from pursuing any claims which have been resolved by this Settlement.

III. SETTLEMENT TERMS

A. Reimbursement for Out-of-Pocket Expenses Incurred By Class Members Prior to the End of the Claims Submission Period.

Any Settlement Class Member who has incurred eligible out-of-pocket expense(s) as outlined in paragraphs III (A) 2 through 5 below that is related to Excess Oil Consumption or Battery Discharge and who incurred such expense prior to the end of the Claims Submission Period will be entitled to submit a claim for reimbursement, subject to the following conditions:

1. Required Proof. In order for a claim to be eligible for reimbursement pursuant to §§ III(A) 2 through 5, Settlement Class Members must submit a Claim Form to the Settlement Administrator that is post-marked during the Claims Submission Period and include: (a) documentation that identifies a Settlement Class Vehicle and VIN, (b) proof of payment for the amount(s) sought for reimbursement; and (c) documentation evidencing the qualifications as

specified for the type of reimbursement sought in paragraphs (2) through (5) below, including sub paragraphs.

2. BMW will reimburse Settlement Class Members who are current or past owners of Settlement Class Vehicles for the cost (not to exceed \$75 each) of up to 3 Oil Services on a Settlement Class Vehicles if:

- a. The amounts were actually paid by Settlement Class Member at the time of Oil Service as evidenced by a repair invoice; and
- b. The Oil Service occurred prior to 10 years/120,000 miles from the Settlement Class Vehicle's in-service date; and
- c. Oil Service took place less than 12 months/10,500 miles after a previous Oil Service as evidenced by the repair invoice of the prior Oil Service and the invoice for the Oil Service for which reimbursement is sought.

Settlement Class Members may elect to receive one (1) free future Oil Service in lieu of reimbursement for each past qualifying Oil Service in addition to the future free Oil Services provided for in Section B1.

3. BMW will reimburse Settlement Class Members who are current and past owners of Settlement Class Vehicles for the cost (up to \$10/quart) of up to 7 quarts of oil that the Settlement Class Member purchased between oil services prior to the Effective Date if:

- a. The oil was of the same type and grade specified for the Settlement Class Vehicle in the owner's manual/on the vehicle; as evidenced by proof of purchase or the repair/service invoice; and
- b. At least one prior oil consumption complaint about the Settlement Class Vehicle had been communicated to BMW NA or an authorized BMW Center, as confirmed by a repair order, Customer Relations Report or other written documentation of an oil consumption complaint to BMW NA or to one of its authorized centers; and
- c. The Settlement Class Vehicle had fewer than 10 years and 120,000 miles at the time of oil purchase as evidenced by required proof, for example, service records from before and/or after oil purchase.

4. BMW will reimburse up to \$50 for the cost of one (1) towing/ rental/ roadside assistance incurred by Settlement Class Members because of an Excess Oil Consumption or a Battery Discharge issue if:

- a. the Settlement Class Vehicle was towed to an authorized BMW Center or a third-party repair facility as evidenced by a repair/service invoice; and
- b. the Settlement Class Member repair/service invoice states that the towing/rental/roadside assistance was related to an Excess Oil Consumption or Battery Discharge issue.

5. BMW will reimburse Settlement Class Members for their out-of-pocket costs for one (1) replacement of any battery (90 Ah or 105 Ah) purchased prior to the mailing of the Settlement Class Notice that was less than 3 years old and purchased outside the New Vehicle Limited Warranty period.

6. Limitations. Defendants do not warrant or guarantee any repairs performed at third-party repair shops and, should any such repairs fail after a Settlement Class Member has made a claim under the Settlement, the Settlement Class Member will not be entitled to submit an additional claim.

B. Future Service Credits and Service Campaign.

1. BMW will provide Settlement Class Members who are current owners or lessees with a credit of \$75 per Oil Service for up to 3 future Oil Services on a Settlement Class Vehicle performed at a BMW Center during the earlier of 10 years or 120,000 miles from the in-service date of the Settlement Class Vehicle.

2. Within the earlier of 10 years or 120,000 miles, but in no event less than 1 year or 12,000 miles from the Effective Date, if a Settlement Class Vehicle's Low Oil light illuminates before the CBS Indicator or oil service light comes on, BMW will provide up to three (3) Oil Consumption Tests at a BMW Center at no cost to the Settlement Class Member.

3. BMW will provide the applicable repairs including diagnosis at no charge for failed Oil Consumption Tests up to the earlier of 10 years or 120,000 miles from in-service date.

4. Settlement Class Members may be eligible to receive one (1) replacement engine, which will include the cylinder heads, during the earlier of 10 years or 120,000 miles from the in-service date, if:

- a. the CCP has been performed on a Settlement Class Vehicle; and
- b. that Settlement Class Vehicle thereafter fails two Oil Consumption Tests; and
- c. BMW cannot completely resolve the Oil Consumption issue after the second failed Oil Consumption Test and second repair attempt; and
- d. the Class Vehicle is then brought back to a BMW Center for an Oil Consumption issue and the BMW Center confirms that there in fact remains an Oil Consumption issue; and
- e. the Settlement Class Member agrees to “contribute” to the total replacement cost of the engine (inclusive of parts and labor) as follows:

<u><i>Odometer Miles at the time of Return to a BMW Center for an Oil Consumption Issue After 2nd failed Oil Consumption Test and 2nd Repair Attempt</i></u>		<u><i>Customer Contribution</i></u>
<i>50,001</i>	<i>60,000</i>	<i>5%</i>
<i>60,001</i>	<i>70,000</i>	<i>15%</i>
<i>70,001</i>	<i>80,000</i>	<i>30%</i>
<i>80,001</i>	<i>90,000</i>	<i>45%</i>
<i>90,001</i>	<i>100,000</i>	<i>60%</i>
<i>100,001</i>	<i>110,000</i>	<i>75%</i>
<i>110,001</i>	<i>120,000</i>	<i>90%</i>
<i>120,001</i>	<i>above</i>	<i>100%</i>

- f. Notwithstanding paragraphs 4(a) through 4(e) above, in the event a Class Vehicle is brought to a BMW Center and in its discretion BMW

determines not to attempt to make a repair related to Excess Oil Consumption, but instead to replace the engine due to the Excess Oil Consumption, the Class Member will have the option for an engine replacement but must agree to contribute to the total replacement cost of the engine (inclusive of parts and labor) in the percentage associated with the odometer mileage of the Class vehicle at the time BMW determines to recommend to replace the engine rather than attempt to repair it as set forth in paragraph 4(e).

5. For Settlement Class Vehicles that can be retrofitted with a 105Ah battery, BMW will provide the Settlement Class Member with one (1) new 105Ah battery to replace the 90Ah battery if they did not previously receive a replacement battery, and, thereafter, 105Ah replacement batteries at a BMW Center, if the 105Ah battery fails within two (2) years of installation (not due to customer negligence) as evidenced by a prior invoice for replacement of the battery.

6. For Settlement Class Vehicles with a 90Ah battery (as of the Settlement Class Notice Date), that cannot accommodate the 105Ah battery, BMW will provide the Settlement Class Member with 90Ah replacement batteries at a BMW Center, if any such battery fails within two (2) years of installation (not due to customer negligence) as evidenced by a prior invoice for replacement of the battery.

7. The CCP will be available to all Settlement Class Vehicles, if not previously performed, regardless of age or mileage, but each Settlement Class Vehicle will only be entitled to one (1) CCP repair.

8. All Settlement Class Members (past and present vehicle owners) will be eligible to submit a claim to receive either a credit voucher for (i) \$1,500 toward the purchase or lease of a new BMW 6 and 7 Series vehicles; or (ii) \$1,000 toward the purchase or lease of all other new BMW models. The credit voucher will be transferable to immediate family members (children, parents, and siblings) and will be valid for one (1) year from the Effective Date.

C. Claim Review, Claim Processing, Claim Confirmation, and Appeal from Denial.

1. Claim Review and Processing: All claims submitted for reimbursement or compensation will be reviewed within twenty (20) days of receipt by the Settlement Administrator, which will be responsible for ensuring that all information and documentation required under this Settlement Agreement has been submitted, conditionally approve properly supported claims and submit those claims to BMW NA for the Claims Confirmation process. Approved claims will be processed for payment thirty (30) days after the Effective Date. The Settlement Administrator will advise each claimant by letter if the claim has been rejected and, if so, the reason for the rejection. Any claimant whose claim is deemed incomplete, or whose claim is denied in whole or in part, will receive from the Settlement Administrator by first-class mail a written explanation stating the reasons for denial, including steps the claimant can take to cure the deficiencies, if possible. The claimant receiving such notice will be allowed thirty (30) days to submit materials to cure the deficiencies. The Settlement Administrator's letter will inform claimants that, they may appeal a denial if they have a valid basis to do so by contacting Settlement Class Counsel, who will jointly review with Defendants' Counsel the rejected claim. If the parties cannot agree on whether a claim should be accepted and paid, the parties agree to submit the claim for review to the Special Master (agreeable to all parties) who will make the final decision regarding the claim. The parties will split equally (50/50) the special master's fees and costs. The Settlement Administrator shall provide monthly updates to both parties jointly.

2. Claim Confirmation: After Claim Review and processing, the Settlement Administrator will calculate the amount due to each claimant for all claims accepted and conditionally approved by the Settlement Administrator as complying with the requirements of this Settlement Agreement. The Settlement Administrator will, on a weekly rolling basis, submit

those approved claims to Defendants to determine if there is any reason to believe that an accepted claim is fraudulent or otherwise invalid. Within a rolling forty-five (45) days basis of Defendants' receipt from the Settlement Administrator of the conditionally approved claims, Defendants may object to the approval of the claim based on evidence that: (1) the vehicle's warranty was voided because (a) the VIN has been altered or cannot be read, (b) the vehicle has been declared a total loss or sold for salvage purposes (for reasons unrelated to Excess Oil Consumption or Battery Discharge), or (c) the vehicle has been used in any competitive racing event (this does not include non-driving events where the vehicle is on display); (2) the VIN number associated with the claim does not match the Settlement Class Member's VIN number; or (3) the claim for reimbursement is for an item or service that is not covered under this Settlement Agreement; or for which a claim under this Settlement Agreement has already been made and paid; or for which the Settlement Class Member has received "goodwill" or other cost/price adjustment, coupon, reimbursement, or refund from BMW NA, a BMW Center, insurer or any person or entity associated with Defendants, equal to or in excess of the amount of the claim submitted.

3. Claim Payment: Commencing fourteen (14) days after the Effective Date, the Settlement Administrator will commence issuing payment for approved and validated Claims.

4. Appeal from Denial: If a claimant has a valid basis for appealing a denial, the claimant may appeal that denial by notifying the Settlement Administrator, in writing, within fifteen (15) days of the date notice of such denial was mailed to the claimant that the claimant wishes to appeal the denial. Claimant must provide the Settlement Administrator with the basis for the appeal. The Settlement Administrator will maintain a file of all timely-submitted appeals from claim denials. Thirty (30) days after the Settlement Administrator sends the last denial letter, the Settlement Administrator will provide Settlement Class Counsel and Defense Counsel with a list

of all timely-submitted appeals and all documents related to such claimants' appeals. The Parties will then meet and confer in an effort to resolve the appeals from claim denials. If the Parties are unable to resolve any appeal by meeting and conferring, the appeal will be submitted to the Special Master, whose determination will be final and binding.

IV. NOTIFICATION TO CLASS MEMBERS

A. Unless otherwise specified, Defendants will pay all costs related to the following notice program (subject to the Court approving the same, which will be effectuated within sixty (60) days of the entry of the Preliminary Approval Order):

1. Defendant will retain a third-party to search the applicable registration databases to identify the last known addresses of all Settlement Class Members; and
2. Provide a notice to those Settlement Class Members by a direct first-class mailing.
3. Settlement Class Members will be able to submit their claims by U.S. Mail or via email.
4. Publication on a website maintained by the Settlement Administrator and 800 number, which shall remain available until all claims decisions by the Claims Administrator and payment to claimants have been made.

B. Within sixty (60) days after entry of the Preliminary Approval Order, or such longer period as may be required due to a delay in securing registration data from one or more state motor vehicle agencies, the Settlement Administrator will disseminate Settlement Class Notice to the Settlement Class as specified in the Preliminary Approval Order and herein, and in compliance with all applicable laws, including, but not limited to, the Due Process Clause of the Constitution.

C. Within sixty (60) days after entry of the Preliminary Approval Order, the

Settlement Administrator will be responsible for, without limitation:

(a) maintaining and administering the website and telephone numbers described below; and (b) establishing a website dedicated to the Settlement which (i) will provide information about the Settlement including all relevant documents and (ii) will provide a means by which Settlement Class Members may submit their claims by U.S. Mail or email.

D. Defendants will commence making payments required under the Settlement Agreement within fourteen (14) days after the Effective Date.

E. All costs associated with Settlement Administration will be paid by Defendants.

F. Contents of the Settlement Class Notice: The Settlement Class Notice, in a form substantially similar to the one attached to the Settlement Agreement as Exhibit B, will advise Class Members of the following:

1. General Terms: The Settlement Class Notice will contain a plain and concise description of the nature of the Action, the history of the Action, the preliminary certification of the Settlement Class, and the proposed Settlement, including information on the identity of Settlement Class Members, how the proposed Settlement would provide relief to the Settlement Class Members, what claims are released under the proposed Settlement, and other relevant terms and conditions.

2. Exclusion/Opt-Out Rights: The Settlement Class Notice will inform Settlement Class Members that they have the right to request exclusion from (opt out of) the Settlement. The Settlement Class Notice will provide the deadlines and procedures for exercising this right.

3. Objection to Settlement: The Settlement Class Notice will inform Settlement Class Members of their right to object to the proposed Settlement and appear at the

Final Approval Hearing. The Settlement Class Notice will provide the deadlines and procedures for exercising these rights.

4. Attorneys' Fees and Expenses: The Settlement Class Notice will inform Settlement Class Members about the amounts being sought by Settlement Class Counsel as Attorneys' Fees and Expenses, will explain that Defendants will pay the attorneys' fees and expenses awarded to Settlement Class Counsel after the Effective Date, in addition to and without reducing the relief being made available to Settlement Class Members.

5. Claim Form: The Settlement Class Notice will include the Claim Form, which will inform the Settlement Class Member that he/she must fully complete and timely return the Claim Form and supporting documents within the Claim Period to be eligible to obtain a recovery.

6. Parties' Websites: Counsel for any Party may place content/formation about the Settlement on their websites (including an invitation for an interested party to signal a desire to receive additional information or a return call/contact); and

7. Media Inquiries: If the media contacts any Party, that Party may respond to the inquiry.

F. No less than ten (10) days prior to the Final Approval Hearing, Defendants will provide to the Court, with a copy to Settlement Class Counsel, an affidavit from the Settlement Administrator attesting that Settlement Class Notice was disseminated in a manner consistent with the terms of this Settlement Agreement, or those otherwise required by the Court.

V. REQUESTS FOR EXCLUSION BY SETTLEMENT CLASS MEMBERS

A. The provisions of this paragraph will apply to any Request for Exclusion. Any Settlement Class Member may make a Request for Exclusion by mailing or delivering such

request in writing to Settlement Class Counsel and Defendants' Counsel at the addresses set forth in the Settlement Class Notice. Any Request for Exclusion must be postmarked and received not later than the Opt-Out Deadline specified in the Court's Preliminary Approval Order. Any Request for Exclusion must (1) state the Settlement Class Member's full name and current address; (2) identify the model year and Vehicle Identification Number ("VIN") of his/her vehicle(s) and the date(s) of purchase or lease; and (3) specifically and clearly state his/her desire to be excluded from the Settlement and from the Settlement Class.

B. Any Settlement Class Member who submits a timely Request for Exclusion may not file an objection to the Settlement and will be deemed to have waived any rights or benefits under this Settlement Agreement.

C. No less than ten (10) days prior to the Final Approval Hearing, Settlement Class Counsel will report to the Court the names of all individuals who have submitted a Request for Exclusion.

VI. OBJECTIONS BY SETTLEMENT CLASS MEMBERS

A. Any Settlement Class Member who has not filed a timely written Request for Exclusion and who wishes to object to the fairness, adequacy, or reasonableness of this Settlement Agreement or the Settlement, or to the requested award of Attorneys' Fees and Expenses, must file a written notice of objection by the Objection Deadline, as well as a notice of intention to appear at the Final Approval Hearing ("Notice of Intention to Appear") if he/she wishes to appear and be heard at the Final Approval Hearing. To state a valid objection to the Settlement, an objecting Settlement Class Member must provide the following information in the Settlement Class Member's written objection: (1) his/her full name, current address, and current telephone number; (2) the model year of his/her Vehicle(s), as well as the VIN of his/her Vehicle(s) and the date(s) of

purchase or lease; (3) a statement of the position(s) the objector wishes to assert, including the factual and legal grounds for the position; (4) provide copies of relevant repair history or other proof that the objector has owned or leased the Settlement Class Vehicle (i.e., a true copy of a vehicle title, registration, or license receipt); and (5) any other documents that the objector wishes to submit in support of his/her position and of any other documents that the objector wishes to submit in support of his/her position.

B. To be valid, an objection also must include a detailed statement of each objection asserted, including the grounds for objection. In addition, any Settlement Class Member objecting to the Settlement must provide a detailed statement of any objections to any other class action settlements submitted in any court, whether state, federal, or otherwise, in the United States in the previous five (5) years. If the Settlement Class Member has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she must affirmatively so state in the written materials provided in connection with the objection to this Settlement. Upon the filing of an objection, of their own choosing, Class Counsel and/or Defendants' Counsel may take the deposition of the objecting Settlement Class Member pursuant to the Federal Rules of Civil Procedure at an agreed-upon time and location, and to obtain any evidence relevant to the objection. Failure by an objector to make himself or herself available for deposition or comply with expedited discovery may result in the Court striking the objection. The Court may tax the costs of any such discovery to the objector or the objector's counsel if the Court determines that the objection is frivolous or is made for an improper purpose.

C. Finally, subject to approval of the Court, any objecting Settlement Class Member may appear, in person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, or

object to any petitions for attorneys' fees and reimbursement of reasonable litigation costs and expenses. The objecting Settlement Class Member must file with the Clerk of the Court and serve upon all counsel designated in the Settlement Class Notice a Notice of Intention to Appear by the Objection Deadline or on such other date that may be set forth in the Settlement Class Notice. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member (or his/her counsel) will present to the Court in connection with the Final Approval Hearing. Any Settlement Class Member who does not provide a Notice of Intention to Appear in complete accordance with the deadlines and other specifications set forth in the Settlement Class Notice, and who has not filed an objection in complete accordance with the deadlines and other specifications set forth in this Settlement and the Settlement Class Notice, will be deemed to have waived any objections to the Settlement and will be barred from speaking or otherwise presenting any views at the Final Approval Hearing.

D. The agreed-upon procedures and requirements for filing objections in connection with the Final Approval Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Settlement Class Member's objection to the Settlement, in accordance with such Class Member's due-process rights. The Preliminary Approval Order and Settlement Class Notice will require all Settlement Class Members who have any objections to file such notice of objection or request to be heard with the Court, and serve by mail or hand delivery such notice of objection or request to be heard upon Settlement Class Counsel and Defendants' Counsel at the addresses set forth in the Settlement Class Notice, by no later than the Objection Deadline. The Preliminary Approval Order will further provide that objectors who fail properly or timely to file their objections with the Court, along with the required information and documentation set forth above, or to serve them as provided above, will not be heard during the

Final Approval Hearing, and their objections will be waived and will not be considered by the Court. Settlement Class Counsel will be responsible for addressing all objections.

E. Any Settlement Class Member who objects to the Settlement will be entitled to all of the benefits of the Settlement if this Settlement Agreement and the terms contained herein are approved, as long as the objecting Settlement Class Member complies with all the requirements of this Settlement Agreement applicable to Settlement Class Members.

VII. RELEASE, DISMISSAL OF ACTION, AND JURISDICTION OF COURT

The Parties agree to the following release and waiver, which will take effect upon entry of the Effective Date:

A. By this Settlement Agreement and the following Release, the released parties include BMW NA and BMW AG and their direct and indirect parents, subsidiaries, affiliates, officers, directors, agents, authorized BMW dealers, attorneys, and all other persons or entities acting on its or their behalf; suppliers, licensors, licensees, distributors, assemblers, partners, component part designers, manufacturers, holding companies, joint ventures, and any individuals or entities involved in the chain of design, development, testing, manufacture, sale, assembly, distribution, marketing, advertising, financing, warranting, repair, and maintenance of the Settlement Class Vehicles and their component parts (“Released Parties”). The released claims refer to any and all claims, including demands, rights, liabilities, and causes of action, of every nature and description that were asserted or could have been asserted in the Action, which relate to Excess Oil Consumption and Battery Discharge in the Settlement Class Vehicles, excluding claims for property damage or personal injury (“Released Claims”). Upon the Effective Date of this Settlement, the Settlement Class Representatives and Settlement Class shall each and do hereby forever release, discharge, waive, and covenant not to sue the Released Parties regarding

any and all of the Released Claims. This release includes any such claims that the Settlement Class Representatives and Settlement Class do not know of or suspect to exist in their favor at the time of this release and that, if known by them, might have affected their settlement and release of the Released Parties, or might have affected their decision not to object to this Settlement. The foregoing waiver includes without limitation an express waiver, to the fullest extent permitted by New Jersey law, and any and all other state laws, including of any and all rights conferred by section 1542 of the *California Civil Code*, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The foregoing waiver also includes without limitation an express waiver, to the fullest extent permitted by law, of any and all rights under any law of any state or territory of the United States, including the District of Columbia, and any federal law or principle of common law or equity, or of international foreign law, that is comparable to section 1542 of the *California Civil Code*. The Settlement Class Representatives and Settlement Class recognize that even if they later discover facts in addition to or different from those they know or believe to be true, they nevertheless agree that upon entry of the final approval order and judgment, the Settlement Class Representatives and Settlement Class fully, finally, and forever settle and release any and all of the Released Claims. The foregoing waiver and release was bargained for and is a material element of this Settlement Agreement.

B. The Settlement Class Representatives represent and warrant that they are the sole and exclusive owners of all claims that they are releasing under this Settlement Agreement. The Settlement Class Representatives further acknowledge that they have not assigned, pledged, or in any manner whatsoever sold, transferred, assigned, or encumbered any right, title, interest, or

claim arising out of or in any way whatsoever pertaining to the Action, including, without limitation, any claim for benefits, proceeds, or value under the Action, and that the Settlement Class Representatives are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Action or in any benefits, proceeds, or values under the Action.

C. The Settlement Class Representatives further represent that, as of the date of this agreement, they are not aware of any Settlement Class Members who have filed claims or actions for the relief sought in this Action, other than the Settlement Class Representatives.

D. Without in any way limiting its scope, this Release encompasses, by example and without limitation, any and all claims for attorneys' fees, costs, expert fees, consultant fees, interest, litigation fees, costs, or any other fees, costs, and/or disbursements incurred by Settlement Class Counsel or by Plaintiffs, except to the extent otherwise specified in the Settlement Agreement.

E. The Settlement Class Representatives expressly agree that this Release will be and may be raised as a complete defense to and will preclude any action or proceeding relating to the Released Claims.

F. This Settlement Agreement and Release does not affect the rights of Settlement Class Members who timely and properly request exclusion from (opt-out of) the Settlement.

G. The administration and consummation of the Settlement as embodied in this Settlement Agreement will be under the authority of the Court. The Court will retain jurisdiction to protect, preserve, and implement the Settlement Agreement including, but not limited to, the Release. The Court expressly retains jurisdiction to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement Agreement.

H. Upon the Effective Date: (1) the Settlement Agreement will be the exclusive remedy for any and all Settlement Class Members for Released Claims, except those who have properly requested exclusion (opted out) in accordance with the terms and provisions hereof; (2) the Defendants will not be subject to liability or expense of any kind to any Settlement Class Member(s) for Released Claims except as set forth herein; and (3) Settlement Class Members will be permanently barred from initiating, asserting, or prosecuting any and all Released Claims against Defendants in any federal or state court in the United States or any other tribunal.

I. Nothing in this Release will preclude any action to enforce the terms of the Settlement Agreement, including participation in any of the processes detailed therein.

VIII. ATTORNEYS' FEES AND EXPENSES AND INCENTIVE AWARDS

A. All expenses incurred in administering this Settlement Agreement, including, without limitation, all attorneys' fees and costs, the cost of the Settlement Class Notice, and the cost of distributing and administering the benefits of the Settlement Agreement, will be paid by Defendants, subject to the limitations contained herein. The Settlement Class Counsel Fees and Expenses, and Class Representative Incentive Awards, if any, will be paid separate and apart from any relief provided to the Settlement Class.

B. As part of the resolution of the Action, the Parties have agreed that Settlement Class Counsel may apply for an award of attorneys' fees, inclusive of costs and expenses, not to exceed \$3,022,000.00 in the aggregate. The Parties have further agreed that Settlement Class Counsel shall not seek payment of any amount for any fees, costs and expenses in excess of \$3,022,000.00 if awarded by the Court. The Settlement Class Counsel Fees and Expenses will be paid separate and apart from any relief provided to the Settlement Class. Defendants do not oppose, and will not encourage or assist any third party in opposing, Settlement Class Counsel's request for attorneys'

fees, costs and expenses up to and not exceeding \$3,022,000.00, nor will Defendants contest the reasonableness of the amounts requested under this Agreement.

C. Also as part of the resolution of the Action, the Parties have agreed that Settlement Class Counsel will seek Service Awards (not to exceed \$3,500) from the Court for each Class Representative, to be paid paid separate and apart from any relief provided to the Settlement Class. Settlement Class Counsel will apply to the Court for an award to each Class Representative who had their vehicle inspected and/or produced documents for their effort, service, time, and expenses. Defendants do not oppose, and will not encourage or assist any third party in opposing, Settlement Class Counsel's request for Incentive Awards up to and not exceeding \$28,000 in the aggregate, nor will Defendants contest the reasonableness of the amounts requested under this Agreement.

D. The total amount of Settlement Class Counsel Fees, Expenses and Incentive Awards awarded by the Court, subject to Settlement Class Counsel's and Defendants' agreed-upon amount, will be paid by wire transfer, within fourteen (14) business days after the Effective Date. Settlement Class Counsel will, at their discretion, allocate the award of attorneys' fees, costs, and expenses among Settlement Class Counsel in any manner in which they in good faith believe reflects the contributions of such counsel to the prosecution and settlement of the Actions.

E. Defendants will not be liable for or obligated to pay any fees, expenses, costs, or disbursements to, or incur any expense on behalf of, any person or entity, either directly or indirectly, in connection with this Action, this Settlement Agreement, or the proposed Settlement, other than the amount or amounts expressly provided for in this Settlement Agreement.

F. Defendants are not responsible for any of Settlement Class Counsel's attorneys' fees and/or internal costs for the settlement, including, but not limited to, any investigative, expert, and/or actuarial costs, or any other claims for fees or expenses, other than the attorneys' fees and expenses awarded by the Court pursuant to this Agreement.

IX. REPRESENTATIONS, WARRANTIES, AND COVENANTS

A. Settlement Class Counsel, who are signatories hereof, represent and warrant that they have the authority, on behalf of Plaintiffs and Settlement Class Counsel, to execute, deliver, and perform this Settlement Agreement and to consummate all of the transactions contemplated hereby. This Settlement Agreement has been duly and validly executed and delivered by Settlement Class Counsel and Plaintiffs and constitutes their legal, valid, and binding obligation.

B. Defendants, through their undersigned attorneys, represent and warrant that they have the authority to execute, deliver, and perform this Settlement Agreement and to consummate the transactions contemplated hereby. The execution, delivery, and performance by Defendants of this Settlement Agreement and the consummation by it of the actions contemplated hereby have been duly authorized by all necessary corporate action on the part of Defendants. This Settlement Agreement has been duly and validly executed and delivered by Defendants and constitutes their legal, valid, and binding obligation.

X. MISCELLANEOUS PROVISIONS

A. The Parties expressly acknowledge and agree that this Settlement Agreement and the exhibits and related documents thereto along with all related drafts, motions, pleadings, conversations, negotiations, and correspondence, constitute an offer of compromise and a compromise within the meaning of Federal Rule of Evidence 408 and any equivalent rule of evidence in any state. In no event will this Settlement Agreement, any of its provisions or any

negotiations, statements, or court proceedings relating to its provisions in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Action, any other action, or in any judicial, administrative, regulatory, or other proceedings, except in a proceeding to enforce this Settlement Agreement or the rights of the Parties or their counsel.

Without limiting the foregoing, this Settlement Agreement, the exhibits thereto, any related documents, any related negotiations, statements, or court proceedings will not be construed as, offered as, received as, used as, or deemed to be evidence or an admission or concession of any liability, wrongdoing, fault, or omission of any kind whatsoever by Defendants with respect to any alleged wrongdoing, fault, or omission of any kind whatsoever, regardless of whether or not this Settlement Agreement results in entry of a Final Approval Order as contemplated herein. Defendants specifically deny all of the allegations made in connection with the Action. Neither this Settlement Agreement nor any class certification pursuant to it will constitute, in this or in any other proceeding, an admission by the Defendants, or evidence or a finding of any kind, that any requirement for class certification is satisfied with respect to the Action, or any other litigation, except for the limited purpose of settlement pursuant to this Settlement Agreement. This Settlement Agreement also is made with the Parties' understanding and agreement that (1) under applicable laws, it is appropriate that a class be certified for settlement purposes only (i.e., without needing to satisfy fully the standard required for certification of the matter for litigation purposes); (2) Defendants contest and deny that any class, including the proposed Settlement Class, is suitable for certification as a class under the law of any jurisdiction, other than for the purposes of this Settlement Agreement; and (3) notwithstanding any other provisions of this Settlement Agreement, all actions and proceedings pursuant to it will be consistent with the foregoing. This provision will survive the expiration or voiding of the Settlement Agreement.

B. This Settlement Agreement is entered into only for purposes of settlement. If the Final Approval Order is not entered, then this Settlement Agreement, including any releases or dismissals hereunder, is canceled, and no term or condition of this Settlement Agreement, or any draft thereof, or of the discussion, negotiation, documentation or other part or aspect of the Parties' settlement discussions, will have any effect, nor will any such matter be admissible in evidence for any purpose, or used for any purposes whatsoever in the Actions, and all Parties will be restored to their prior rights and positions as if the Settlement Agreement had not been entered into.

This Settlement Agreement will terminate by decision of either the Defendants or the Plaintiffs, through Settlement Class Counsel, if: (1) the Court, or any appellate court(s), rejects, modifies, or denies approval of any portion of this Settlement Agreement or the proposed Settlement that the terminating Party reasonably determines(s) is material, including without limitation, the terms of relief, the findings, or conclusions of the Court, the provisions relating to notice, the definition of the Class, and/or the terms of the Release; or (2) the Court, or any appellate court(s), does not enter or completely affirm, or alters or expands, any portion of the Final Approval Order, or any of the Court's findings of fact or conclusions of law, that the terminating Party reasonably determine(s) is material. The terminating Party must exercise the option to withdraw from and terminate this Settlement Agreement, as provided in this paragraph, no later than 20 days after receiving notice of the event prompting the termination. In such event, the Parties will be returned to the positions that they occupied as of October 11, 2017.

Further, Defendants may unilaterally withdraw from and terminate this Settlement Agreement within twenty (20) days after receiving notice of either of the following events:

1. any state attorney general, federal agency, or regulatory or administrative authority institutes a proceeding against the Defendants arising out of or otherwise related to the

Release and any of the terms or conditions of this Settlement Agreement; or

2. any federal or state regulator or agency: (a) objects either to any aspect or term of the Settlement Agreement; and (b) requires any substantial modification to the Settlement Agreement, including, without limitation, a constriction or expansion of the scope of the contemplated relief that Defendants in their sole discretion deem reasonably material.

D. If this Settlement Agreement is terminated pursuant to Section X then:

1. This Settlement Agreement will be null and void and will have no force or effect and no Party to this Settlement Agreement will be bound by any of its terms, except for the terms set forth in this paragraph D;

2. The Parties will petition to have lifted any stay orders entered pursuant to this Agreement;

3. All of the provisions, and all negotiations, statements, and proceedings relating to it, will be without prejudice to the rights of Defendants, Plaintiffs, or any Settlement Class Member, all of whom will be restored to their respective positions occupied as of October 11, 2017, except that the Parties will cooperate in requesting that the Court set a new scheduling order such that no Parties' substantive or procedural rights are prejudiced by the attempted settlement;

4. Defendants expressly and affirmatively reserve all defenses, arguments, and motions as to all claims that have been or might later be asserted in the Action, including, without limitation, the argument that this Action may not be litigated as a class action;

5. Neither this Settlement Agreement, nor the fact of its having been made, nor the negotiations leading to it, nor any discovery or action taken by a Party or Settlement Class Member pursuant to this Settlement Agreement, will be admissible or entered into evidence for

any purpose whatsoever;

6. Any Settlement-related order(s) or judgment(s) entered in this Action after the date of execution of this Agreement will be deemed vacated and will be without any force or effect; and

E. The headings of the sections and paragraphs of this Settlement Agreement are included for convenience only and will not be deemed to constitute part of this Settlement Agreement or to affect its construction.

F. This Settlement Agreement, including all exhibits attached hereto, may not be modified or amended except in writing and signed by all of the Parties and with approval of the Court.

G. This Settlement Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

H. This Settlement Agreement and any amendments thereto will be governed by and construed in accordance with the substantive laws of the State of New Jersey. The Settlement Agreement will be interpreted and enforced pursuant to New Jersey law. Federal law (including Fed. R. Pro. 23 and federal case law) will govern approval of the settlement, preliminary and final certification of the Settlement Class, and all related issues such as Class Counsel's attorneys' fee and cost petition.

I. Any disagreement or action to enforce this Settlement Agreement will be commenced and maintained only in the Court in which this Action is pending.

J. Except as otherwise provided in this Settlement Agreement, each Party to this Settlement Agreement will bear his, her, or its own costs of the Action.

K. The Parties to this Settlement Agreement reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extensions of time that may be necessary to carry out any of the provisions of this Settlement Agreement, as well as to correct any inadvertent, non-substantive mistakes or typographical errors contained in any of the Settlement papers, without additional costs or attorneys' fees.

L. Proper notice will be given to Plaintiffs and Defendants of all applications for Court approval or Court orders required under this Settlement Agreement.

M. The determination of the terms of, and the drafting of, this Settlement Agreement, including its exhibits, has been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel. Since this Settlement Agreement was drafted with the participation of all Parties and their counsel, the presumption that ambiguities will be construed against the drafter does not apply. Each of the Parties was represented by competent and effective counsel throughout the course of settlement negotiations and in the drafting and execution of this Settlement Agreement, and there was no disparity in bargaining power among the Parties to this Settlement Agreement. No parol or other evidence may be offered to explain, modify, construe, contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which this Settlement Agreement was made or executed.

N. All of the exhibits of this Settlement Agreement are material and integral parts hereof, and are fully incorporated herein by reference. This Settlement Agreement and the exhibits hereto constitute the entire, fully integrated agreement among the Parties and cancel and supersede all prior written and unwritten agreements and understandings pertaining to the Settlement of the Actions.

O. The Parties agree that any disputes regarding the meaning of the terms and

conditions of this Settlement Agreement, the Parties' rights and obligations under this Settlement Agreement, or the manner in which any issue or dispute arising under this Settlement Agreement should be resolved, will be submitted to the Court for resolution.

P. The Parties agree and acknowledge that this Settlement Agreement includes a covenant of good faith and fair dealing.

Q. The waiver by one Party of any breach of this Settlement Agreement by another Party will not be deemed a waiver of any prior or subsequent breach of this Settlement Agreement.

R. If one Party to this Settlement Agreement considers another Party to be in breach of its obligations under this Settlement Agreement, that Party must provide the breaching Party with written notice of the alleged breach within ten (10) days of discovery of the breach and provide a reasonable opportunity to cure the breach before taking any action to enforce any rights under this Settlement Agreement.

S. All time periods set forth herein will be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Settlement Agreement or by order of the Court, the day of the act, event, or default from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is a Saturday, Sunday, or legal holiday, or, when the action to be done is the filing of a paper in court, a day on which conditions or events have made the office of the clerk of the court inaccessible, in which event the period will run until the end of the next day that is not one of the aforementioned days. As used in this section "legal holiday" includes New Year's Day, Birthday of Martin Luther King, Jr., Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States.

T. **Notices.** All notices to the Parties or counsel required by this Settlement Agreement will be made in writing and communicated by electronic and regular mail to the following addresses (unless one of the Parties subsequently designates one or more other designees):

If to Class Counsel:

Matthew D. Schelkopf, Esq.
McCune Wright Arevalo, LLP
555 Lancaster Avenue
Berwyn, Pennsylvania 19312
mds@mccunewright.com

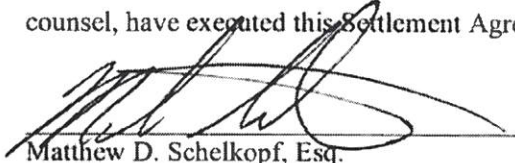
David C. Wright, Esq.
McCune Wright Arevalo, LLP
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dcw@mccunewright.com

Eric D. Barton, Esq.
Wagstaff & Cartmell LLP
4740 Grand Avenue, Suite 300
Kansas City, MO 64112
ebarton@wcllp.com

If to Defendants' Counsel:

Christopher J. Dalton, Esq.
Daniel Z. Rivlin, Esq.
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christopher.dalton@bicp.com
daniel.rivlin@bipc.com

IN WITNESS WHEREOF, Plaintiffs and Defendants, by and through their respective counsel, have executed this Settlement Agreement as of the date(s) indicated on the lines below.



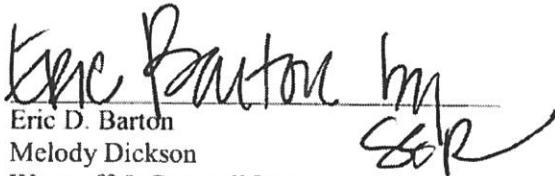
Matthew D. Schelkopf, Esq.
Joseph G. Sauder, Esq.
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Email: daniel.rivlin@bipc.com

Date: 4/11/18

Attorneys for Defendants,
BMW of North America, LLC and Bayerische
Motoren Werke Aktiengesellschaft

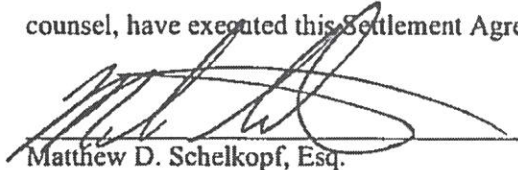


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Facsimile: (909) 557-1275
dcw@mccunewright.com
rdm@mccunewright.com

Date: April 10, 2018

IN WITNESS WHEREOF, Plaintiffs and Defendants, by and through their respective counsel, have executed this Settlement Agreement as of the date(s) indicated on the lines below.



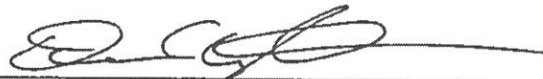
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Email: daniel.rivlin@birc.com

Date:

Attorneys for Defendants,
BMW of North America, LLC and Bayerische
Motoren Werke Aktiengesellschaft

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Facsimile: (909) 557-1275
dew@mccunewright.com
rdm@mccunewright.com

Date: *April 10, 2018*

IN WITNESS WHEREOF, Plaintiffs and Class Representatives, Joon Bang, Razvan Victor Bengulescu, Gerald Bezems, Scott Crockett, Rifat Gorener, Christopher LeSieur, Lawrence Marcus, and Mikhail Suleymanov, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

DATED: 3/7/2018



JOON BANG

DATED: _____

RAZVAN VICTOR BENGULESCU

DATED: _____

GERALD BEZEMS

DATED: _____

SCOTT CROCKETT

DATED: _____

RIFAT GORENER

DATED: _____

CHRISTOPHER LESIEUR

DATED: _____

LAWRENCE MARCUS

DATED: _____

MIKHAIL SULEYMANOV

IN WITNESS WHEREOF, Plaintiffs and Class Representatives, Joon Bang, Razvan Victor Bengulescu, Gerald Bezems, Scott Crockett, Rifat Gorener, Christopher LeSieur, Lawrence Marcus, and Mikhail Suleymanov, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

DATED: _____

JOON BANG

DATED: 4/04/2018

RAZVAN VICTOR BENGULESCU

DATED: _____

GERALD BEZEMS

DATED: _____

SCOTT CROCKETT

DATED: _____

RIFAT GORENER

DATED: _____

CHRISTOPHER LESIEUR

DATED: _____

LAWRENCE MARCUS

DATED: _____

MIKHAIL SULEYMANOV

IN WITNESS WHEREOF, Plaintiffs and Class Representatives, Joon Bang, Razvan Victor Bengulescu, Gerald Bezems, Scott Crockett, Rifat Gorener, Christopher LeSieur, Lawrence Marcus, and Mikhail Suleymanov, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

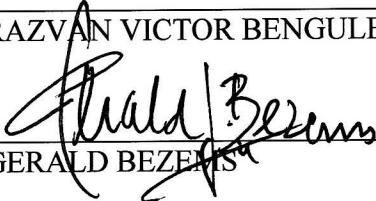
DATED: _____

JOON BANG

DATED: _____

RAZVAN VICTOR BENGULESCU

DATED: 03/24/2018



GERALD BEZEMS

DATED: _____

SCOTT CROCKETT

DATED: _____

RIFAT GORENER

DATED: _____

CHRISTOPHER LESIEUR

DATED: _____

LAWRENCE MARCUS

DATED: _____

MIKHAIL SULEYMANOV

IN WITNESS WHEREOF, Plaintiffs and Class Representatives, Joon Bang, Razvan Victor Bengulescu, Gerald Bezems, Scott Crockett, Rifat Gorener, Christopher LeSieur, Lawrence Marcus, and Mikhail Suleymanov, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

DATED: _____

JOON BANG

DATED: _____

RAZVAN VICTOR BENGULESCU

DATED: _____

GERALD BEZEMS

DATED: 3-26-18



SCOTT CROCKETT

DATED: _____

RIFAT GORENER

DATED: _____

CHRISTOPHER LESIEUR

DATED: _____

LAWRENCE MARCUS

DATED: _____

MIKHAIL SULEYMANOV

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DATED: _____

JOON BANG

DATED: _____

RAZVAN VICTOR BENGULESCU

DATED: _____

GERALD BEZEMS

DATED: _____

SCOTT CROCKETT

DATED: 04/04/2018



RIFAT GORENER

DATED: _____

CHRISTOPHER LESIEUR

DATED: _____

LAWRENCE MARCUS

DATED: _____

MIKHAIL SULEYMANOV

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DATED: _____

JOON BANG

DATED: _____

RAZVAN VICTOR BENGULESCU

DATED: _____

GERALD BEZEMS

DATED: _____

SCOTT CROCKETT

DATED: _____

RIFAT GORENER

DATED: 4-5-2018



CHRISTOPHER LESIEUR

DATED: _____

LAWRENCE MARCUS

DATED: _____

MIKHAIL SULEYMANOV

IN WITNESS WHEREOF, Plaintiffs and Class Representatives, Joon Bang, Razvan Victor Bengulescu, Gerald Bezems, Scott Crockett, Rifat Gorener, Christopher LeSieur, Lawrence Marcus, and Mikhail Suleymanov, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

DATED: _____

JOON BANG

DATED: _____

RAZVAN VICTOR BENGULESCU

DATED: _____

GERALD BEZEMS

DATED: _____

SCOTT CROCKETT

DATED: _____

RIFAT GORENER

DATED: _____

CHRISTOPHER LESIEUR

DATED: 4/10/18

Lawrence Marcus

LAWRENCE MARCUS

DATED: _____

MIKHAIL SULEYMANOV

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DATED: _____

JOON BANG

DATED: _____

RAZVAN VICTOR BENGULESCU

DATED: _____

GERALD BEZEMS

DATED: _____

SCOTT CROCKETT

DATED: _____

RIFAT GORENER

DATED: _____

CHRISTOPHER LESIEUR

DATED: _____

LAWRENCE MARCUS

DATED: 03/20/2018

Mikhail Suleymanov

MIKHAIL SULEYMANOV

EXHIBIT A

**CLAIM FORM TO RECEIVE REIMBURSEMENT FOR ELIGIBLE PAST EXPENSES
IN**

BANG v. BMW OF NORTH AMERICA, LLC

This form must be submitted or postmarked on or before _____, 2018

Complete this form only if you wish to make a claim for reimbursement for eligible past expenses benefits available under the Settlement.

PLEASE TYPE OR PRINT LEGIBLY

You must supply all of the following information in order to obtain reimbursement for eligible past expenses under this Settlement.

Name: _____

Address: _____

Email address: _____

BMW Model Year: 20 __ __ Model: _____ (ex: 550 or X6)

Vehicle Identification Number: _____
(The VIN is 17 characters and can be found on the metal plate at the bottom of the driver's side front windshield or on your sale or title documents.)

Date of Purchase/Lease: _____

YOU MAY BE ELIGIBLE FOR ONE OR MORE OF THE FOLLOWING BENEFITS/REIMBURSEMENTS FOR PAST EXPENSES PROVIDED UNDER THE SETTLEMENT:

- A. Reimbursement for Past Oil Services or Vouchers for Future Oil Services***
- B. Reimbursement for up to 7 Quarts of Oil Previously Purchased Between Oil Services***
- C. Reimbursement for Past Towing/Rental/Roadside-Assistance Service***
- D. Reimbursement for the Past Replacement of a Battery that was less than 3 Years Old***

PLEASE COMPLETE THIS CLAIM FORM ONLY IF YOU ARE SEEKING ANY OF THE BENEFITS/REIMBURSEMENTS LISTED ABOVE.

You **MUST** submit a Claim Form if you are seeking reimbursement for any of the items listed in A-D on the previous page. You do **not** need to submit this Claim Form if you are **only** seeking the relief detailed in items E-H (below) and are **not** seeking **any** reimbursement in items A-D:

- E. You are a current owner or lessee of a Class Vehicle seeking to have the “N63 Customer Care Package” performed on your Class Vehicle, and your Class Vehicle has not yet received the N63 Customer Care Package; you should contact your local BMW Center to schedule an appointment.
- F. You are a current owner or lessee of a Class Vehicle seeking Oil-Consumption Testing or engine replacement following failed oil-consumption tests, please check the Settlement website (insert website) after _____, 2018 to see if the Settlement has been approved and become effective. After the Settlement has become effective, you can make an appointment with a BMW Center.
- G. You are a current owner or lessee of a Class Vehicle seeking three (3) Future Oil Services on a Class Vehicle; a voucher for those services is included with this Notice Package. Those Future Oil Services will be available after the Settlement has become effective.
- H. You are a current owner or lessee of a Class Vehicle seeking to obtain the New Vehicle Discount; a voucher for that benefit is included with this Notice Package. The New Vehicle Discount will be available after the Settlement has become effective.

In order to expedite your claim submission and processing, please place a check mark (✓) or (X) next to each benefit you are seeking (you may be eligible for more than one benefit):

	Reimbursement for Past Oil Services and/or Vouchers for Future Oil Services (go to “A” below)
	Reimbursement for up to 7 Quarts of Oil Previously Purchased Between Oil Services (go to “B” below)
	Reimbursement for Past Towing/Rental/Roadside-Assistance Service (go to “C” below)
	Reimbursement for Past Replacement of a Battery that was less than 3 Years Old (go to “D” below)

PLEASE SEE QUESTIONS 7 AND 9 ON THE NOTICE FORM FOR MORE INFORMATION AND LIMITATIONS.

CLAIMS FOR REIMBURSEMENT FOR PAST EXPENSES

If you are seeking reimbursement for past expenses, please follow these instructions. You can seek reimbursement for more than one category. Please print the applicable reimbursement

category or categories (A, B, C, and/or D) on the top right-hand corner of any documents that you submit to support a reimbursement claim.

A. Reimbursement for Past Oil Services

To obtain reimbursement for up to three (3) past oil services (not to exceed \$75 each), you must submit for each oil service claimed documents showing:

- a. The amount you paid for the oil service as evidenced by a repair invoice; and
- b. That the oil service occurred prior to 10 years/120,000 miles from your Class Vehicle’s in-service date; and
- c. That the oil service took place less than 12 months/10,500 miles after a previous oil service as evidenced by the repair invoice of the prior oil service and the invoice for the oil service for which you are seeking reimbursement.

For each set of supporting documents submitted (up to 3), please indicate that they are being submitted for **Reimbursement Category A** by writing “A” in the top right-hand corner of each document. *Alternatively, instead of reimbursement, you can choose to receive a voucher good for a future oil service on a Class Vehicle. Please note your choice below.*

You can use the table below for each oil service that you are seeking to have reimbursed or for which you are seeking a voucher for a future oil service.

Claim		Mileage	Date	Cash	Voucher
1	Oil service for which you are seeking reimbursement			<input type="checkbox"/>	<input type="checkbox"/>
	Prior oil service				
	<i>Difference (must be less than 12 months/10,500 miles)</i>				
2	Oil service for which you are seeking reimbursement			<input type="checkbox"/>	<input type="checkbox"/>
	Prior oil service				
	<i>Difference (must be less than 12 months/10,500 miles)</i>				
3	Oil service for which you are seeking reimbursement			<input type="checkbox"/>	<input type="checkbox"/>
	Prior oil service				
	<i>Difference (must be less than 12 months/10,500 miles)</i>				

B. Reimbursement for Past Oil Purchases for up to 7 Quarts of Oil Previously Purchased Between Oil Services

To obtain reimbursement for the cost (up to \$10 per quart) of up to seven (7) quarts of oil that you purchased between oil services, you must submit documents showing that:

- a. The oil was of the same type and grade specified for your Class Vehicle in the owner's manual or on the vehicle, as evidenced by a proof of purchase or a repair order/service invoice; and
- b. There was at least one (1) prior oil-consumption complaint about your Class Vehicle to BMW NA or an authorized BMW Center, as confirmed by a repair order, a BMW NA Customer Relations Report, or other written documentation of an oil-consumption complaint to BMW NA or to one of its authorized centers; and
- c. Your Class Vehicle had fewer than 10 years and 120,000 miles at the time of oil purchase(s) as evidenced by required proofs, for example, service records from before and/or after the oil purchase.

For each set of supporting documents submitted (for up to seven (7) quarts of oil), please indicate that they are being submitted for **Reimbursement Category B** by writing "B" in the top right hand corner of each document.

C. Reimbursement for Past Towing/Rental/Roadside-Assistance Service

To obtain reimbursement of up to \$50 for the cost of one (1) towing/rental/roadside-assistance service you incurred because of an excess oil consumption or premature battery failure issue, you must submit documents showing that:

- a. Your Class Vehicle was towed to an authorized BMW Center or a third-party repair facility as evidenced by a repair order or service invoice; and
- b. The repair order or service invoice states that the towing/rental/roadside-assistance service was related to an excess oil consumption or a premature battery failure issue.

Please indicate that the supporting documents are being submitted for **Reimbursement Category C** by writing "C" in the top right-hand corner of each document.

D. Reimbursement for Past Replacement of a Battery that Was Less than 3 Years Old

If you are seeking reimbursement for one (1) replacement of a 90 Ah or 105 Ah battery, you must submit documents showing that:

- a. You purchased a 90 Ah or 105Ah battery;
- b. The replaced (discharged) battery was less than 3 years old; and
- c. You purchased the replacement (new) battery outside the 4 year/50,000 mile New Vehicle Limited Warranty period.

Please indicate that the supporting documents are being submitted for **Reimbursement Category D** by writing “**D**” in the top right-hand corner of each document.

Did you receive any “goodwill” or other cost/price adjustment, coupon, reimbursement, or refund from BMW NA, a BMW Center, insurer or any person or entity associated with Defendants, equal to or in excess of the amount of the claim submitted in connection with *any* of the above services, repairs, or replacement?

If so, please provide proof of same and explain below.

COMPLETED CLAIMS FORMS CAN BE SUBMITTED BY MAIL OR ONLINE.

IF SUBMITTING BY MAIL, COMPLETE THIS CLAIM FORM AND MAIL IT, POSTMARKED ON OR BEFORE _____, **2018** TO:

Claims Administrator
[Name]
PO Box ____]
[City, State, ZIP Code]

IF SUBMITTING ONLINE, COMPLETE AND SUBMIT THE CLAIM FORM AVAILABLE AT [WWW.\[INSERT WEBSITE\].COM](#) N OR BEFORE _____, **2018**.

CLAIMANT DECLARATION

I declare under penalty of perjury that the information above and the documents I have supplied are true and correct to the best of my knowledge.

Signed On: _____

(DD/MM/YYYY)

in _____, _____.
(City) (State)

(Sign your name here)

(Type or print your name here)

(Capacity of person signing - if applicable)

EXHIBIT B

United States District Court for the District of New Jersey

If you are a current or former owner or lessee of a model-year 2009 to 2014 BMW vehicle with an “N63” engine, you could get benefits from a class-action settlement.

A federal court has authorized this notice. This is not a solicitation from a lawyer.

- A nationwide settlement has been reached in a class action lawsuit against BMW of North America, LLC and Bayerische Motoren Werke Aktiengesellschaft involving certain model-year 2009 to 2014 BMW 5 series, 6 series, 7 series, X5, and X6 vehicles equipped with an N63 engine.
- The Settlement provides an opportunity to be reimbursed for certain past expenses and to obtain free future benefits, which are explained more fully below.
- Your legal rights are affected whether you act or don’t act, so please read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:		
SUBMIT A CLAIM FORM AND/OR TAKE YOUR CLASS VEHICLE TO AN AUTHORIZED BMW CENTER	Make a claim to receive the valuable reimbursements for eligible past expenses and benefits potentially available to you under the Settlement and/or take your vehicle to an authorized BMW Center for certain free services after the Settlement is approved and/or utilize the new vehicle discount voucher and free future oil services vouchers.	Claims must be submitted by _____, 2018. <i>See Question 8, below.</i> You may bring your Class Vehicle to a BMW Center and/or utilize the new vehicle discount voucher and free future oil services vouchers after the Settlement is approved. <i>See Question 6, below.</i>
EXCLUDE YOURSELF	Write to the Settlement Administrator to opt out of the Settlement. This is the only option that allows you to be part of any other lawsuit, or your own lawsuit, against the Defendants about the legal claims released in this Settlement.	Requests for Exclusion must be postmarked by _____, 2018. <i>See Question 12, below.</i>
OBJECT	Write to the judge about why you do not like the Settlement.	Objections must be postmarked by _____, 2018. <i>See Question 17, below.</i>
GO TO A HEARING	Ask to speak in court to the judge about the Settlement.	The Final Approval Hearing is currently scheduled for _____, 2018. <i>See Question 19, below.</i>
DO NOTHING	Give up many of the benefits you may be entitled to under the Settlement and your right to be part of any other lawsuit against the Defendants about the legal claims released by the Settlement.	<i>See Question 22, below.</i>

**QUESTIONS? CALL TOLL-FREE _____ OR VISIT [www.\[to be inserted\].com](http://www.[to be inserted].com)
PARA UNA NOTIFICACION EN ESPANOL, LLAMAR O VISITAR NUESTRO WEBSITE**

- These rights and options -- *and the deadlines to exercise them* -- are explained in this notice.
- The Court in charge of this case still must decide whether to approve the Settlement before any benefits can be distributed. Please be patient and check the settlement website for updates.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATIONPAGE

1. Why have I received this notice?
2. What is the lawsuit about?
3. Why is this a class action?
4. Why is there a Settlement?

WHO IS IN THE SETTLEMENTPAGE

5. How do I know if I am part of the Settlement? What vehicles are included in the Settlement?

THE BENEFITS: WHAT YOU GETPAGE

6. What are the benefits of the Settlement?
7. What am I giving up in exchange for the Settlement benefits?

HOW TO GET BENEFITS PAGE

8. How do I get the benefits of the Settlement?
9. What if my claim is denied?
10. When will I get the benefits?

EXCLUDING YOURSELF FROM THE SETTLEMENTPAGE

11. Can I exclude myself from this Settlement?
12. If I exclude myself, can I get anything from this Settlement?
13. If I don't exclude myself, can I sue later?
14. How do I exclude myself from the Settlement?

THE LAWYERS REPRESENTING YOUPAGE

15. Do I have a lawyer in the case?
16. How will the lawyers be paid?

OBJECTING TO THE SETTLEMENTPAGE

17. How do I tell the Court if I don't like the Settlement?
18. What's the difference between objecting and excluding?

THE COURT'S FINAL APPROVAL HEARINGPAGE

19. When and where will the Court decide whether to approve the Settlement?
20. Do I need to go to the hearing?
21. May I speak at the hearing?

QUESTIONS? CALL TOLL-FREE _____ OR VISIT [www.\[to be inserted\].com](http://www.[to be inserted].com)
PARA UNA NOTIFICACION EN ESPANOL, LLAMAR O VISITAR NUESTRO WEBSITE

WHAT IF I DO NOTHING?PAGE

22. What happens if I do nothing?

GETTING MORE INFORMATIONPAGE

23. Are there more details about the Settlement?

1. Why have I received this notice?

A Court has authorized this notice because you have a right to know about the proposed settlement of this class-action lawsuit, and your options, before the Court decides whether to give “final approval” to the Settlement. This notice explains the lawsuit, the proposed Settlement, and your legal rights. You have received this notice because BMW’s records indicate that you are a current or former owner or lessee of a model-year 2009-2014 BMW 5 series, 6 series, 7 series, X5, or X6 vehicle equipped with an N63 engine purchased or leased in the United States or Puerto Rico.

Judge Madeline Cox Arleo of the United States District Court for the District of New Jersey is overseeing this class-action lawsuit, known as *Bang, et al. v. BMW of North America, LLC and Bavarian Motor Works*, Civil Action No. 2:15-cv-06945 (the “Action”). Joon Bang, Razvan Victor Bengulescu, Gerald Bezems, Scott Crockett, Rifat Gorener, Christopher Lesieur, Lawrence Marcus, and Mikhail Suleymanov, the people who sued, are called the “Plaintiffs,” and the companies that were sued, BMW of North America, LLC (“BMW NA”), and Bayerische Motoren Werke Aktiengesellschaft (“BMW AG”), are called the “Defendants.”

2. What is the lawsuit about?

This lawsuit involves model-year 2009-2014 BMW 5 series, 6 series, 7 series, X5, and X6 vehicles equipped with N63 engines that were purchased or leased in the United States or Puerto Rico (the “Class Vehicles”). The lawsuit alleges that the Class Vehicles consume excessive amounts of engine oil, requiring additional oil changes and the need for adding engine oil between regular oil changes, as well as substantial battery drain potentially causing premature battery failure. BMW AG, which manufactures BMW vehicles, and BMW NA, which distributes and warrants BMW vehicles in the U.S., deny these allegations and stand behind and support their products.

3. Why is this a class action?

In a class action, one or more people called “Class Representatives” assert claims on behalf of people who have similar claims. All of these people are the “Class” or “Class Members.” One court resolves the issues for all Class Members, except for those who timely exclude themselves from (or “opt out” of) the Class. The Class Representatives in the Action are the Plaintiffs identified above. You have received this notice because you have been identified as potentially being a Class Member.

4. Why is there a Settlement?

All parties have agreed to a Settlement to avoid further cost and risk of a trial, and so that the people affected can begin getting benefits in exchange for releasing the Defendants from liability for the claims that were raised or could have been raised in the Action involving the Class Vehicles’ alleged engine oil consumption and battery failure issues. The Settlement does not mean that the Defendants broke any laws, or otherwise did anything wrong, because Judge Arleo did not decide which side was right. The Class Representatives and the

QUESTIONS? CALL TOLL-FREE _____ OR VISIT [www.\[to be inserted\].com](http://www.[to be inserted].com)
PARA UNA NOTIFICACION EN ESPANOL, LLAMAR O VISITAR NUESTRO WEBSITE

lawyers representing them think the Settlement is fair and reasonable for the Class.

5. How do I know if I am part of the Settlement? What vehicles are included in the Settlement?

The Settlement Class includes all persons or entities in the United States and Puerto Rico who currently own or lease, or previously owned or leased, certain U.S. specification model-year 2009-2014 BMW 5 series, 6 series, 7 series, X5, or X6 vehicles equipped with an N63 engine purchased or leased in the United States or Puerto Rico, which include the following vehicles:

Model Year Designation	Production Range	Model Designation
2009 to 2012	3/2009 to 6/2012	7 Series Sedan (F01 & F02)
2010 to 2013	4/2010 to 6/2012	7 Series Active Hybrid (F04)
2010 to 2012	3/2010 to 7/2013	5 Series Gran Turismo (F07)
2010 to 2013	3/2010 to 7/2013	5 Series Sedan (F10)
2011 to 2012	3/2011 to 7/2012	6 Series Convertible (F12)
2011 to 2012	7/2011 to 7/2012	6 Series Coupe (F13)
2010 to 2013	3/2010 to 6/2013	X5 SAV (E70)
2009 to 2014	7/2008 to 6/2014	X6 SAV (E71)
2009 to 2012	9/2009 to 9/2011	X6 Active Hybrid SAV (E72)

Please note that not all vehicles in the model years identified above contained the N63 engine at issue in the Action. You have received this notice because BMW's records indicate that you have or had a BMW vehicle with an N63 engine. If you're not sure whether you are included in the Settlement Class, you may call (toll-free) [to be inserted] with questions.

6. What are the benefits of the Settlement?

If Judge Arleo grants final approval of the Settlement and the Settlement becomes effective (the "Effective Date"), you may be entitled to some or all of the following benefits.

A. Reimbursement for Past Expenses

Class Members may be eligible for reimbursement of various expenses related to excessive engine oil consumption and premature battery failure.

i. Reimbursement for Past Oil Services

Class Members are eligible to receive reimbursement for the cost (not to exceed \$75 each) of up to 3 past Oil Services on a Class Vehicle if:

- a. The amounts were actually paid by the Class Member at the time of Oil Service as evidenced by a repair invoice; and
- b. The Oil Service occurred prior to 10 years/120,000 miles from the Class Vehicle's in-service date; and
- c. The Oil Service took place less than 12 months/10,500 miles after a previous Oil Service as evidenced by the repair invoice of the prior Oil Service and the invoice for the Oil Service for which reimbursement is sought.

**QUESTIONS? CALL TOLL-FREE _____ OR VISIT [www.\[to be inserted\].com](http://www.[to be inserted].com)
PARA UNA NOTIFICACION EN ESPANOL, LLAMAR O VISITAR NUESTRO WEBSITE**

In the alternative, Class Members may elect to receive one (1) free future Oil Service in lieu of reimbursement for each qualifying past Oil Service, in addition to the future free Oil Services provided below (see Answer 6.B.ii).

ii. Reimbursement for Past Oil Purchases for up to 7 Quarts of Oil Purchased Between Oil Services

Class Members are eligible to receive reimbursement of the cost (up to \$10 per quart) of up to seven (7) quarts of oil that the Class Member purchased between oil services prior to the Effective Date if:

- a. The oil was of the same type and grade specified for the Class Vehicle in the owner's manual or on the vehicle, as evidenced by proof of purchase, repair order, or service invoice; and
- b. At least one (1) prior oil-consumption complaint about the Class Vehicle was communicated to BMW NA or an authorized BMW Center, as confirmed by a repair order, Customer Relations Report, or other written documentation of an oil-consumption complaint to BMW NA or to one of its authorized BMW Centers; and
- c. The Class Vehicle had fewer than 10 years and 120,000 miles at the time of oil purchase(s) as evidenced by required proofs, for example, service records from before and/or after oil purchase.

iii. Reimbursement for Towing/Rental/Roadside-Assistance Service

Class Members are eligible to receive reimbursement up to \$50 for the cost of one (1) towing/ rental/ roadside assistance incurred by Settlement Class Members because of an excess oil consumption or premature battery failure issue if:

- a. the Class Vehicle was towed to an authorized BMW Center or a third-party repair facility as evidenced by a repair/service invoice; and
- b. the Class Member repair/service invoice states that the towing/rental/roadside-assistance service was related to an excess oil consumption or a premature battery failure issue.

iv. Reimbursement for Past Replacement of a Battery that Was Less than 3 Years Old

Class Members are eligible to receive reimbursement for the cost of one (1) replacement of a 90 Ah or 105 Ah battery purchased prior to the mailing of the Class Notice, where the Class Member provides proof that (a) the Class Member purchased a new battery, (b) the replaced (discharged) battery was less than 3 years old, and (c) the replacement (new) battery was purchased outside the 4 year/50,000 mile New Vehicle Limited Warranty period.

* * *

Limitations: Defendants do not warrant or guarantee any repairs performed at third-party (non-BMW) repair shops and, should any such repairs fail after a Settlement Class Member has made a claim under the Settlement, the Settlement Class Member will not be entitled to submit an additional claim.

In order to obtain reimbursement for eligible past expenses, you must submit a Claim Form and include all of the documentation described above and identified on the Claim Form.

QUESTIONS? CALL TOLL-FREE _____ OR VISIT [www.\[to be inserted\].com](http://www.[to be inserted].com)
PARA UNA NOTIFICACION EN ESPANOL, LLAMAR O VISITAR NUESTRO WEBSITE

B. *Service Campaign for Class Vehicles*

If you currently own or lease a Class Vehicle, you may be eligible for service credits and other relief going forward (after the Effective Date).

i. *N63 Customer Care Package*

Defendants have already made available at no cost to current owners and lessees of Class Vehicles the “N63 Customer Care Package” (described in BMW Service Information Bulletin SI B11 06 14) intended to eliminate or reduce excess engine oil consumption and premature battery failure. The N63 Customer Care Package is available regardless of the age or mileage of a Class Vehicle; however, each Class Vehicle is entitled to receive the N63 Customer Care Package only once. If you’re unsure whether the N63 Customer Care Package has been performed on your Class Vehicle, you can contact your local BMW Center or BMW NA Customer Relations (at 800-831-1117). When contacting your BMW Center or BMW NA Customer Relations, please have your Class Vehicle’s Vehicle Identification Number (“VIN”) available. (The VIN can be found on the metal plate at the bottom of the driver’s side front windshield or on your sale or title documents.)

If your Class Vehicle has not yet received the N63 Customer Care Package, you may schedule an appointment to take it to your local BMW Center to have it performed at no cost.

ii. *Three (3) Free Future Oil Services*

Current owners or lessees of Class Vehicles will receive 3 future Oil Services (up to \$75 per Oil Service) on a Class Vehicle performed at a BMW Center during the earlier of 10 years or 120,000 miles from the in-service date of the Class Vehicle. A voucher for those future Oil Services is included with this package. The Oil Services will become available after the Settlement is effective.

iii. *Oil-Consumption Testing*

If, during the earlier of the first 10 years or 120,000 miles that a Class Vehicle has been on the road, but in no event less than 1 year or 12,000 miles from the Effective Date, the Class Vehicle’s “Low Oil” light illuminates before the Condition Based Service (“CBS”) Indicator or the “oil service” light comes on, BMW will provide up to three (3) Oil-Consumption Tests per Class Vehicle at a BMW Center at no cost to the then-current owner or lessee of a Class Vehicle. The Oil-Consumption Test will help to determine whether the Class Vehicle is consuming an excess amount of oil. BMW will provide the applicable repairs, including diagnosis, at no charge to correct a failed Oil-Consumption Test, up to the earlier of 10 years or 120,000 miles from the Class Vehicle’s in-service date at the time of the failed Oil-Consumption Test.

iv. *Engine Replacement*

Class Members who are then-current owners or lessees of Class Vehicles may be eligible to receive one (1) replacement engine, which will include the cylinder heads, per Class Vehicle during the earlier of 10 years or 120,000 miles from a Class Vehicle’s in-service date, if:

- a. the N63 Customer Care Package (described in Service Information Bulletin SI B11 06 14) has been performed on the Class Vehicle; and
- b. the Class Vehicle thereafter fails two (2) Oil-Consumption Tests; and
- c. BMW cannot completely resolve the excess oil consumption issue after the second failed

**QUESTIONS? CALL TOLL-FREE _____ OR VISIT [www.\[to be inserted\].com](http://www.[to be inserted].com)
PARA UNA NOTIFICACION EN ESPANOL, LLAMAR O VISITAR NUESTRO WEBSITE**

- d. Oil-Consumption Test and second repair attempt; and the Class Vehicle is then brought back to a BMW Center for an Oil Consumption issue and the BMW Center confirms that there in fact remains an Oil Consumption issue; and
- e. the Class Member agrees to “contribute” to the total replacement cost of the engine (inclusive of parts and labor) as follows:

<u>Odometer Miles at the time of Return to a BMW Center for an Oil-Consumption Issue After Second failed Oil-Consumption Test and Second Repair Attempt</u>		<u>Customer Contribution</u>	<u>BMW Contribution</u>
50,001	60,000	5%	95%
60,001	70,000	15%	85%
70,001	80,000	30%	70%
80,001	90,000	45%	55%
90,001	100,000	60%	40%
100,001	110,000	75%	25%
110,001	120,000	90%	10%
120,001	above	100%	0%

Note: If a Class Vehicle is brought to a BMW Center and BMW, in its discretion, determines not to attempt to make a repair related to excess oil consumption, but instead to replace the engine due to the excess oil consumption, the Class Member will have the option for an engine replacement but must agree to contribute to the total replacement cost of the engine (inclusive of parts and labor) in the percentage associated with the odometer mileage of the Class Vehicle at the time BMW determines to recommend replacing the engine rather than attempting to repair it as set forth in the chart above.

v. Replacement Battery

For Class Vehicles that can be retrofitted with a 105Ah battery, BMW will provide the Settlement Class Member who is a current owner or lessee with one (1) new 105Ah battery to replace the 90Ah battery if they did not previously receive a replacement battery, and, thereafter, 105Ah replacement batteries at a BMW Center, if the 105Ah battery fails within two (2) years of installation (not due to customer negligence) as evidenced by a prior invoice for replacement of the battery.

For Class Vehicles with a 90Ah battery (as of the Settlement Class Notice Date), that cannot accommodate the 105Ah battery, BMW will provide the Settlement Class Member who is a current owner or lessee with 90Ah replacement batteries at a BMW Center, if any such battery fails within two (2) years of installation (not due to customer negligence) as evidenced by a prior invoice for replacement of the battery.

C. New Vehicle Credit Voucher

Included with this Notice is a voucher good for \$1,500 towards the purchase or lease of a new BMW 6 or 7 Series vehicle or \$1,000 towards the purchase or lease of any other new BMW vehicle. The voucher will be transferable to immediate family members (children, parents, and siblings) and will be valid for one (1) year from the Effective Date of this Settlement.

QUESTIONS? CALL TOLL-FREE _____ OR VISIT [www.\[to be inserted\].com](http://www.[to be inserted].com)
PARA UNA NOTIFICACION EN ESPANOL, LLAMAR O VISITAR NUESTRO WEBSITE

* * *

As part of the claims-confirmation process, a claim for reimbursement will be rejected if: (1) the Vehicle's warranty was voided because (a) the VIN has been altered or cannot be read, (b) the Vehicle has been declared a total loss or sold for salvage purposes (for reasons unrelated to excess oil consumption or premature battery failure issues), or (c) the Vehicle has been used in any competitive racing event (this does not include non-driving events where the Vehicle is on display); (2) the VIN number associated with the claim does not match the Settlement Class Member's VIN number; or (3) the claim for reimbursement is (a) for an item or service that is not covered under this Settlement Agreement, or (b) for which a claim under this Settlement Agreement has already been made and paid, or (c) for which the Class Member has received "goodwill" or other cost/price adjustment, coupon, reimbursement, or refund from BMW NA, a BMW Center, insurer or any person or entity associated with Defendants, equal to or in excess of the amount of the claim submitted.

7. What am I giving up in exchange for the Settlement benefits?

If the Settlement becomes final, Class Members will be releasing Defendants and related people and entities from all of the claims described and identified in Section VII.A of the Settlement Agreement. In essence, the claims released by Class Members are all claims (except for personal injury or damage to property other than the Class Vehicle) that could arise based on excess engine oil consumption or premature battery failure in the Class Vehicles. The Settlement Agreement is available at [www.\[to be inserted\].com](http://www.[to be inserted].com). The Settlement Agreement describes the released claims with specific descriptions, in necessarily accurate legal terminology, so read it carefully.

Judge Arleo has appointed specific lawyers to represent you in this lawsuit and Settlement. You can talk to one of the lawyers listed in Answer 15 below, free of charge, if you have questions about the released claims or what they mean. You can also speak with your own lawyer, should you have one, about this Settlement.

8. How do I get the benefits of the Settlement?

If you are a Class Member and the N63 Customer Care Package has not yet been performed on your vehicle, you can schedule an appointment with your local BMW Center to have it performed.

If are a Class Member and would like to obtain the other Service Campaign benefits described in Answer 6.B., above, you can do so after the Effective Date of the Settlement by making an appointment for the Service Campaign with an authorized BMW Center in your area. *The Effective Date is thirty (30) days after Judge Arleo gives final approval of the Settlement, unless an appeal is filed, in which case it may be longer.*

If you are a Class Member and would like to obtain the reimbursement benefits (described in Answer 6.A., above), you need to complete the Claim Form that accompanies this Notice and mail or email it, with all the required proofs, to the address provided on the Claim Form. Additional Claim Forms are available at [www.\[to be inserted\].com](http://www.[to be inserted].com). The current deadline for submitting Claim Forms is _____, 2018.

You may use the Future Oil Services and New Vehicle Discount vouchers included with this Notice after the Effective Date. *The Effective Date is thirty (30) days after Judge Arleo gives final approval of the Settlement, unless an appeal is filed, in which case it may be longer.*

These benefits are also subject to limitations, which are discussed in the answer to Question 6.

QUESTIONS? CALL TOLL-FREE _____ OR VISIT [www.\[to be inserted\].com](http://www.[to be inserted].com)
PARA UNA NOTIFICACION EN ESPANOL, LLAMAR O VISITAR NUESTRO WEBSITE

If you have any questions on how to complete the Claim Form or what information is needed, you can call the following toll-free number: **[to be inserted]**.

9. What if my claim is denied?

There is a process in the Settlement Agreement to resolve disagreements between you and Defendants over your claim. During this process, the court-appointed lawyers listed in the answer Question 15 below will represent you in any dispute regarding relief under the terms of the Settlement, and the dispute will be handled in accordance with the procedures set forth in the Settlement Agreement. You may have the right to appeal any denied claim to a Special Master. If you have questions regarding this process, visit [www.\[to be inserted\].com](http://www.[to be inserted].com) to see a copy of the Settlement Agreement, or contact Class Counsel below.

10. When will I get the Settlement benefits?

- 1) If you have submitted a claim, your Claim Form will be processed and payments will be issued on a continuing, rolling basis after the Effective Date.

Please be patient, and feel free to check the website or call the toll-free phone number listed above for current status.

- 2) If your vehicle hasn't yet received the N63 Customer Care Package, you can contact your BMW Center to have it performed at any time.
- 3) After the Effective Date, you can schedule an appointment with your BMW Center for Oil-Consumption Testing and, if required, engine replacement.
- 4) The free Future Oil Services (described in Answer 6.B.ii, above) and New Vehicle Discount vouchers (described in Answer 6.C., above) included with this Notice will be valid after the Effective Date.

11. Can I exclude myself from this Settlement?

Yes. If you want to keep the right to sue or if you are already suing Defendants in another action over the legal issues in this case, then you must take steps to opt out of this Settlement. This is called asking to be excluded from – sometimes called “opting out” of – the Settlement.

12. If I exclude myself, can I get anything from this Settlement?

No. If you ask to be excluded, you cannot object to the Settlement and you will not receive any of the benefits of the Settlement, other than the N63 Customer Care Package described in Answer 6.B.i., above. But you may sue, continue to sue, or be part of a different lawsuit against Defendants in the future, including for claims that this Settlement resolves. You will not be bound by anything that happens in this lawsuit.

13. If I don't exclude myself, can I sue later?

No. Unless you exclude yourself, you give up the right to sue Defendants for the claims that this Settlement resolves.

QUESTIONS? CALL TOLL-FREE _____ OR VISIT [www.\[to be inserted\].com](http://www.[to be inserted].com)
PARA UNA NOTIFICACION EN ESPANOL, LLAMAR O VISITAR NUESTRO WEBSITE

14. How do I exclude myself from the Settlement?

To exclude yourself from the Settlement, you must send a letter by mail saying that you want to be excluded from *Bang v. BMW of North America, LLC*, Case No. 2:15-cv-06945-MCA-SCM. Be sure to include: (1) your full name and current address; (2) the model-year and VIN of your Class Vehicle(s) and the date(s) of purchase/lease; (3) specifically and clearly state your desire to be excluded from the Settlement and from the Settlement Class; and (4) your signature. You cannot ask to be excluded over the phone or via the internet. You must mail your request to be excluded, postmarked no later than _____, **2018**, to the Settlement Administrator at the address below:

Bang Settlement
 PO Box XXXX
 City, State XXXXX-XXXX

Failure to comply with any of these requirements for excluding yourself may result in you being bound by this Settlement.

15. Do I have a lawyer in the case?

The Plaintiffs and you have been represented by a number of lawyers and several law firms that have prosecuted this case together. Judge Arleo has appointed the following lawyers to represent you and other Class Members as “Class Counsel”:

Matthew D. Schelkopf
 Joseph G. Sauder
 Joseph B. Kenney
 McCune Wright Arevalo, LLP
 555 Lancaster Avenue
 Berwyn, Pennsylvania 19312
 Telephone: (610) 200-0581
 Facsimile: (610) 421-1326
mds@mccunewright.com
jgs@mccunewright.com
jbk@mccunewright.com

Eric D. Barton
 Sarah Ruane
 Melody Dickson
 Wagstaff & Cartmell LLP
 4740 Grand Avenue, Suite 300
 Kansas City, Missouri 64112
 816-701-1100
ebarton@wcllp.com
mdisckson@wcllp.com

David C. Wright
 Richard D. McCune
 McCune Wright Arevalo, LLP
 3281 East Guasti Road, Suite 100
 Ontario, California 91761
 Telephone: (909) 557-1250
 Facsimile: (909) 557-1275
dcw@mccunewright.com
rdm@mccunewright.com

You will not be charged for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

QUESTIONS? CALL TOLL-FREE _____ OR VISIT [www.\[to be inserted\].com](http://www.[to be inserted].com)
PARA UNA NOTIFICACION EN ESPANOL, LLAMAR O VISITAR NUESTRO WEBSITE

16. How will the lawyers be paid?

As part of the resolution of the Action, Class Counsel and Defendants have agreed that Class Counsel may apply for an award of attorneys’ fees, costs, and expenses not to exceed \$3,022,000.00, as well as service awards to the eight Plaintiffs in the amount of \$3,500.00 (\$28,000.00 in total). Defendants have agreed not to oppose this request. The Parties have also agreed that Class Counsel will not seek payment of any amount in excess of \$3,022,000.00 for attorneys’ fees, costs, and expenses as well as service awards to the eight Plaintiffs in the amount of \$3,500.00 (\$28,000.00 in total) if awarded by Judge Arleo. The Class Counsel fees and expenses, as well as the service awards to the class representatives, will be paid separate and apart from any relief provided to the Class and will not reduce the value of the benefits distributed to Class Members. Defendants will also separately pay the costs to administer the Settlement. Judge Arleo will determine the amount of attorneys’ fees, costs, and expenses and service awards after evaluating Plaintiffs’ submission.

17. How do I tell the Court if I don’t like the Settlement?

You can object to the Settlement if you don’t like some part of it. You can give reasons why you think Judge Arleo should not approve it. To object, send a letter saying that you object to the Settlement in *Bang v. BMW of North America, LLC*, Case No. 2:15-cv-06945-MCA-SCM. You must include: (1) your full name, current address, current telephone number, and the name of your lawyer and your lawyer’s address if you are represented by a lawyer other than Class Counsel; (2) the model year and VIN of your Class Vehicle(s) and the date(s) of purchase or lease; (3) the reasons why you object and the factual and legal reasons for your objection (including all relevant documents that pertain to your objection); (4) copies of relevant repair history or other proof that the objector has owned or leased the Class Vehicle (i.e., a true copy of a vehicle title, registration, or license receipt); (5) a statement that you have reviewed the Settlement Class definition and understand that you are a Settlement Class Member, and you have not opted out of the Settlement Class; (6) a detailed list of any other objections to any class action settlements you submitted to any court, whether state, federal, or otherwise, in the United States in the previous five (5) years; (7) a Notice of Intention to Appear at the Final Approval Hearing if you intend to appear in person at the hearing; and (8) your signature. **The objection must be mailed to the Court, the Claims Administrator, Class Counsel, and Defendants’ Counsel at the below addresses.** The mailed copies must be postmarked on or before _____, 2018:

COURT	Clerk of Court United States District Court for the District of New Jersey Rev. Dr. Martin Luther King, Jr. Federal Building & U.S. Courthouse 50 Walnut Street Newark, New Jersey 01702	
CLAIMS ADMINISTRATOR	<i>Claims Administrator</i> <i>Bang Settlement</i> PO Box XXXX City, State XXXXX-XXXX	
CLASS COUNSEL	Matthew D. Schelkopf Joseph G. Sauder Joseph B. Kenney McCune Wright Arevalo, LLP 555 Lancaster Avenue Berwyn, Pennsylvania 19312	Eric D. Barton Melody Dickson Wagstaff & Cartmell LLP 4740 Grand Avenue, Suite 300 Kansas City, MO 64112

QUESTIONS? CALL TOLL-FREE _____ OR VISIT [www.\[to be inserted\].com](http://www.[to be inserted].com)
PARA UNA NOTIFICACION EN ESPANOL, LLAMAR O VISITAR NUESTRO WEBSITE

DEEFENDANTS’ COUNSEL	Christopher J. Dalton Daniel Z. Rivlin Buchanan Ingersoll & Rooney PC 550 Broad Street, Suite 810 Newark, New Jersey 07102-4582
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18. What’s the difference between objecting and excluding?

Objecting is simply telling Judge Arleo that you don’t like something about the Settlement. You can object only if you stay in the Settlement. Excluding yourself is telling Judge Arleo that you don’t want to be part of the Settlement. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

19. When and where will Judge Arleo decide whether to approve the Settlement?

Judge Arleo will hold a “Final Approval Hearing” to decide whether to approve the Settlement on _____, **2018 at ____ a.m.**, at the United States District Court for the District of New Jersey, Rev. Dr. Martin Luther King, Jr. Federal Building & U.S. Courthouse, 50 Walnut Street, Newark, New Jersey 07102. At this hearing, Judge Arleo will determine whether the Settlement is fair, adequate, and reasonable and whether the objections by Class Members, if any, have merit. If you have filed an objection on time, you may attend and ask to speak, but you don’t have to. However, Judge Arleo will only listen to people who have asked to speak at the hearing (*See* Question 21 below). At this hearing, Judge Arleo will also decide the service awards for the Class Representatives, as well as the attorney’s fees for the lawyers representing the Class Members. We do not know how long the Court’s decision will take, and the hearing date may change due to other court business. You should monitor [www.\[to be inserted\].com](http://www.[to be inserted].com) to find out if any dates have changed and to learn if Judge Arleo has approved the Settlement.

20. Do I need to go to the hearing?

No. Class Counsel will answer any questions Judge Arleo may have, but you are welcome to come at your own expense. If you send an objection, you don’t have to come to Court to talk about it. As long as you mail your valid written objection on time, Judge Arleo will consider it. You may also pay another lawyer to attend, but it’s not required.

21. May I speak at the hearing?

You may ask Judge Arleo for permission to speak at the Final Approval Hearing. To do so, you must file a “Notice of Intent to Appear” in *Bang v. BMW of North America, LLC*, Case No. 2:15-cv-069-45-MCA-SCM. Be sure to include your name, address, telephone number, signature, and other requirements outlined in Answer 17. Your Notice of Intent to Appear must be postmarked no later than _____, **2018**, and mailed to the addresses listed in Answer 17. You cannot speak at the hearing if you have excluded yourself from the Settlement.

22. What if I do nothing?

If you do nothing, you will give up the right to be part of any other lawsuit against Defendants about the legal claims released by the Settlement. You will be entitled to take your Class Vehicle to a BMW Center for the Service Campaign benefits described in Answer 6.B., above. However, you will not receive any of the

QUESTIONS? CALL TOLL-FREE _____ OR VISIT [www.\[to be inserted\].com](http://www.[to be inserted].com)
PARA UNA NOTIFICACION EN ESPANOL, LLAMAR O VISITAR NUESTRO WEBSITE

reimbursement benefits described in Answer 6.A offered by this Settlement unless you timely submit a Claim Form.

23. Are there more details about the Settlement?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get copies of the Settlement Agreement and related documents at [www.\[to be inserted\].com](http://www.[to be inserted].com). You may also write with questions to [insert settlement administrator address]. You can also call the toll-free number,

_____.

QUESTIONS? CALL TOLL-FREE _____ OR VISIT [www.\[to be inserted\].com](http://www.[to be inserted].com)
PARA UNA NOTIFICACION EN ESPANOL, LLAMAR O VISITAR NUESTRO WEBSITE

EXHIBIT C

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

JOON BANG, RAZVAN VICTOR
BENGULESCU, GERALD BEZEMS,
SCOTT CROCKETT, RIFAT
GORENER, CHRISTOPHER LESIEUR,
LAWRENCE MARCUS, and MIKHAIL
SULEYMANOV, individually and on
behalf of others similarly situated,

Plaintiffs,

vs.

BMW OF NORTH AMERICA, LLC,
BAVARIAN MOTOR WORKS, and
DOES 1 through 10, inclusive,

Defendants.

No. 2:15-cv-6945 (MCA)(LDW)

CLASS ACTION

JURY TRIAL DEMANDED

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

WHEREAS, pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, the parties seek entry of an order preliminarily approving the settlement of this action pursuant to the settlement agreement fully executed on April 11, 2018 (the “Settlement Agreement” or “Settlement”), which, together with its attached exhibits, sets forth the terms and conditions for a proposed settlement of the Action and dismissal of the Action with prejudice; and

WHEREAS, the Court has read and considered the Settlement and its exhibits, and Plaintiffs’ Unopposed Motion for Preliminary Approval;

NOW, THEREFORE, IT IS ON THIS _____ DAY OF _____, 2018,

ORDERED THAT:

1. This Order incorporates by reference the definitions in the Settlement, and all terms used in this Order shall have the same meanings as set forth in the Settlement.

2. The Court preliminarily approves the Settlement as being within the realm of reasonableness to the Settlement Class, subject to further consideration at the Final Approval Hearing described below.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court certifies, solely for purposes of effectuating the Settlement, the Settlement Class as follows:

All persons or entities in the United States, the District of Columbia, and Puerto Rico who currently own or lease, or previously owned or leased, model-year 2009 through 2014 BMW 5 Series, 6 Series, 7 Series, X5 or X6 vehicles that contain the N63 engine. Excluded from the Class are: Defendants, as well as Defendants' affiliates, employees, officers, and directors, attorneys, agents, insurers, third-party providers of extended warranty/service contracts, franchised dealers, independent repair/service facilities, fleet owners and operators, rental companies and vehicles, the attorneys representing Defendants in this case, the Judges and Mediator to whom this case is assigned and their immediate family members, all persons who request exclusion from (opt-out of) the Settlement, vehicles deemed a total loss, anyone claiming personal injury, property damage other than to a Class Vehicle or subrogation, all persons who previously released any

claims encompassed in this Settlement, and vehicles transported outside the United States.

4. The Court appoints Matthew D. Schelkopf and David C. Wright of McCune Wright Arevalo, LLP and Eric D. Barton of Wagstaff & Cartmell LLP as Settlement Class Counsel for the Settlement Class. Any Settlement Class Member may enter an appearance in the action, at their own expense, either individually or through counsel. However, if they do not enter an appearance, they will be represented by Settlement Class Counsel.

5. The Court appoints Plaintiffs Joon Bang, Razvan Victor Bengulescu, Gerald Bezems, Scott Crockett, Rifat Gorener, Christopher LeSieur, Lawrence Marcus, and Mikhail Suleymanov as Settlement Class Representatives.

6. The Court preliminarily finds, solely for purposes of the Settlement, that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members in the Action is impracticable; (b) there are questions of law and fact common to the Settlement Class that predominate over any individual questions; (c) the claims of the Settlement Class Representatives are typical of the claims of the Settlement Class; (d) the Settlement Class Representatives and Settlement Class Counsel have and will continue to fairly and adequately represent and protect the interests of the Settlement Class; and (e) a class action is superior to all other available methods for the fair and efficient adjudication of the controversy. The Court also preliminarily finds that certification of the Settlement Class is

appropriate when balanced against the risks of continued litigation. It further appears that extensive and costly investigation, research, and discovery has been conducted such that counsel for the parties are reasonably able to evaluate the benefits of settlement, which will avoid substantial additional costs to the parties and reduce delay and risks associated with this action. It further appears that the Settlement has been reached as a result of intensive, arm's-length negotiations using an experienced third-party neutral.

7. The Court approves the form and content of the Claim Form (Exhibit A to the Settlement Agreement) and Settlement Class Notice (Exhibit B to the Settlement Agreement). The Court finds that the mailing of the Settlement Class Notice in the manner set forth in the Settlement, as well as the establishment of a settlement website and toll-free number, satisfies due process. The foregoing is the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Settlement Class Members entitled to Settlement Class Notice. The Court authorizes the Parties to make non-material modifications to the Settlement Class Notice and Claim Form prior to publication if they jointly agree that any such changes are appropriate. Accordingly, the Court directs the following notice procedures to be effectuated on or before _____, 2018 (sixty (60) days after the date of this Order):

- a. Individual direct mail (first class) notice regarding the Settlement will be sent to all current and former owners and lessees of Class Vehicles using BMW NA's database and information from state motor vehicle agencies obtained by Experian Information Solutions, Inc. or similar provider;
- b. Publication on a website to be established and maintained by the Settlement Administrator; and
- c. The established of a toll-free telephone number.

8. The Court appoints Rust Consulting as the Settlement Administrator. The Settlement Administrator is directed to perform all settlement administration duties set out in the Settlement Agreement, including establishing, maintaining, and administering a website dedicated to the Settlement which (i) will provide information about the Settlement including all relevant documents and (ii) will provide a means by which Settlement Class Members may submit their claims by U.S. Mail or email. At least ten days before the Final Approval Hearing, the Settlement Administrator will provide an affidavit to the Court attesting that Settlement Class Notice was disseminated in a manner consistent with the terms of the Settlement.

9. If Settlement Class Members do not wish to participate in the Settlement Class, they may exclude themselves. All requests to be excluded from the Settlement Class must be in writing, sent to the Settlement Administrator, and

postmarked on or before the Opt-Out Deadline, which is _____, 2018 (one hundred and five (105) days after the date of this Order).

a. Any request for exclusion must (1) state the Settlement Class Member's full name and current address; (2) identify the model year and Vehicle Identification Number ("VIN") of his/her vehicle(s) and the date(s) of purchase or lease; and (3) specifically and clearly state his/her desire to be excluded from the Settlement and from the Settlement Class. No Request for Exclusion will be valid unless all of the information described above is included. All Settlement Class Members who exclude themselves from the Settlement Class will not be eligible to receive any monetary benefits under the settlement, will not be bound by any further orders or judgments entered for or against the Settlement Class, and will preserve their ability to independently pursue any claims they may have against BMW and other Released Persons.

10. Any Settlement Class Member who has not previously submitted a Request for Exclusion may object to the Settlement and appear at the Final Approval Hearing to support or oppose the approval of the Settlement Agreement. All objections and requests to appear at the Final Approval Hearing must be in writing and postmarked on or before _____, 2018 (one hundred and five (105) days after the date of this Order).

a. The following information must be provided in the Settlement Class Member's written objection: (1) his/her full name, current address, and current telephone number; (2) the model year of his/her Settlement Class Vehicle(s), as well as the VIN of his/her Settlement Class Vehicle(s) and the date(s) of purchase or lease; (3) a statement of the position(s) the objector wishes to assert, including the factual and legal grounds for the position; (4) provide copies of relevant repair history or other proof that the objector has owned or leased the Settlement Class Vehicle (i.e., a true copy of a vehicle title, registration, or license receipt); and (5) any other documents that the objector wishes to submit in support of his/her position and of any other documents that the objector wishes to submit in support of his/her position. To be valid, an objection also must include a detailed statement of each objection asserted, including the grounds for objection. In addition, any Settlement Class Member objecting to the Settlement must provide a detailed statement of any objections to any other class action settlements submitted in any court, whether state, federal, or otherwise, in the United States in the previous five (5) years. If the Settlement Class Member has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she must affirmatively so state in the written materials provided in connection with the objection to this Settlement.

b. All objections and requests to appear at the Final Approval Hearing must be sent to the Court as well as to: David C. Wright and Matthew D. Schelkopf, McCune Wright Arevalo, LLP, 555 Lancaster Avenue, Berwyn, PA 19312; and Christopher J. Dalton and Daniel Z. Rivlin, Buchanan Ingersoll & Rooney PC, 550 Broad Street, Suite 810, Newark, NJ 07102.

11. Any Settlement Class Member who does not object in the manner provided in this Order shall be deemed to have waived such objections and shall forever be foreclosed from objecting to the fairness, reasonableness, or adequacy of the proposed settlement and any judgment approving the settlement.

12. The Court hereby schedules the Final Approval Hearing for _____, 2018 at _____ a.m./p.m. (not less than one hundred and twenty (120) days after the date of this Order). The Final Approval Hearing will take place in Courtroom MLK 4A of the United States District Court for the District of New Jersey, Newark Division, Martin Luther King, Jr. Federal Building & U.S. Courthouse, 50 Walnut Street, Newark NJ 07101, to determine whether the proposed Settlement should be approved as fair, reasonable, and adequate, whether a judgment should be entered approving the Settlement, and whether Settlement Class Counsel's application for attorneys' fees and for incentive awards to the Settlement Class Representatives should be approved. The

Court may adjourn the Final Approval Hearing without further notice to Settlement Class Members.

13. Settlement Class Members shall have until thirty (30) days after the date of the Final Approval Hearing to submit Claim Forms. Claim Forms must be postmarked by that date to be considered timely.

Honorable Madeline Cox Arleo
United States District Judge