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 9 Edo Tsoar

10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA**

13 EDO TSOAR, individually, and on
 14 behalf of all others similarly situated,

15 Plaintiffs,

16 vs.

17 BMW OF NORTH AMERICA, LLC, a
 18 New Jersey Corporation; and DOES 1
 19 to 100, inclusive,

20 Defendants.
 21

Case No.

**CLASS ACTION COMPLAINT
 FOR DAMAGES AND
 EQUITABLE RELIEF**

22
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 24 **JURY TRIAL DEMANDED**
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1 Plaintiff Edo Tsoar, by his attorneys, files this Class Action Complaint, for
2 himself and all others similarly situated against BMW of North America, LLC
3 (“BMW” or “Defendant”). Plaintiff alleges, on information and belief, except for
4 information based on personal knowledge, which allegations are likely to have
5 evidentiary support after further investigation and discovery, as follows:

6
7 **I.**

8 **INTRODUCTION**

9
10 1. BMW markets and sells numerous models of vehicles in the United
11 States including the 2014 – 2016 BMW i3 REx (the “Class Vehicles”).

12
13 2. This case involves Defendant BMW’s marketing and distribution of
14 the Class Vehicles, which BMW advertises as including a “fuel extender” or
15 “option” two-cylinder gasoline, combustion engine with a small fuel tank that
16 engages when the battery level drops to a specified point. BMW advertises that
17 the fuel extender acts purely as a generator to produce electricity and extend the
18 range of the vehicle from approximately 81 miles per charge to 150 miles per
19 charge. BMW fails to advise consumers, however, that when the vehicle is
20 operating on the fuel extender, the vehicle is unable to maintain the speed and
21 performance of normal operation; the performance relied upon when purchasing a
22 “Class Vehicle.”

23
24 3. This action is brought by Plaintiff on behalf of a class and subclass
25 comprised of all similarly situated consumers in the United States and California,
26 respectively, who purchased or leased one or more of the Class Vehicles other
27 than for resale or distribution (the “Classes” or “Class Members”). Plaintiff and
28 Class Members assert claims against BMW for: i) Violation of the Magnuson-

1 Moss Warranty Act, ii) Violation of the Song-Beverly Consumer Warranty Act,
2 iii) Breach of Express Warranty, iv) Breach of Implied Warranty of Fitness for a
3 Particular Purpose, v) Breach of Implied Warranty of Merchantability (on behalf
4 of Nationwide Class), vi) Breach of Implied Warranty of Merchantability (on
5 behalf of California Subclass), vii) Unlawful, Unfair, and Fraudulent Business
6 Acts & Practices (Cal. Bus. & Prof. Code § 17200 et seq.), and viii) Violation of
7 the Consumer Legal Remedies Act (Cal. Bus. & Prof. Code § 17500 et seq.).
8 Plaintiff and Class Members seek restitution, damages, and equitable relief,
9 including disgorgement of profits, and appropriate attorneys' fees and costs.

10
11 **II.**

12 **THE PARTIES**

13
14 4. On or about January 27, 2016, Plaintiff Edo Tsoar, an individual
15 consumer over the age of 18, leased a 2015 BMW i3 REx (VIN No.
16 WBY1Z4C53FV503332), from a dealership located in Calabasas, California.
17 Plaintiff leased the 2015 BMW i3 REx for personal use while traveling to and
18 from work and to transport his son to and from sporting events, including
19 practices and weekend tournaments. The REx model was attractive to Plaintiff
20 because of the Range Extender included in the vehicle; the Range Extender
21 doubled the vehicle's electronic driving range 81 miles to 150 miles per charge.
22 Unbeknownst to Plaintiff however, when the battery charge depletes to a certain
23 level, triggering the engagement of the Range Extender, the vehicle does not
24 produce enough power to maintain normal operation. Indeed, if the vehicle is
25 under any kind of significant load (such as going uphill, or loaded with
26 passengers), the speed of the vehicle will dramatically decrease as the battery
27 charge diminishes. BMW knew about, but did not disclose, this sudden,
28 significant, and dangerous loss of power that was inevitable when the Range

1 Extender is engaged. Plaintiff leased the BMW i3 REx under the reasonable but
2 mistaken belief that the vehicle would perform in a reasonable manner at all times,
3 however it did not.

4
5 5. In late April 2016, Plaintiff learned of the defect in the vehicle that
6 caused the vehicle to significantly and dangerously lose power when operating
7 solely on the Range Extender. Had he known about the defect, he would not have
8 purchased this vehicle, would not have paid a premium price, and would not have
9 retained the vehicle.

10
11 6. Plaintiff has standing to assert all of the claims set forth herein, as he
12 suffered an injury in fact and a loss of money or property as a result of
13 Defendant's conduct.

14
15 7. Defendant is a Delaware limited liability company with its principal
16 place of business in Woodcliff Lake, NJ.

17
18 8. Defendant and its subsidiaries, affiliates, and other related entities,
19 and its respective employees were the agents, servants and employees of
20 Defendant, and each was acting within the purpose and scope of that agency and
21 employment.

22
23 9. Whenever reference is made to any act by Defendant or its
24 subsidiaries, affiliates, and other related entities, such allegation shall be deemed
25 to mean that the principals, officers, directors, employees, agents, and/or
26 representatives of Defendant committed, knew of, performed, authorized, ratified
27 and/or directed that act or transaction for Defendant while engaged in the scope of
28 their duties.

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III.

JURISDICTION AND VENUE

10. This Court has jurisdiction over the subject matter presented by this Complaint because it is a class action arising under 28 U.S.C. § 1332(d), which, under the Class Action Fairness Act of 2005 (“CAFA”), Pub. L. No. 109-2, 119 Stat. 4 (2005), explicitly provides for the original jurisdiction of the federal courts of any class action in which any member of the class is a citizen of a state different from any defendant, and in which the matter in controversy exceeds in the aggregate the sum of \$5,000,000, exclusive of interest and costs. Plaintiff alleges that the total claims of individual Class Members are in excess of \$5,000,000 in the aggregate, exclusive of interest and costs, as required by 28 U.S.C. § 1332(d)(2).

11. This Court has personal jurisdiction over Defendant because Defendant engaged in significant business throughout the State of California thus providing the State of California with general jurisdiction.

12. Venue in this District is proper under 28 U.S.C. § 1391(b) because Defendant, as a corporation, is deemed to reside in any district in which it is subject to personal jurisdiction. Moreover, because Defendant has failed to identify a California principal place of business in their Statement of Information filed with the California Secretary of State as required by California Corporations Code § 2105, venue is proper in this County and judicial district.

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IV.

FACTUAL ALLEGATIONS

13. In 2013, BMW announced the roll-out of the BMW i3, a five-door urban electric vehicle, and BMW's first zero emissions mass-produced vehicle. The BMW i3 features carbon-fiber-reinforced polymer to improve the vehicle's energy consumption, and touting its commitment to energy efficiency, sustainability, and performance, BMW markets the BMW i3 series as "an electric vehicle that performs like a BMW... because it is one."

14. Defendant offers two versions of the BMW i3, the purely electric i3, capable of driving 81 miles per charge, and the BMW i3 REx equipped with a Range Extender (the "Class Vehicle" or "Class Vehicles"). BMW advertises that the Class Vehicle is capable of driving 150 miles in total range, doubling the electric driving range by integrating a gas-powered, two-cylinder engine that generates electricity to maintain the vehicle's performance. The BMW i3 REx is marketed to drivers who want to "go even farther."

15. The BMW i3 REx, however, is plagued with a serious defect: the added mileage range is coupled with a sudden, severe, and dangerous loss in power. Specifically, the Range Extender does not produce enough power for the vehicle to maintain the performance allowed by the battery. For example, if the vehicle is traveling up hill and the battery reaches approximately 5%, thereby activating the Range Extender, the speed of the vehicle will suddenly and rapidly decrease, without warning. Likewise, if the vehicle has an increased load of passengers and the battery reaches approximately 5%, thereby activating the Range Extender, the speed of the vehicle will suddenly and rapidly decrease, without warning.

1 16. Plaintiff has experienced such a loss in power. One afternoon, while
2 traveling in the Class Vehicle in Agora Hills, California, Plaintiff's battery was
3 getting low, around 6%. Plaintiff continued to drive the vehicle home (a
4 destination that was less than 5 miles away), and while going up a hill with the
5 flow of traffic, the vehicle suddenly and unexpectedly lost power, dramatically
6 decreasing the speed of the vehicle. Plaintiff was unable to keep up with the flow
7 of traffic and had to change lanes to the far right, slowest lane to safely proceed.
8 Thereafter, Plaintiff experienced a similar loss in power on multiple occasions.
9 The loss in power always occurred when the Class Vehicle's battery was at or
10 below approximately 5%, the Range Extender was activated, and the driving
11 condition/terrain required more power. Alarmed and frightened by the defect,
12 Plaintiff went to the dealership to discuss the issue, however the sales manager
13 would not allow him to return the car, instead suggesting Plaintiff change his
14 driving habits. Plaintiff now avoids driving farther than 80 miles.

15
16 17. Plaintiff's experience is by no means isolated; other consumers have
17 had similar experiences. In fact, there are blogs and other websites where
18 consumers have complained of the exact same defect.

19
20 18. For example a website titled "autoblog.com" published an article
21 entitled, "BMW looking to fix i3 acceleration problem uncovered by Consumer
22 Reports." The articles states, "Consumer Reports brought the problem to light
23 when one of its drivers was behind the wheel of an i3 using the range-extender.
24 When the driver attempted to pass another vehicle on a rolling, two-lane road, the
25 BMW suddenly had no power to accelerate." Additionally,
26 "autoconnectedcar.com" published a review entitled, "Why I'm Returning my
27 BMW i3 After Three Months," addressing the same problem: the inability of the
28 i3 REx model to maintain performance while the Range Extender is engaged.

1 There, it was reported by a consumer, "...the last straw came when I was driving
2 back from the Inland Empire, I was in the fast lane on the freeway. I ran out of
3 battery power and the gasoline extension started. I couldn't keep up with traffic
4 and I had to pull over."

5
6 19. Likewise, the data base maintained by the National Highway Traffic
7 Administration contains numerous similar complaints by consumers, some of
8 which are set forth below.

9
10 **Date Complaint Filed:** 1/15/2016
11 **Date of Incident:** 12/16/2015
12 **NHTSA ID Number:** 10820554
13 **Manufacturer:** BMW of North America, LLC
14 **Vehicle Identification Number:** WBY1Z4C59FV...

15 **SUMMARY:**

16 TL* THE CONTACT OWNS A 2015 BMW I3. WHILE DRIVING
17 APPROXIMATELY 70 MPH, ON AN EXTENDED RANGE, THE
18 SPEED DECREASED TO BELOW 60 MPH AND COMPLETELY
19 LOST ACCELERATION. THERE WERE NO WARNING
20 INDICATORS ILLUMINATED. THE FAILURE WAS NOT
21 DIAGNOSED. THE MANUFACTURER WAS MADE AWARE OF
22 THE FAILURE. THE VIN WAS INVALID. THE FAILURE
23 MILEAGE WAS 9,500

24 **Date Complaint Filed:** 1/4/2016
25 **Date of Incident:** 12/29/2016
26 **NHTSA ID Number:** 10817494
27 **Manufacturer:** BMW of North America, LLC
28 **Vehicle Identification Number:** Not available.

SUMMARY:

2015 BMW I3 WITH RANGE EXTENDER (REX) JUST HIT 1000
MILES. HAD FOR 6 WEEKS. I WAS TRAVELING DOWN A
FREEWAY AT 75 MPH USING MY ELECTRIC CAR. AS THE
BATTERY WAS ALMOST OUT OF JUICE, I KNEW THE FUEL
RANGE EXTENDER WOULD KICK IN. HOWEVER, WHEN THE
EXTENDER KICKED IN, MY MPH IMMEDIATELY STARTED

1 TO DROP. WITHIN THE 15 SECONDS, I WAS DOWN TO 35
2 MPH FROM THE 75 I WAS TRAVELING. I HAD THE
3 ACCELERATOR FLOORED, BUT COULD NOT GET ANY
4 POWER TO KEEP UP WITH THE FLOW OF TRAFFIC. WITH
5 MY HAZARD LIGHTS TURNED ON. MY CAR AND I SAFELY
6 NAVIGATED TO THE SIDE OF THE ROAD. THANK
7 GOODNESS THERE WAS NOT A CAR FOLLOWING TO CLOSE
8 OR A SEMI TRUCK. I WOULD BE DEAD OR IN A SERIOUS
9 ACCIDENT IF THERE WAS. MY CONCERN, CONSUMERS ARE
10 NOT BEING WARNED OF THIS ISSUE... HERE ARE A FEW
11 MORE FACTS THAT ARE RELAVATN 1. WHEN I DROVE THE
12 CAR THE FIRST TIMER HE RANGE EXTENDER KICKED IN. I
13 WAS NOT DROPPED DOWN TO 30-35 MPH, I WAS ABLE TO
14 KEEP UP WITH FREEWAY TRAFFIC JUST FINE 2. ON
15 DECEMBER 29, 2015 II WAS TRAVELING ON A FREEWAY AT
16 75 MPH. THERE WAS A SLIGHT INCLINE. MY ELECTRIC HAD
17 BEEN USED AND THE REX KICKED IN. THE CAR
18 IMMEDIATELY STARTED TO DROP IN SPEED. I HAD THE
19 ACCELERATOR PUSHED TO THE FLOOR IN HOPES OF
20 GETTING THE CAR BACK UP TO A SAFE SPEED. HOWEVER,
21 THAT DID NOT HAPPEN. I HAD TO NAVIGATE MY DYING
22 CAR TO THE SIDE OF THE ROAD IN 75 MPH TRAFFIC. 3.
23 IMMEDIATELY TOOK THE I3 TO THE BMW SERVICE
24 PROVIDER. INSTRUCTED BY THE SERVICE DEPT THIS IS
25 WORKING AS DESIGNED. ERROR MESSAGE OF 0056 DID
26 NOT HAVE ANY DESCRIPTION ON IT. NOT SURE HOW THE
27 TECHNICIAN KNEW THERE WAS NOT AN ISSUE 4.
28 INSTRUCTED BY SERVICE DEPT TO GO BACK TO MY SALES
PERSON TO BE RE-TRAINED ON MY CAR. WHY ISN'T THERE
AN INDICATOR LIGHT WARNING THE DRIVER YOU WILL
BE LOOSING SIGNIFICANT POWER AND SPEED. PULL OVER
TO A SAFE MPH? CONCERNED FOR OTHER
CONSUMERS....SOMEONE WILL NOT BE AS LUCKY AS I
WAS.

Date Complaint Filed: 4/25/2016

Date of Incident: 4/13/2016

NHTSA ID Number: 10861225

Manufacturer: BMW of North America, LLC

Vehicle Identification Number: WBY1Z4C57EV

1 **SUMMARY:**

2 TEST DRIVING THIS BMW I3, I NOTICED THE REX RANGE
3 EXTENDER ENGINE WAS DANGEROUSLY SLOW. THE 34 HP
4 SCOOTER ENGINE IS A HAZARD IN TRAFFIC. I ALSO
5 NOTICED THE BRAKE LIGHTS WOULD NOT COME ON
6 WHEN SLOWING TO A STOP. CONSUMER REPORTS
7 OUTLINED IT, AND I CAN'T SAY IT BETTER. WHY ARE
8 THERE NOT MINIMUM FMVSS PERFORMANCE STANDARDS
9 TO COVER THE HAZARDS WHILE IN REX-MODE (BATTERY
10 DEAD, RUNNING ON SCOOTER MOTOR IN HEAVY, FAST,
11 TRAFFIC)? THIS IS A NEW AREA: WEIRD BEHAVIOR FROM
12 EVS IN REX MODE.
13 [HTTP://WWW.CONSUMERREPORTS.ORG/CRO/NEWS/2014/10/
14 BEWARE-TAILGATING-A-BMW-I3/INDEX.HTM](http://www.consumerreports.org/cro/news/2014/10/BEWARE-TAILGATING-A-BMW-I3/INDEX.HTM)
15 [HTTP://WWW.CONSUMERREPORTS.ORG/CRO/NEWS/2014/10/
16 BMW-I3-HAS-THE-LITTLE-ENGINE-THAT-
17 COULD/INDEX.HTM](http://www.consumerreports.org/cro/news/2014/10/BMW-I3-HAS-THE-LITTLE-ENGINE-THAT-COULD/INDEX.HTM)

18 **Date Complaint Filed:** 8/16/2014

19 **Date of Incident:** 8/13/2014

20 **NHTSA ID Number:** 10625717

21 **Manufacturer:** BMW of North America, LLC

22 **Vehicle Identification Number:** WBY1Z4C54EV...

23 **SUMMARY:**

24 I WAS DRIVING MY BMW I3 REX FROM THE SAN
25 FRANCISCO BAY AREA TO THE BEACH NEAR SANTA CRUZ
26 VIA HIGHWAY 17 WITH MY WIFE AND TWO CHILDREN.
27 GETTING TO THE BEACH FROM MOST OF THE SF BAY AREA
28 REQUIRES DRIVING OVER SOME COASTAL HILLS. AS I
 APPROACHED THE HILLS, MY EV BATTERY WAS VERY
 LOW. THE I3 WITH "REX" (SIMILAR TO THE CHEVY VOLT)
 HAS A GASOLINE ENGINE THAT ACTIVATES WHEN THE
 MAIN EV BATTERY IS DEPLETED. IN THESE HILLS, THE REX
 ENGINE TURNED ON. FOR SEVERAL MINUTES, THE CAR
 DROVE NORMALLY AND KEPT PACE WITH MODERATE
 TRAFFIC IN THE SLOW LANE. THE SPEED LIMIT ON
 HIGHWAY 17 VARIES FROM 50MPH TO 65MPH. ON THE
 HILLY PARTS, IT IS A TWO LANE HIGHWAY WITH NO
 SHOULDER ON EITHER SIDE, INFREQUENT EXITS AND
 OCCASIONAL TURN-OUTS. WITHOUT ANY WARNING FROM

1 THE CAR, I EXPERIENCED A SUDDEN AND DRAMATIC
2 REDUCTION IN POWER, WITH THE CAR SLOWING FROM
3 APPROXIMATELY 50MPH TO 25MPH EVEN UNDER FULL
4 THROTTLE. I TURNED ON MY HAZARD BLINKERS AS
5 APPROACHING CARS HONKED AND SWERVED TO AVOID
6 US. WITH NO SHOULDERS, WE HAD TO "LIMP" TO THE
7 NEXT TURNOUT. THIS WAS EXTREMELY ALARMING AND
8 POTENTIALLY DANGEROUS. WE REALIZED THAT ENGINE
9 WAS RUNNING LOUDLY AND WE SURMISED THAT IT WAS
10 RECHARGING THE BATTERY. AFTER A COUPLE OF
11 MINUTES, I CONFIRMED THAT POWER WAS RESTORED BY
12 BRIEFLY ACCELERATING IN THE LONG TURN-OUT. I THEN
13 ATTEMPTED TO MERGE BACK ONTO THE HIGHWAY.
14 ALTHOUGH FULL POWER SEEMED AVAILABLE INITIALLY,
15 AS I PULLED OUT OF THE TURN-OUT INTO THE SLOW
16 LANE, THE POWER DROPPED AGAIN, SLOWING US FROM
17 40MPH BACK TO 25MPH. WE AGAIN LIMPED TO THE NEXT
18 TURN-OUT AS CARS AVOIDED US. MOST SHOCKING OF
19 ALL, I SPOKE WITH BMW'S INTERNAL "I CONCIERGE"
20 PRODUCT TEAM WHO INFORMED ME THAT THIS WAS
21 NORMAL OPERATION FOR THIS VEHICLE. I LEARNED THAT
22 THE I3 HAS A SPECIAL MODE TO SAFELY DEAL WITH
23 HILLS, BUT THIS WAS REMOVED FROM THE US CAR IN
24 ORDER TO MAXIMIZE CALIFORNIA "CREDITS." MONEY
25 TRUMPS SAFETY.

19 **Date Complaint Filed:** 1/16/2015

20 **Date of Incident:** 11/29/2014

21 **NHTSA ID Number:** 10676147

22 **Manufacturer:** BMW of North America, LLC

23 **Vehicle Identification Number:** WBY1Z4C54EV...

24 **SUMMARY:**

25 I WAS DRIVING MY BMW I3 REX FROM THE SAN
26 FRANCISCO BAY AREA TO THE BEACH NEAR SANTA CRUZ
27 VIA HIGHWAY 17 WITH MY WIFE AND TWO CHILDREN.
28 GETTING TO THE BEACH FROM MOST OF THE SF BAY AREA
REQUIRES DRIVING OVER SOME COASTAL HILLS. AS I
APPROACHED THE HILLS, MY EV BATTERY WAS VERY
LOW. THE I3 WITH "REX" (SIMILAR TO THE CHEVY VOLT)
HAS A GASOLINE ENGINE THAT ACTIVATES WHEN THE

1 MAIN EV BATTERY IS DEPLETED. IN THESE HILLS, THE REX
2 ENGINE TURNED ON. FOR SEVERAL MINUTES, THE CAR
3 DROVE NORMALLY AND KEPT PACE WITH MODERATE
4 TRAFFIC IN THE SLOW LANE. THE SPEED LIMIT ON
5 HIGHWAY 17 VARIES FROM 50MPH TO 65MPH. ON THE
6 HILLY PARTS, IT IS A TWO LANE HIGHWAY WITH NO
7 SHOULDER ON EITHER SIDE, INFREQUENT EXITS AND
8 OCCASIONAL TURN-OUTS. WITHOUT ANY WARNING FROM
9 THE CAR, I EXPERIENCED A SUDDEN AND DRAMATIC
10 REDUCTION IN POWER, WITH THE CAR SLOWING FROM
11 APPROXIMATELY 50MPH TO 25MPH EVEN UNDER FULL
12 THROTTLE. I TURNED ON MY HAZARD BLINKERS AS
13 APPROACHING CARS HONKED AND SWERVED TO AVOID
14 US. WITH NO SHOULDERS, WE HAD TO "LIMP" TO THE
15 NEXT TURNOUT. THIS WAS EXTREMELY ALARMING AND
16 POTENTIALLY DANGEROUS. WE REALIZED THAT ENGINE
17 WAS RUNNING LOUDLY AND WE SURMISED THAT IT WAS
18 RECHARGING THE BATTERY. AFTER A COUPLE OF
19 MINUTES, I CONFIRMED THAT POWER WAS RESTORED BY
20 BRIEFLY ACCELERATING IN THE LONG TURN-OUT. I THEN
21 ATTEMPTED TO MERGE BACK ONTO THE HIGHWAY.
22 ALTHOUGH FULL POWER SEEMED AVAILABLE INITIALLY,
23 AS I PULLED OUT OF THE TURN-OUT INTO THE SLOW
24 LANE, THE POWER DROPPED AGAIN, SLOWING US FROM
25 40MPH BACK TO 25MPH. WE AGAIN LIMPED TO THE NEXT
26 TURN-OUT AS CARS AVOIDED US. MOST SHOCKING OF
27 ALL, I SPOKE WITH BMW'S INTERNAL "I CONCIERGE"
28 PRODUCT TEAM WHO INFORMED ME THAT THIS WAS
NORMAL OPERATION FOR THIS VEHICLE. I LEARNED THAT
THE I3 HAS A SPECIAL MODE TO SAFELY DEAL WITH
HILLS, BUT THIS WAS REMOVED FROM THE US CAR IN
ORDER TO MAXIMIZE CALIFORNIA "CREDITS." MONEY
TRUMPS SAFETY.

20. BMW marketed, distributed, and sold the Class Vehicles in the State
of California as well as nationwide.

1 21. BMW knew or, at a minimum should have known, at the time it
2 began to advertise and sell and/or lease the Class Vehicles that the Range
3 Extender contained serious design, manufacturing, and/or assembly defects that
4 caused the Class Vehicles to malfunction with the Range Extender was engaged.
5

6 22. Plaintiff believes that due to these defects, the BMW i3 REx is
7 defective and is not fit for its intended purpose.
8

9 23. As a result, Class Members will suffer actual harm and damages
10 including but not limited to:
11

12 a. Class Members have paid premium prices for vehicles
13 marketed with the Range Extender as doubling the driving range of the
14 vehicle without inhibiting performance, when in fact the Subject Vehicles,
15 when operating with the Range Extender, lose significant power and are
16 unable to perform as they would using the charged battery; and
17

18 b. Class Members would not have purchased the Class Vehicles
19 had the known the vehicles lose significant power and are ill-equipped to
20 operate safely when the Range Extender is activated.
21

22 24. Plaintiff brings this action individually and on behalf of all other
23 current and former owners and lessees of Class Vehicles. Plaintiff seeks damages,
24 injunctive relief, and equitable relief for the conduct of BMW related to the BMW
25 i3 REx, as alleged in this Complaint.
26
27
28

V.

CLASS ALLEGATIONS

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4 25. Plaintiff brings this class action under Rule 23 of the Federal Rules of
5 Civil Procedure (“FRCP”) and seeks certification of the claims and issues in this
6 action pursuant to the applicable provisions of Rule 23. The proposed Class and
7 Subclass are defined as:

8 **The Nationwide Class**

9 All persons who purchased or leased the following
10 vehicles sold by Defendant in the United States other
11 than for resale or distribution: 2014 – 2016 BMW i3
12 REx. Excluded from the Class are officers and directors
13 of Defendant, members of the immediate families of the
14 officers and directors of Defendant, and the legal
15 representatives, heirs, successors and assigns and any
16 entity in which they have or have had a controlling
17 interest in Defendant.

16 **The California Subclass**

17 All persons who purchased or leased the following
18 vehicles sold by Defendant in California other than for
19 resale or distribution: 2014 – 2016 BMW i3 REx.
20 Excluded from the Class are officers and directors of
21 Defendant, members of the immediate families of the
22 officers and directors of Defendant, and the legal
23 representatives, heirs, successors and assigns and any
24 entity in which they have or have had a controlling
25 interest in Defendant.

26 26. Defendant’s representations were applied uniformly to all Members
27 of the Class during the Class Period, so that the questions of law and fact are
28 common to all Members of the Class. All Members of the Class were and are
similarly affected by having been exposed to the misrepresentations, purchased or

1 leased and used the Subject Vehicles for their intended and foreseeable purpose,
2 and the relief sought is for the benefit of Plaintiff and Members of the Class.

3
4 27. The Classes are so numerous that joinder of all Members would be
5 impractical.

6
7 28. Questions of law and fact common to each Class Member exist that
8 predominate over questions affecting only individual Members, including, *inter*
9 *alia*:

10
11 a. Whether BMW engaged in the conduct alleged herein;

12
13 b. Whether BMW designed, advertised, marketed, distributed,
14 leased, sold, or otherwise placed Class Vehicles into the stream of
15 commerce in the United States;

16
17 c. Whether BMW knew, or should have known, that Class
18 Vehicles were unable to maintain normal performance when using the
19 Range Extender in situation requiring more power;

20
21 d. Whether BMW's conduct violates consumer protection
22 statutes, warranty laws, and other laws as asserted herein;

23
24 e. Whether Plaintiff and the other Class members overpaid for
25 their Class Vehicles;

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1 f. Whether Plaintiff and the other Class members are entitled to
2 equitable relief, including but not limited to, restitution or injunctive relief;
3 and

4
5 g. Whether Plaintiff and the other Class member are entitled to
6 damages and other monetary relief and, if so, in what amount.
7

8 29. The claims asserted by Plaintiff are typical of the claims of the Class
9 Members, as his claims arise from the same course of conduct by Defendant and
10 the relief sought is common. Plaintiff, like all Class Members, was exposed to
11 Defendant's misrepresentations and suffered an injury.
12

13 30. Plaintiff will fairly and adequately represent and protect the interests
14 of the Class Members. Plaintiff has retained counsel competent and experienced
15 in both consumer protection and class action litigation.
16

17 31. Certification of this class action is appropriate under F.R.C.P. 23(b)
18 because the above questions of law or fact common to the respective Members of
19 the Classes predominate over questions of law or fact affecting only individual
20 Members. This predominance makes class litigation superior to any other method
21 available for the fair and efficient adjudication of these claims.
22

23 32. Absent a class action, it would be highly unlikely that Plaintiff or any
24 other Class Members could protect their own interests because the cost of
25 litigation through individual lawsuits would exceed any expected recovery.
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1 33. Certification is also appropriate because Defendant has acted or
2 refused to act on grounds applicable to the Class, making appropriate final
3 injunctive relief with respect to the Class as a whole.

4
5 34. Further, given the large number of purchasers and lessees of the
6 Subject Vehicles, allowing individual actions to proceed in lieu of a class action
7 would risk yielding inconsistent and conflicting adjudications.

8
9 35. A class action is a fair and appropriate method for the adjudication of
10 this controversy, in that it will permit many claims to be resolved in a single
11 forum simultaneously, efficiently, and without the unnecessary hardship that
12 would result from the prosecution of numerous individual actions and the
13 duplication of discovery, effort, expense and burden on the courts that such
14 individual actions would engender.

15
16 36. The benefits of proceeding as a class action, including providing a
17 method for obtaining redress for claims that would not be practical to pursue
18 individually, outweigh any difficulties that might be argued regarding the
19 management of this class action.

20
21 **COUNT I**

22 **Violation of Magnuson-Moss Warranty Act**

23 **(By Nationwide Class)**

24
25 37. Plaintiff repeats every allegation contained in the paragraphs above
26 and incorporates such allegations by reference. Plaintiff brings this cause of
27 action on behalf of himself and the Nationwide Class.

1 38. Plaintiff is a "consumer" within the meaning of the Magnuson-Moss
2 Warranty Act, 15 U.S.C. § 2301(3).

3
4 39. The Class Vehicles are "consumer products" within the meaning of
5 the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

6
7 40. BMW is a "supplier" and "warrantor" within the meaning of the
8 Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)-(5).

9
10 41. The Class Vehicles are "consumer products" within the meaning of
11 the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

12
13 42. 15 U.S. C. § 2301(d)(I) provides a cause of action for any consumer
14 who is damaged by the failure of a warrantor to comply with a written or implied
15 warranty.

16
17 43. BMW's express warranties are written warranties within the meaning
18 of the Magnuson-Moss Warranty Act, 15 U.S. C. § 2301(6). The Class Vehicles'
19 implied warranties are covered under 15 U.S.C. § 2301(7).

20
21 44. BMW breached these warranties as described in more detail above.
22 Without limitation, the Class Vehicles are equipped with the Range Extender. The
23 Class Vehicles share a common design defect in that the Range Extender, when
24 active, fails to generate enough power to allow the Class Vehicles to operate
25 safely, as represented by BMW.

26
27 45. Plaintiff and the other Nationwide Class members have had sufficient
28 direct dealings with either BMW or its agents to establish privity of contract

1 between BMW, on one hand, and Plaintiff and each of the other Nationwide Class
2 members on the other hand. Nonetheless, privity is not required here because
3 Plaintiff and each of the other Nationwide Class members are intended third-party
4 beneficiaries of contracts between BMW and its dealers, and specifically, of
5 BMW's implied warranties. The dealers were not intended to be the ultimate
6 consumers of the Class Vehicles and have no rights under the warranty
7 agreements provided with the Class Vehicles; the warranty agreements were
8 designed for and intended to benefit the consumers only.

9
10 46. Affording BMW a reasonable opportunity to cure its breach of
11 written warranties would be unnecessary and futile here. At the time of sale or
12 lease of each Class Vehicle, BMW knew, should have known, or was reckless in
13 not knowing of its misrepresentations and omissions concerning the Class
14 Vehicles' inability to perform as warranted, but nonetheless failed to rectify the
15 situation and/or disclose the defective design. Under the circumstances, the
16 remedies available under any informal settlement procedure would be inadequate
17 and any requirement that Plaintiff resorts to an informal dispute resolution
18 procedure and/ or afford BMW a reasonable opportunity to cure its breach of
19 warranties is excused and thereby deemed satisfied.

20
21 47. Plaintiff and the other Nationwide Class members would suffer
22 economic hardship if they returned their Class Vehicles but did not receive the
23 return of all payments made by them. Because BMW is refusing to acknowledge
24 any revocation of acceptance and return immediately any payments made,
25 Plaintiff and the other Nationwide Class members have not re-accepted their Class
26 Vehicles by retaining them.

1 48. The amount in controversy of Plaintiffs individual claims meets or
2 exceeds the sum of \$25. The amount in controversy of this action exceeds the sum
3 of \$50,000, exclusive of interest and costs, computed on the basis of all claims to
4 be determined in this lawsuit.

5
6 49. Plaintiff, individually and on behalf of the other Nationwide Class
7 members, seeks all damages permitted by law, including diminution in value of
8 the Class Vehicles, in an amount to be proven at trial.

9
10 **COUNT II**

11 **Violation of the Song-Beverly Consumer**
12 **Warranty Act (Breach of Express Warranty)**
13 **(By California Subclass)**

14
15 50. Plaintiff repeats every allegation contained in the paragraphs above
16 and incorporates such allegations by reference. Plaintiff brings this cause of
17 action on behalf of himself and the California subclass.

18
19 51. At all times herein mentioned, Defendant is the warrantor of the
20 Class Vehicles' express warranty.

21
22 52. Pursuant to the Class Vehicles' express warranty, Defendant
23 undertook to preserve and maintain the utility or performance of the vehicle or
24 provide compensation if there was a failure in such utility or performance.

25
26 53. Plaintiff's and California subclass members' Class Vehicles have and
27 had serious defects and nonconformities to warranty, including but not limited to
28 inability to maintain adequate power to operate the safely vehicle while the Range

1 Extender is engaged, a condition which could very easily result in death or serious
2 bodily injury.

3
4 54. Under the Song-Beverly Consumer Warranty Act, otherwise known
5 as the “California Lemon Law,” the Class Vehicles are consumer goods leased or
6 purchased primarily for family or household purposes and Plaintiff and California
7 Subclass members used the Class Vehicles primarily for those purposes.

8
9 55. Plaintiff and the California subclass are buyers of consumer goods
10 under the California Lemon Law.

11
12 56. The defects and nonconformity to warranty manifested within the
13 applicable express warranty period, and were likely to cause death or serious
14 bodily injury if the vehicle was driven.

15
16 57. Affording BMW a reasonable opportunity to cure its breach of
17 written warranties would be unnecessary and futile here. At the time of sale or
18 lease of each Class Vehicle, BMW knew, should have known, or was reckless in
19 not knowing of its misrepresentations and omissions concerning the Class
20 Vehicles' inability to perform as warranted, but nonetheless failed to rectify the
21 situation and/or disclose the defective design. Under the circumstances, the
22 remedies available under any informal settlement procedure would be inadequate
23 and any requirement that Plaintiff resorts to an informal dispute resolution
24 procedure and/or afford BMW a reasonable opportunity to cure its breach of
25 warranties is excused and thereby deemed satisfied.

26
27 58. Plaintiff and the California subclass members justifiably revoke
28 acceptance of the vehicle under the California Lemon Law.

1
2 59. Under the California Lemon Law, Plaintiff and the California
3 subclass members are entitled to reimbursement of all payments made towards
4 the vehicle less the amount directly attributable to Plaintiff's use of the vehicle
5 prior to discovery of the nonconformity under Cal. Civil Code §1793.2(d)(2)(c), in
6 an amount to be proven at trial.

7
8 60. Plaintiff and the California subclass members are entitled to damages
9 resulting from BMW failure to comply with its obligations under the California
10 Lemon Law, including a civil penalty pursuant to Cal. Civil Code §1794(e)(1) of
11 two times the amount of their actual damages because BMW willfully failed to
12 comply with its responsibilities under the California Lemon Law, in an amount to
13 be proven at trial.

14
15 61. Under the California Lemon Law, Plaintiff and the California
16 subclass members are also entitled to recover reasonable attorney's fees and costs
17 as part of the judgment in connection with the commencement and prosecution of
18 this action.

19
20 **COUNT III**

21 **Breach of Express Warranty**

22 **(By Nationwide Class)**

23
24 62. Plaintiff repeats every allegation contained in the paragraphs above
25 and incorporates such allegations by reference. Plaintiff brings this cause of
26 action on behalf of himself and the Nationwide Class.

1 68. At the time of contracting, BMW had reason to know of the
2 Plaintiff's and other Nationwide Class members' particular purpose for
3 purchasing or leasing a Class Vehicle with a Range Extender. That particular
4 purpose includes use of the Range Extender to double the range of the vehicle on
5 a single charge, while maintaining the performance of the vehicle.

6
7 69. Plaintiff and the other Nationwide Class members relied on BMW's
8 skill and/or judgment to select or furnish suitable goods, thereby creating an
9 implied warranty that the goods would be fit for such purpose.

10
11 70. The Range Extender was not fit for these purposes, as alleged
12 hereinabove. Thus, Plaintiff and the other Nationwide Class members were
13 injured by BMW's conduct in breaching the implied warranty.

14
15 **COUNT V**

16 **Breach of Implied Warranty of Merchantability**

17 **(By Nationwide Class)**

18
19 71. Plaintiff repeats every allegation contained in the paragraphs above
20 and incorporates such allegations by reference. Plaintiff brings this cause of
21 action on behalf of himself and the Nationwide Class.

22
23 72. BMW is and was at all relevant times a merchant with respect to the
24 BMW i3 REx.

25
26 73. The Class Vehicles, when sold and at all times thereafter, were not in
27 merchantable condition and are not fit for the ordinary purpose for which Range
28 Extender equipped motor vehicles are used. Specifically, the Class Vehicles are

1 equipped with a defective Range Extender, causing the vehicle to lose significant
2 power during normal operation. The Class Vehicles share a common design
3 defect in that the BMW i3 REX fails to operate as represented by BMW.
4

5 74. Plaintiff and each of the other Nationwide Class members are
6 intended third-party beneficiaries of contracts between BMW and its dealers and,
7 specifically, of BMW's implied warranties.
8

9 75. As a direct and proximate result of BMW's breach of the warranty of
10 merchantability, Plaintiff and the other Nationwide Class members have been
11 damaged in an amount to be proven at trial.
12

13 **COUNT VI**

14 **Breach of Implied Warranty of Merchantability**

15 **(By California Subclass)**

16
17 76. Plaintiff repeats every allegation contained in the paragraphs above
18 and incorporates such allegations by reference. Plaintiff brings this cause of
19 action on behalf of himself and the California Subclass.
20

21 77. Defendant designed, engineered, manufactured, tested, assembled,
22 marked, advertised, sold and/or distributed the Class Vehicles leased and/or
23 purchased by Plaintiff and members of the California Subclass.
24

25 78. Pursuant to the Uniform Commercial Code, Defendant implied a
26 warranty of merchantability concerning the Class Vehicle that it was fit for the
27 ordinary purpose for which such goods are used.
28

1 79. The product sold by Defendant and supplied to Plaintiff and members
2 of the California Subclass was not of merchantable quality in that: (a) The product
3 was unreasonably dangerous; and (b) The unreasonably dangerous condition
4 existed when the goods left Defendant's hands.
5

6 80. As a result of the failure of the Class Vehicle to have the expected
7 quality, the vehicle exhibits a sudden, unexpected, and severe loss of power when
8 the Range Extender is activated, a condition which could very easily result in
9 death or serious bodily injury.
10

11 81. The failure of the Class Vehicles to have the expected quality was a
12 substantial factor in causing harm to Plaintiff and members of the California
13 Subclass.
14

15 82. Plaintiff and the California Subclass is therefore entitled to damages
16 in an amount to be proven at trial.
17

18 83. Plaintiff and the California Subclass is further entitled to rescission of
19 their contracts and a return of any amounts paid toward the purchase of their Class
20 Vehicles.
21

22 84. Plaintiff and the California Subclass is further entitled to recover a
23 civil penalty pursuant to Cal. Civil Code §1794(e)(1) of two times the amount of
24 their actual damages. Plaintiff and the Subclass Members are also entitled to
25 attorneys' fees and costs pursuant to California Civil Code § 1794(d), and all other
26 remedies permitted by law.
27
28

COUNT VII

Unlawful, Unfair, and Fraudulent Business Acts and Practices —

Violation of Cal. Bus. & Prof. Code § 17200, *et seq.*

(By California Subclass)

85. Plaintiff repeats every allegation contained in the paragraphs above and incorporates such allegations by reference. Plaintiff brings this cause of action on behalf of himself and the California Subclass.

86. This cause of action is brought under the California Unfair Competition Law (“UCL”), California Business & Professions Code § 17200, *et seq.*, which provides that “unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter I (commencing with Section 17500) as Part 3 of Division 7 of the Business and Professions Code.”

87. BMW engaged in unfair, deceptive, untrue or misleading advertising because they marketed the Class Vehicles as having an Range Extender that allowed the vehicle to double the battery range, without representing that while using the Range Extender the Class Vehicles lost significant power.

88. As a result of BMW’s misrepresentations alleged herein, Plaintiff and the other California Class members overpaid for their Class Vehicles because the value of the Range Extender was illusory.

89. BMW’s misrepresentations and omissions alleged herein caused Plaintiff and the other California Class members to make their purchases or leases

1 of their Class Vehicles. Absent those misrepresentations and omissions, Plaintiff
2 and the other California Class members would not have purchased or leased these
3 Vehicles, would not have purchased or leased these Vehicles at the prices they
4 paid, and/or would have purchased or leased less expensive alternative vehicles
5 that could travel a longer range while maintaining power and performance.

6
7 90. As one of the purchasers of the Class Vehicles who, as alleged
8 above, was exposed to the misrepresentations and would not have paid the prices
9 he did, if at all, if the true facts had been disclosed to him, Plaintiff has standing
10 and is entitled to seek all available remedies under the UCL.

11
12 91. As a private attorney general seeking to confer an important benefit
13 to upon the public at large, Crown seeks to recover its reasonable attorneys' fees
14 pursuant to California Civil Procedure Code § 1021.5.

15
16 92. Under California Business & Professions Code § 17203, as a result of
17 VW's violations of the UCL, Plaintiff and Class Members are entitled to
18 injunctive relief, restitution for out-of-pocket expenses, and an order disgorging
19 from Defendant and restoring to Members of the Class all monies that may have
20 been acquired by Defendant because of such unfair, deceptive and/or unlawful
21 business acts or practices.

22
23 93. Under California Civil Code § 3287(a), Plaintiff and Class Members
24 are further entitled to pre-judgment interest as a direct and proximate result of
25 BMW's wrongful conduct. The amount on which interest is applied is a sum
26 certain and capable of calculation in an amount according to proof.

COUNT VIII

Violation of the Consumers Legal Remedies Act,

Cal. Bus. & Prof. Code § 17500, *et seq.*

(By California Subclass)

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2
3
4
5
6 94. Plaintiff repeats every allegation contained in the paragraphs above
7 and incorporates such allegations by reference. Plaintiff brings this cause of
8 action on behalf of himself and the California Subclass.

9
10 95. This Cause of Action is brought pursuant to the California’s
11 Consumers Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750, *et seq.*

12
13 96. The Class Vehicles are “goods” as defined in Cal. Civ. Code §
14 1761(a).

15
16 97. Plaintiff and the Class Members are “consumers” as defined in Cal.
17 Civ. Code § 1761(d), and Plaintiff, Class Members, and BMW are “persons” as
18 defined in Cal. Civ. Code § 1761(c).

19
20 98. BMW made numerous representations concerning the vehicles
21 specifications that were misleading, including marketing and advertising the Class
22 Vehicles as having the ability to double in range, when such an increase was at the
23 expense of the Class Vehicles’ performance.

24
25 99. In purchasing or leasing the Affected Vehicles, Plaintiff and Class
26 Member were deceived by BMW’s failure to disclose that the Class Vehicles,
27 while operating on the Range Extender, were unable to sustain normal
28 performance.

1 100. BMW's conduct, as hereinabove described, is in violation of
2 California Civil Code §1770(a)(5), representing that goods or services have
3 sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities
4 which they do not have.

5
6 101. BMW's conduct, as hereinabove described, is in violation of
7 California Civil Code §1770(a)(7), representing that goods are of a particular
8 standard, quality, or grade, if they are another.

9
10 102. BMW's conduct, as hereinabove described, is in violation of
11 California Civil Code §1770(a)(9), advertising goods with the intent not to sell
12 them as advertised.

13
14 103. BMW's conduct, as hereinabove described, is in violation of
15 California Civil Code §1770(a)(16), representing that goods have been supplied in
16 accordance with a previous representation when they have not.

17
18 104. As a direct and proximate result of Defendant's unlawful, unfair, and
19 deceptive business practices in violation of California Civil Code Cal. Civ. Code
20 § 1750 *et seq.*, Plaintiff and the Class Members have suffered and continue to
21 suffer harm by Defendant's conduct. Defendant's conduct presents a continuing
22 threat of harm to the public in that, among other things, Defendant will continue to
23 mislead consumers by selling vehicles that are not of the particular characteristics,
24 standard, quality, and/or grade represented by Defendant to consumers.
25 Furthermore, Defendant's conduct presents a continuing threat of harm to the
26 public in that Defendant will continue to make false representations to consumers
27 that Defendant has sold the vehicle in accordance to Defendant's prior
28

1 representations to such consumers, when in fact Defendant has not actually done
2 so.

3
4 105. Accordingly, Plaintiff and Class Members seek an injunction
5 requiring defendant to immediately cease all acts of unfair and fraudulent business
6 practices as alleged herein. Additionally, Plaintiff and Class Members seek
7 attorneys' fees and costs pursuant to California Civil Code § 1780(e), and all other
8 remedies permitted by law.

9
10 **PRAYER FOR RELIEF**

11
12 **WHEREFORE**, Plaintiff, for himself and all others similarly situated,
13 prays for relief against Defendant, jointly and severally under each Count in this
14 Complaint as follows:

15
16 1. For an order certifying the Nationwide Class and California Subclass,
17 and appointing Plaintiff's counsel as Counsel for both Classes;

18
19 2. For an award of equitable relief as follows:

20
21 a. An order enjoining BMW from continuing to engage, use, or
22 employ any unlawful, unfair and/or deceptive business acts or practices and
23 from refusing to engage in a corrective advertising campaign; and

24
25 b. An order awarding restitution for out-of-pocket expenses and
26 economic harm and disgorging and restoring all monies that may have been
27 acquired by BMW because of such acts and/or practices;

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3. For an award of damages as permitted by law;

4. For an award of punitive damages for BMW’s malicious, oppressive and deliberate fraud, as permitted by law;

5. For an order rescinding their contracts and a ordering the return of any amounts paid toward the purchase of their Class Vehicles

6. For an award of attorneys’ fees under, *inter alia*, Cal. Code Civ. Proc. § 1021.5 and Cal. Civ. Code §§ 1750, *et seq.* and 1794, *et. seq.*;

7. For pre- and post-judgment interest on any amounts awarded;

8. For an award of costs; and

9. For an Order providing such further relief as may be found just and proper.

MLG AUTOMOTIVE LAW, APLC

Dated: May 17, 2016

By: /s/ Jonathan A. Michaels
Jonathan A. Michaels, Esq.
Kathryn J. Harvey, Esq.
Kristen R. Rodriguez, Esq.
Attorneys for Plaintiff,
Edo Tsoar

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

MLG AUTOMOTIVE LAW, APLC

Dated: May 17, 2016

By: /s/ Jonathan A. Michaels
Jonathan A. Michaels, Esq.
Kathryn J. Harvey, Esq.
Kristen R. Rodriguez, Esq.
Attorneys for Plaintiff,
Edo Tsoar

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