

1 **MLG AUTOMOTIVE LAW, APLC**  
 2 A Professional Law Corporation  
 3 Jonathan A. Michaels, Esq. – State Bar No. 180455  
 4 Kathryn J. Harvey, Esq. – State Bar No. 241029  
 5 Kristen R. Rodriguez, Esq. – State Bar No. 289668  
 6 2801 W. Coast Highway, Suite 370  
 7 Newport Beach, CA 92663  
 Telephone: (949) 581-6900  
 Facsimile: (949) 581-6908  
 (jmichaels@mlgautomotivelaw.com)  
 (kharvey@mlgautomotivelaw.com)  
 (krodriguez@mlgautomotivelaw.com)

8 Attorneys for Plaintiff,  
 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  
 23  
 24 **JURY TRIAL DEMANDED**  
 25  
 26  
 27  
 28

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.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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/  
17          BMW-I3-HAS-THE-LITTLE-ENGINE-THAT-  
18          COULD/INDEX.HTM](http://www.consumerreports.org/cro/news/2014/10/BMW-I3-HAS-THE-LITTLE-ENGINE-THAT-<br/>16          COULD/INDEX.HTM)

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

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

21           **NHTSA ID Number:** 10625717

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  
          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**

1  
2  
3  
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;

26  
27  
28

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.  
26  
27  
28



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 63. BMW expressly warranted that the Class Vehicles, together with the  
2 Range Extender installed therein, were of high quality and, at a minimum, would  
3 work properly and as intended.  
4

5 64. BMW breached this warranty by selling to Plaintiff and the other  
6 Nationwide Class members the Class Vehicles with known defective Range  
7 Extenders. As alleged hereinabove, the defective Range Extenders fail to function  
8 properly as a result of an inherent design and/or manufacturing defect.  
9

10 65. As a result of BMW's conduct, Plaintiff and the other Nationwide  
11 Class members have suffered economic damages including, without limitation,  
12 loss of vehicle and use of the Range Extender, substantial loss in value and resale  
13 value of the vehicles, and other related damages.  
14

15 66. Plaintiff and the other Nationwide Class members have complied  
16 with all obligations under the warranty, or otherwise have been excused from  
17 performance of said obligations as a result of BMW's conduct described  
18 hereinabove.  
19

20 **COUNT IV**

21 **Breach of Implied Warranty of Fitness For a Particular Purpose**  
22 **(By Nationwide Class)**  
23

24 67. 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.  
27  
28

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

1 **COUNT VII**

2 **Unlawful, Unfair, and Fraudulent Business Acts and Practices —**

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

4 **(By California Subclass)**

5  
6 85. 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 86. This cause of action is brought under the California Unfair  
11 Competition Law (“UCL”), California Business & Professions Code § 17200, *et*  
12 *seq.*, which provides that “unfair competition shall mean and include any  
13 unlawful, unfair or fraudulent business act or practice and unfair, deceptive,  
14 untrue or misleading advertising and any act prohibited by Chapter I  
15 (commencing with Section 17500) as Part 3 of Division 7 of the Business and  
16 Professions Code.”

17  
18 87. BMW engaged in unfair, deceptive, untrue or misleading advertising  
19 because they marketed the Class Vehicles as having an Range Extender that  
20 allowed the vehicle to double the battery range, without representing that while  
21 using the Range Extender the Class Vehicles lost significant power.

22  
23 88. As a result of BMW’s misrepresentations alleged herein, Plaintiff and  
24 the other California Class members overpaid for their Class Vehicles because the  
25 value of the Range Extender was illusory.

26  
27 89. BMW’s misrepresentations and omissions alleged herein caused  
28 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)**

1  
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;

28

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

2  
3 4. For an award of punitive damages for BMW’s malicious, oppressive  
4 and deliberate fraud, as permitted by law;

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

8  
9 6. For an award of attorneys’ fees under, *inter alia*, Cal. Code Civ.  
10 Proc. § 1021.5 and Cal. Civ. Code §§ 1750, *et seq.* and 1794, *et. seq.*;

11  
12 7. For pre- and post-judgment interest on any amounts awarded;

13  
14 8. For an award of costs; and

15  
16 9. For an Order providing such further relief as may be found just and  
17 proper.

18 **MLG AUTOMOTIVE LAW, APLC**

19  
20  
21 Dated: May 17, 2016

22 By:           /s/ Jonathan A. Michaels            
23 Jonathan A. Michaels, Esq.  
24 Kathryn J. Harvey, Esq.  
25 Kristen R. Rodriguez, Esq.  
26 Attorneys for Plaintiff,  
27 Edo Tsoar  
28



**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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28