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

**GURDIP KELLEY, individually,  
and on behalf of all others  
similarly situated,**

Plaintiffs,

v.

**BMW OF NORTH AMERICA,  
LLC,**

Defendants.

Case No.:

**CLASS ACTION COMPLAINT**

1. Violation of Cal. Unfair Competition Law (Cal. Bus. & Prof. Code § 17200, et seq.);
2. Violation of Cal. False Advertising Law (Cal. Bus. & Prof. Code § 17500, et seq.);
3. Violation of Consumer Legal Remedies Act (Cal. Civ. Code § 1750, et seq.);
4. Breach of Express Warranty in Violation of Magnuson-Moss Federal Warranty Act;
5. Breach of Implied Warranty in Violation of Magnuson-Moss Federal Warranty Act;
6. Breach of Express Warranty in Violation of Song-Beverly Consumer Warranty Act;
7. Breach of Implied Warranty in Violation of Song-Beverly Consumer Warranty Act;

**JURY TRIAL DEMANDED**

Plaintiff, GURDIP KELLEY, individually and on behalf of all others similarly situated, allege as their Complaint and Demand for Jury Trial the following:

### **I. OVERVIEW**

1. Plaintiff Gurdip Kelley bring this class and representative action for a Class defined as: “All persons who currently own or lease a 5 Series, 6 Series, 7 Series, X5 and/or X6 model BMW equipped with the 4.4-liter V8 version of the N63B4400 engine, manufactured between 2008 and 2013 (‘N63 Engine’).”
2. Defendants have adopted, promulgated, represented, and benefited from N63 Engine reliability issues. These engine reliability issues result from problems relating to the timing chain, fuel injectors, mass airflow sensors, crankcase vent lines, battery, the engine vacuum pump and low-pressure fuel sensor of the N63 Engine. Such problems led to more serious concerns such as excessive battery drainage (the “Battery Defect”), oil leakage (the “Oil Defect”) and engine seizure, often causing pistons to crack the engine block due to the high pressure (the “Engine Defect”). Such engine reliability issues have arisen with the N63 Engine regardless of mileage, sometimes even occurring in vehicles with less than 20,000 miles.
3. Plaintiffs each purchased or leased a BMW between 2008 and 2013 containing the N63 Engine, and have subsequently suffered from the issues stated herein above.

### **II. JURISDICTION AND VENUE**

4. Subject matter jurisdiction is properly imposed on this Court over this action pursuant to 28 U.S.C. §1332(d)(2) since Plaintiff and Defendant are citizens of different states and because, upon information and belief, the aggregate amount in controversy exceeds \$5,000,000 exclusive of costs and interest.
5. Subject matter jurisdiction is properly imposed on this Court over this action pursuant to 28 U.S.C. §1331 because Plaintiff presents a claim under the federal Magnuson-Moss Warranty Act, 15 U.S.C. §2301, *et seq.*

6. Personal jurisdiction is properly imposed on this Court over Defendant because Defendant is qualified to do business in the State of California, and Defendant maintains systematic and continuous business activities in the State of California, and Defendant intentionally avails itself of California consumers.
7. Venue is proper under 28 U.S.C. §1391(b)(2) because Plaintiff Kelley purchased her vehicle from Valencia BMW in Valencia, California. A substantial part of the acts or omissions giving rise to Plaintiff's claims therefore occurred within the District.

### **III. PARTIES**

8. Plaintiff, Gurdip Kelley, is a California resident who lives in Lathrop, San Joaquin County, California. In June of 2011, Kelley purchased a brand new 2011 BMW 750i 4-door sedan, containing a 4.4-liter twin-turbocharged v8 engine, model N63B4400, from Valencia BMW in Valencia, California.
9. Defendant, BMW of North America, LLC ("BMW") is organized under the laws of Delaware with its principal place of business located at 300 Chestnut Ride Road, Woodcliff, NJ 07677. BMW of North America was created in 1975 to act as the United States importer of BMW luxury and performance vehicles, which were traditionally manufactured in Munich, Germany. The company sells vehicles through a number of independently owned dealerships across the United States. At all relevant times, BMW was engaged in the business of importing, assembling, marketing, distributing and warranting BMW automobiles in the State of California and throughout the United States.

### **IV. FACTUAL ALLEGATIONS**

#### **A. The N63 Engine**

10. The BMW N63 Engine is a 4.4-liter V8 twin turbo engine, manufactured and included in BMW vehicles from 2008 and 2013 ("Class Vehicles"). Upon information and belief, the N63 Engine was included in the following BMW models and years as shown below:
  - a. BMW 7 Series Sedan produced from 03/2009 – 06/2012
  - b. BMW Hybrid 7 Series produced from 04/2010 – 06/2012

- c. BMW 5 Series Sedan produced from 03/2010 – 07/2013
- d. BMW 6 Series Coupe produced from 07/2011 – 07/2012
- e. BMW 6 Series Convertible produced from 03/2011 – 07/2012
- f. BMW X5 produced from 03/2010 – 06/2013
- g. BMW X6 produced from 07/2008 – 06/2014
- h. BMW Hybrid X6 produced from 09/2009 – 09/2011

11. As is evidenced in numerous news articles, online articles and online discussion forums, the N63 Engine has experienced continued reliability issues. Such issues have caused severe engine malfunctions including, but not limited to, causing the engines to lock up and pistons to crack the engine block due to excessively high pressure.
12. Due to these issues and ongoing consumer complaints, BMW issued several service bulletins to their dealerships nationwide. These bulletins were intended to address the N63 Engine's Battery Defect, Oil Defect and Engine Defects. These bulletins were intended to apply to all Class Vehicles, irrespective of whether the vehicle is still under warranty.
13. The N63 Engine was included in the 2011 BMW 750i Sedan purchased and owned by the Plaintiff Kelley.

**B. The Battery Defect**

14. The Battery Defect is due to heat produced by the N63 Engine twin turbochargers causing the N63 Engine's cooling system to continue to run long after the engine has been turned off. This system draws more power than the battery can deal with, causing excessive drain on the battery. However, reprogramming the engine computers to keep the battery's state of charge at a higher level, would adversely affect fuel economy, and would cause BMW to re-certify its car with the Environmental Protection Agency. This would lead to revised mile per gallon numbers that would be lower than previously advertised, making BMW susceptible to additional legal recourse. Thus, Defendants have attempted to mask the problem by issuing a technical service bulletin ordering their dealerships to replace the battery at every oil change.
- <http://www.roadandtrack.com/car-culture/buying->

[maintenance/a25710/enginerdy-strange-connections-bmw-n63-v8/](#)).

### **C. The Oil Defect**

15. The Oil Defect causes the N63 Engine to burn excessive amounts of oil between regularly scheduled vehicle services. The Oil Defect became so problematic that in 2013, BMW issued a service bulletin to their dealers and service providers, instruction them to add two quarts of oil to N63 Engines whereas Class Vehicle owners were instructed to add one quart. Specifically, BMW released service bulletin SI B110113 in or about June 2013. This service bulletin read as follows:

**Subject: N63 and N63T Engine: Engine Oil Consumption, Engine Oil Top-ups and Refill Capacity**

MODEL F01 F02 F06 F07 F10 F12 F13 E70 E71

**Customers with one of the vehicles above may complain that the engine's oil consumption is "too high," resulting in engine oil top-ups and workshop visits to address the issue before the vehicle displays an engine oil service as being "due."** When the vehicle's engine oil drops to the minimum level, a message will display in the vehicle advising the driver to "add 1 quart of engine oil." After topping up and continued operation, the "add engine oil" message may display again before an engine oil service is required and performed.

**Cause:**

**Engines that are fitted with a turbocharger, as part of their normal operation, will consume engine oil at a higher rate than a naturally aspirated engine (non-turbocharged engine). In this case, a "turbocharged" engine could require topping up of the engine oil more frequently.**

**Procedure:**

Engine oil – Topping up

**When one of the above vehicles displays a message to add 1 quart of engine oil, BMW recommends adding 2 quarts of engine oil instead.** The engine's oil sump design allows the additional quart; the result is a total capacity of 9.5 quarts (9.0 liters) of engine oil.

<http://www.xbimmers.com/forums/showthread.php?p=14449679>).

- 16.**BMW has attempted to mask this issue by reducing the oil-service interval from every 2 years or 15,000 miles, whichever occurs first, to every 12 months or 10,000 miles. BMW has a reputation for its vehicles being able to go long periods without oil service.
- 17.**The June 2015 edition of Consumer Reports contained an article regarding the Oil Defect entitled, "*Excessive oil consumption isn't normal: Automakers say adding oil between scheduled changes is acceptable. It's not.*" (<http://www.consumerreports.org/cro/magazine/2015/06/excessive-oil-consumption/index.htm>).
- 18.**The Oil Defect harms N63 Engine owners in that excessive oil consumption requires additional service visits, which is something that BMW owners expect to avoid by purchasing a high-end BMW. N63 Engine owners will suffer significant loss when they attempt to sell the vehicle because the reputation of these vehicles has been greatly impaired by this now widely-publicized defect.
- 19.**The Oil Defect poses a safety risk because it prevents the engine from maintaining the proper level of engine oil, and causes voluminous oil consumption that cannot be reasonably anticipated or predicted by the driver. This creates a danger in that it can cause engine failure while the Class Vehicles are in operation at any time and under any driving conditions or speeds, thereby exposing the Class Vehicle drivers, their passengers and those sharing the road, to serious risk of accidents and injury.
- 20.**Rather than fix or eliminate the Oil Defect, as part of the service bulletin, BMW has ordered its technicians to add a quart of oil per oil-service, in hopes of reducing the chance customers will receive a low oil-level warning, and to hide the fact that Defendants' vehicles equipped with the N63 Engine consume a larger amount of oil than advertised. (<http://www.roadandtrack.com/car-culture/buying-maintenance/a25710/enginerdy-strange-connections-bmw-n63-v8/>).

#### **D. The Engine Defect**

- 21.**The Engine Defect causes several components of the N63 Engine to fail at an excessively high rate, including but not limited to, timing chains that stretch and snap, leaking crankcase ventilation and fuel lines, malfunctioning fuel injectors, mass airflow sensors and vacuum pumps. Thus as part of the service bulletins, Defendants are replacing these parts with allegedly improved components. These repairs often takes several days to several weeks to be fully performed. (<http://www.topspeed.com/cars/car-news/bmw-n63-customer-care-package-a-recall-that-bmw-refuses-to-call-a-recall-ar166918.html>).
- 22.**One BMW mechanic who was interviewed, claiming he has changed over a dozen N63 Engine parts, referred to the N63 Engine as a “bomb on wheels.” Much of his work has consisted of replacing faulty fuel injectors or a faulty high pressure fuel pump, both of which BMW attempts to address in the Customer Care Package (“Care Package”), as discussed herein below. (<http://www.autoevolution.com/news/bmw-44-liter-n63-engine-experiencing-frequent-reliability-problems-88225.html>).
- 23.**This mechanic went on explain that the “injectors would shoot too much petrol inside the cylinder which would in turn cause some shrapnel to come off that would eventually get stuck in all sorts of places and cause the piston the crack the case. Basically, you’d be in for a surprise when a rod or even a piston would shoot through the engine block.” (*Id.*).
- 24.**In many instances, despite the replacement of engine parts pursuant to the Care Package, the N63 Engine problems continue to persist.
- 25.**One N63 Engine owner stated that despite having BMW replace the fuel injectors with the latest model, he/she has “experienced multiple (as many as 14 misfires per cylinder!) and this is AFTER having my injectors replaced 90 days ago!” This owner goes on to state that the fuel injectors have been replaced more than once, yet the problems persist. (<http://www.7post.com/forums/showthread.php?t=1076902>).

**26.** Another owner expressed similar issues regarding the fuel injectors:

“I had my Customer Care Package (recall) done on my engine about a month and a half ago and about 2 weeks ago I had the check engine light come on and the drivetrain malfunction error show up on my idrive screen. I took it to BMW and they say that my new injectors were no good and they needed them replaced.”  
(<http://www.7post.com/forums/showthread.php?t=1076902&page=3>).

**27.** Additionally, the plethora of issues and complaints regarding the N63 Engine is evidenced by yet another owner’s forum post in or about August of 2014, when he/she states, “Wow, this is beyond ridiculous. All the horror stories make me feel like I’ll be moving onto the new s-class benz when I’m done with this car. This is becoming too much and way too consistent that I’m seeing all these severe, chronic issues with these ‘brand new’ bimmers.”  
(<http://www.bimmerfest.com/forums/showthread.php?t=805414>).

**28.** Similar to the Oil Defect, the Engine Defect poses a safety risk because it can cause engine failure while the Class Vehicles are in operation at any time and under any driving conditions or speeds, thereby exposing the Class Vehicle drivers, their passengers and those sharing the road, to serious risk of accidents and injury.

**29.** The safety risk caused by the Engine Defect is apparent by one N63 Engine owner’s experience:

“I was driving my 2012 X5 on I-65 yesterday on my way back from Birmingham to Mobile. I was about 30 miles from home, doing about 80 when I passed a truck and got back in the right lane. Just as I got over, the engine malfunction warning came on and my speed went from 80 to 45 in about ½ second! Scared the daylights out of me and my 9 year old. The truck I just passed had to swerve to keep from hitting me... Took it to BMW today and they said there were two faulty fuel injectors and had to order new ones.”  
(<http://www.xbimmers.com/forums/showthread.php?t=805582&page=3>).

### **E. Customer Care Program**

- 30.**As a result of the aforementioned issues and ongoing consumer complaints, in or about December 29, 2014, Defendants released Bulletin B001314, otherwise known as the N63 Customer Care Package.
- 31.**Pursuant to the Care Package, the Defendants' authorized dealerships and service centers were instructed to contact all owners receiving services at their branches who operate the N63 Engine. The dealerships were to inform all such owners that Defendants will inspect, and if needed, replace the following parts: (i) fuel injectors, (ii) vehicle battery, (iii) low pressure fuel sensor, (iv) engine vacuum pump, (v) crankcase vent lines and (vi) the mass air flow sensors. Defendants would also be changing the service interval from every 2 years or 15,000 miles, whichever occurs first, to every 12 months or 10,000 miles. Defendants stated in the Bulletin that the work would be performed regardless of whether the vehicle is out of warranty.
- 32.**In or about December 29, 2014, Defendants also issued a sales bulletin referred to as the Customer Loyalty Offer ("Loyalty Offer"). Pursuant to this Loyalty Offer, Defendants offered additional trade-in cash bonuses to owners affected by the N63 Engine, to trade in their Class Vehicle and purchase a new car.
- 33.**In or about December 29, 2014, Defendants also issued a bulletin referred to as the N63 Customer Appreciation Program ("Appreciation Program"). Pursuant to this Appreciation Program, Defendants' sales teams were also afforded discretionary authorization to offer a gift of Fifty Dollars (\$50.00) in the form of a gas card, gift bag or vehicle detailing, amongst other offers. The Care Package, Loyalty Offer and Appreciation Program are collectively referred to as the "Campaign".
- 34.**Plaintiffs are informed and believe, and based thereon alleged that these bulletins were not released to the general public, but were only released internally to BMW dealerships.
- 35.**When Defendant released the Campaign bulletins, the automaker commented

that this represents its “commitment to the long-term reliability of our most technologically advanced products.” (<http://www.roadandtrack.com/car-culture/buying-maintenance/a25710/engineerdy-strange-connections-bmw-n63-v8/>).

- 36.** Yet as stated above, the Care Package merely masks the Oil Defect and the Battery Defect rather than reprogramming the N63 Engine to cure the defects entirely. Moreover, as multiple Class members have stated, the Care Package has failed to remedy the Engine Defects, merely masking said defects and requiring multiple trips to the dealership to replace the same engine parts again and again.
- 37.** In many instances, where Plaintiffs have utilized the Care Package, and the N63 Engine problems continue to persist thereafter, Defendants refused to honor the Loyalty Offer and/or the Appreciation Program.
- 38.** Defendants refused to honor the Loyalty Offer and Appreciation Program in many instances despite BMW’s claim that all Class Vehicles are covered regardless of whether or not their warranty has expired. Many owners of Class Vehicles outside of their warranty period, include Plaintiff Kelley’s 2011 BMW 750i, have been denied these programs by BMW.
- 39.** Moreover, the Care Package, Loyalty Offer and Appreciation Program do not factor in the diminution suffered by owners of Class Vehicles who sell their cars, and set up obstacles designed to diminish the damages paid to the class through attrition and unnecessary hurdles. A class action is designed to avoid precisely these problems. BMW’s remedial programs are flawed. While striving to appear fair, the programs’ reality is much different. The programs seek to mask rather than repair the ongoing issues with the N63 Engine, require additional trips to the dealerships, and continuing to charge customers for additional car batteries, despite being responsible for the defects. They also fail to fairly compensate current owners for the losses they will suffer upon selling their cars, based on the fallacy that the cars’ prices will not be largely affected

by the issues and inefficiencies of the N63 Engine, which happens to be one of the key components of value for Class Vehicles.

**40.**As such, the Campaign offered by Defendant has failed to remedy the defects and issues prevalent in the N63 Engine.

**F. Plaintiff Kelley's N63 Engine Failures and Campaign Failures**

**41.**On or about June 14, 2011, Plaintiff Kelley purchased a 2011 BMW 750i from Valencia BMW, located at 23435 Valencia Blvd., Valencia, CA 91355. This vehicle is a Class Vehicle containing the N63 Engine. Kelley's vehicle was sold with BMW's "New SAV Limited Warranty," (the "Warranty") which covers the vehicle for 48 months or 50,000 miles along with BMW's Standard Maintenance Program over the same length of time.

**42.**Neither BMW nor its authorized dealership told Kelley that her BMW would burn excessive amounts of oil and require additional oil between visits before she purchased the vehicle. Plaintiff would not have purchased the vehicle if she was aware of the Oil Defect.

**43.**Neither BMW nor its authorized dealership told Kelley that her BMW would need its battery replaced at every oil change before she purchased the vehicle. Plaintiff would not have purchased the vehicle if she was aware of the Battery Defect.

**44.**Neither BMW nor its authorized dealership told Kelley that her BMW was likely to suffer from a host of reliability and mechanical issues before she purchased the vehicle. Plaintiff would not have purchased the vehicle if she was aware of the Engine Defect.

**45.**In or about June 18, 2015, Kelley took her 2011 BMW 750i to Crevier BMW, located at 1500 Auto Mall Drive, Santa Ana, CA 92705, for standard maintenance. It was at this time that Kelley was first informed of the Campaign. This occurred just four (4) days after Kelley's warranty had expired.

**46.**From the time the Campaign was released on or about December 29, 2014, until June 18, 2015, Kelley never received a phone call or any correspondence from

BMW to inform her of the Campaign.

- 47.**In or about June 18, 2015, Plaintiff Kelley's 2011 BMW 750i received replacement high-pressure fuel pumps per the Care Package. Since that time, Plaintiff Kelley's BMW has been experiencing rough engine idling on a regular basis.
- 48.**Ms. Kelley, through her son Kanwar Kelley, has contacted Defendant and their authorized representatives via telephone and email, expressing her frustrations with the vehicle, stating that she would not have purchased the vehicle had she known of the inherent defects, and that she no longer wished to own the vehicle. Kelley requested that BMW honor its Loyalty Offer and Appreciation Program.
- 49.**Defendant refuses to honor Kelley's request for the Loyalty Offer and Appreciation Program.
- 50.**In or about August 2015, Kelley was driving her BMW and received an alert on the vehicle's electronic display that told her that the vehicle was experiencing a drivetrain malfunction. The alert informed her to "Drive moderately. Maximum output not available. Consult Service Center."
- 51.**Shortly thereafter, Kelley ceased to drive the vehicle regularly, only using it on average of once per week. Kelley originally intended for this vehicle to serve as her primary mode of transportation.
- 52.**In or about the beginning of October 2015, Kelley took the vehicle back to Valencia BMW, complaining of the rough engine idling and drivetrain malfunction. The dealership claims that an inspection was performed but no faults discovered. No service repairs were performed per the Care Package.
- 53.**Neither BMW nor its authorized dealerships have performed any repairs to Kelley's BMW regarding the Oil Defect and Battery Defect, despite the Care Package service bulletin.
- 54.**Despite replacing the high-pressure fuel pumps, and despite Kelley's vehicle subsequently suffering from continuing issues related to the N63 Engine, BMW

has declined to honor the Loyalty Offer and Appreciation Program for Plaintiff Kelley.

**55.**As a result of the N63 Engine problems, the market resale value of Plaintiff Kelley's BMW 750i has declined significantly, upon information and belief, by several thousands of dollars more than the average depreciation when compared to other BMW 750i's not equipped with the N63 Engine. This decline in value is attributable to BMW's breaches of warranty regarding the N63 Engine, and failure to honor its own service bulletins containing the Loyalty Offer and Appreciation Program.

**G. BMW's Knowledge of the N63 Engine Defects**

**56.**Upon information and belief, BMW knew or should have known of the Oil Defect, Engine Defect and Battery Defect before Plaintiff Kelley purchased her 2011 BMW 750i on June 14, 2011. BMW had numerous sources from which to obtain this information:

**57.**First, BMW knew or should have known about the N63 Engine defects as a result of its policy of collecting defective parts when replaced by authorized service technicians. The new vehicle Warranty includes the language, "[p]arts for which replacement are made become the property of BMW NA."

**58.**This provision indicates that BMW maintains an internal, regimented process to identify defective components as the parts are replaced by BMW service representatives.

**59.**Second, BMW should have learned of the N63 Engine defects from warranty reimbursements to its independent service representatives. The Warranty instructs N63 Engine owners to take their vehicles to authorized service centers for any repairs under warranty, as it states, "To obtain warranty service coverage, the vehicle must be brought, upon discovery of a defect in material or workmanship, to the workshop of any authorized BMW SAV center in the United States..." This shows that BMW had a real-time source of product feedback and notice of product failures once N63 Engine owners would invoke

the Warranty at an authorized service center.

**60.**Third, BMW knew or should have known about the N63 Engine defects from the numerous complaints Class Vehicle owners made directly to the BMW Customer Relations and Services Department.

**61.**Fourth, BMW knew or should have known about the defects from public comments, complaints and numerous articles from the BMW community. As a high-performance luxury automotive brand, BMW has attracted a large number of BMW fans who enjoy discussing their BMW vehicles with other enthusiasts. There are several websites where BMW owners and enthusiasts post comments and complaints about BMW vehicles. Many automotive-based magazines and websites also contain several articles regarding the N63 Engine defects. BMW could have learned of the extent of the N63 Engine defects from these public sources of real-time product failure information.

#### **V. CLASS ACTION ALLEGATIONS**

**62.**Plaintiffs seek certification of a Class defined as follows:

**63.**All natural persons who purchased, currently own, leased or currently lease a BMW vehicle containing the N63 Engine for use within the United States and its territories (“Class Members”).

**64.**Excluded from the Class are Defendants, their employees, co-conspirators, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliated companies; class counsel and their employees; and the judicial officers and their immediate family members and associated court staff assigned to this case, and all persons within the third degree of relationship to any such persons.

**65.**The Class can be readily identified using vehicle window stickers, sales records, production records, and other information kept by Defendants or third parties in the usual course of business and presently within their control.

**66.**Questions of law and fact are common to the Class and predominate over questions affecting only individual members, including, *inter alia*:

- a) Whether a BMW containing the N63 Engine suffers from the Engine Defect as described above.
- b) Whether a BMW containing the N63 Engine suffers from the Battery Defect as described above.
- c) Whether a BMW containing the N63 Engine suffers from the Oil Defect as described above.
- d) Whether a failure to accurately inform customers of the N63 Engine defects constitutes an unlawful business practice or act;
- e) Whether Defendant willfully concealed the N63 Engine Defects and recklessly disregarded their existence;
- f) Whether Defendants breached express and implied warranties by selling a vehicle containing the N63 Engine and misstating the amount of oil it consumes, how quickly it drains the battery and that it contains several defective engine parts;
- g) Whether Defendants engaged in unfair, unlawful and/or fraudulent business practices under California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, *et seq.*, by misstating the frequency of battery replacements, the amount of oil required and frequency of oil changes, and the frequency of defective engine parts in their advertisements, or in communications with the customers;
- h) Whether the same conduct violated Bus. & Prof. Code §§ 17500, *et seq.*;
- i) Whether the same conduct violated California's Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code §§ 1750, *et seq.*;
- j) Whether Defendants' unlawful, unfair and/or deceptive practices harmed Plaintiff and the Class Members;
- k) Whether Defendant was unjustly enriched by their deceptive practices; and
- l) Whether Plaintiffs and the Class Members are entitled to equitable or

injunctive relief.

67. Plaintiffs' claims are typical of the claims of the Class Members and arise from the same conduct by BMW. The relief Plaintiffs seek is typical of the relief sought for the absent Class Members.

68. Plaintiffs will fairly and adequately represent and protect the interests of all absent Class members. Plaintiffs are represented by counsel competent and experienced in both consumer protection and class action litigation.

69. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all the individual Class Members is impracticable. Because the damages suffered, and continued to be suffered, by each individual Class Member may be relatively small, the expense and burden of individual litigation would make it very difficult or impossible for individual Class Members to redress the wrongs done to each of them individually and the burden imposed on the judicial system would be enormous.

70. The prosecution of separate actions by the individual Class Members would create a risk of inconsistent or varying adjudications regarding individual Class Members, which would establish incompatible standards of conduct for Defendant. The conduct of this action as a class action presents far fewer management difficulties, conserves judicial resources, the parties' resources, and protects the rights of each Class Member.

## **VI. CAUSES OF ACTION**

### **FIRST CAUSE OF ACTION**

#### **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW (Cal. Bus. & Prof. Code §17200, *et seq.*)**

71. Plaintiffs re-allege and incorporate by reference all paragraphs alleged herein.

72. California Business and Professions Code §17200 prohibits any "unlawful, unfair, or fraudulent business acts or practices." Defendant has engaged in unlawful, fraudulent, and unfair business acts and practices in violation of the Unfair Competition Law.

**73.**Defendant has violated the unlawful prong because they knew or should have known of the Engine Defect, Oil Defect and Battery Defect in all vehicles containing the N63 Engine and the resulting complications and unprecedented depreciation to all Class Vehicles.

**74.**Defendant has violated the fraudulent prong of §17200 because the misrepresentations and omissions regarding defects in their vehicles as set forth were likely to deceive a reasonable consumer, and the information would be material to a reasonable consumer.

**75.**Defendant has violated the unfair prong of §17200 because the acts and practices set forth offend established public policy and because the harm they cause to consumers greatly outweighs any benefits associated with those practices. Defendants' conduct has also impaired competition within the automotive vehicles market and has prevented Plaintiffs from making fully informed decisions about whether to purchase or lease their vehicles and/or the price to be paid to purchase or lease them. Defendants' conduct also offends established public policy as delineated in the regulatory provisions described above and their underlying purposes.

**76.**The named Plaintiffs have suffered injury in fact, including losing money or property, as a result of Defendants' unfair, unlawful and/or deceptive practices. As set forth in the allegations concerning each Plaintiff, in purchasing or leasing the vehicles, the Plaintiffs relied on the misrepresentations and/or omissions of Defendant regarding the oil consumption and intervals between oil changes, the life expectancy of the vehicle battery and the reliability of the N63 Engine. Had the named Plaintiffs known the true oil consumption, battery consumption and engine deficiencies, they would not have purchased or leased their vehicles and/or paid as much for them. The named Plaintiffs have already paid, and will be required to pay in the future, oil and battery costs over what they were informed to expect when Defendant concealed and/or misinformed Plaintiffs of the N63 Engine defects. Plaintiffs have also paid, and continue to

pay additional costs associated with taking their vehicle to BMW authorized service centers, often more than once, for engine repairs that take anywhere from several days to several weeks.

77. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendants' business. Defendants' wrongful conduct is part of a pattern or generalized conduct that is still perpetuated and repeated, both in California and nationwide.

78. Plaintiffs request this Court enter such orders or judgments to enjoin Defendant from continuing its unfair, unlawful, and/or deceptive practices and to restore to Plaintiffs and Class Members any money BMW acquired by unfair competition, as provided in CAL. BUS. & PROF. CODE §17203, and for such other relief set forth below.

**SECOND CAUSE OF ACTION  
VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW  
(Cal. Bus. & Prof. Code §17500, *et seq.*)**

79. Plaintiffs re-allege and incorporate by reference as fully set forth herein, paragraphs 1-78 of this Complaint.

80. California Business and Professions Code §17500 states: "It is unlawful for any...corporation...with intent directly or indirectly to dispose of real or personal property...to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated...from this state, before the public in any state, in any newspaper or other publication, or any advertising device...or in any other manner or means whatsoever, including over the Internet, any statement...which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading."

81. Defendant caused to be made or disseminated through California and the United States, through advertising, including stickers affixed to vehicle windows, statements that were untrue or misleading, and which were known, or which by exercising reasonable care should have been known to Defendant,

to be untrue and misleading to consumers and Plaintiffs.

**82.** Defendants have violated §17500 because the misrepresentations and omissions regarding oil consumption and intervals between oil changes, the life expectancy of the vehicle battery and the reliability of the N63 Engine as set forth were material and likely to deceive a reasonable consumer.

**83.** The named Plaintiffs have suffered injury in fact, including losing money or property, as a result of Defendants' false advertising. As set forth in the allegations concerning each Plaintiff, in purchasing or leasing their vehicles, the Plaintiffs relied on the misrepresentations and/or omissions of Defendant regarding the amount of oil, the interval between oil changes, the battery life and reliability of the N63 Engine in their vehicles. Had the named Plaintiffs known the true oil consumption, battery consumption and engine reliability issues they would not have purchased or leased their vehicles and/or paid as much for them. The named Plaintiffs have already paid and will be required to pay in the future fuel costs over what they would have paid if Defendant had accurately disclosed its vehicles' oil consumption, battery consumption and engine deficiencies.

**84.** All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct of Defendants' business. Defendants' wrongful conduct is part of a pattern of generalized conduct that is still perpetuated and repeated, both in California and nationwide.

**85.** Plaintiffs request this Court enter such orders or judgments as may be necessary to enjoin Defendant from continuing their false advertising and to restore to Plaintiffs and Class Members any money BMW acquired by unfair competition, and for such other relief set forth below.

**THIRD CAUSE OF ACTION**  
**VIOLATIONS OF THE CONSUMER LEGAL REMEDIES ACT**  
**(Cal. Civ. Code §1750, *et seq.*)**

**86.** Plaintiffs re-allege and incorporate by reference as fully set forth herein, paragraphs 1-85 of this Complaint.

- 87.** Defendant is a “person” under Cal. Civ. Code §1761(c).
- 88.** Plaintiffs are “consumers,” as defined by Cal. Civ. Code §1761(d), who purchased or leased one or more vehicles manufactured by Defendants.
- 89.** Defendant participated in unfair or deceptive acts or practices that violated the Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code §1750, *et seq.*, as described in this Complaint.
- 90.** By employing deficient research and testing methods for use of their vehicles when driven in the United States, Defendant produced inaccurate oil consumption estimates requiring consumers to add an additional quart of oil when the vehicle displays a message to add 1 quart or requires an oil change, and requiring consumers to reduce the oil change interval from two years/15,000 miles to one year/10,000 miles.
- 91.** Defendant’s deficient research and testing methods also produced inaccurate battery consumption estimates requiring replacement of these luxury vehicles’ expensive batteries every 10,000 to 20,000 miles.
- 92.** Defendant’s deficient research and testing methods also produced inaccurate results regarding the efficiency and reliability of the engine parts contained in the N63 Engine, resulting in defective engine parts, Class Vehicle breakdowns, the need for replacement engine parts and reoccurring engine issues suffered across the Class Members.
- 93.** By employing deficient research and testing methods for the N63 Engine, Defendant engaged in deceptive business practices prohibited by the C.L.R.A., Cal. Civ. Code §1750, *et seq.*, including (1) representing the vehicles have characteristics, uses, benefits, and qualities which they do not have; (2) representing the vehicles are of a particular standard, quality, and grade when they are not; and (3) advertising the vehicles with the intent not to sell them as advertised.
- 94.** Defendant knew its testing methods were insufficient and therefore produced inaccurate oil consumption, battery consumption and engine reliability results.

Defendant nevertheless failed to make appropriate disclosures despite its superior knowledge and affirmative misrepresentations to the contrary.

**95.**A reasonable consumer would not have purchased or paid as much as for the vehicles had Defendant disclosed the aforementioned defects of the N63 Engine, as that information is material to a reasonable consumer.

**96.**Because of its violations of the C.L.R.A. detailed above, Defendant has caused and continues to cause actual damage to Plaintiffs and, if not stopped, will continue to harm them. Had the named Plaintiffs known the true oil consumption, battery consumption and engine defects, they would not have purchased or leased their vehicles and/or paid as much for them. The named Plaintiffs have already paid and will be required to pay in the future costs over what they would have paid if Defendant had accurately disclosed its vehicles' oil consumption, battery consumption and engine defects.

**97.**Under Civil Code §1780(a), Plaintiffs and Class Members seek injunctive and equitable relief for Defendant's violations of the C.L.R.A. After mailing appropriate notice and demand under Civil Code §1782(a) & (d), Plaintiffs will subsequently amend this Complaint to also include a request for damages. Plaintiffs and Class Members request this Court enter such orders or judgments as may be necessary to restore to any person in interest any money which may have been acquired with such unfair business practices, and for such other relief, including attorneys' fees and costs, as provided in Civil Code §1780 and the Prayer for Relief.

**98.**Plaintiffs include an affidavit with this Complaint that shows venue in this District is proper, to the extent such an affidavit is required by Cal. Civ. Code §1780(d).

**FOURTH CAUSE OF ACTION  
BREACH OF EXPRESS WARRANTY PURSUANT TO THE  
MAGNUSON-MOSS WARRANTY ACT**

**99.**Plaintiffs re-allege and incorporate by reference as fully set forth herein, paragraphs 1-98 of this Complaint.

- 100.** Plaintiff and other Class Members are “consumers” who purchased “consumer products” for purposes of 15 U.S.C. §2301(1) and (3) because they purchased N63 Engine vehicles for personal, family or household purposes and are entitled to invoke the vehicle Warranty.
- 101.** BMW is a “supplier” and “warrantor” within the meaning of 15 U.S.C. §2301(4) and (5) because the company regularly sells BMW vehicles accompanied by the vehicle Warranty.
- 102.** The amount in controversy meets or exceeds \$25.00 in value. In addition, the amount in controversy meets or exceeds \$50,000 in value (exclusive of costs) computed on the basis of all claims to be determined in this suit.
- 103.** BMW violated the Magnuson-Moss Warranty Act when it failed to honor its written Warranty obligations in the vehicle Warranty by delivering N63 Engine vehicles that suffered from the Oil Defect, Battery Defect and Engine Defects as described herein above.
- 104.** BMW specifically warranted its vehicles “against defects in materials or workmanship” at the time of retail sale and for an additional “48 months or 50,000 miles.” BMW extended this Warranty “to the first retail purchaser, and each subsequent purchaser” for the duration of the Warranty.
- 105.** The terms of BMW’s Warranty became part of the basis of the bargain between Plaintiff and all other Class Members when deciding to purchase a vehicle containing the N63 Engine.
- 106.** BMW breached its written Warranty with respect to vehicles containing the N63 Engine (i) each time it sold vehicles containing the N63 Engine in a defective state to retail purchasers, (ii) each time its authorized service representatives failed to properly repair, replace or adjust malfunctioning N63 Engines to a non-defective state and (iii) each time it failed to authorize its service representatives to perform adequate repairs on N63 Engines and instead instructed its representatives to perform temporary, inadequate repairs to mask the underlying defects until after the expiration of the Warranty.

107. BMW has been given a reasonable opportunity to cure its breach of the express Warranty. BMW has known about the Oil Defect, Battery Defect and Engine Defects from customer complaints, service information and warranty data and has failed to repair or replace N63 Engine parts as originally warranted.
108. Said Warranty was the basis of the bargain of the contract between Plaintiffs and BMW, for the sale of the Class Vehicles to Plaintiffs.
109. Said purchase of Defendant's vehicle was induced by, and Plaintiffs relied upon, this written Warranty.
110. Plaintiffs and Class Members have met all of Plaintiffs' obligations and preconditions as provided in the written Warranty.
111. As a direct and proximate result of BMW's breach of the express Warranty, Plaintiff and Class Members have suffered damages in an amount to be determined at trial.
112. Plaintiff, individually and on behalf of the Class Members, seeks all damages permitted by law, including compensation for the monetary difference between vehicles containing the N63 Engine as warranted and sold; towing charges incurred due to N63 Engine breakdowns; the cost of purchasing, leasing or renting replacement vehicles, along with all other incidental and consequential damages, statutory attorneys fees and all other relief allowed by law.

**FIFTH CAUSE OF ACTION  
BREACH OF IMPLIED WARRANTY PURSUANT TO THE MAGNUSON-  
MOSS WARRANTY ACT**

113. Plaintiffs re-allege and incorporate by reference as fully set forth herein, paragraphs 1-112 of this Complaint.
114. The vehicles purchased by Plaintiff and the Class Members were subject to an implied warranty of merchantability as defined in 15 U.S.C. §2301(7) running from the Defendant, to the intended consumers, Plaintiffs and the Class Members herein.

115. BMW is a “supplier” of consumer goods, as a person engaged in the business of making a consumer product directly available to Plaintiffs.
116. Defendant is prohibited from disclaiming or modifying any implied warranty when making a written warranty to the consumer or when the Defendant has entered into a contract in writing within ninety (90) days of purchase to perform services relating to the maintenance or repair of a motor vehicle.
117. Pursuant to 15 U.S.C. §2308, Plaintiffs’ Class Vehicles were impliedly warranted to be substantially free of defects and non-conformities in both material and workmanship, and in safe condition, thus impliedly warranting the Class Vehicles as fit for the ordinary purpose for which they were intended.
118. The Class Vehicle was warranted to pass without objection in the trade under the contract description, and was required to conform to the descriptions of the respective vehicles contained in the contracts and labels.
119. The above-described defects in the Class Vehicles render them unfit for the ordinary and essential purpose for which the vehicles were intended.
120. As a result of the breaches of implied warranty of merchantability by Defendant, Plaintiffs, on behalf of the Class Members, have suffered and continue to suffer various damages.

**SIXTH CAUSE OF ACTION  
BREACH OF EXPRESS WARRANTY PURSUANT TO THE SONG-  
BEVERLY CONSUMER WARRANTY ACT**

121. Plaintiffs re-allege and incorporate by reference as fully set forth herein, paragraphs 1-120 of this Complaint.
122. Pursuant to Cal Civ. Code. §1793.2, Plaintiffs and the Class Members have presented the Class Vehicles to Defendant and/or other authorized service dealers of Defendant within the term of protection, and have tendered the subject Class Vehicles for the above-mentioned defects and/or nonconformities that substantially impair the use, value and safety of the Class Vehicles.
123. Defendant, through itself and/or other authorized dealerships, has been

unable to repair said substantially impairing defects and/or nonconformities in a reasonable number of attempts.

**124.** Pursuant to Cal Civ. Code. §1793.2, Plaintiffs and the Class Members are entitled to a refund of the full purchase price of the Class Vehicles, including all collateral charges and finance charges, and/or replacement vehicles, plus all attorney fees and costs.

**125.** Defendant has willfully violated the provisions of this act by knowing of its obligations to refund or replace the Class Vehicles, but failing to fulfill them.

**SEVENTH CAUSE OF ACTION  
BREACH OF IMPLIED WARRANTY PURSUANT TO THE SONG-  
BEVERLY CONSUMER WARRANTY ACT**

**126.** Plaintiffs re-allege and incorporate by reference as fully set forth herein, paragraphs 1-125 of this Complaint.

**127.** The Class Vehicles purchased by Plaintiffs and the Class Members were subject to an implied warranty of merchantability as defined in Cal. Civ. Code §1790 running from the Defendant to the intended consumers, Plaintiff and Class Members herein.

**128.** Defendant is the supplier of consumer goods as a person engaged in the business of making a consumer product directly available to Plaintiffs and Class Members.

**129.** Defendant is prohibited from disclaiming or modifying any implied warranty under Cal. Civ. Code §1790.

**130.** Pursuant to Cal. Civ. Code §1790, all Class Vehicles were impliedly warranted to be fit for the ordinary use for which the Class Vehicles were intended.

**131.** The Class Vehicles were warranted to pass without objection in the trade under the contract description, and were required to conform to the descriptions of the respective Class Vehicles contained in the contracts and labels.

**132.** The above-described defects in the N63 Engine of the Class Vehicles

caused them to fail to possess even the most basic degree of fitness for ordinary use.

**133.** As a result of the breaches of implied warranty by Defendant, Plaintiff and the Class Members have suffered and continue to suffer various damages.

#### **VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf all others similarly situated, respectfully request this Court enter a judgment against Defendant and in favor of Plaintiffs, and grant the following relief:

A. Determine this action may be maintained as a Class action with respect to the Class Members and certify it as such under Rule 23(b)(3), or alternatively certify all issues and claims that are appropriately certified, and designate and appoint Plaintiffs as Class Representatives and their counsel as Class Counsel;

B. Declare, adjudge and decree the conduct of the Defendant as alleged herein to be unlawful, unfair and/or deceptive;

C. Notify all Class Members about the Oil Defect, Battery Defect and Engine Defects at BMW's expense and provide correct information on oil consumption, battery consumption and N63 Engine defects;

D. Award Plaintiffs and Class members actual, compensatory damages, as proven at trial, including all economic losses sustained, for past and future amounts, resulting from the misstated oil consumption and battery consumption, and the Defendant's failure to inform Plaintiffs and Class Members of the Engine Defects;

E. Award Plaintiffs and the Class Members restitution of all monies paid to Defendant as a result of unlawful, deceptive, and unfair business practices;

F. Award Plaintiffs and the Class Members reasonable attorneys' fees, costs, and pre- and post-judgment interest; and

G. Award Plaintiffs and the Class members such other further and

different relief as the nature of the case may require or as may be determined to be just, equitable, and proper by this Court.

**VIII. JURY TRIAL DEMANDED**

Plaintiffs, by counsel, request a trial by jury on their legal claims, as set forth herein.

**DATED: December 17, 2015**

BY: s/Todd M. Friedman

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