

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

JOEL GREEN, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

BMW OF NORTH AMERICA, LLC, and
BMW AG,

Defendants.

NO.:

CLASS ACTION

JURY TRIAL DEMANDED

PLAINTIFF'S INITIAL COMPLAINT

Dated: May 27, 2016

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CERTIFICATION OF NON-ARBITRABILITY
PURSUANT TO LOCAL CIVIL RULE 201.154

PLAINTIFF'S INITIAL COMPLAINT

Plaintiff Joel Green (“Plaintiff”) brings this class action lawsuit against BMW of North America, LLC (“BMW-NA”) and BMG AG (“BMW-GER”) (together “BMW” or “Defendants”) on behalf himself and all others similarly situated, as more specifically described below, who purchased or leased 2014-2016 model year BMW i3 vehicles with a Range Extender (hereafter “i3 REx” or “Class Vehicles”). BMW i3 REx vehicles are defective and were deceptively marketed to consumers. In support of this Class Action Complaint, Plaintiff avers the following based upon information and belief, except for information based on personal knowledge, which allegations are likely to have evidentiary support after further investigation and discovery.

INTRODUCTION

1. In 2014, BMW’s highly anticipated i Series line of electric and electric-hybrid vehicles were introduced to the market for sale to the public in certain states. These vehicles include the BMW i8 electric plug-in hybrid and the BMW i3 all-electric hybrid.

2. The i3 is offered with an additional feature called a Range Extender – a gasoline-powered, two-cylinder combustion engine with a small fuel tank that engages when the i3 electric battery level drops to a certain level. The Range Extender supposedly allows the vehicle to operate for many miles (double the

mileage, according to BMW) after the electric battery in the i3 loses power and is a large selling point for BMW to prospective owners and lessees of the i3.

3. BMW's i3 vehicles were widely touted by BMW as being "ideal for everyday use":



4. The actual performance of the i3 REx, however, is far from ideal. Unfortunately for consumers like Plaintiff, model years 2014-2016 BMW i3 REx vehicles suffer from a serious defect that manifests when the Class Vehicles transition from running on the electric battery to the fuel-powered Range Extender. Specifically, within minutes after this transition occurs, Class Vehicles experience a drastic loss of power and reduction in speed, referred to as "limp mode," creating a serious safety risk for owners and lessees of Class Vehicles, as well as other drivers on the roads.

5. In addition to affirmatively touting the Class Vehicles as "ideal for everyday use," BMW also fails to inform prospective owners and lessees of the i3

REx that the vehicle is plagued with this defect and that owners and lessees of the Class Vehicles will inevitably experience a significant power loss or deceleration in certain driving scenarios, including under conditions where the defect can pose a significant threat to safety.

6. Despite several complaints by consumers about this issue, BMW has done nothing to satisfactorily remedy the defect. The only action BMW appears to have taken is to provide a software update that results in a five-word electronic warning on Class Vehicle dashboards when the vehicle's electric battery level is low that states "Low Batter: Power reduction possible." This response is woefully inadequate and clearly does nothing to eliminate the clear safety concerns created by the deceleration defect in Class Vehicles, nor does it fix the actual deceleration problem itself.

7. Plaintiff brings this class action lawsuit on behalf of a class of similarly situated consumers who have purchased or leased one or more of the Class Vehicles (the "Class" or "Class Members").

8. Plaintiff and the Class seek redress for BMW's violations of the Magnuson-Moss Warranty Act, the Song-Beverly Consumer Warranty Act, the California Unfair Competition Law (CAL. BUS. & PROF. CODE §§ 17200 *et seq.*), the California Consumer Legal Remedies Act (CAL. BUS. & PROF. CODE §§ 1750 *et seq.*), and BMW's breaches of express and implied warranties.

9. Plaintiff and the Class seek actual damages, restitution, and equitable relief, as well as statutorily-permitted reasonable attorney's fees and costs of suit and pre- and post-judgment interest. Plaintiff also seeks punitive damages as a result of BMW knowingly introducing defective i3 vehicles into the marketplace and defrauding consumers across the nation.

PARTIES

A. Plaintiff Joel Green

10. Plaintiff Joel Green is an adult individual who resides in Valencia, California. On or about January 31, 2015, Plaintiff signed a three-year lease agreement to lease a new 2014 BMW i3 REx from Valencia BMW, an authorized BMW retailer.

B. BMW Defendants

11. Defendant BMW AG (BMW-GER) is a corporation organized and existing under the laws of Germany, with its principal place of business located in Munich, Bavaria, Germany. Upon information and belief, BMW-GER is the parent corporation of BMW of North America, LLC.

12. Defendant BMW of North America, LLC (BMW-NA) is organized under the laws of Delaware with its principal place of business located at 300 Chestnut Ridge Road, Woodcliff, New Jersey. BMW-NA 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 339 independently-owned dealerships across the United States.

13. At all relevant times, BMW was engaged in the business of importing, assembling, marketing, distributing, and warranting BMW automobiles in the State of New Jersey, California, and throughout the United States.

14. Upon information and belief, BMW markets, sells, distributes, and warrants BMW i3 vehicles in many states across the United States, including but not limited to California, New Jersey, New York, Massachusetts, Connecticut, and Texas.

15. BMW-NA and BMW-GER sell BMW vehicles through a network of dealerships that are agents of BMW-NA and BMW-GER.

16. There exists, and at all times herein existed, a unity of ownership between BMW-NA, BMW-GER, and their agents such that any individuality or separateness between them has ceased and each of them is the alter ego of the others.

17. Upon information and belief, Defendant BMW-GER communicates with Defendant BMW-NA concerning virtually all aspects of the BMW products it distributes within the United States.

18. Upon information and belief, the design, manufacture, distribution, service, repair, modification, installation and decisions regarding the Class

Vehicles' electric battery and Range Extender as they relate to the alleged defect within the Class Vehicles were performed exclusively by Defendants.

19. Upon information and belief, Defendants developed the post-purchase owner's manuals, warranty booklets, and information included in maintenance recommendations and/or schedules for the Class Vehicles.

20. Defendants engage in continuous and substantial business in New Jersey.

21. Upon information and belief, at all times mentioned herein each Defendant was acting as an agent and/or employee of each of the other Defendants, and at all times mentioned was acting within the course and scope of said agency and/or employment with the full knowledge, permission, and consent of each of the other Defendants. In addition, each of the acts and/or omissions of each Defendant alleged herein were made known to, and ratified by, each of the other Defendants.

JURISDICTION

22. This Court has subject matter jurisdiction of this action pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because: (i) there are 100 or more class members, (ii) there is an aggregate amount in controversy exceeding \$5,000,000, exclusive of interest and costs, and (iii) at least one Class Member is a

citizen of a different state than Defendants. This court has supplemental jurisdiction over the state law claims asserted herein pursuant to 28 U.S.C. § 1367.

23. This Court has personal jurisdiction over Defendants because they are present, licensed to conduct business, and do conduct business regularly in this District; and Defendant has sufficient contacts with this District.

VENUE

24. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant BMW-NA maintains its headquarters in and is deemed to reside in this District, Defendants regularly transacts business in this District, including sales and advertising, and Defendants are subject to personal jurisdiction in this District. Additionally, a substantial part of the events and/or omissions giving rise to Plaintiff's claims occurred within this District.

FACTUAL ALLEGATIONS

A. BMW' i-Series and the BMW i3 REx

25. The BMW i Series is a sub-brand of BMW that was founded in 2011. It currently offers two vehicles: the i8 plug-in hybrid, and the i3 all-electric car.

26. The i3 is a five-door electric vehicle that BMW touts as its first zero emissions, mass-produced vehicle. It is advertised as “an electric vehicle that performs like a BMW. . . because it is one.”¹ The BMW i3 is depicted below:



27. Series production on BMW i3 vehicles that would be offered to the public began in September 2013. BMW i3 vehicles are available in nearly 50 countries.

28. In 2015, BMW sold over 11,000 i3 vehicles in the United States alone,² with one report suggesting that BMW’s total U.S. sales for the i3 since its introduction is nearing 20,000 vehicles and 50,000 worldwide.³

¹ Life Quality BMW Twitter post, dated March 28, 2016, available at <https://twitter.com/lifequalitybmw/status/714558204512833537> (last visited May 27, 2016).

29. The i3 can be purchased with or without a Range Extender – a gas-powered, two-cylinder combustion engine that BMW states can “approximately double[] your electric driving range so you can breathe a little easier on drives where charging stations are not readily available.”⁴

30. “Under-the-skin” pictures depicting the i3 with an open space for the Range Extender and a separate picture comparing an electric hybrid with and without a gas engine component are displayed below:



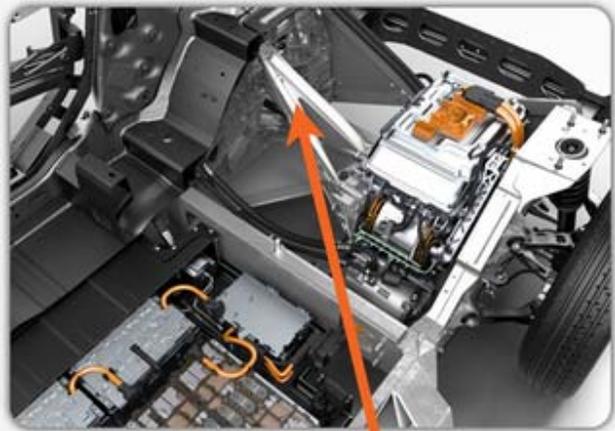
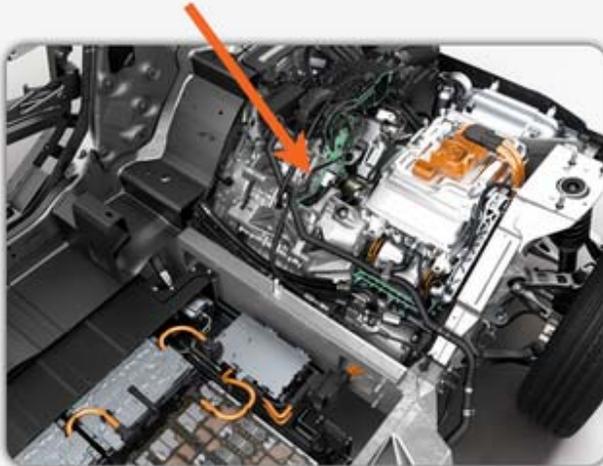
² Horatiu Boeriu, *BMW sold over 11,000 i3 electric vehicles in U.S. in 2015*, available at <http://www.bmwblog.com/2016/01/05/bmw-sold-over-11000-i3-electric-vehicles-in-u-s-in-2015/> (last visited May 27, 2016).

³ Jeff Cobb, *BMW Sells its 50,000th i-Series Worldwide in January*, available at <http://www.hybridcars.com/bmw-sells-its-50000th-i-series-worldwide-in-january/> (last visited May 27, 2016).

⁴ BMW i3, available at <http://www.bmwusa.com/bmw/bmwi/i3> (last visited May 26, 2016).



GAS ENGINE



NO GAS ENGINE

31. The all-electric i3 without Range Extender is stated as capable of achieving 81 miles per charge, but the i3 with the Range Extender is advertised as capable of driving 150 miles.

B. The BMW i3 REx Suffers from a Defective Range Extender that Causes Sudden Deceleration

32. The BMW i3 REx defect manifests when the vehicle transitions from electric battery to the gas-powered Range Extender. The vehicle will abruptly lose power and drastically decelerate, creating a dangerous situation for not just owners and lessees of the vehicle but also for other drivers on the road.

33. Specifically, the Range Extender does not provide an adequate power source for continued safe of operation of the vehicle once the electric battery reaches a certain (low) level on its charge and transitions to the Range Extender.

34. One car review report forebode this issue and dangerous situation, and offered the following question about the i3's ability to handle demanding driving situations:

“The big, and so far unanswered, question will be whether a range-extended i3 will suffer performance shortfalls in other, more demanding situations.

Consider, for example, a heavily loaded range-extended electric car on a 10-mile uphill grade at freeway speeds.

Once the buffer capacity of the pack is depleted, would a 40- or 50-kW generator be enough to keep the i3 at maximum speed on that freeway?”⁵

⁵ John Voelcker, *BMW i3 Electric Car: ReX Range Extender Not For Daily Use?*, available at http://www.greencarreports.com/news/1082814_bmw-i3-electric-car-rex-range-extender-not-for-daily-use/page-2 (last visited May 27, 2016).

35. The answer to this question is no. Quite simply, the i3 REx cannot handle these more demanding driving situations, such as the added load of additional weight or negotiating inclines. And in these situations, with the battery depleted, power and acceleration are drastically reduced, creating the risk of an accident and injury.

36. The i3 REx defect also manifests itself under normal conditions, including on relatively flat surfaces and while driving on roads over longer distances.

37. BMW was aware of this defect almost immediately after it began offering the i3 REx for sale to the public, if not before. BMW has sold and leased, and continues to sell and lease, BMW i3 REx vehicles with the knowledge that Class Vehicles experience an abrupt, dramatic, and dangerous loss of power in many driving scenarios after the Range Extender is engaged.

38. Nevertheless, BMW has done nothing to disclose this dangerous defect to prospective owners and lessees, clearly putting profit ahead of consumer and driver safety.

C. BMW's Knowledge of and Response to the i3 REx Defect

39. The deceleration issue was first brought to light back in 2014 by *Consumer Reports*,⁶ the year of the release of i3 and nearly two years ago.

40. At the time, BMW acknowledged to *Consumer Reports* that there was an issue with abrupt deceleration, and indicated that it would be working toward a solution to the problem. The proposed fix was to be an upgrade that would include warnings regarding loss of power.⁷

41. Specifically, the only “fix” that appears to have been provided by BMW is a software update that results in an electronic warning displaying five words on Class Vehicle dashboards when the vehicle’s electric battery level is low. A picture of this warning is depicted below:

⁶ *BMW looking to fix i3 acceleration problem uncovered by Consumer Reports*, available at <http://www.autoblog.com/2014/10/10/bmw-i3-acceleration-problem-consumer-reports/> (last visited May 26, 2015).

⁷ *Id.*



42. This can hardly be said to be an upgrade at all; if anything, creates a driver distraction and only adds to the “range anxiety” that BMW’s i3 vehicles already create – the deep-seated fear of many electric vehicle drivers that their vehicle will not have sufficient mileage or power to get them from point A to point B safely.⁸

43. To date, Plaintiff is unaware of any legitimate measure taken by BMW to actually fix the underlying deceleration issue other than its provision of an upgrade in the vehicle’s software to warn drivers of reduced vehicle power.

44. Upon information and belief, no further remedial measures have been taken, and Plaintiff and Class Members still experience routine abrupt and unsafe deceleration while operating their i3 REx vehicles.

⁸ See Jo Borrás, *BMW i3 REX Needs to Be Gassed Up Every Hour*, available at <http://gas2.org/2015/11/06/gas-it-up-bmw-i3-range-extender-ev/> (last visited May 27, 2016).

45. Furthermore, owners and lessees of the i3 REx routinely receive the same treatment from BMW dealers and service workers when they complain about this issue – as identified in the consumer complaints below, i3 REx owners and lessees are simply told that the vehicle is working properly, essentially being told to “go pound sand.”

D. Plaintiff’s Experiences with the BMW i3 REx Defect and Abrupt Deceleration

46. Plaintiff’s experiences with abrupt deceleration in his Class Vehicle are in line with countless other i3 REx owners’ and lessees’ complaints about and experiences with this vehicle.

47. On or about January 31, 2015, Plaintiff entered into a three-year lease agreement to lease a 2014 BMW i3 REx (VIN No. WBY1Z4C55EV275669) from Valencia BMW in Valencia, California.

48. Plaintiff leased his i3 REx as a pleasure vehicle, but also to assist him in making short trips, including a regular 50-mile trip to Lancaster, California from his home, and back.

49. Plaintiff was particularly attracted to the REx model of the BMW i3 because he had heard that Range Extender feature nearly doubles the mileage range (as confirmed by EPA ratings) from 81 miles on the vehicle’s electric battery alone to a 150 miles using the fuel-powered Range Extender.

50. When Plaintiff leased his i3 REx, however, he was not aware of the vehicle's defect that manifests when the vehicle switches from running on the electric battery to the fuel-powered Range Extender.

51. Plaintiff has experienced the defect alleged herein on over a dozen separate occasions. Specifically, Plaintiff will be operating his i3 REx when, after a few minutes following the switch from the vehicle's electric battery mode to running on the Range Extender, Plaintiff experiences a sudden loss of power and deceleration in his i3 vehicle.

52. Plaintiff's most recent experience with the i3 REx deceleration defect was May 26, 2016. Plaintiff was making an approximately 50-mile drive that he routinely makes to Lancaster, California from his house. Approximately 10-15 minutes after his i3 REx switched over to the Range Extender for power, Plaintiff experienced sudden deceleration.

53. Plaintiff has had this experience with his i3 REx so frequently that he now knows he will need to immediately take action that allows him to avoid an accident; however, this was not always the case. Naturally, the first couple of times that Plaintiff experienced the deceleration defect in his i3 REx, Plaintiff was not aware of the defect.

54. During Plaintiff's first encounter with the deceleration defect in his i3 REx – sometime in the summer of 2015 - Plaintiff was driving on a two-lane

freeway at approximately 75 mph. After a number of minutes of driving on the Range Extender mode, the vehicle's power appeared to abruptly cut out. Plaintiff's vehicle speed was suddenly reduced to 35 mph no matter how much he tried to engage the vehicle accelerator.

55. Due to this drastic reduction in speed, another driver behind the Plaintiff blasted his vehicle's horn and nearly rear-ended the Plaintiff.

56. Plaintiff has also experienced the deceleration defect in other scenarios. One particular scenario where Plaintiff experiences deceleration is when attempting to drive his i3 REx up inclines; often the vehicle has barely enough momentum to make it over an incline and maintain the flow of traffic.

57. The loss in power experienced in Plaintiff's i3 REx typically occurs when his electric battery power falls to between 5 and 10%. Plaintiff has experienced abrupt deceleration in his i3 REx on both steep terrains and on flat surfaces.

58. Plaintiff has attempted to obtain a remedy from BMW for this defect in his i3 REx on multiple occasions. On a number of occasions, Plaintiff contacted and worked with his BMW dealership to attempt to fix this issue. Every attempt by Plaintiff to identify and remedy the defect in his i3 REx has failed, and his vehicle still experiences the deceleration defect.

59. Notably, on more than one occasion, Plaintiff was told by BMW's service employees that his vehicle is operating as expected and that the loss of power and acceleration his i3 REx experiences is normal – despite that he was never told of this condition of his vehicle ahead of purchasing it.

60. Plaintiff also was provided the above-mentioned software update (the warning sign on his dashboard), but this update did nothing to substantively eliminate or resolve the defect. The update merely provides a notification on the vehicle dashboard that warns of loss of vehicle power or deceleration when the vehicle's electric battery is running low on power.

61. This supposed “fix” by BMW did nothing to address or eliminate the defect alleged herein, and, if anything, it creates an additional safety hazard as i3 REx owners like Plaintiff and the Class Members are required to keep an eye on their dashboards for this notification, which clearly distracts drivers from paying attention to the road and safely operating their vehicles.

62. Quite simply, had Plaintiff known about the defect in his i3 REx, he would not have leased his vehicle, or he would not have leased it at the price he currently pays for the lease. Plaintiff's experience has been contrary to BMW's claim that the i3 is “ideal for everyday use.”

63. As a result of Defendants' conduct alleged herein, Plaintiff has been subjected to substantial risk of physical injury and has suffered legal injury and economic harm.

64. In addition to overpaying for his defective i3 REx (had he been willing to purchase the vehicle at all), Plaintiff also spent hundreds of dollars on an electric car battery charger and a WeatherTech floor lining system for his vehicle.

E. Numerous Other BMW i3 REx Owners and Lessees Have Complained of the Defect

65. Plaintiff's experience is neither unique nor isolated. Defendants' defective i3 REx has drawn the attention and ire of consumers around the country, with countless angry customers taking to the internet to voice their discontent over their vehicles and the response (or lack thereof) by BMW.

66. A small sample of the countless consumer complaints and negative reviews about the i3 REx deceleration issue are reproduced below, including complaints made to NHTSA, blogs, BMW forums/message boards, and other consumer gripe-sites [all *sic*]:

“The last straw came when I was driving back from the Inland Empire, I was in a fast lane on the freeway. I ran out of battery power and the gasoline extension engine started.

I couldn't keep up with traffic I had to pull over and drive in the slow lane which produced even more anxiety.

There was burning smell that really bothered me. I think it may have damaged the batteries or something.

The whole way home, *I was afraid that I wasn't going to make it.* Since the freeway episode, it doesn't seem to be driving as well.”⁹

“It has been reported that in designing the BMW i3, BMW chose to use the engine only for extending range in order to enable California drivers to receive a full \$2500 rebate. For whatever reason, the extended range option on the BMW i3 *appears to not relieve range anxiety but add to it.*

We have also seen reviews from actual buyers who confirm you *need to have a charger at home and at work to feel comfortable in with an electric car that has a 71-80 mile range.* Many owners note that the BMW i3 is not good for weekend road trips because the gas tank only holds 1.9 gallons with about 78 miles of driving range and finding charging stations is difficult.”¹⁰

“*Consumer Reports* brought the [deceleration] problem to light when one of its drivers was behind the wheel of an i3 using the range-extender. When the driver attempted to pass another vehicle on a rolling, two-lane road, the BMW *suddenly had no power to accelerate – a scary situation.* CR started examining the car and found something pretty shocking: After driving at a constant

⁹ <http://www.autoconnectedcar.com/2015/04/review-why-im-returning-my-bmw-i3-after-three-months/> (last visited May 26, 2016) (emphasis added).

¹⁰ *Id.* (emphasis added).

speed for a while without any regenerative braking in range-extended mode, *acceleration to 60 miles per hour plummeted from about 9 seconds normally to a staggering 27 to 40 seconds in their testing.*¹¹

“cheyanne says:

December 31, 2015 at 4:33 pm

I am an I3 Rex lover!...until. I think this car is wonderful, it is speedy, efficient and and take corners / u turns with the best of the bmw family. I was in love with my car until...I had taken a further journey than usual and knew I was going to be using the fuel backup. That is ok, that is why I bought it! Going 75 down the freeway in heavy traffic...guess what the fuel did not kick in, my car went from 75 to 30 in seconds!! Of course, I was in the fast lane. My saving grace is there was not a semi following me, if there was this car would not have saved me.

I am dreadfully concerned BMW is not letting the consumer know about this. For those who are going to tell me I am driving wrong...1. I was in comfort mode. 2. I read the manual , no where does it say be fearful of your life when you car loses power..

I have contacted 2 BMW services providers and am now being told....oh yea, that is how the Rex works. My car is a 2015, I have had it for 6 weeks. At this time, my little death bomb of a car will need to be flipped in. I cannot knowingly drive a car like this knowing the power might not be there when needed. Other blogs I read indicated there was a fix, the service people said there is not, and my car has it already.

¹¹ <http://www.autoblog.com/2014/10/10/bmw-i3-acceleration-problem-consumer-reports/> (last visited May 26, 2016) (emphasis added).

To BMW, you need to get this together. When people start to die, will you recognize the flaw?"¹²

67. Numerous additional consumer complaints appear on the Complaints page of the National Highway Traffic Administration website, including the following:

Date Complaint Filed: 05/19/2016

Date of Incident: 04/30/2016

Component(s): VEHICLE SPEED CONTROL

NHTSA ID Number: 10865893
Consumer Location: SAN BERNARDINO, CA

Manufacturer: BMW of North America, LLC

Vehicle Identification No. (VIN): WBY1Z4C55GV...

SUMMARY:

WHEN ELECTRIC RANGE IS OUT, THE ENGINE KICKS IN AND SPEED IMMEDIATELY DROP TO 50+MPH ON THE FREEWAY CLIMBING UP A HILL THE FIRST DAY I BOUGHT THE CAR WHICH SCARES ME AND I HAVE TO STAY ON THE LEFT LANE AND QUICKLY EXIT. . . .

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

SUMMARY:

TEST DRIVING THIS BMW I3, I NOTICED THE REX RANGE EXTENDER ENGINE WAS DANGEROUSLY SLOW. THE 34 HP SCOOTER ENGINE IS A HAZARD IN TRAFFIC. I ALSO NOTICED THE BRAKE LIGHTS WOULD NOT COME ON WHEN SLOWING TO A STOP. CONSUMER REPORTS OUTLINED IT, AND I CAN'T SAY IT BETTER. WHY ARE THERE NOT MINIMUM FMVSS PERFORMANCE STANDARDS TO COVER THE HAZARDS WHILE IN REX-MODE (BATTERY DEAD, RUNNING ON SCOOTER

¹² <http://www.autoconnectedcar.com/2015/04/review-why-im-returning-my-bmw-i3-after-three-months/> (last visited May 26, 2016).

MOTOR IN HEAVY, FAST, TRAFFIC)? THIS IS A NEW AREA:
WEIRD BEHAVIOR FROM EVS IN REX MODE.
[HTTP://WWW.CONSUMERREPORTS.ORG/CRO/NEWS/2014/10/BEWARE-TAILGATING-A-BMW-I3/INDEX.HTM](http://www.consumerreports.org/cro/news/2014/10/beWARE-TAILGATING-A-BMW-I3/INDEX.HTM)
[HTTP://WWW.CONSUMERREPORTS.ORG/CRO/NEWS/2014/10/BMW-I3-HAS-THE-LITTLE-ENGINE-THAT-COULD/INDEX.HTM](http://www.consumerreports.org/cro/news/2014/10/bmw-I3-HAS-THE-LITTLE-ENGINE-THAT-COULD/INDEX.HTM)

Date Complaint Filed: 1/15/2016

Date of Incident: 12/16/2015

NHTSA ID Number: 10820554

Manufacturer: BMW of North America, LLC

Vehicle Identification Number: WBY1Z4C59FV...

SUMMARY:

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

Date Complaint Filed: 1/4/2016

Date of Incident: 12/29/2016

NHTSA ID Number: 10817494

Manufacturer: BMW of North America, LLC

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 TO DROP. WITHIN THE 15 SECONDS, I WAS DOWN TO 35 MPH FROM THE 75 I WAS TRAVELING. I HAD THE ACCELERATOR FLOORED, BUT COULD NOT GET ANY POWER TO KEEP UP WITH THE FLOW OF TRAFFIC. WITH MY HAZARD LIGHTS TURNED ON. MY CAR AND I SAFELY NAVIGATED TO THE SIDE OF THE ROAD. THANK GOODNESS

THERE WAS NOT A CAR FOLLOWING TO CLOSE OR A SEMI TRUCK. I WOULD BE DEAD OR IN A SERIOUS ACIDENT IF THERE WAS. MY CONCERN, CONSUMERS ARE NOT BEING WARNED OF THIS ISSUE... HERE ARE A FEW MORE FACTS THAT ARE RELAVATN 1. WHEN I DROVE THE CAR THE FIRST TIMER HE RANGE EXTENDER KICKED IN. I WAS NOT DROPPED DOWN TO 30-35 MPH, I WAS ABLE TO KEEP UP WITH FREEWAY TRAFFIC JUST FINE 2. ON DECEMBER 29, 2015 II WAS TRAVELING ON A FREEWAY AT 75 MPH. THERE WAS A SLIGHT INCLINE. MY ELECTRIC HAD BEEN USED AND THE REX KICKED IN. THE CAR IMMEDIATELY STARTED TO DROP IN SPEED. I HAD THE ACCELERATOR PUSHED TO THE FLOOR IN HOPES OF GETTING THE CAR BACK UP TO A SAFE SPEED. HOWEVER, THAT DID NOT HAPPEN. I HAD TO NAVIGATE MY DYING CAR TO THE SIDE OF THE ROAD IN 75 MPH TRAFFIC. 3. IMMEDIATELY TOOK THE I3 TO THE BMW SERVICE PROVIDER. INSTRUCTED BY THE SERVICE DEPT THIS IS WORKING AS DESIGNED. ERROR MESSAGE OF 0056 DID NOT HAVE ANY DESCRIPTION ON IT. NOT SURE HOW THE TECHNICIAN KNEW THERE WAS NOT AN ISSUE 4. 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: 8/16/2014

Date of Incident: 8/13/2014

NHTSA ID Number: 10625717

Manufacturer: BMW of North America, LLC

Vehicle Identification Number: WBY1Z4C54EV...

SUMMARY:

I WAS DRIVING MY BMW I3 REX FROM THE SAN FRANCISCO BAY AREA TO THE BEACH NEAR SANTA CRUZ VIA HIGHWAY 17 WITH MY WIFE AND TWO CHILDREN. 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 THE CAR, I EXPERIENCED A SUDDEN AND DRAMATIC REDUCTION IN POWER, WITH THE CAR SLOWING FROM APPROXIMATELY 50MPH TO 25MPH EVEN UNDER FULL THROTTLE. I TURNED ON MY HAZARD BLINKERS AS APPROACHING CARS HONKED AND SWERVED TO AVOID US. WITH NO SHOULDERS, WE HAD TO "LIMP" TO THE NEXT TURNOUT. THIS WAS EXTREMELY ALARMING AND POTENTIALLY DANGEROUS. WE REALIZED THAT ENGINE WAS RUNNING LOUDLY AND WE SURMISED THAT IT WAS RECHARGING THE BATTERY. AFTER A COUPLE OF MINUTES, I CONFIRMED THAT POWER WAS RESTORED BY BRIEFLY ACCELERATING IN THE LONG TURN-OUT. I THEN ATTEMPTED TO MERGE BACK ONTO THE HIGHWAY. ALTHOUGH FULL POWER SEEMED AVAILABLE INITIALLY, AS I PULLED OUT OF THE TURN-OUT INTO THE SLOW LANE, THE POWER DROPPED AGAIN, SLOWING US FROM 40MPH BACK TO 25MPH. WE AGAIN LIMPED TO THE NEXT TURN-OUT AS CARS AVOIDED US. MOST SHOCKING OF ALL, I SPOKE WITH BMW'S INTERNAL "I CONCIERGE" 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.

F. BMW Sold and Continues to Sell Class Vehicles with Knowledge of the Defect

68. As set forth above, BMW marketed, distributed, and sold BMW i3 REx vehicles in multiple states across the nation, including in the State of California.

69. BMW knew or should have known that i3 REx vehicles contain a serious defect that manifests when the Range Extender is engaged, resulting in drastic reduction in power and acceleration.

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

71. As a result, Class Members will suffer actual harm and damages including but not limited to:

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

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

c. Class Members have paid for electric chargers and other ancillary equipment for these vehicles.

CLASS ALLEGATIONS

72. Plaintiff brings this action on his own behalf, and on behalf of the following class pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and/or 23(b)(3), defined as follows:

All purchasers and lessees of model year 2014-2016 BMW i3 REx vehicles sold or leased by BMW.

73. Excluded from the Class are Defendants, their affiliates, subsidiaries, parents, successors, predecessors, any entity in which Defendants or its parents have a controlling interest; Defendants' current and former employees, officers and directors; the Judge(s) and/or Magistrate(s) assigned to this case; any person who properly obtains exclusion from the Class; any person whose claims have been finally adjudicated on the merits or otherwise released; and the parties' counsel in this litigation. Plaintiff reserves the right to modify, change, or expand the Class definitions based upon discovery and further investigation.

74. **Numerosity**: The Class is so numerous that joinder of all members is impracticable. While the exact number and identities of individual Class Members are unknown at this time, such information being in the sole possession of Defendant and obtainable by Plaintiff only through the discovery process, Plaintiff believes, and on that basis alleges, that tens of thousands of Class Members have been subjected to the conduct by Defendant herein alleged. Indeed, as stated above,

reports indicate that as of the end of 2015, nearly 20,000 i3 vehicles have been sold nationwide.

75. **Existence/Predominance of Common Questions of Fact and Law:**

Common questions of law and fact exist as to all members of the Class. These questions predominate over the questions affecting individual Class Members.

These common legal and factual questions include, but are not limited to:

- a. Whether BMW engaged in the conduct alleged herein;
- b. Whether the Range Extender in Class Vehicles contains a defect;
- c. Whether BMW placed Class Vehicles into the stream of commerce in the United States with knowledge of the deceleration defect;
- d. Whether BMW knew or should have known, of the deceleration defect when the Range Extender is engaged in Class Vehicles, and if so, how long BMW knew of this defect;
- e. Whether BMW's conduct alleged herein violates consumer protection statutes, false advertising laws, warranty laws, and other laws as asserted herein;
- f. Whether Plaintiff and Class Members overpaid for their Class Vehicles in light of the REx defect;

g. Whether Plaintiff and Class Members are entitled to damages, including punitive damages, as a result of BMW's conduct alleged herein, and if so, the amount or proper measure of those damages; and

h. Whether Plaintiff and Class Members are entitled to equitable relief, including but not limited to restitution and/or injunctive relief;

76. **Typicality**: All of Plaintiff's claims are typical of the claims of the Class since Plaintiff and all Class Members were injured in the same manner by Defendant's uniform course of conduct described herein. Plaintiff and all Class Members have the same claims against Defendant relating to the conduct alleged herein, and the same events giving rise to Plaintiff's claims for relief are identical to those giving rise to the claims of all Class Members. Plaintiff and all Class Members sustained monetary and economic injuries including, but not limited to, ascertainable losses arising out of Defendant's wrongful conduct in selling and failing to remedy defective Class Vehicles. Plaintiff is advancing the same claims and legal theories on behalf of herself and all absent Class Members.

77. **Adequacy**: Plaintiff is an adequate representative for the Class because his interests do not conflict with the interests of the Class that he seeks to represent. Plaintiff has retained counsel competent and highly experienced in complex class action litigation – including consumer fraud and automobile defect class action cases – and counsel intends to prosecute this action vigorously. The

interests of the Class will be fairly and adequately protected by Plaintiff and his counsel.

78. **Superiority**: A class action is superior to all other available means of fair and efficient adjudication of the claims of Plaintiff and all Class Members. The injury suffered by each individual Class Member is relatively small in comparison to the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendants' conduct. It would be virtually impossible for members of the Class individually to redress effectively the wrongs done to them by Defendant. Even if Class Members could afford such individual litigation, the court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties, and to the court system, presented by the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, an economy of scale, and comprehensive supervision by a single court. Upon information and belief, members of the Class can be readily identified and notified based upon, *inter alia*, the records (including databases, e-mails, dealership records and files, *etc.*) Defendant maintains regarding its sales and leases of Class Vehicles.

79. Defendant has acted, and refuses to act, on grounds generally applicable to the Class, thereby making appropriate final equitable relief with respect to the Class as a whole.

COUNT I
Common Law Fraud

80. Plaintiff repeats and incorporates by reference each and every allegation contained in the foregoing paragraphs.

81. BMW made material omissions concerning a presently existing or past fact. For example, Defendant did not fully and truthfully disclose to its customers the true nature of the inherent defect with the Range Extender. A reasonable consumer would have expected that the Range Extender would not be defective and pose a serious safety risk. The facts concealed or not disclosed by BMW to Plaintiff and Class Members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase or lease Defendant's Class Vehicles or pay a lesser price. Had Plaintiff and the Class known about the defective nature of the Class Vehicles and their Range Extender, they would not have purchased or leased the Class Vehicles or would have paid less for them. As a result, Plaintiff and the other Class members were fraudulently induced to lease and/or purchase the Class Vehicles with the said defects and all of the resultant problems.

82. These omissions were made by Defendant with knowledge of their falsity, and with the intent that Plaintiff and Class Members rely upon them.

83. Plaintiff and Class Members reasonably relied on these omissions, and suffered damages as a result. To the extent that Defendant's conduct was willful, oppressive or malicious, Plaintiff and Class Members are entitled to an award of punitive damages.

COUNT II
Breach of Express Warranty

84. Plaintiff repeats and incorporates by reference each and every allegation contained in the foregoing paragraphs.

85. Each Class Vehicle is expressly warranted by Defendant to be of high quality and, at a minimum, would actually work properly. Defendant also expressly warranted that they would repair and/or replace defects in material and/or workmanship free of charge that occurred during the applicable warranty periods.

86. Defendant breached its express warranty by selling to Plaintiff and Class Members the Class Vehicles with known defective Range Extenders, which fail to function properly and that present an unreasonable safety risk.

87. As a result of the Defendant's actions, Plaintiff and Class Members have suffered economic damages including but not limited to diminished value and other related damage.

88. Plaintiff and Class Members have complied with all obligations under the warranty, or otherwise have been excused from performance of said obligations as a result of Defendant's conduct described herein.

89. To the extent it is required, the parties are in privity.

COUNT III
Breach of the Implied Warranty of Merchantability

90. Plaintiff repeats and incorporates by reference each and every allegation contained in the foregoing paragraphs.

91. BMW is and at all relevant times was a merchant with respect to the Class Vehicles.

92. A warranty that the Class Vehicles were in merchantable quality and condition is implied by law.

93. Defendant impliedly warranted that the Class Vehicles were of good and merchantable condition and quality - fit and safe for their ordinary intended use, and would be reasonably safe.

94. The Class Vehicles were defective at the time they left the possession of BMW. BMW knew of the deceleration defect in the Range Extender at the time these transactions occurred. Thus, the Class Vehicles, when sold and at all times thereafter, were not in merchantable condition or quality and are not fit for their ordinary intended purpose.

95. By virtue of the conduct described herein and throughout this Complaint, BMW breached the implied warranty of merchantability.

96. Plaintiff has been damaged as a direct and proximate result of the breach of the implied warranty.

97. Plaintiff has performed each and every duty required of him under the terms of the warranties, except as may have been excused or prevented by the conduct of Defendant or by operation of law in light of Defendant's unconscionable conduct.

98. Defendant received timely notice regarding the problems at issue in this litigation (indeed, Defendant knew of the defect either prior to or shortly after it began offering the Class Vehicles for sale or lease) and, notwithstanding such notice, Defendant failed and continues to fail to offer an effective remedy.

99. In addition, each Defendant has received, on information and belief, numerous complaints and other notices from consumers advising of the deceleration defect associated with Range Extenders in Class Vehicles.

100. To the extent it is required, the parties are in privity.

101. As a direct and proximate result of Defendant's breach of warranties, Plaintiff was injured. Had Plaintiff been aware of the full extent of the Range Extender defect, he would not have leased his i3 REx or would have paid significantly less.

COUNT IV

Breach of Implied Warranty of Fitness for a Particular Purpose

102. Plaintiff repeats and incorporates by reference each and every allegation contained in the foregoing paragraphs.

103. At the time it leased and sold Class Vehicles, BMW had reason to know of the Plaintiff's and Class Members' particular purpose for purchasing or leasing a Class Vehicle with a Range Extender. That particular purpose includes use of the Range Extender to double the range of the vehicle on a single charge, while maintaining the performance of the vehicle.

104. Plaintiff and the other Class Members relied on BMW's skill and/or judgment to select or furnish suitable goods, thereby creating an implied warranty that the goods would be fit for such purpose.

105. The Range Extender was not fit for these purposes, as alleged hereinabove.

106. As a result of BMW's shortcomings and the conduct alleged herein, Plaintiff and Class Members were injured by BMW's breach of the implied warranty of fitness for a particular purpose.

COUNT V

**Violation of Magnuson-Moss Warranty Act ("MMWA")
(15 U.S.C. § 2301, *et seq.*)**

107. Plaintiff repeats and incorporates by reference each and every allegation contained in the foregoing paragraphs.

108. Plaintiff is a "consumer" as that term is defined under the MMWA. *See* 15 U.S.C. § 2301(3).

109. The Class Vehicles are "consumer products" as that term is defined under the MMWA. *See id.* § 2301(1).

110. Defendant BMW is a "supplier" and "warrantor" as those terms are defined under the MMWA. *See id.* § 2301(4)-(5).

111. The Class Vehicles are "consumer products" as that term is defined under the MMWA. *See id.* § 2301(1).

112. Section 2301(d)(I) of the MMWA provides a cause of action for consumers who are harmed by the failure of a warrantor to comply with a written or implied warranty.

113. Defendants' express warranties are written warranties within the meaning of Section 2301(6) of the MMWA. Section 2301(7) of the MMWA accounts for BMW's implied warranties with respect to the Class Vehicles.

114. As set forth above, BMW breached its warranties with Plaintiff and Class Members.

115. Class Vehicles contain a gas-powered Range Extender and share a common defect in or involving the Range Extender that manifests uniformly and, when experienced, causes Class Vehicles to fail to generate enough power to

properly operate the vehicle, resulting in drastic loss of power and acceleration and unsafe, abrupt deceleration.

116. Plaintiff's and Class Members' interactions with BMW suffice to create privity of contract between Plaintiff and Class Members, on the one hand, and BMW, on the other hand; however, privity of contract need not be established nor is it required because Plaintiff and Class Members are intended third-party beneficiaries of contracts between BMW and its authorized dealers, and specifically, of BMW's implied warranties. BMW's dealers are intermediaries between BMW and consumers that sell Class Vehicles to consumers and are not consumers of Class Vehicles, and therefore have no rights against BMW with respect to Plaintiff and Class Members purchases or leases of Class Vehicles. BMW's warranties were designed for the benefit of consumers who purchase(d) or lease(d) Class Vehicles.

117. Plaintiff and the other Class Members would suffer economic hardship if they returned their Class Vehicles but did not receive the return of all payments made by them. Because BMW is refusing to acknowledge any revocation of acceptance and return immediately any payments made, Plaintiff and the other Class Members have not re-accepted their Class Vehicles by retaining them.

118. The amount in controversy of Plaintiff's individual claims meets or exceeds the sum of \$25. The amount in controversy of this action exceeds the sum of \$50,000, exclusive of interest and costs, computed on the basis of all claims to be determined in this lawsuit.

119. Plaintiff, individually and on behalf of the other Class Members, seeks all damages permitted by law, including diminution in value of the Class Vehicles, in an amount to be proven at trial.

COUNT VI
**Violation of the Song-Beverly Consumer
Warranty Act ("SBCWA") For Breach of Express Warranty
(CAL. CIV. CODE §§ 1792, *et seq.*)**

120. Plaintiff repeats and incorporates by reference each and every allegation contained in the foregoing paragraphs.

121. At all times herein mentioned, BMW was and is the warrantor of the Class Vehicles' express warranty.

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

123. Plaintiff's and Class Members' Class Vehicles have and had serious defects and nonconformities to warranty, including but not limited to inability to maintain adequate power to operate their Class Vehicles safely while the Range

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

124. Under the SBCWA, the Class Vehicles are consumer goods leased or purchased primarily for family or household purposes and Plaintiff and Class Members used the Class Vehicles primarily for those purposes.

125. Plaintiff and Class Members are buyers of consumer goods as those terms are defined and provided for under CAL. CIV. CODE § 1791.

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

127. Affording BMW a reasonable opportunity to cure its breach of written warranties would be unnecessary and futile.

128. At the time of sale or lease of each Class Vehicle, BMW knew, should have known, or was reckless in not knowing of its misrepresentations and omissions concerning the Class Vehicles' inability to perform as warranted, but nonetheless failed to rectify the situation and/or disclose the defect.

129. Under the circumstances, the remedies available under any informal settlement procedure would be inadequate and any requirement that Plaintiff resorts to an informal dispute resolution procedure and/or afford BMW a

reasonable opportunity to cure its breach of warranties is excused and thereby deemed satisfied.

130. Plaintiff and Class Members justifiably revoke acceptance of the vehicle under the SBCWA.

131. Under the SBCWA, Plaintiff and Class Members are entitled to reimbursement of all payments made towards the vehicle less the amount directly attributable to Plaintiff's use of the vehicle prior to discovery of the nonconformity under CAL. CIV. CODE §1793.2(d)(2)(c), in an amount to be proven at trial.

132. Plaintiff and Class Members are entitled to damages resulting from BMW's failure to comply with its obligations under the SBCWA, including a civil penalty pursuant to CAL. CIV. CODE §1794(e)(1) in an amount of two times their actual damages (to be proven at trial) because BMW willfully failed to comply with its responsibilities under the SBCWA.

133. Under the SBCWA, Plaintiff and Class Members are also entitled to recover reasonable attorney's fees and costs as part of the judgment in connection with the commencement and prosecution of this action.

COUNT VII
**Violation of the Song-Beverly Consumer
Warranty Act (“SBCWA”) For Breach of the
Implied Warranty of Merchantability
(CAL. CIV. CODE §§ 1792, *et seq.*)**

134. Plaintiff repeats and incorporates by reference each and every allegation contained in the foregoing paragraphs.

135. Plaintiff and Class Members are “buyers” within the meaning of the SBCWA. *See* CAL. CIV. CODE § 1791(b).

136. The Class Vehicles are “consumer goods” within the meaning of CAL. CIV. CODE § 1791(a).

137. BMW is a “manufacturer” within the meaning of CAL. CIV. CODE § 1791(j).

138. BMW impliedly warranted to Plaintiff and the other Class Members that its i3 REx vehicles were “merchantable” within the meaning of CAL. CIV. CODE §§ 1791.1(a) & 1792.

139. In reality, the Class Vehicles do not possess those qualities that a buyer would reasonably expect.

140. Section 1791.1(a) states: “Implied warranty of merchantability” or “implied warranty that goods are merchantable” means that the consumer goods meet each of the following: (1) Pass without objection in the trade under the contract description. (2) Are fit for the ordinary purposes for which such goods are

used. (3) Are adequately contained, packaged, and labeled. (4) Conform to the promises or affirmations of fact made on the container or label.

141. The Class Vehicles are not suitable for the market, and would not pass without objection in the automotive industry and market because of the deceleration defect inherent to the Range Extender. Specifically, the Range Extender fails to properly extend the mileage range of i3 REx, as is advertised, and instead causes Class Vehicles to decelerate and lose power.

142. The Range Extender defect makes the Class Vehicles unsuitable for safe driving, the vehicles are not in merchantable condition, and are therefore, not fit for their ordinary purposes.

143. Furthermore, Class Vehicles are not adequately labeled because the labeling fails to disclose the Range Extender defect.

144. BMW breached the SBCWA implied warranty of merchantability by manufacturing and selling Class Vehicles containing defects associated with the Range Extender.

145. The deceleration defect in Class Vehicles has caused Plaintiff and the Class Members to not receive the benefit of their bargain and has caused Class Vehicles to depreciate in value.

146. As a direct and proximate result of BMW's conduct, the value of Plaintiff's and the other Class Members' i3 REX vehicles is substantially impaired and reduced, causing Plaintiff and Class Members harm.

147. Pursuant to CAL. CIV. CODE §§ 1791.1(d) and 1794, Plaintiff and Class Members are entitled to damages and other legal and equitable relief, including, at their election, the purchase price of or a buyback of their i3 REX vehicles, or the overpayment or diminution in value of their i3 REX vehicles.

148. Plaintiffs and Class Members are also entitled to costs and reasonable attorneys' fees as a result of BMW's conduct. *See* CAL. CIV. CODE § 1794.

COUNT VIII

Violation of the California Unfair Competition Law ("UCL") (CAL. BUS. & PROF. CODE §§ 17200, *et seq.*)

149. Plaintiff repeats and incorporates by reference each and every allegation contained in the foregoing paragraphs.

150. The California UCL prohibits acts of "unfair competition," including any "unlawful, unfair or fraudulent business act or practice" and "unfair, deceptive, untrue or misleading advertising."

151. Defendant has engaged in unfair competition and unfair, unlawful or fraudulent business practices by the conduct, statements, and omissions described above, and by knowingly and intentionally concealing from Plaintiff and Class Members that the Class Vehicles suffer from a defect (and the costs, risks, and

diminished value of the Vehicles as a result of this problem). BMW should have disclosed this information because they were in a superior position to know the true facts related to this design defect, and Plaintiff and Class Members could not reasonably be expected to learn or discover the true facts related to this defect.

152. These acts and practices have deceived Plaintiff and are likely to deceive the public. In failing to disclose the Range Extender defect and suppressing other material facts from Plaintiff and Class Members, BMW breached its duties to disclose these facts, violated the UCL, and caused injuries to Plaintiff and Class Members. The omissions and acts of concealment by BMW pertained to information that was material to Plaintiff and Class Members, as it would have been to all reasonable consumers.

153. The injuries suffered by Plaintiff and Class Members are greatly outweighed by any potential countervailing benefit to consumers or to competition. Nor are they injuries that Plaintiff and Class members should or could have reasonably avoided.

154. BMW's acts and practices are unlawful because they violate California Civil Code §§ 1668, 1709, 1710 and 1750 *et seq.*, and California Commercial Code § 2313.

155. Plaintiff seeks to enjoin further unlawful, unfair and/or fraudulent acts or practices by Defendant, to obtain restitutionary disgorgement of all monies and

revenues generated as a result of such practices, require notice of this dangerous condition be provided to the Class, and all other relief allowed under CAL. BUS. & PROF. CODE § 17200.

COUNT IX
Violation of the California Consumers Legal Remedies Act (“CLRA”)
(CAL. BUS. & PROF. CODE §§ 1750, *et seq.*)

156. Plaintiff repeats and incorporates by reference each and every allegation contained in the foregoing paragraphs.

157. The CLRA prohibits unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer.” CAL. CIV. CODE § 1770.

158. Defendant is a “persons” as defined by CAL. CIV. CODE § 1761(c).

159. The Class Vehicles are “goods” as defined by CAL. CIV. CODE § 1761(a).

160. Plaintiff and the Class Members are “consumers” as defined by CAL. CIV. CODE § 1761(d).

161. BMW made numerous representations concerning the Class Vehicles specifications that were misleading, including marketing and advertising the Class Vehicles as having the ability to double in range and that the Class Vehicles are “ideal” for every day driving.

162. In purchasing or leasing Class Vehicles, Plaintiff and Class Members were deceived by BMW's failure to disclose that the Class Vehicles, while operating on the Range Extender, were unable to sustain normal performance.

163. BMW's conduct, as hereinabove described, is in violation of CAL. CIV. CODE §1770 on the following grounds:

- (a)(2): misrepresenting the source, sponsorship, approval or certification of goods or services;
- (a)(5): representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have;
- (a)(7): representing that goods are of a particular standard, quality, or grade, if they are another;
- (a)(9): advertising goods with the intent not to sell them as advertised; and
- (a)(16), representing that goods have been supplied in accordance with a previous representation when they have not.

164. BMW knew that Class Vehicles have the Range Extender deceleration defect and are not suitable for their intended use.

165. BMW was under a duty to Plaintiff and Class Members to disclose the defective nature of the Class Vehicles because:

a. BMW was in a superior position to know the true state of facts about the safety defect and associated repair costs in the Class Vehicles and the Range Extenders;

b. Plaintiff and the Class Members could not reasonably have been expected to learn or discover that the Class Vehicles and their Range Extenders have a dangerous safety and security defect until manifestation of the defect; and

c. Defendant knew that Plaintiff and the Class members could not reasonably have been expected to learn or discover the safety and security defect until manifestation of the defect.

166. In failing to disclose the deceleration defect in Class Vehicle Range Extenders, BMW has knowingly and intentionally concealed material facts and breached their duty not to do so.

167. The facts concealed or not disclosed by BMW to Plaintiff and Class Members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase Defendant's Class Vehicles or pay a lesser price. Had Plaintiff and the Class known about the defective nature of the Class Vehicles, they would not have purchased the Class Vehicles or would have paid less.

168. As a direct and proximate result of Defendant's unfair or deceptive acts or practices, Plaintiff and Class Members are entitled to injunctive relief, restitution and other appropriate equitable relief.

169. Plaintiff has made multiple pre-suit attempts to remedy the defect in his i3 REx vehicle, to no avail.

COUNT X
Violation of the California False Advertising Law ("FAL")
(CAL. BUS. & PROF. CODE §§ 17500, *et seq.*)

170. Plaintiff repeats and incorporates by reference each and every allegation contained in the foregoing paragraphs.

171. The California FAL, CAL. BUS. & PROF. CODE § 17500, *et seq.*, makes it unlawful for a company or any employee to, *inter alia*:

“with intent directly or indirectly to . . . perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, . . . in any newspaper or other publication, or any *advertising device*, or by *public outcry or proclamation*, . . . *any statement*, concerning . . . those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, 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, or for any person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal

property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised.”

CAL. BUS. & PROF. CODE § 17500.

172. Defendant has disseminated, and caused to be disseminated, deceptive advertising misrepresentations, omissions, and practices as described herein. Specifically, Defendant and/or its employees have advertised and have made spoken statements to prospective owners and lessees of Class Vehicles regarding the capabilities of the i3 REx, including mileage capabilities, quality, suitability for the road.

173. Defendant’s advertisements regarding its i3 REx and Range Extender capabilities were and are untrue and misleading, and Defendant knew, or by the exercise of reasonable care should have known, that the statements were untrue or misleading.

174. Defendants’ advertising misrepresentations, omissions, and practices made in connection with the sale and lease of BMW i3 REx vehicles are unfair, deceptive, and misleading within the meaning of the FAL. These representations are likely to, and did, deceive reasonable consumers such as Plaintiff.

175. As detailed above, Plaintiff suffered injury in fact and a loss of money as a result of Defendant’s conduct and practices.

176. Pursuant to California Business & Professions Code § 17535, Plaintiff and Class Members seek, and are entitled to:

- a. an order enjoining Defendant from continuing to make false and misleading statements concerning Class Vehicles; and
- b. restitution and disgorgement of any and all excessive amounts paid to Defendant or its agents.

177. Plaintiff and Class Members are also entitled to the following additional relief.

- a. equitable relief pursuant to California Code of Civil Procedure § 384;
- b. pre- and post-judgment interest at the highest rate allowable by law; and
- c. payment of attorney's fees and costs pursuant to, *inter alia*, California Code of Civil Procedure § 1021.5, the common fund and private attorney general doctrines.

178. As a result of Defendant's violations of the FAL, Plaintiff and Class Members are entitled to equitable relief as the Court deems appropriate.

COUNT XI
Restitution

179. Plaintiff repeats and incorporates by reference each and every allegation contained in the foregoing paragraphs.

180. Plaintiff and Class Members have overpaid for their defective Class Vehicles in amounts that they would not have paid to purchase or lease the vehicles had they known of the deceleration defect.

181. Defendant has been unjustly enriched by these overpayments which were obtained by the conduct described herein, and equity militates against Defendant retaining these ill-gotten gains.

182. Defendant should be required to relinquish the monies it obtained and disgorge its profits from sales of defective i3 REx vehicles as restitution to place Plaintiff and Class Members in the position in which they would have been had Defendant not knowingly sold Class Vehicles with a concealed defect in the Range Extender.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, hereby requests that this Court enter an Order against Defendants providing the following:

A. Certification of the proposed Class and appointment of Plaintiff's counsel as Class Counsel;

B. Injunctive relief temporarily and permanently enjoining BMW from continuing to engage in the unlawful conduct alleged herein;

C. Requiring BMW to provide, at its own expense, reasonable notification to Class Members (and to its dealers) of the existence of the Range Extender deceleration defect, and how to potentially fix it;

D. Payment to Plaintiff and Class Members of all out-of-pocket expenses resulting from or arising from the deceleration defect alleged herein;

C. An award of all actual, general, special, incidental, statutory, punitive, and consequential damages to which Plaintiff and Class members are entitled (including, without limitation, any payments made to a BMW dealer to address the Range Extender defect);

D. An award of pre- and post-judgment interest on any amounts awarded;

E. Any additional appropriate equitable, injunctive and/or declaratory relief, including, without limitation, an order that requires BMW to repair, recall, and/or replace the Class Vehicles and to extend applicable warranties to a reasonable period of time, or, at a minimum, to provide Plaintiffs and Class Members with appropriate curative notice regarding the existence and cause of the Range Extender defect;

F. An award of reasonable attorneys' fees and costs of suit; and

G. All such other or further relief as the Court may find to be appropriate.

JURY DEMAND

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

Dated: May 27, 2016

CHIMICLES & TIKELLIS LLP

By: 

CHIMICLES & TIKELLIS LLP

Benjamin F. Johns

(NJ ID No. 03818-2005)

Andrew W. Ferich

(NJ ID No. 01505-2012)

361 West Lancaster Avenue

Haverford, Pennsylvania 19041

Telephone: (610) 642-8500

Facsimile: (610) 649-3633

Email: bfj@chimicles.com

awf@chimicles.com

*Attorneys for Plaintiff and the
Proposed Class*

**CERTIFICATION OF NON-ARBITRABILITY
PURSUANT TO LOCAL CIVIL RULE 201.1**

I, Benjamin F. Johns, of full age, hereby certify that pursuant to L. Civ. R. 201.1 the within matter is not arbitrable, being that the Complaint seeks damages that are in an excess of \$150,000.

Dated: May 27, 2016

CHIMICLES & TIKELLIS LLP

By: 

CHIMICLES & TIKELLIS LLP

Benjamin F. Johns
(NJ ID No. 03818-2005)
Andrew W. Ferich
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awf@chimicles.com

*Attorneys for Plaintiff and the
Proposed Class*

JS 44 (Rev. 1/16)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS Joel Green</p> <p>(b) County of Residence of First Listed Plaintiff <u>Los Angeles County, CA</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys (Firm Name, Address, Email and Telephone Number) Benjamin F. Johns, Chimicles & Tikellis LLP, 361 W. Lancaster Ave., Haverford, PA 19041 (610) 642-8500 bfj@chimicles.com</p>	<p>DEFENDANTS BMW of North America, LLC and BMW AG</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys (If Known)</p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	LABOR	SOCIAL SECURITY	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
	PRISONER PETITIONS	IMMIGRATION		
	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District *(specify)* 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
28 U.S.C. Section 1332

Brief description of cause:
Consumer fraud case related to faulty performance of Range Extender for battery-operated vehicles

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):* JUDGE _____ DOCKET NUMBER _____

DATE: 05/27/2016 SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____