

EXHIBIT 1

**Service of Process
Transmittal**

01/05/2016

CT Log Number 528422266

TO: Howard Harris
BMW of North America, LLC
300 Chestnut Ridge Road
Woodcliff Lake, NJ 07677-7731

RE: Process Served in California

FOR: BMW of North America, LLC (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: AVI AZOULAI, etc., pltf. vs. BMW of North America, LLC, etc., et al., Dfts.
DOCUMENT(S) SERVED: Summons, Coversheet, Notice, Information Sheet, Complaint, Exhibit(s)
COURT/AGENCY: Santa Clara County - Superior Court - San Jose, CA
Case # 15CV289571
NATURE OF ACTION: Product Liability Litigation - Lemon Law - 2014 BMW 750LI, VIN:
WBAYE8C56ED136155
ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA
DATE AND HOUR OF SERVICE: By Process Server on 01/05/2016 at 12:50
JURISDICTION SERVED : California
APPEARANCE OR ANSWER DUE: Within 30 days after service
ATTORNEY(S) / SENDER(S): HOVANES MARGARIAN
THE MARGARIAN LAW FIRM
801 N. Brand Blvd., Suite 210
Glendale, CA 91203
818-553-1000
ACTION ITEMS: CT has retained the current log, Retain Date: 01/06/2016, Expected Purge Date:
01/11/2016
Image SOP
Email Notification, Barry Chen Barry.chen@bmwnaext.com
Email Notification, Diane Carbone Diane.Carbone@bmwna.com
Email Notification, Gino Palacios Gino.Palacios@bmwnaext.com
SIGNED: C T Corporation System
ADDRESS: 818 West Seventh Street
Los Angeles, CA 90017
TELEPHONE: 213-337-4615

**SUMMONS
(CITACION JUDICIAL)**

1-5-16
12:50

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

(ENDORSED)
FILED
DEC 18 2015

DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY _____ DEPUTY

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

BMW OF NORTH AMERICA, LLC, a Delaware Limited Liability Company; and DOES 1 through 100, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

AVI AZOULAI, an individual

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

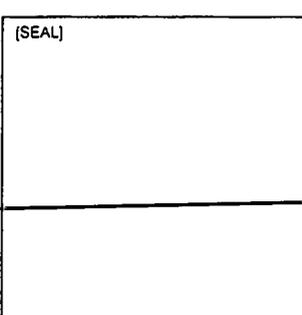
The name and address of the court is:
(El nombre y dirección de la corte es): **SANTA CLARA SUPERIOR COURT
DOWNTOWN SUPERIOR COURT
191 N. 1ST STREET, SAN JOSE, CA 95113**

CASE NUMBER
(Número de Caso): **15CV28957 1**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
HOVANES MARGARIAN, 801 N. BRANDENBURG RD., STE. 210, GLENDALE, CA 91203 (818) 553-1000

DATE: **DEC 18 2015** (Fecha)
Clerk, by **DAVID H. YAMASAKI** (Secretario) *Chief Executive Officer, Clerk*
Deputy (Adjunto) *Ramirez*

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify): **BMW OF NORTH AMERICA, LLC**
under: CCP 416.40 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify): **LIMITED LIABILITY COMPANY**
- by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Hovanes Margarian, Esq. (CA SBN: 246359)
The Margarian Law Firm
801 North Brand Boulevard, Suite 210
Glendale, California 91203
TELEPHONE NO.: (818) 553-1000 FAX NO.: (818) 553-1005
ATTORNEY FOR (Name): AVI AZOULAI, an individual

FOR COURT USE ONLY
FILED
(ENDORSED)
DEC 18 2015
DAVID N. TRIVISANO
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
STREET ADDRESS: 191 N. 1st Street
MAILING ADDRESS: 191 N. 1st Street
CITY AND ZIP CODE: San Jose, CA 95113
BRANCH NAME: Downtown Superior Court

CASE NAME:
AZOULAI v. BMW OF NORTH AMERICA, LLC, et al.

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000)
 Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter **Joinder**
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:
15CV28957 1
JUDGE:
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:
- | | | |
|---|--|---|
| <p>Auto Tort</p> <input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46) <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other PI/PD/WD (23) <p>Non-PI/PD/WD (Other) Tort</p> <input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PI/PD/WD tort (35) <p>Employment</p> <input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | <p>Contract</p> <input checked="" type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37) <p>Real Property</p> <input type="checkbox"/> Eminent domain/Inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26) <p>Unlawful Detainer</p> <input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38) <p>Judicial Review</p> <input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | <p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <p>Enforcement of Judgment</p> <input type="checkbox"/> Enforcement of judgment (20) <p>Miscellaneous Civil Complaint</p> <input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42) <p>Miscellaneous Civil Petition</p> <input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|---|--|---|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): 6
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: December 14, 2015
HOVANES MARGARIAN, Esq.
(TYPE OR PRINT NAME)

Hovanes Margarian
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

CIVIL LAWSUIT NOTICE

Superior Court of California, County of Santa Clara
191 N. First St., San Jose, CA 95113

CASE NUMBER: _____

PLEASE READ THIS ENTIRE FORM

PLAINTIFF (the person suing): Within 60 days after filing the lawsuit, you must serve each Defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

DEFENDANT (The person sued): You must do each of the following to protect your rights:

1. You must file a written response to the *Complaint*, using the proper legal form or format, in the Clerk's Office of the Court, within 30 days of the date you were served with the *Summons and Complaint*;
2. You must serve by mail a copy of your written response on the Plaintiff's attorney or on the Plaintiff if Plaintiff has no attorney (to "serve by mail" means to have an adult other than yourself mail a copy); and
3. You must attend the first Case Management Conference.

Warning: If you, as the Defendant, do not follow these instructions, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court and the Superior Court of California, County of Santa Clara Local Civil Rules and use proper forms. You can obtain legal information, view the rules and receive forms, free of charge, from the Self-Help Center at 99 Notre Dame Avenue, San Jose (408-882-2900 x-2926), www.sccselfservice.org (Select "Civil") or from:

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1toc.htm>

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone, at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: Peter Kirwan Department: 1

The 1st CMC is scheduled for: (Completed by Clerk of Court)
Date: APR 15 2016 Time: 10:00am in Department: 1

The next CMC is scheduled for: (Completed by party if the 1st CMC was continued or has passed)
Date: _____ Time: _____ in Department: _____

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccsuperiorcourt.org/civil/ADR/ or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

**SANTA CLARA COUNTY SUPERIOR COURT
ALTERNATIVE DISPUTE RESOLUTION
INFORMATION SHEET**

Many cases can be resolved to the satisfaction of all parties without the necessity of traditional litigation, which can be expensive, time consuming, and stressful. The Court finds that it is in the best interests of the parties that they participate in alternatives to traditional litigation, including arbitration, mediation, neutral evaluation, special masters and referees, and settlement conferences. Therefore, all matters shall be referred to an appropriate form of Alternative Dispute Resolution (ADR) before they are set for trial, unless there is good cause to dispense with the ADR requirement.

What is ADR?

ADR is the general term for a wide variety of dispute resolution processes that are alternatives to litigation. Types of ADR processes include mediation, arbitration, neutral evaluation, special masters and referees, and settlement conferences, among others forms.

What are the advantages of choosing ADR instead of litigation?

ADR can have a number of advantages over litigation:

- **ADR can save time.** A dispute can be resolved in a matter of months, or even weeks, while litigation can take years.
- **ADR can save money.** Attorney's fees, court costs, and expert fees can be reduced or avoided altogether.
- **ADR provides more participation.** Parties have more opportunities with ADR to express their interests and concerns, instead of focusing exclusively on legal rights.
- **ADR provides more control and flexibility.** Parties can choose the ADR process that is most likely to bring a satisfactory resolution to their dispute.
- **ADR can reduce stress.** ADR encourages cooperation and communication, while discouraging the adversarial atmosphere of litigation. Surveys of parties who have participated in an ADR process have found much greater satisfaction than with parties who have gone through litigation.

What are the main forms of ADR offered by the Court?

Mediation is an informal, confidential, flexible and non-binding process in which the mediator helps the parties to understand the interests of everyone involved, and their practical and legal choices. The mediator helps the parties to communicate better, explore legal and practical settlement options, and reach an acceptable solution of the problem. The mediator does not decide the solution to the dispute; the parties do.

Mediation may be appropriate when:

- The parties want a non-adversary procedure
- The parties have a continuing business or personal relationship
- Communication problems are interfering with a resolution
- There is an emotional element involved
- The parties are interested in an injunction, consent decree, or other form of equitable relief

Neutral evaluation, sometimes called "Early Neutral Evaluation" or "ENE", is an informal process in which the evaluator, an experienced neutral lawyer, hears a compact presentation of both sides of the case, gives a non-binding assessment of the strengths and weaknesses on each side, and predicts the likely outcome. The evaluator can help parties to identify issues, prepare stipulations, and draft discovery plans. The parties may use the neutral's evaluation to discuss settlement.

Neutral evaluation may be appropriate when:

- The parties are far apart in their view of the law or value of the case
- The case involves a technical issue in which the evaluator has expertise
- Case planning assistance would be helpful and would save legal fees and costs
- The parties are interested in an injunction, consent decree, or other form of equitable relief

-over-

Arbitration is a less formal process than a trial, with no jury. The arbitrator hears the evidence and arguments of the parties and then makes a written decision. The parties can agree to binding or non-binding arbitration. In binding arbitration, the arbitrator's decision is final and completely resolves the case, without the opportunity for appeal. In non-binding arbitration, the arbitrator's decision could resolve the case, without the opportunity for appeal, unless a party timely rejects the arbitrator's decision within 30 days and requests a trial. Private arbitrators are allowed to charge for their time.

Arbitration may be appropriate when:

- The action is for personal injury, property damage, or breach of contract
- Only monetary damages are sought
- Witness testimony, under oath, needs to be evaluated
- An advisory opinion is sought from an experienced litigator (if a non-binding arbitration)

Civil Judge ADR allows parties to have a mediation or settlement conference with an experienced judge of the Superior Court. Mediation is an informal, confidential, flexible and non-binding process in which the judge helps the parties to understand the interests of everyone involved, and their practical and legal choices. A settlement conference is an informal process in which the judge meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations. The request for mediation or settlement conference may be made promptly by stipulation (agreement) upon the filing of the Civil complaint and the answer. There is no charge for this service.

Civil Judge ADR may be appropriate when:

- The parties have complex facts to review
- The case involves multiple parties and problems
- The courthouse surroundings would be helpful to the settlement process

Special masters and referees are neutral parties who may be appointed by the court to obtain information or to make specific fact findings that may lead to a resolution of a dispute.

Special masters and referees can be particularly effective in complex cases with a number of parties, like construction disputes.

Settlement conferences are informal processes in which the neutral (a judge or an experienced attorney) meets with the parties or their attorneys, hears the facts of the dispute, helps identify issues to be resolved, and normally suggests a resolution that the parties may accept or use as a basis for further negotiations.

Settlement conferences can be effective when the authority or expertise of the judge or experienced attorney may help the parties reach a resolution.

What kind of disputes can be resolved by ADR?

Although some disputes must go to court, almost any dispute can be resolved through ADR. This includes disputes involving business matters; civil rights; collections; corporations; construction; consumer protection; contracts; copyrights; defamation; disabilities; discrimination; employment; environmental problems; fraud; harassment; health care; housing; insurance; intellectual property; labor; landlord/tenant; media; medical malpractice and other professional negligence; neighborhood problems; partnerships; patents; personal injury; probate; product liability; property damage; real estate; securities; sports; trade secret; and wrongful death, among other matters.

Where can you get assistance with selecting an appropriate form of ADR and a neutral for your case, information about ADR procedures, or answers to other questions about ADR?

Contact:

Santa Clara County Superior Court
ADR Administrator
408-882-2530

Santa Clara County DRPA Coordinator
408-792-2784

1 THE MARGARIAN LAW FIRM
2 HOVANES MARGARIAN (246359)
3 801 N. Brand Blvd., Suite 210
4 Glendale, CA 91203
5 Telephone: (818) 553-1000
6 Facsimile: (818) 553-1005
7 hovanes@margarianlaw.com

8 Attorneys for Plaintiff,
9 AVI AZOULAI

(ENDORSED)
FILED
DEC 18 2015

DAVID M. TAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY _____ DEPUTY
Kantier

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SANTA CLARA

12 AVI AZOULAI, as an individual, on behalf
13 of himself, all others similarly situated, and
14 the general public,

15 Plaintiff,

16 vs.

17 BMW OF NORTH AMERICA, LLC, a
18 Delaware Limited Liability Company; and
19 DOES 1 through 100, inclusive,

20 Defendants.

Case No.: **15CV28957 1**
(Class Action)

CLASS ACTION COMPLAINT FOR DAMAGES:

1. Breach of Express Warranty
2. Breach of Implied Warranty
3. Breach of Warranty (Song-Beverly Consumer Warranty Act), Civil Code § 1790, *et seq.*;
4. Breach of Warranty (Magnuson-Moss Warranty Act), 15 U.S.C. § 2301 *et seq.*;
5. Violation of the California Consumer Legal Remedies Act ("CLRA"), Civil Code § 1750 *et seq.*;
6. Violation of the California Unfair Competition Act ("UCL"), Business and Professions Code § 17200, *et seq.*

DEMAND FOR JURY TRIAL

COMPLAINT

27 NOW COMES Plaintiff, AVI AZOULAI, as an individual, on behalf of himself, all others
28 similarly situated, and the general public, by and through Plaintiff's attorneys, with the Class Action

1 Complaint for Damages against Defendants, BMW OF NORTH AMERICA, LLC, a Delaware Limited
2 Liability Company; and DOES 1 through 100, inclusive, alleges and affirmatively states as follows:

3 **INTRODUCTION**

4 1. This is a civil action alleging breaches of express and implied warranties pursuant to the
5 Song-Beverly Consumer Warranty Act (Civil Code § 1790, *et seq.*) and the Magnuson-Moss Warranty
6 Act (15 U.S.C. § 2301, *et seq.*), violation of the California Consumer Legal Remedies Act (“CLRA”)
7 (Civil Code §1750, *et seq.*), violation of the California Unfair Competition Act (“UCL”) (Business and
8 Professions Code § 17200, *et seq.*) and false advertisement (Business and Professions Code § 17500, *et*
9 *seq.*) for Defendant BMW’s unlawful, unfair, fraudulent and deceptive business acts or practices,
10 Defendant’s pattern and practice of fraudulently, unfairly, deceptively, and unlawfully marketing,
11 advertising, promoting and leasing/selling various vehicles with defective BMW Soft Close Automatic
12 door system (the “SCA”) that is inherently dangerous and lacks basic safeguards.
13
14

15 2. Plaintiff brings this action on behalf of himself and all other similarly situated persons
16 residing in California and/or the United States who leased and/or purchased vehicles manufactured by
17 Defendant, BMW OF NORTH AMERICA, LLC, a Delaware Limited Liability Company (“BMW”)
18 equipped with a defective SCA that is inherently dangerous and lacks basic safeguards, described in
19 further detail within this Complaint (the “Class”).
20

21 3. Defendants designed, manufactured, distributed, marketed, sold and leased vehicles equipped
22 with SCA that is inherently dangerous and lacks basic safeguards from 2002.

23 4. Since 2002, if not before BMW knew or should have known that SCA is defective, because
24 BMW has internal procedures of testing their new vehicles and their equipment for extended periods of
25 time, in various conditions, before mass production and distribution of the vehicles.
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PARTIES

5. Plaintiff, AVI AZOULAI (hereinafter "AZOULAI", "PLAINTIFF"), is and was at all times relevant herein an individual residing in Santa Clara County, State of California. Plaintiff AZOULAI leased and during pertinent times was in possession of a 2014 BMW 750Li, bearing the VIN WBAYE8C56ED136155 ("Subject Vehicle"), which was manufactured, sold or otherwise delivered to Plaintiff AZOULAI with the defective SCA at issue in this case and as described herein.

6. Plaintiff appears in this action on behalf of himself, on behalf of all others similarly situated, and pursuant to Business and Professions Code §§ 17200 *et seq.* and 17500 *et seq.*, on behalf of the general public in their capacity as a private attorney general.

7. Defendant, BMW is a Delaware Limited Liability Company licensed to do, and is doing business throughout the United States, with its principal place of business located at 300 Chestnut Ridge Road, Woodcliff Lake, NJ 07677. BMW transacts business in Santa Clara County, California, and at all relevant times designed, manufactured, promoted, marketed, distributed, and/or leased/sold the Subject Vehicles that are the subject of this Complaint, throughout the United States including California. Defendant BMW has significant contacts with Santa Clara County and the activities complained of herein occurred, in whole or in part, in Santa Clara County.

8. Plaintiff is informed and believes, and based thereon alleges that Defendants DOES 1 through 100 are corporations, or are other business entities or organizations of a nature unknown to Plaintiff.

9. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff sues said defendants by said fictitious names, and will amend this Complaint when the true names and capacities are ascertained or when such facts pertaining to liability are ascertained, or as permitted by law or by the Court. ~~Plaintiff is informed and believes that each of the fictitiously named defendants is in some~~ manner responsible for the events and allegations set forth in this Complaint.

1 10. Plaintiff is informed, believes, and based thereon alleges that at all relevant times, each
2 Defendant was a developer, designer, manufacturer, distributor and lessor/seller of vehicles, was the
3 principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate,
4 parent corporation, successor in interest and/or predecessor in interest of some or all of the other
5 Defendants, and was engaged with some or all of the other defendants in a joint enterprise for profit,
6 and bore such other relationships to some or all of the other Defendants so as to be liable for their
7 conduct with respect to the matters alleged in this complaint. Plaintiff is further informed and believes,
8 and based thereon allege that each Defendant acted pursuant to and within the scope of the relationships
9 alleged above, and that at all relevant times, each Defendant knew or should have known about,
10 authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other
11 Defendants. As used in this Complaint, "Defendants" means "Defendants and each of them," and
12 refers to the Defendants named in the particular cause of action in which the word appears and includes
13 BMW and DOES 1 through 100.
14

15
16 11. At all times mentioned herein, each Defendant was the co-conspirator, agent, servant,
17 employee, and/or joint venturer of each of the other Defendants and was acting within the course and
18 scope of said conspiracy, agency, employment, and/or joint venture and with the permission and
19 consent of each of the other Defendants.
20

21 12. Plaintiff makes the allegations in this Complaint without any admission that, as to any
22 particular allegation, Plaintiff bears the burden of pleading, proving, or persuading, and Plaintiff
23 reserves all of Plaintiff's rights to plead in the alternative.
24

25 JURISDICTION AND VENUE

26 13. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure §
27 410.10.

28 14. Venue is proper within this county because acts, conduct, and events alleged herein occurred

1 within California, including the County of Santa Clara.

2 **FACTUAL ALLEGATIONS**

3 15. Plaintiff files this class action on behalf of himself, all others similarly situated and the
4 general public for damages and/or restitution, as appropriate, for the Class from Defendant BMW for
5 developing, designing, manufacturing, distributing and selling vehicles with a defective SCA.
6

7 16. The SCA is a convenience feature that is usually offered by BMW as a part of a larger
8 executive package. SCA pulls the door of the vehicle and firmly closes it when the door is within 6mm
9 of the closed position. Being solely a convenience feature, the SCA does not have basic safeguards. A
10 design defect and the lack of any sensors cause the SCA motor to pull the door and firmly close it even
11 when a person leaves any part of the body between the 6mm opening of the door, thus making the SCA
12 inherently dangerous.
13

14 17. On or about June 16, 2015, Mr. Azoulai happened to have his right index finger between the
15 door openings when the door of the Subject Vehicle was lightly pushed toward the closing position.
16 Had the Subject Vehicle had conventional doors, he would have suffered minor pain and the door
17 would have stopped; however, the SCA system on the Subject Vehicle, which lacks any sensors or
18 basic safeguards, pulled the door and firmly closed it on Mr. Azoulai's right index finger. Right after
19 the incident Mr. Azoulai rushed to the Kaiser Permanente Santa Clara Medical Center's emergency
20 department with a bleeding finger. (A true and correct copy of the photograph of Mr. Azoulai's finger is
21 attached hereto and marked as Exhibit "A") Doctor Eric Messner, MD examined Mr. Azoulai and
22 diagnosed "1. Crush injury of right index finger; 2. Right index finger laceration." Mr. Azoulai was
23 given medical care and was discharged. (A true and correct copy of an excerpt from Doctor Eric
24 Messner's diagnose is attached hereto and marked as Exhibit "B")
25

26 ~~18. BMW manufactured, sold and distributed certain models of vehicles described below that~~
27 contain the defective SCA which is inherently dangerous and lacks basic safeguards, directly affecting
28

1 the use and enjoyment of the vehicle, beginning on or before 2002.

2 19. The models of vehicles with a defective SCA include at least the following: 2002 – 2016
3 BMW 7 Series; 2004 – 2016 BMW 6 Series Coupe and Convertible; 2008 – 2016 BMW X5; 2009 –
4 2016 BMW X6; 2010 – 2016 BMW 5 Series GT; 2011 – 2016 BMW 5 Series; and 2013 – 2016 BMW
5 6 Series GC; including M models of the referenced vehicles (hereinafter referred to as the “Subject
6 Vehicle(s)” or “Class Vehicle(s)”).

7
8 20. The Class Vehicles contain one or more design and/or manufacturing defects, including but
9 not limited to defects contained in the Class Vehicles’ SCA, which is inherently dangerous and lacks
10 basic safeguards.

11 21. Plaintiff is informed and believes and thereon alleges that BMW acquired its knowledge of
12 the SCA defect since 2002, if not before, through sources not available to Class Members, including but
13 not limited to pre-release testing data, early consumer complaints about the SCA defect to Defendants
14 and their dealers about the Class Vehicles, testing conducted in response to those complaints, aggregate
15 data from BMW dealers, including dealer repair orders and high warranty reimbursement rates that can
16 cost in the thousand dollars for each class vehicle, and from other internal sources.

17
18 22. BMW has a duty to disclose the SCA defect and remedy the associated out-of-pocket repair
19 costs to Class Vehicles owners, among other reasons, because the defect is inherently dangerous and
20 lacks basic safeguards; because BMW had and has exclusive knowledge or access to material facts
21 about the Class Vehicles and SCA that were and are not known or reasonably discoverable by Plaintiffs
22 and Class Members; and because BMW has actively concealed the SCA defect from its customers.

23
24 23. Hundreds, if not thousands, of purchasers and lessees of the Class Vehicles have experienced
25 problems caused by the SCA defect. Complaints posted on the Internet by consumers demonstrate that
26 the defect is widespread:

- 27
28
- “I had a disaster with soft close door on my 550i. I accidentally had my thumb in the wrong spot on the door and the

1 automatic motor closed the door on my thumb before I could get it
2 out of the way. My thumb was crushed in the door. This is a very
3 dangerous convenience. I will never opt for it again. If this can
4 happen to me, it's even more dangerous for a small child." (January
5 29, 2013)

6 • "This is a dangerous stupid system. I'm driving a 2013 X6
7 for the past 6 months. 3 of my friends had crushed their thumb on my
8 door and today, my turn! Why there is no sensor to sense if there is
9 anything stucked between the doors? I will never buy a BMW
10 anymore." (June 19, 2013)

11 • "Same thing happened to me, it automatically shut the door
12 on my thumb. Scared to death for my 2 granddaughters." (March 13,
13 2014)

14 • "Same thing happened to me Friday. The door relentlessly
15 pulled itself closed on my index finger. I was in the emergency room
16 for 3 hours, and I am left with no feelings in the tip of my index
17 finger. The doctor said that I won't know the degree of recovery until
18 in six months. My 9 year old daughter asked, "did they think of
19 putting a sensor or something to figure out that there is a finger in the
20 way?" Right, BMW, did you ever think about a sensor to prevent
21 injuries that apparently are happening to your customers?" (October
22 19, 2014)

23 24. Apart from demonstrating how widespread the defect is, most of the online complaints
24 demonstrate that ordinary consumers were not informed, nor they have expected their vehicles to be
25 equipped with a defective SCA, which is inherently dangerous and lacks basic safeguards. Online
26 complaints also demonstrate how the defect affects the use and enjoyment of the class vehicles and the
27 dangerousness of the system.

28 25. Plaintiff is informed and believes and thereon alleges that since SCA is only a convenience
feature, the benefit to the society from this system is clearly outweighed by the dangerous nature of the
system. Defendant BMW, by implementing this feature as standard equipment of a car or as part of a
larger package, doesn't leave the purchaser or a lessee of a vehicle a choice of opting out of having the
system installed on his or her vehicle. Consequently, every person that purchased a specific vehicle or a
specific package had to live with a dangerous convenience feature without assuming the risks

1 associated with this system.

2 26. Plaintiff is informed and believes and thereon alleges that the majority of auto manufacturers
3 have implemented various safeguards that stop automatically moving exposed parts, such as door
4 windows, when the pressure on those parts reach a certain level. Plaintiff does not see a reason why
5 BMW has failed to implement such safeguards for SCA system.
6

7 27. Plaintiff is informed and believes and thereon alleges that, among other things, the SCA
8 system exposes the Class members to liability, because the defective SCA system is installed on all
9 doors of Subject Vehicles, including (the) passenger door(s), thereby creating a dangerous condition for
10 the passengers of Subject Vehicles.

11 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

12 28. This action has been brought and may properly be maintained as a class action pursuant to
13 the provisions of California Code of Civil Procedure § 382 and Civil Code § 1781 and other applicable
14 law on behalf of himself and a Class as defined as follows:
15

16 (1) California Class: The Class that Plaintiff seeks to represent (“California Class”) consists of
17 all persons and entities who purchased or leased, or will purchase or lease, a Subject
18 Vehicle in California, on or after the date Defendant placed the Subject Vehicles into the
19 stream of commerce (the Class specifically does not include any claims seeking damages
20 for personal injuries or property damage resulting from defects as alleged herein). Excluded
21 from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of
22 Defendants, as well as the officers, directors, agents, servants, or employees of Defendants,
23 and the immediate family member of any such person. Also excluded is any trial judge who
24 may preside over this case.
25

26 (2) National Class: ~~The Class that Plaintiff seeks to represent (“National Class”)~~ is defined to
27 include all persons and entities within the United States who purchased or leased, or will
28

1 purchase or lease, a Subject Vehicle, on or after Defendant placed the Subject Vehicles into
2 the stream of commerce (the Class specifically does not include any claims seeking
3 damages for personal injuries or property damage resulting from defects as alleged herein).
4 Excluded from the National Class are Defendants, any parent, subsidiary, affiliate, or
5 controlled person of Defendants, as well as the officers, directors, agents, servants, or
6 employees of Defendants, and the immediate family member of any such person. Also
7 excluded is any trial judge who may preside over this case.
8

9 29. There is a well-defined community of interest in the litigation, and the proposed class is
10 ascertainable:

11 a. Common Questions Predominate: Common questions of law and fact exist as to all
12 class members, and predominate over any questions that effect only individual members of the class, if
13 there are any individual questions. The common questions of law and fact include, but are not limited
14 to:
15

- 16 (1) Whether the Subject Vehicles were designed, manufactured, sold and/or otherwise
17 equipped with SCA systems that were of a poor, weak, or inferior in design and/or
18 otherwise defective;
- 19 (2) Whether Defendants knew of the defective nature of the SCA systems on the
20 Subject Vehicles;
- 21 (3) Whether Defendants violated California consumer protection statutes;
- 22 (4) Whether Defendants breached its express warranties;
- 23 (5) Whether Defendants breached its implied warranties;
- 24 (6) Whether Defendants' SCA systems on the Subject Vehicles contained an inherent
25 design and/or manufacturing defect;
26
- 27 (7) Whether the defect in the SCA systems on the Subject Vehicles are inherently
28

1 dangerous when used for their intended purpose;

2 (8) Whether the advertisements and statements made by Defendants were and are
3 false and/or had and have had a tendency to deceive customers, by either failing to
4 disclose the existence of an inherent defect or misrepresenting that the Subject
5 Vehicles contained no defects;

6
7 (9) Whether Defendants failed to adequately warn and/or notify class members and
8 the general public regarding the defects of the SCA systems on the Subject Vehicles
9 which are unreasonably dangerous due to their inherent design or defect as described
10 herein;

11 (10) Whether Defendants have failed to notify all Subject Vehicle owners or lessees of
12 the defect here at issue and repair or correct (or offer to repair or correct) all
13 defective SCAs on the Subject Vehicles at no cost to the owners or lessees of the
14 Subject Vehicles;

15
16 (11) Whether Defendants are obligated to inform the Class of their right to obtain, free
17 of charge, repair and replacement of the defective components of the defective SCA
18 or addition of such components that will cure the defect on the Subject Vehicles;

19 (12) Whether Defendants adequately informed Dealers of the remedies to the design or
20 defect as described herein;

21
22 (13) Whether Defendants are required to provide the New Motor Vehicle Board with a
23 copy of BMW's Service Bulletin(s), if any, concerning the remedies to the design or
24 defect as described herein (or the information contained in the bulletin(s)) so that the
25 public could have access to it;

26 (14) ~~The nature and extent of Defendants implied warranty of merchantability for the~~
27 SCA system;

- 1 (15) Whether BMW's warranty to repair defects in the Subject Vehicles was part of the
2 basis of the bargain as between BMW and members of the Class;
- 3 (16) Whether the presence of the defective SCAs in the Subject Vehicles is an
4 unlawful, unfair and/or "fraudulent" business act or practice within the meaning of
5 the Business and Professions Code §§ 17200 *et seq.*;
- 6 (17) Whether Defendants concealed from and/or failed to disclose to Plaintiff and the
7 Class the true defective nature of the SCA systems;
- 8 (18) Whether Defendants had a duty to Plaintiff and the Class to disclose the defective
9 nature of the SCA systems;
- 10 (19) Whether the facts concealed and/or otherwise not disclosed by Defendants to
11 Plaintiff and the Class are material facts;
- 12 (20) Whether Defendants knew that the SCA systems are defective, are inherently
13 dangerous, and thus the Subject Vehicles were not suitable for use as passenger
14 vehicles, and otherwise are not as warranted and represented by Defendants;
- 15 (21) Whether Defendants knew or reasonably should have known about these inherent
16 defect(s);
- 17 (22) When Defendants learned of this inherent defect;
- 18 (23) Whether Defendants continued to lease/sell the Subject Vehicles with the
19 defective SCAs as alleged herein despite its knowledge and/or reckless or negligent
20 disregard of this inherent defect;
- 21 (24) Whether the class members are entitled to damages in terms of cost of
22 replacement, retrofit or repair of the defective SCAs on the Subject Vehicles and any
23 out-of-pocket expenses incurred in connection therewith, and if so, the nature and
24 amount of such damages;
- 25
26
27
28

1 (25) Whether Plaintiff and the Class are entitled to recover damages and the proper
2 measure of damages;

3 (26) Whether Plaintiff and the Class are entitled to equitable relief, including but not
4 limited to restitution;

5 (27) Whether Plaintiff and the Class are entitled to declaratory relief sought herein;

6 (28) Whether Plaintiff and the Class are entitled to injunctive relief sought herein;

7 (29) Whether Plaintiff and the Class are entitled to punitive damages and, if so, the
8 amount of such exemplary damages;

9 (30) Whether the defective SCAs caused the amount paid for the purchase or lease of
10 the Subject Vehicles to be less than the fair market value of those vehicles; and

11 (31) Whether there is a difference between the fair market value of the Subject
12 Vehicles and the actual value of those vehicles given the presence of the defective
13 SCAs.
14

15
16 b. Typicality: Plaintiff's claims are typical of the claims of the class members. Plaintiff
17 and the class members sustained the same types of damages and losses.

18 c. Numerosity and Ascertainability: The classes are so numerous, thousands of persons,
19 that individual joinder of all class members is impractical under the circumstances. The class members
20 can be ascertained by, among other things, lease/sales records and by responses to methods of class
21 notice permitted by law.
22

23 d. Adequacy: Plaintiff is a member of the Class and will fairly and adequately protect the
24 interests of the members of the class. The interests of the Plaintiff are coincident with, and not
25 antagonistic to, those other members of the Class. Plaintiff have retained attorneys who are experienced
26 in Class action litigation. ~~Plaintiff will fairly and adequately represent and protect the interest of the~~
27 Plaintiff Class. Plaintiff is an adequate representative of the Class, as he does not have interests that are
28

1 adverse to the interests of the Plaintiff Class. Plaintiff is committed to the vigorous prosecution of this
2 action and have retained counsel, who are competent and experienced in handling complex and class
3 action litigation on behalf of consumers.

4 e. Superiority and Substantial Benefit: The prosecution of separate actions by individual
5 members of the Class would create a risk of: (1) Inconsistent or varying adjudications concerning
6 individual members of the Class which would establish incompatible standards of conduct for the party
7 opposing the Class; and (2) Adjudication with respect to the individual members of the Class would
8 substantially impair or impede the ability of other members of the Class who are not parties to the
9 adjudications to protect their interests. The class action method is appropriate for the fair and efficient
10 prosecution of this action. Individual litigation of the claims brought herein by each Class Member
11 would produce such a multiplicity of cases that the judicial system having jurisdiction of the claims
12 would remain congested for years. Class treatment, by contract provides manageable judicial treatment
13 calculated to bring a rapid conclusion to all litigation of all claims arising out of the aforesaid conduct
14 of Defendants. The certification of the Class would allow litigation of claims that, in view of the
15 expense of the litigation may be sufficient in amount to support separate actions.
16
17

18 FACTS COMMON TO ALL CAUSES OF ACTION

19 30. BMW develops, designs, manufactures, markets, advertises, distributes, and sells various
20 models of vehicles, including the Subject Vehicles identified herein that were manufactured and/or
21 equipped with SCA.
22

23 31. Plaintiff is informed and believes and based thereon alleges that the Subject Vehicles
24 contain an SCA system comprised of defective components or lacking safeguards which makes the
25 SCA inherently dangerous.

26 32. ~~The particular SCA system in the Subject Vehicles for the corresponding model years, are~~
27 and always have been defective, which, among other things, is inherently dangerous and lacks basic
28

1 safeguards, substantially affecting the use, value and enjoyment of the Subject Vehicles. The model and
2 years of the vehicles that can be equipped with SCA are:

- 3 • 2002 – 2016 BMW 7 Series;
- 4 • 2004 – 2016 BMW 6 Series Coupe;
- 5 • 2004 – 2016 BMW 6 Series Convertible;
- 6 • 2008 – 2016 BMW X5;
- 7 • 2009 – 2016 BMW X6;
- 8 • 2010 – 2016 BMW 5 Series GT;
- 9 • 2011 – 2016 BMW 5 Series;
- 10 • 2013 – 2016 BMW 6 Series GC;
- 11 • And M models of the above-referenced vehicles.

12
13
14 33. As a part of BMW's advertising campaign, through its controlled dealership network,
15 BMW distributed to the class members numerous pamphlets, brochures and specification sheets which
16 emphasized or focused on the quality and safety of the Subject Vehicles here at issue.

17
18 34. The written materials distributed and disseminated by Defendants in their advertising
19 campaign(s) created express warranties as to the reliability, excellence and safety of the Subject
20 Vehicles at issue and that the components of such vehicles are free from inherent risk of failure,
21 particularly with regard to use and safety. Such warranty was breached by the existence of the defect in
22 the Subject Vehicles at issue and BMW's failure to warn consumers of its existence.

23
24 35. These advertisements, due to the national scope and extent of Defendants multi-media
25 campaign, were uniformly made to all members of the class. Class members' acts of leasing and/or
26 purchasing the Subject Vehicles were consistent with basing such decisions upon such advertisements,
27 and thus formed part of the basis for the transaction at issue.

28 36. Plaintiff is informed and believes, and based thereon alleges that the dangerousness of the

1 SCA system on the Subject Vehicles is due, in part, to Defendants failing to install a pressure sensor on
2 the Subject Vehicles.

3 37. At all relevant times, BMW has been aware of the herein described defect in the SCA
4 system on the Subject Vehicles, and has consciously disregarded the rights and safety of Plaintiff,
5 members of the Class and the general public in that numerous complaints about the dangerousness of
6 the defective SCA in the Subject Vehicles have been lodged with BMW. Despite said knowledge,
7 BMW, however, has failed to notify owners and lessees of the Subject Vehicles of the defects
8 associated with their continued operation as alleged herein.

9
10 38. At all relevant times, BMW has not fully disclosed to purchasers or lessees of the Subject
11 Vehicles, information regarding the dangerousness of the SCAs of the Subject Vehicles as detailed
12 herein, nor has it disclosed the true facts that BMW either knew or recklessly or negligently disregarded
13 the existence and reasons for this inherent defect for years.

14
15 39. Plaintiff is further informed and believes, and based thereon alleges that in not correcting or
16 warning of this defect, BMW has violated its own internal procedures, which require prompt
17 investigation and thorough analysis of all potential defects and notification to vehicle owners and
18 lessees describing the defect, as well as instructions relating to the correction of the defect if a defect is
19 determined to exist.

20
21 40. BMW, by and through its authorized dealerships, engaged in a nationwide conspiracy to
22 cover up the Subject Vehicles' SCA defect by systematically refusing to document visits by Plaintiff
23 and other Class members with the subject complaint.

24 41. By failing to document these visits and provide repair orders BMW systematically deprived
25 Plaintiff and other Class members of their lemon law rights by distorting the Subject Vehicles' repair
26 histories.

27
28 42. Knowing the truth and motivated by profit and market share, Defendants have knowingly

1 and willfully engaged in the acts and/or omissions to mislead and/or deceive Plaintiff and others
2 similarly situated.

3 43. The defective SCA on the Subject Vehicles has resulted and will continue to result in
4 significant loss and damage to the class members, including but not limited to, diminished use and
5 reduced fair market value.

6 44. Despite the Defendants' express representations that the Subject Vehicles would likely
7 retain their value at a rate higher than competing vehicles and that the vehicles are "reliable," this has
8 simply not occurred. As a result of the problems with the Subject Vehicles as described herein and
9 inherently dangerous SCA system, the value of the Subject Vehicles has been significantly diminished.
10 On the Internet and in other media outlets, hundreds of people have reported the problems they have
11 experienced with their vehicles. There is little doubt that these reports have seriously diminished the
12 resale value of the Subject Vehicles. Given the high value and the luxury status of Subject Vehicles, the
13 fact that these vehicles are equipped with an inherently dangerous SCA system, diminishes the value of
14 the vehicles more than the same problems would in lower valued vehicles.
15
16

17 45. This action seeks financial compensation for members of the Class in connection with their
18 purchase of the Subject Vehicles. Plaintiff do not seek: (i) damages for personal, bodily, or emotional
19 injury or wrongful death; or (ii) damages for becoming subject to liability or legal proceedings by
20 others.
21

22 TOLLING OF STATUTE OF LIMITATIONS

23 46. Any applicable statutes of limitation have been equitably tolled by BMW's affirmative acts
24 of fraudulent concealment, suppression and denial of the true facts regarding the existence of the
25 inherent defects alleged herein. Such acts of fraudulent concealment include, but are not limited to
26 ~~intentionally covering up and refusing to publically disclose critical internal memoranda, design plans,~~
27 studies, Notices of Action, Problem Detail Reports and other reports of failure and injury, as well as
28

1 affirmative misrepresentations made to NHTSA and people who called or otherwise contacted BMW
2 attempting to identify and resolve this defect. Through such acts of fraudulent concealment, BMW was
3 able to actively conceal from the public for years the truth about the defective design and manufacture
4 of the SCA system on the Subject Vehicles, thereby tolling the running of any applicable statute of
5 limitations.

6
7 47. Defendants are estopped from relying on any statutes of limitation because of their
8 misrepresentation and fraudulent concealment of the true facts, as described herein, concerning the
9 SCA system on the Subject Vehicles. Defendants were, at all times aware of the true nature of the
10 defects as described herein but at all times continued to manufacture and market the Subject Vehicles
11 despite this knowledge.

12 FIRST CAUSE OF ACTION

13 **BREACH OF EXPRESS WARRANTY**

14 **(Against All Defendants)**

15
16 48. Plaintiff re-alleges and incorporates by reference as fully set forth herein all paragraphs of
17 Class Action Complaint for Damages.

18 49. BMW's written representations in the warranty manual(s), sales brochures, pamphlets and
19 other writings disseminated by BMW in the promotion, marketing and sales of the Subject Vehicles
20 constitute an express warranty and/or warranties to Plaintiff and the class members.

21
22 50. By BMW's advertising campaign(s) which focused on its vehicles being safe and free of
23 defects, including but not limited to the Subject Vehicles being "advanced BMW engineering",
24 "Ruthlessly sophisticated", "Top Safety Pick" and having "Award-winning safety", as printed in their
25 product brochures, pamphlets and media and which focused on excellence, reliability and safety of
26 ~~these vehicles, BMW expressly warranted that such vehicles were safe and free from inherent and latent~~
27 defects.

1 51. For each of the Subject Vehicles at issue, BMW issued a standardized express written
2 warranty which covers the base vehicle, including without limitation, the SCA system, and warranted
3 that the vehicles were free of defects. Applying any BMW warranty limitation period to avoid the need
4 to repair this particular defect would be unconscionable in that, *inter alia*, the vehicles at issue contain
5 an inherent latent defect which could arise at any time, the defect was already present at the time of
6 delivery, BMW was either aware of or consciously and/or recklessly disregarded this defect which
7 could not be discovered by Plaintiff and members of the class at the time of such purchase or lease, and
8 purchasers or lessees lacked any meaningful choice with respect to the warranty terms.
9

10 52. Defendants have and continue to breach said express warranties in the following ways,
11 among others as follows:

- 12 a. At the time of manufacture and lease/sale of the Subject Vehicles, there existed an
13 inherent, latent defect in the SCA system;
- 14 b. The SCA system on the Subject Vehicles was not free from defects;
- 15 c. The SCA system on the Subject Vehicles was and is at all relevant times defective;
- 16 d. BMW has refused to take responsibility for the defective SCA on the Subject Vehicles,
17 denying all liability or even the existence of the defect as described herein;
- 18 e. BMW has engaged in a nationwide conspiracy to cover up the Subject Vehicles' SCA
19 defect by systematically refusing to document visits by Plaintiff and other Class
20 members to authorized dealerships with the subject complaint;
- 21 f. By failing to document these visits and provide repair orders BMW has systematically
22 deprived Plaintiff and other Class members of their lemon law rights by distorting the
23 Subject Vehicles' repair histories; and
24
25

26 53. ~~Plaintiff AZOULAI provided a formal notice to Defendant BMW of their breach as alleged~~
27 herein on October 23, 2015 (A true and correct copy of said notice is attached hereto and marked as
28

1 Exhibit "C").

2 54. To date Defendants have failed to remedy their breach pursuant to Plaintiff's notices.

3 55. As a result of Defendants' breach of express warranties as set forth above, Plaintiff and
4 others similarly situated have suffered and will continue to suffer damages in an amount to be
5 determined at trial.

6
7 **SECOND CAUSE OF ACTION**

8 **BREACH OF IMPLIED WARRANTY**

9 **(Against All Defendants)**

10 56. Plaintiff re-alleges and incorporates by reference as fully set forth herein all paragraphs of
11 Class Action Complaint for Damages.

12 57. The Subject Vehicles are manufactured goods and at all times relevant, Defendant
13 manufactured, sold and placed these products into the stream of commerce.

14 58. The transactions by which the members of the Class members purchased the Subject
15 Vehicles were transactions for the sale of goods and at all times relevant, Defendant BMW was in the
16 business of manufacturing, selling and/or distributing these goods for sale throughout the United States,
17 including California.

18 59. The presence of the defect in the Subject Vehicles purchased by the Nationwide Class
19 substantially impairs the use and value of those goods. Moreover, the defects in the Subject Vehicles
20 render them non-conforming goods and/or were not the same quality as those generally accepted in the
21 trade, were not fit for the ordinary purposes for which the goods are used, were of poor or below
22 average quality within the description and/or did not conform to the affirmations of fact made by BMW
23 in its labeling, product inserts and/or warranty materials it provided along with the lease/sale of the
24 Subject Vehicles.
25
26

27 60. The defective SCA makes the Subject Vehicles unfit for the ordinary purposes for which
28

1 the Vehicles are to be used and at all times relevant, BMW has failed and refused to repair the defects
2 in the SCA system of the Subject Vehicles, and has failed and refused to do so at no charge to the class
3 members.

4 61. Upon discovering the latent defects in the defective SCA on the Subject Vehicles, Plaintiff
5 took reasonable steps to notify Defendant BMW within a reasonable time that the product did not have
6 the expected quality and contained the defects as alleged herein.
7

8 62. As a direct and proximate result of the foregoing, Plaintiff and all the other class members
9 sustained significant loss and damage, including but not limited to reduced fair market value and did
10 not receive the benefit of their bargain.

11 **THIRD CAUSE OF ACTION**

12 **BREACH OF WARRANTY UNDER THE SONG-BEVERLY CONSUMER WARRANTY ACT**

13 **CIVIL CODE § 1790 *et seq.***

14 **(Against All Defendants)**

15
16 63. Plaintiff re-alleges and incorporates by reference as fully set forth herein all paragraphs of
17 Class Action Complaint for Damages.

18 64. BMW's written representations in warranty manual(s), sales brochures, pamphlets and
19 other writings disseminated by BMW in the advertising, promotion, marketing and sales of the Subject
20 Vehicles constitute an express warranty and/or warranties to Plaintiff and others similarly situated.
21

22 65. BMW's statements made in its advertising, promotion, marketing and sales of the Subject
23 Vehicles, and by operation of law, constitute implied warranties that these vehicles are merchantable
24 and fit for their intended purpose.

25 66. At all times relevant, Defendants had reason to know at the time of the lease/sale and
26 ~~delivery of the Subject Vehicles that they were required for a particular purpose, namely as means of~~
27 transportation on the roads and highways of California and throughout the United States on the daily
28

1 basis with the reasonable expectation of doing so without a risk of injury or need for replacement or
2 retrofit of the SCA system during the ordinary and regular course of using a motor vehicle, and that the
3 purchasers, owners and/or lessees were relying on the manufacturer's skill and judgment to develop,
4 design, manufacture, distribute, and sell a vehicle with a suitable SCA system.

5 67. Defendants breached these express and implied warranties by offering, selling or leasing
6 the Subject Vehicles that, by their design and construction, contained inherent defects which were
7 likely to make SCA unreasonably dangerous by its very design and lack of safeguards. BMW also
8 breached these warranties by failing to warn Plaintiff and the class members of the defects as alleged
9 herein, that were, at all relevant times known to BMW.

10 68. Defendants have and continue to breach said express warranties, including but not limited
11 to, as follows:

- 12 a. At the time of manufacture and lease/sale of the Subject Vehicles, there existed an
13 inherent defect in the SCA system;
- 14 b. The SCA system on the Subject Vehicles was not free from defects;
- 15 c. The SCA system on the Subject Vehicles was and is at all relevant times defective;
- 16 d. BMW has refused to take responsibility for the defective SCA on the Subject Vehicles,
17 denying all liability or even the existence of the defect as described herein;
- 18 e. BMW has engaged in a nationwide conspiracy to cover up the Subject Vehicles' SCA
19 defect by systematically refusing to document visits by Plaintiff and other Class
20 members to authorized dealerships with the subject complaint;
- 21 f. By failing to document these visits and provide repair orders BMW has systematically
22 deprived Plaintiff and other Class members of their lemon law rights by distorting the
23 Subject Vehicles' repair histories; and

24 69. As a result of Defendants' breach of express warranties as set forth above, Plaintiff and
25
26
27
28

1 members of the class have suffered damages in an amount to be determined at trial, including but not
2 limited to the cost of repair or retrofit of the SCA system on the Subject Vehicles and any out-of-pocket
3 expenses associated therewith. Plaintiff and members of the class are also entitled to an order of the
4 Court requiring BMW to provide repair and replacement of the defective SCA on the Subject Vehicles.

5 70. Plaintiff and members of the Class are also entitled to a refund or reimbursement for all
6 amounts they have paid to have the SCA system repaired and/or retrofitted and seek any other legal or
7 equitable relief to be determined at the time of trial.
8

9 **FOURTH CAUSE OF ACTION**

10 **BREACH OF WARRANTY UNDER THE MAGNUSON-MOSS WARRANTY ACT**

11 **15 U.S.C. § 2301 *et seq.***

12 **(Against All Defendants)**

13 71. Plaintiff re-alleges and incorporates by reference as fully set forth herein all paragraphs of
14 Class Action Complaint for Damages.
15

16 72. The Subject Vehicles and respective SCA systems on the Subject Vehicles are “consumer
17 products” as that term is defined by 15 U.S.C. § 2301(1).

18 73. Plaintiff and Class members are “consumers” as that term is defined by 15 U.S.C. §
19 2301(3).

20 74. BMW is a “supplier” as that term is defined by 15 U.S.C. § 2301(4).

21 75. BMW is a “warrantor” as that term is defined by 15 U.S.C. § 2301(5).

22 76. BMW provided Plaintiff and Class members with “written warranties” as that term is
23 defined by 15 U.S.C. § 2301(6).
24

25 77. Section 15 U.S.C. § 2310(d)(1) provides that a consumer who is damaged by the failure of
26 a supplier, warrantor, or service contractor to comply with any obligation under this title, or a written
27 warranty, implied warranty, or service contract, may bring suit for damages and other legal and
28

1 equitable relief in any court of competent jurisdiction in any state or in an appropriate District Court of
2 the United States.

3 78. BMW's written representations in the warranty manual(s), sales brochures, pamphlets and
4 other writings disseminated by BMW in the advertising, promotion, marketing and sales of the Subject
5 Vehicles constitute an express warranty and/or warranties to Plaintiff and others similarly situated.
6

7 79. BMW's statements made in its advertising, promotion, marketing and sales of the Subject
8 Vehicles, and by operation of law, constitute implied warranties that these vehicles are merchantable
9 and fit for their intended purpose.

10 80. At all times relevant, Defendants had reason to know at the time of the lease/sale and
11 delivery of the Subject Vehicles that they were required for a particular purpose, namely as means of
12 transportation on the roads and highways of California and throughout the United States on the daily
13 basis with the reasonable expectation of doing so without a risk of injury or the need to retrofit the SCA
14 during the ordinary and regular course of using a motor vehicle, and that the purchasers, owners and/or
15 lessees were relying on the manufacturer's skill and judgment to develop, design, manufacture,
16 distribute, and sell a vehicle with a suitable SCA system.
17

18 81. Defendants breached these express and implied warranties by offering, selling or leasing
19 the Subject Vehicles that, by their design and construction, contained inherent defects which made the
20 SCA inherently dangerous. BMW also breached these warranties by failing to warn Plaintiff and the
21 class members of the defects as alleged herein, that were, at all relevant times known to BMW.
22

23 82. Defendants have and continue to breach said express warranties, including but not limited
24 to, as follows:

- 25 a. At the time of manufacture and lease/sale of the Subject Vehicles, there existed an
26 inherent defect in the SCA system;
- 27 b. The SCA system on the Subject Vehicles was not free from defects;
28

- 1 c. The SCA system on the Subject Vehicles was and is at all relevant times defective;
- 2 d. BMW has refused to take responsibility for the defective SCA on the Subject Vehicles,
- 3 denying all liability or even the existence of the defect as described herein;
- 4 e. BMW has engaged in a nationwide conspiracy to cover up the Subject Vehicles' SCA
- 5 defect by systematically refusing to document visits by Plaintiff and other Class
- 6 members to authorized dealerships with the subject complaint;
- 7
- 8 f. By failing to document these visits and provide repair orders BMW has systematically
- 9 deprived Plaintiff and other Class members of their lemon law rights by distorting the
- 10 Subject Vehicles' repair histories; and

11 83. As a result of Defendants' breach of express warranties as set forth above, Plaintiff and

12 members of the class have suffered damages in an amount to be determined at trial, including but not

13 limited to the cost of repair or retrofit of the SCA system on the Subject Vehicles and any out-of-pocket

14 expenses associated therewith. Plaintiff and members of the class are also entitled to an order of the

15 Court requiring BMW to provide repair and replacement of the defective SCA on the Subject Vehicles.

16

17 84. Plaintiff and members of the Class are also entitled to a refund or reimbursement for all

18 amounts they have paid to have the SCA system repaired and/or retrofitted and seek any other legal or

19 equitable relief to be determined at the time of trial.

20

21 **FIFTH CAUSE OF ACTION**

22 **VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT**

23 **CIVIL CODE § 1750 *et seq.***

24 **(Against All Defendants)**

25 85. Plaintiff re-alleges and incorporates by reference as fully set forth herein all paragraphs of

26 Class Action Complaint for Damages.

27 86. The Subject Vehicles are "goods" within the meaning of Civil Code § 1761(a).

28

1 87. Defendants are “persons” as defined by Civil Code § 1761(c).

2 88. Plaintiff and each member of the Class are “consumers” within the meaning of Civil Code §
3 1761(d).

4 89. The Consumer Legal Remedies Act (“CLRA”), California Civil Code § 1750 *et seq.* applies
5 to Defendants’ actions and conduct described herein because it extends to transactions that are intended
6 to result, or which have resulted, in the sale or lease of goods or services to consumers.
7

8 90. Defendants have violated the CLRA in at least the following respects:

- 9 a. In violation of Civil Code § 1770(a)(5), Defendants have represented that the Subject
10 Vehicles have characteristics and benefits that they do not have;
- 11 b. In violation of Civil Code § 1770(a)(7), Defendants have represented that the Subject
12 Vehicles are of a particular standard, quality, or grade when they are not;
- 13 c. In violation of Civil Code § 1770(a)(9), Defendants have advertised the Subject
14 Vehicles without an intent to sell them as advertised;
- 15 d. In violation of Civil Code § 1770(a)(14), Defendants have misrepresented that a
16 transaction confers or involves legal rights, obligations, or remedies of Plaintiff and
17 other members of the Class concerning the Subject Vehicles when they were not;
- 18 e. In violation of Civil Code § 1770(a)(18), Defendants have represented that the Subject
19 Vehicles were supplied in accordance with previous representations when they were
20 not; and
- 21 f. In violation of Civil Code § 1770(a)(19), Defendants unlawfully inserted an
22 unconscionable provision in the contract to purchase or lease the Subject Vehicles
23 here at issue by inserting into such contracts provisions where the consumers purport
24 to waive a right or benefit provided by law to obtain a repair or a retrofit of an inherent
25 defect without a clear statement and consent to such provisions.
26
27
28

1 91. Defendants' deceptive acts alleged herein occurred in the course of selling a consumer
2 product and Defendants have done so continuously through the filing of this Complaint.

3 92. As a direct and proximate result of Defendants violation of Civil Code § 1770 *et seq.*,
4 Plaintiff and other Class members have suffered irreparable harm and monetary damages entitling them
5 to both injunctive relief and restitution. Plaintiff, on behalf of himself and on behalf of the Class, seek
6 damages and all other relief allowable under the CLRA.

7
8 93. Defendants' wrongful conduct, as set forth above, was willful, oppressive, and malicious.
9 Accordingly, Plaintiff, and others similarly situated, seek punitive damages against Defendants in an
10 amount to deter Defendants from similar conduct in the future.

11 94. Pursuant to Civil Code § 1782, Plaintiff provided notice to Defendants at least thirty days
12 prior to filing this action for damages.

13 95. Defendants failed to make the showing required by Civil Code § 1782(c).

14 96. As a result, Plaintiff seeks actual and punitive damages for violation of the CLRA. In
15 addition, pursuant to Civil Code § 1782(a)(2), Plaintiff and members of the class are entitled to an order
16 enjoining the above-described wrongful acts and practices of Defendants, providing restitution to
17 Plaintiff and the Class, ordering payment of costs and attorneys' fees, and any other relief deemed
18 appropriate and proper by the Court under Civil Code § 1780.
19

20
21 **SIXTH CAUSE OF ACTION**

22 **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW**

23 **BUSINESS AND PROFESSIONS CODE § 17200 *et seq.***

24 **(Against All Defendants)**

25 97. Plaintiff re-alleges and incorporates by reference as fully set forth herein all paragraphs of
26 Class Action Complaint for Damages.

27 98. Plaintiff brings this claim on behalf of himself and others similarly situated in his
28

1 representative capacity as a private attorney general against all Defendants for their unlawful, unfair,
2 fraudulent, untrue and/or deceptive business acts and/or practices pursuant to California Business and
3 Professions Code § 17200 *et seq.* (“UCL”), which prohibits all unlawful, unfair and/or fraudulent
4 business acts and/or practices.

5
6 99. Plaintiff asserts these claims as they are representative of an aggrieved group and as a
7 private attorney general on behalf of the general public and other persons who have expended funds
8 that the Defendants should be required to pay or reimburse under the restitutionary remedy provided by
9 California Business and Professions Code § 17200 *et seq.*

10 100. The acts, omissions, misrepresentations, practices and non-disclosures of Defendants as
11 alleged herein constitute unlawful, unfair and/or fraudulent business acts and/or practices within the
12 meaning of California Business and Professions Code § 17200 *et seq.*

13 101. The acts, omissions, misrepresentations, practices, non-disclosures and/or concealments of
14 material facts, and/or deception alleged in the preceding paragraphs occurred in connection with
15 Defendants’ conduct of trade and commerce in California.
16

17 102. As a direct and proximate result of the aforementioned acts, Defendants, and each of them,
18 received monies expended by Plaintiff and others similarly situated who leased/purchased the Subject
19 Vehicles.
20

21 103. Defendants aggressively promoted and advertised their Subject Vehicles in an unlawful,
22 unfair, fraudulent, untrue and/or deceptive manner that is and was likely to deceive the public.

23 104. Defendants falsely advised class members that the non-conformities exhibited by the
24 Subject Vehicles as outlined herein were in fact normal and did not constitute a defect.

25 105. Defendants actively engaged in a custom and practice of encouraging failure to and/or
26 failing to document complaints by class members regarding the non-conformities exhibited by the
27 Subject Vehicles as outlined herein.
28

1 106. Defendants' misconduct as alleged in this action constitutes negligence and other tortious
2 conduct and this misconduct gave these Defendants an unfair competitive advantage over their
3 competitors.

4 107. Defendants' conduct constitutes unfair acts or practices conducted in the course of
5 Defendants' respective businesses, and thereby constitutes violations of California Business and
6 Professions Code § 17200 *et seq.* Defendants' conduct and intent to widely market the Subject
7 Vehicles to California consumers involved false and misleading advertising. Such conduct offends the
8 established public policy of the State of California and is immoral, unethical, oppressive, unscrupulous
9 and substantially injurious.
10

11 108. Pursuant to California Business and Professions Code § 17203 of the UCL, Plaintiff seeks
12 an order of this Court enjoining BMW from continuing to engage in unlawful, unfair or fraudulent
13 business practices, and any other act prohibited by the UCL.
14

15 109. In addition to the relief requested in the Prayer below, Plaintiff seeks the imposition of a
16 constructive trust over, and restitution of, the monies collected and profits realized by Defendants.

17 110. Defendants' conduct, as fully described herein, constitutes acts of untrue and misleading
18 advertising and are, by definition, violations of California Business and Professions Code § 17200 *et*
19 *seq.*
20

21 111. The unlawful, unfair, deceptive and/or fraudulent business practices and/or false and
22 misleading advertising of Defendants, as fully described herein, present a continuing threat to members
23 of the public to be injured by the Subject Vehicles equipped with the defective SCAs as alleged herein.

24 WHEREFORE, Plaintiff prays for an order requiring Defendants to: (1) notify the Class and the
25 general public of the defective SCA on the Subject Vehicles; and (2) provide, at no cost to owners or
26 lessees of the Subject Vehicles, the retrofit or repair of the SCA systems.

27 ///
28

1 PRAYER

2 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated and as to the
3 Sixth Cause of Action, also on behalf of the general public, prays for judgment against Defendants as
4 follows:

- 5 A. An order certifying this case as a class action and appointing Plaintiff and their counsel to
6 represent the Class;
- 7
- 8 B. For actual damages;
- 9 C. For statutory damages in an amount of not less than \$1,000 per Plaintiff or Class member
10 pursuant to California Civil Code § 1780(a)(1);
- 11 D. For restitution as appropriate;
- 12 E. For statutory pre-judgment interest;
- 13 F. For punitive damages in an amount to deter Defendants from similar conduct in the future;
- 14 G. For any additional and consequential damages suffered by Plaintiff and the Class;
- 15 H. For reasonable attorneys' fees and the costs of this action;
- 16 I. For declaratory and/or equitable relief under the causes of action stated herein; and
- 17 J. For such other relief as this Court may deem just and proper.
- 18

19 DEMAND FOR JURY TRIAL

20 Plaintiff demands a trial by jury for himself and the Class on all claims so triable.

21 Dated this 14th day of December, 2015

22 THE MARGARIAN LAW FIRM

23 By 
24 Hovanes Margarian, Esq.

25 Attorney for Plaintiff

26 AVI AZOULAI

27 and all others Similarly Situated

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Exhibit "A"



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Exhibit "B"



KAISER PERMANENTE

**SANTA CLARA MEDICAL CENTER
EMERGENCY DEPARTMENT
700 LAWRENCE EXP
SANTA CLARA, CALIFORNIA 95051
PHONE: (408) 851-5300**

Patient: Avi Azouai MRN: 110007956838

Primary Care Provider: ERIC JACOB MESSNER MD

You were evaluated and treated by: Scanlon, Eileen J (Pa-C)

Discharge diagnosis:

- | | |
|---------------------------------------|-------|
| 1. CRUSH INJURY OF RIGHT INDEX FINGER | 927.3 |
| 2. RIGHT INDEX FINGER LACERATION | 883.0 |

INSTRUCTIONS

Laceration: After Your Emergency Department Visit

Your Kaiser Permanente Care Instructions

A laceration, or cut, is an open wound through the skin. The doctor or other health care professional has cleaned your wound. The care you need depends on the type of cut or wound you have. The doctor may have used stitches, staples, tapes (Sten strips), or skin glue to close the wound. This will stop the bleeding, help the wound heal, and reduce scarring.

Take good care of your wound at home to help it heal quickly and reduce your chance of infection. While your wound is healing, avoid any activity that could cause your wound to reopen.

Even though you have been released from the emergency department, you still need to watch for any problems. The doctor or other health care professional carefully checked you. But sometimes problems can develop later if you have new symptoms, or if your symptoms do not get better, return to the emergency department or call your doctor right away.

A visit to the emergency department is only one step in your treatment. Even if you feel better, you still need to do what your doctor or other health care professional recommends, such as going to all arranged follow-up appointments, finding out the results of all tests and labs ordered as part of your care, and taking medications exactly as directed. This will help you recover and help prevent

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Exhibit "C"



THE MARGARIAN LAW FIRM

801 N. Brand Blvd., Suite 210 | Glendale, CA 91203
Main 818.553.1000 | Fax 818.553.1005

October 23, 2015

VIA CERTIFIED U.S. MAIL, RETURN RECEIPT REQUESTED

BMW of North America, LLC
Customer Relations
300 Chestnut Ridge Road
Woodcliff Lake, NJ 07677-7731

BMW of North America, LLC
P.O. Box 1227
Westwood, NJ 07677

BMW of North America, LLC
c/o C T Corporation System
818 W. Seventh Street, 2nd Floor
Los Angeles, CA 90017

Re: *Avi Azoulai v. BMW of North America, LLC*
Vehicle: *2014 BMW 750Li*
VIN: *WBAYE8C56ED136155*
Our File No.: *CA140904-1159*

NOTICE OF VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT, CALIFORNIA CIVIL CODE § 1750 et seq.

To Whom It May Concern:

Please be advised that this office represents Avi Azoulai, on behalf of himself, all others similarly situated, and the general public, regarding claims against BMW of North America, LLC (hereinafter "BMW NA"). Please direct all future contacts and correspondences regarding this matter to our office.

On or about April 30, 2014, Mr. Azoulai leased a 2014 BMW 750Li bearing the Vehicle Identification Number WBAYE8C56ED136155 (hereinafter referred to as "Subject Vehicle"). The Subject Vehicle is equipped with factory-installed BMW Soft Close Automatic door system (hereinafter referred to as the "SCA").

The SCA is a convenience feature that is usually offered by BMW NA as a part of a larger executive package. SCA pulls the door of the vehicle and firmly closes it when the door is within 6mm of the closed position. Being solely a convenience feature, the SCA does not have basic safeguards. A design defect causes SCA motor to pull the door and firmly close it even when a person leaves any part of the body between the 6mm opening of the door.

On or about June 16, 2015, Mr. Azoulai happened to have his right index finger between the door openings when the door of the Subject Vehicle was lightly pushed toward the closing position. Had the Subject Vehicle had conventional doors, he would have suffered minor pain and the door would have stopped; however, SCA system on the Subject Vehicle pulled the door



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and closed it on Mr. Azoulai's right index finger. Right after the incident Mr. Azoulai rushed to the Kaiser Permanente Santa Clara Medical Center's emergency department with a bleeding finger. Doctor Eric Messner, MD examined Mr. Azoulai and diagnosed "1. Crush injury of right index finger; 2. Right index finger laceration." Mr. Azoulai was given medical care and was discharged.

After the incident our client discovered that many other internet complaints report similar injuries caused by BMW SCA. These injuries are undoubtedly caused by the defective design of the SCA system and demonstrate how dangerous the system is without any safeguards. Almost every auto manufacturer has implemented various safeguards that stop automatically moving exposed parts, such as door windows, when the pressure on those parts reach a certain level. We do not see a reason why BMW has failed to implement such safeguards for SCA system.

Since SCA is only a convenience feature, the benefit to the society of this system is clearly outweighed by the dangerous nature of the system. Moreover, by implementing this feature as standard equipment of a car or as part of a larger package doesn't leave the purchaser or a lessee of a vehicle a choice of opting out of having the system installed on his or her vehicle. Consequently, every person that purchased a specific vehicle or a specific package had to live with a dangerous convenience feature without assuming the risks associated with this system. Mr. Azoulai was one of these persons.

Based on the information currently available, the SCA is offered on the following vehicles: 2002 – 2016 BMW 7 Series; 2004 – 2016 BMW 6 Series Coupe and Convertible; 2008 – 2016 BMW X5; 2009 – 2016 BMW X6; 2010 – 2016 BMW 5 Series GT; 2011 – 2016 BMW 5 Series; and 2013 – 2016 BMW 6 Series GC; including M models (hereinafter referred to as the "Class Vehicles").

This letter is written on behalf of Mr. Azoulai and all other current and former purchasers, owners, and lessees of the class vehicles (the "Class"). Note that investigation is still ongoing and the Class might consist of more vehicles than identified herein. The Subject Vehicle and Class Vehicles had the defect at the time of their initial retail sales and leasing, and at all times thereafter.

Despite the clear prior knowledge that SCA system may cause serious injuries to persons around Class Vehicles, the same was not disclosed to the purchasers/lessees at the time of their acquisition of the vehicles.

Additionally, in transactions intended to result in the sales/leases of the Class Vehicles to consumers, which did in fact result in the sales and leasing of them to consumers, BMW NA and all of its authorized dealerships violated the CLRA, by doing the following:

- a. In violation of Civil Code § 1770(a)(5), BMW NA represented that the vehicles have characteristics and benefits that they do not have, as described herein;
- b. In violation of Civil Code § 1770(a)(7), BMW NA represented that the vehicles



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- are of a particular standard, quality, or grade when they are not, as described herein;
- c. In violation of Civil Code § 1770(a)(9), BMW NA advertised the vehicles without an intent to sell them as advertised, as described herein;
 - d. In violation of Civil Code § 1770(a)(14), BMW NA misrepresented that a transaction confers or involves legal rights, obligations, or remedies of consumers when it does not;
 - e. In violation of Civil Code § 1770(a)(18), BMW NA represented that the vehicles were supplied in accordance with previous representations when they were not;
 - f. In violation of Civil Code § 1770(a)(19), BMW NA unlawfully inserted an unconscionable provision in the contract to purchase or lease the Class Vehicles by inserting into such contracts provisions which purport to cause the consumers to waive certain rights and/or benefits provided by law to obtain a repair or a retrofit of an inherent defect, even though the provisions do not contain a clear statement and consent to such a waiver.

The representations and advertisements included statements that the vehicles were or would be free from defects when sold or leased, that they were safe, that their safety and quality were much better than those of other vehicles, and that they were built to exceptional standards.

Furthermore, both the Federal Magnuson-Moss Federal Warranty Act, 15 U.S.C. § 2301, *et seq.*, and the Song-Beverly Consumer Warranty Act (also known as the “Lemon Law”) provide important protections for aggrieved consumers. By example, California Civil Code § 1790, *et seq.*, provides:

If the manufacturer or its representative in this state does not service or repair the goods to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either replace the goods or reimburse the buyer in an amount equal to the purchase price... (CA Civ. Code § 1793.2(d)(1)).

What constitutes a “reasonable number of attempts” is a question of fact and must be determined on a case by case basis. Both the Magnuson-Moss Federal Warranty Act and the Song-Beverly Consumer Warranty Act also provide remedies for a violation of the manufacturer’s duty to repurchase a defective consumer product, including a civil penalty and payment of a consumer’s reasonable attorney’s fees and costs based on actual time expended.

Moreover, BMW NA and its authorized dealerships violated the CA Business and Professions Codes 17200 and 17500, both through the above-outlined violations and by:

- a) ~~Falsely representing, concealing, and/or failing to disclose to Class Members that the vehicles were defective in that they have a dangerous system;~~
- b) Falsely advising Class Members that the non-conformities exhibited by the vehicles are in fact normal and do not constitute a defect; and



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- c) Actively engaging in a custom and practice of encouraging the failure to and/or failing to document complaints by Class Members regarding the non-conformities exhibited by the Class Vehicles.

CLRA Demand on Behalf of the Class

Given the foregoing, demand is hereby made as follows:

1. That BMW NA repair and correct the defective condition, that the work include correction of the SCA, including, but not limited to implementing sensors that will stop the operation of the system when there is an object between the door openings;
2. That BMW NA conduct tests of the Class Vehicles sufficient to assure that the SCA has truly been corrected;
3. That the repairs and corrections be performed for all members of the Class, whether or not they have complained of the foregoing nonconformities;
4. That BMW NA do these things in such a way that the owners and lessees of these vehicles bear no charges or expenses;
5. That BMW NA reimburse the members of the Class for expenses they have incurred because of the defective condition, including but not limited to expense of repairs, inspections, and replacement parts and consequential damages;
6. That BMW NA pay the members of the Class the difference between what their vehicles were and are worth free of the defective condition, and what they were and are worth with the existence of the condition, including those members who have since sold or otherwise disposed of their vehicles;
7. That in the meanwhile BMW NA implement a program that will allow purchasers and lessees of new vehicles to opt out of having SCA installed on their vehicles.
7. That BMW NA pay the members of the Class all other damages, restitution and losses caused by the defective condition; and
8. That BMW NA offer all remedies to members of the Class pursuant to the Federal Magnuson-Moss Federal Warranty Act, 15 U.S.C. § 2301, *et seq.*, and the Song-Beverly Consumer Warranty Act.

Thank you for your attention to this matter.

Very truly yours,

Hovanes Margarian
Attorney At Law

7011 3500 0003 1873 9099

U.S. Postal Service...
CERTIFIED MAILTM RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$ 0.485
Certified Fee	3.45
Return Receipt Fee (Endorsement Required)	2.80
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$6.735

Postmark
Here

Sent To BMW of North America, LLC CT Corp
 Street, Apt. No.,
 or PO Box No. 818 W Seventh Street, 2nd floor
 City, State, ZIP+4 Los Angeles CA 90017

PS Form 3800, August 2006

See Reverse for Instructions

7011 3500 0003 1873 9075

U.S. Postal Service...
CERTIFIED MAILTM RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$ 0.485
Certified Fee	3.45
Return Receipt Fee (Endorsement Required)	2.80
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 6.735

Postmark
Here

Sent To BMW of North America, LLC
 Street, Apt. No.,
 or PO Box No. 300 Clarent Ridge Rd.
 City, State, ZIP+4 Woodcliff Lake, NJ 07677-7788

PS Form 3800, August 2006

See Reverse for Instructions

7011 3500 0003 1873 9082

U.S. Postal Service...
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$ 0.485
Certified Fee	3.45
Return Receipt Fee (Endorsement Required)	2.80
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 6.735

Postmark
Here

Sent To BMW of North America, LLC
 Street, Apt. No.,
 or PO Box No. P.O. Box 1227
 City, State, ZIP+4 Westwood N.J.

PS Form 3800, August 2006

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
BMW of North America, LLC
c/o CT Corporation System
818 W. Seventh Street, 2nd Floor
Los Angeles, CA 90017

2. Article Number
 (Transfer from service label)

7011 3500 0003 1873 9099

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee
 B. Received by (Printed Name) C. Date of Delivery
10/1/04
 D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

BMW of North America, LLC
 P.O. Box 1227
 Westwood, NJ 07677

2. Article Number

(Transfer from service label)

7011 3500 0003 1873 9082

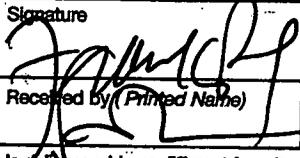
PS Form 3811, February 2004

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X



- Agent
- Addressee

B. Received by (Printed Name)

C. Date of Delivery

10/2/05

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type

- Certified Mail Express Mail
- Registered Return Receipt for Merchandise
- Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

BMW of North America, LLC
 Customer Relations
 300 Chestnut Ridge Rd.
 Woodcliff Lake, NJ 07677-7731

2. Article Number

(Transfer from service label)

7011 3500 0003 1873 9075

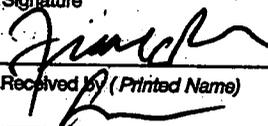
PS Form 3811, February 2004

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X



- Agent
- Addressee

B. Received by (Printed Name)

C. Date of Delivery

10/2/05

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type

- Certified Mail Express Mail
- Registered Return Receipt for Merchandise
- Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes