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15 UNITED STATES DISTRICT COURT  
 16 CENTRAL DISTRICT OF CALIFORNIA  
 17 WESTERN DIVISION

18 BARRY BRAVERMAN, HAKOP  
 19 DEMIRCHYAN, JOEL GREEN,  
 20 CHEVAY JONES, DR. GLYNDA  
 21 ROBERSON, EDÓ TSOAR, PETER  
 22 WEINSTEIN, THOMAS MUNK, PETER  
 23 BERNARD, LAWRENCE CURCIO,  
 24 NAVEEN PARMESHWAR, ADEEL  
 25 SIDDIQUI, CHARLES OLSEN,  
 26 ROBERT DESATNIK, ERIC  
 27 WONDERLY, JOHN LINGSWEILER,  
 28 STEVE RIDGES, and BRANDON  
 REDMOND,

Plaintiffs,

v.

BMW OF NORTH AMERICA, LLC, a  
 Delaware Limited Liability Company, and  
 BMW AG, a corporation organized under  
 the laws of Germany,

Defendants.

No. 8:16-cv-00966-BRO-SS

**FIRST AMENDED  
 CONSOLIDATED CLASS  
 ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

**TABLE OF CONTENTS**

**Page**

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

I. INTRODUCTION..... 1

II. FACTUAL ALLEGATIONS..... 4

    A. The Technological Challenges Posed by Enhancing the Range on Electric Vehicles ..... 4

    B. BMW’s REx Technology..... 5

    C. BMW NA Falsely Marketed Its i3 REx Option in Collaboration With, and At the Direction of, BMW AG..... 8

    D. BMW Violated the Motor Vehicle Safety Act ..... 12

    E. BMW AG and BMW NA Profited from Their Fraud ..... 14

    F. BMW’s False Advertising and Fraud Has Profoundly Harmed Owners of Affected Vehicles ..... 15

III. JURISDICTION ..... 17

IV. VENUE..... 17

V. PARTIES ..... 18

    A. California Plaintiffs..... 18

    B. Colorado Plaintiff..... 26

    C. Florida Plaintiffs..... 27

    D. Georgia Plaintiff..... 29

    E. Illinois Plaintiff ..... 30

    F. Michigan Plaintiff ..... 31

    G. Ohio Plaintiff..... 32

    H. Tennessee Plaintiff..... 33

    I. Texas Plaintiff ..... 34

    J. Utah Plaintiff..... 35

    K. Washington Plaintiff ..... 36

    L. Defendants..... 37

VI. TOLLING OF THE STATUTE OF LIMITATIONS ..... 38

    A. Discovery Rule Tolling ..... 38

1           B.    Estoppel..... 39

2   VII.   CLASS ALLEGATIONS..... 40

3   VIII. VIOLATIONS ALLEGED ..... 45

4           A.    Nationwide ..... 45

5   COUNT I VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT  
       (15 U.S.C. § 2301, *ET SEQ.*)..... 45

6           B.    California..... 47

7   COUNT I VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION  
       LAW (CAL. BUS. & PROF. CODE § 17200, *ET SEQ.*) ..... 47

8   COUNT II VIOLATION OF CALIFORNIA’S CONSUMERS LEGAL  
       REMEDIES ACT (CAL. BUS. & PROF. CODE § 1750, *ET SEQ.*) ..... 48

9   COUNT III VIOLATION OF CALIFORNIA’S FALSE ADVERTISING LAW  
       (CAL. BUS. & PROF. CODE § 17500, *ET SEQ.*) ..... 51

10   COUNT IV FRAUD BY CONCEALMENT ..... 53

11   COUNT V BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY  
       (CAL. COM. CODE § 2314) ..... 56

12   COUNT VI VIOLATION OF THE SONG-BEVERLY CONSUMER  
       WARRANTY ACT FOR BREACH OF IMPLIED WARRANTY OF  
       MERCHANTABILITY (CAL. CIV. CODE §§ 1791.1 & 1792)..... 58

13   COUNT VII VIOLATION OF THE SONG-BEVERLY CONSUMER  
       WARRANTY ACT FOR BREACH OF EXPRESS WARRANTIES  
       (CAL. CIV. CODE §§ 1791.2 & 1793.2(D))..... 60

14           C.    Colorado..... 63

15   COUNT I VIOLATIONS OF THE COLORADO CONSUMER  
       PROTECTION ACT (COLO. REV. STAT. § 6-1-101, *ET SEQ.*)..... 63

16   COUNT II FRAUD BY CONCEALMENT ..... 67

17   COUNT III BREACH OF EXPRESS WARRANTY (COLO. REV. STAT. § 4-  
       2-313)..... 70

18   COUNT IV BREACH OF IMPLIED WARRANTY OF  
       MERCHANTABILITY (COLO. REV. STAT. § 4-2-314)..... 72

19   COUNT V UNJUST ENRICHMENT ..... 74

20           D.    Florida ..... 74

21   COUNT I VIOLATION OF FLORIDA’S UNFAIR & DECEPTIVE TRADE  
       PRACTICES ACT (FLA. STAT. § 501.201, *ET SEQ.*) ..... 74

22

23

24

25

26

27

28

1 COUNT II FRAUD BY CONCEALMENT ..... 78

2 COUNT III BREACH OF IMPLIED WARRANTY OF  
3 MERCHANTABILITY (FLA. STAT. § 672.314) ..... 81

4 COUNT IV UNJUST ENRICHMENT ..... 82

5 E. Georgia ..... 83

6 COUNT I VIOLATION OF GEORGIA’S FAIR BUSINESS PRACTICES  
7 ACT (GA. CODE ANN. § 10-1-390, *ET SEQ.*) ..... 83

8 COUNT II VIOLATION OF GEORGIA’S UNIFORM DECEPTIVE TRADE  
9 PRACTICES ACT (GA. CODE ANN. § 10-1-370, *ET SEQ.*) ..... 84

10 COUNT III FRAUD BY CONCEALMENT ..... 87

11 COUNT IV BREACH OF IMPLIED WARRANTY OF  
12 MERCHANTABILITY (GA. CODE ANN. § 11-2-314) ..... 90

13 F. Illinois ..... 91

14 COUNT I VIOLATION OF THE ILLINOIS CONSUMER FRAUD AND  
15 DECEPTIVE BUSINESS PRACTICES ACT (815 ILL. COMP. STAT.  
16 505/1, *ET SEQ.* & 720 ILL. COMP. STAT. 295/1A) ..... 91

17 COUNT II FRAUD BY CONCEALMENT ..... 95

18 COUNT III BREACH OF EXPRESS WARRANTY (810 ILL. COMP. STAT  
19 5/2-313) ..... 98

20 G. Michigan ..... 101

21 COUNT I VIOLATION OF THE MICHIGAN CONSUMER PROTECTION  
22 ACT (MICH. COMP. LAWS § 445.903, *ET SEQ.*) ..... 101

23 COUNT II FRAUD BY CONCEALMENT ..... 105

24 COUNT III BREACH OF IMPLIED WARRANTY OF  
25 MERCHANTABILITY (MICH. COMP. LAWS § 440.2314) ..... 108

26 COUNT IV UNJUST ENRICHMENT ..... 109

27 H. Ohio ..... 110

28 COUNT I VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT  
(OHIO REV. CODE § 1345.01, *ET SEQ.*) ..... 110

COUNT II FRAUD BY CONCEALMENT ..... 114

COUNT III BREACH OF EXPRESS WARRANTY (OHIO REV. CODE §  
1302.26, *ET SEQ.*) (U.C.C. § 2-313) ..... 117

COUNT V UNJUST ENRICHMENT ..... 119

1 I. Tennessee ..... 120

2 COUNT I VIOLATION OF TENNESSEE CONSUMER PROTECTION ACT  
3 (TENN. CODE § 47-18-101, *ET SEQ.*) ..... 120

4 COUNT II FRAUD BY CONCEALMENT ..... 124

5 COUNT III UNJUST ENRICHMENT ..... 127

6 J. Texas ..... 128

7 COUNT I VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT  
8 (TEX. BUS. & COM. CODE § 17.41, *ET SEQ.*) ..... 128

9 COUNT II FRAUD BY CONCEALMENT ..... 132

10 COUNT III BREACH OF EXPRESS WARRANTY (TEX. BUS. & COM.  
11 CODE § 2.313)..... 135

12 COUNT IV BREACH OF IMPLIED WARRANTY OF  
13 MERCHANTABILITY (TEX. BUS. & COM. CODE § 2.314)..... 138

14 COUNT V UNJUST ENRICHMENT ..... 139

15 K. Utah ..... 139

16 COUNT I VIOLATION OF UTAH CONSUMER SALES PRACTICES ACT  
17 (UTAH CODE ANN. § 13-11-1, *ET SEQ.*)..... 139

18 COUNT II FRAUD BY CONCEALMENT ..... 143

19 COUNT III BREACH OF EXPRESS WARRANTY (UTAH CODE ANN. §  
20 70A-2-313) ..... 146

21 COUNT IV BREACH OF IMPLIED WARRANTY OF  
22 MERCHANTABILITY (UTAH CODE ANN. § 70A-2-314) ..... 149

23 COUNT V UNJUST ENRICHMENT ..... 150

24 L. Washington ..... 151

25 COUNT I VIOLATION OF THE WASHINGTON CONSUMER  
26 PROTECTION ACT (WASH. REV. CODE § 19.86.010, *ET SEQ.*) ..... 151

27 COUNT II FRAUD BY CONCEALMENT ..... 155

28 COUNT III UNJUST ENRICHMENT ..... 158

REQUEST FOR RELIEF ..... 159

DEMAND FOR JURY TRIAL ..... 159

1 Plaintiffs Barry Braverman, Hakop Demirchyan, Joel Green, Chevay Jones, Dr.  
2 Glynda Roberson, Edo Tsoar, Peter Weinstein, Thomas Munk, Peter Bernard,  
3 Lawrence Curcio, Naveen Parmeshwar, Adeel Siddiqui, Charles Olsen, Robert  
4 Desatnik, Eric Wonderly, John Lingsweiler, Steve Ridges, and Brandon Redmond,  
5 individually and on behalf of all others similarly situated (the “Class” as defined  
6 below), allege the following:

7 **I. INTRODUCTION**

8 1. Here is what BMW of North America, LLC (“BMW NA”) promised its  
9 U.S. customers:<sup>1</sup>



20 2. BMW NA also promised that its so-called Range Extender “[e]xtends  
21 driving pleasure” by doubling the range of the i3 from approximately 81 miles to 150  
22 miles.<sup>2</sup>

23 3. On its website, BMW NA describes the Range Extender (“REx”) as a  
24 two-cylinder gas engine that powers a generator, which in turn keeps the battery at a  
25

26 <sup>1</sup> BMW i3 Range & charging, [http://www.bmw.com/com/en/newvehicles/i/i3/2016/showroom/range\\_charging.html](http://www.bmw.com/com/en/newvehicles/i/i3/2016/showroom/range_charging.html) (last accessed Oct. 17, 2016).

27 <sup>2</sup> BMW Range Extender, [http://www.bmw.com/com/en/newvehicles/i/i3/2016/showroom/drive\\_technology.html#rangeextender](http://www.bmw.com/com/en/newvehicles/i/i3/2016/showroom/drive_technology.html#rangeextender) (last accessed Oct. 17, 2016).

1 constant level so that the BMW i3 can continue to drive purely electrically. The Range  
2 Extender switches on automatically when the battery level reaches 6.5%.

3 4. BMW NA, in consultation with and approval from BMW AG, charges a  
4 premium of \$3,850 for a BMW i3 equipped with a REx engine over the base price of  
5 the purely electric model of the i3.

6 5. But rather than a safe, reliable range-extended electric vehicle that could  
7 maintain battery charge and carry drivers and passengers to their destinations with  
8 “plenty of energy left,” BMW NA and BMW AG delivered a vehicle that essentially  
9 becomes a golf cart once the Range Extender feature is activated—suddenly and  
10 terrifyingly decelerating in the middle of fast-moving traffic. During this deceleration,  
11 the brake lights of the vehicle do not engage. Consequently, neither the driver of the  
12 REx vehicle, nor the drivers following the REx vehicle are put on notice of the abrupt  
13 deceleration, thus creating a safety hazard for the vehicle owner and other vehicles on  
14 the road.

15 6. Drivers who experience this phenomenon understandably and reasonably  
16 describe it as “dangerous” and “a hazard,” recalling situations where they were nearly  
17 rear-ended and other vehicles had to swerve around them to avoid a collision.

18 7. Plaintiff Thomas Munk has experienced this multiple times. On a short  
19 trip through Arizona, for example, he was required to use his hazard lights most of the  
20 way, and was almost run over several times by semi-trucks. He illustrates his typical  
21 experience in a video uploaded to YouTube, available at [https://www.youtube.com/  
22 watch?v=RkZMRytD7Gs&feature=youtu.be](https://www.youtube.com/watch?v=RkZMRytD7Gs&feature=youtu.be).

23 8. It is therefore practically impossible to get a range of 150 miles because  
24 the range depends on operating the vehicle in a dangerously under-powered condition.

25 9. Rule No. 1: Manufacturers of any product—from toys to automobiles to  
26 medical devices—must manufacture and sell products that are safe for use. Safety  
27 protects consumers, is essential to long-term brand and model value and corporate  
28 success, and is required by law.

1           10. Rule No. 2: Manufacturers must also tell the complete truth about the  
2 safety of their products. When a safety defect does occur in a consumer product,  
3 manufacturers must disclose to consumers the problem and fully initiate a fulsome  
4 recall to address the problem.

5           11. This case arises because defendants BMW AG and BMW NA  
6 purposefully and intentionally produced, designed, and sold BMW i3 electric cars with  
7 defective Range Extenders that jeopardized the safety of drivers and passengers.

8           12. BMW NA's and BMW AG's deception resulted in very real injury to  
9 owners of the 2014–2016 BMW i3 with optional Range Extender (“Affected  
10 Vehicles”) and to other drivers who share the road with them, including California  
11 residents. By manufacturing and selling cars with defective Range Extenders, BMW  
12 NA and BMW AG defrauded their customers and engaged in unfair competition under  
13 state and federal laws. Substantial diminution in the value of the Affected Vehicles has  
14 occurred now that their deception has been exposed. And the defective Range  
15 Extender has jeopardized the safety of the Affected Vehicles’ owners and lessees.

16           13. Plaintiffs bring this action individually and on behalf of all others who  
17 leased or owned the Affected Vehicles at the time that BMW NA's and BMW AG's  
18 fraud was disclosed. Plaintiffs seek damages, injunctive relief, and equitable relief for  
19 the conduct of BMW NA and BMW AG related to the defective Range Extender, as  
20 alleged in this Amended Consolidated Class Action Complaint. Specifically, Plaintiffs  
21 seek: buyback of the Affected Vehicles; return of the premium they paid for a Range  
22 Extender over the cost of the same model and trim without one; restitution of the  
23 purchase price of their vehicle should any “fix” installed by BMW NA result in a  
24 degradation of performance and/or fuel efficiency; compensation for any additional  
25 sums spent on maintenance as a result of any “fix”; restitution for purchase of  
26 extended warranties that will go unused; and punitive damages for BMWAG's and  
27 BMW NA's knowing fraud that put drivers in California and nationwide at risk.

28



1 **II. FACTUAL ALLEGATIONS**

2 **A. The Technological Challenges Posed by Enhancing the Range on Electric**  
3 **Vehicles**

4 14. According to Tesla founder Elon Musk, “one of the biggest drawbacks to  
5 plug-in cars [is] fear of running out of juice before getting to a destination.” This fear  
6 has been called the “biggest challenge for the electric vehicle sector.”<sup>3</sup>

7 15. Range anxiety—a car buyer’s fear that an electric vehicle will not have  
8 enough charge to reach its destination—is a major deterrent to purchasers of electric  
9 cars.<sup>4</sup> This phenomenon has “historically limited broad consumer adoption of electric  
10 vehicles.”<sup>5</sup> According to CNN, “large-scale sales will depend on the public’s comfort  
11 with always being able to get fuel.”<sup>6</sup>

12 16. “The problem is,” says The Economist, “until there are more high-  
13 voltage charging stations at other peoples’ houses and in public places, range anxiety  
14 means you will not want to stray too far from home—especially on dark, cold, wet  
15 nights, because switching on demisters, heaters, wipers and headlights will all use up  
16 more juice.”<sup>7</sup>

17 17. The most obvious solution is a better battery.<sup>8</sup> But high-powered lithium  
18 ion batteries—the most promising means to extend vehicle range—are not yet ready  
19  
20

21 <sup>3</sup> Jon Hurdle, *Toward a Cure for Range Anxiety*, THE NEW YORK TIMES (Feb. 11,  
22 2013), [http://green.blogs.nytimes.com/2013/02/11/toward-a-cure-for-range-anxiety/  
?\\_r=0](http://green.blogs.nytimes.com/2013/02/11/toward-a-cure-for-range-anxiety/?_r=0).

23 <sup>4</sup> Chris Woodyard, *Tesla CEO Elon Musk vows end to ‘range anxiety’*, USA  
24 TODAY (Mar. 16, 2015), [http://www.usatoday.com/story/money/cars/2015/03/15/elon-  
musk-tesla-range-anxiety/24812353/](http://www.usatoday.com/story/money/cars/2015/03/15/elon-musk-tesla-range-anxiety/24812353/).

25 <sup>5</sup> Tesla Motors, Inc.’s Fiscal Year 2014 Form 10-K, at p. 4.

26 <sup>6</sup> Steven Almas, *The new fear: Electric car ‘range anxiety’*, CNN (Oct. 20, 2010),  
<http://www.cnn.com/2010/US/10/18/ev.charging.stations/?hpt=C1>.

27 <sup>7</sup> *Range anxiety and all that*, THE ECONOMIST (June 8, 2010),  
[http://www.economist.com/blogs/babbage/2010/06/driving\\_electric\\_mini](http://www.economist.com/blogs/babbage/2010/06/driving_electric_mini).

28 <sup>8</sup> Andrew Czyzewski, *How to solve range anxiety*, NEW SCIENTIST (Oct. 19, 2012),  
<http://www.newscientist.com/article/dn22401-how-to-solve-range-anxiety/>.

1 for consumer use because researchers are still developing practical models that reach  
2 the efficiency of theoretical lithium-air batteries.<sup>9</sup>

3 18. In the meantime, electric vehicle manufacturers have taken varied  
4 approaches to easing car buyers' range anxiety. Some, like Tesla's Model S, have  
5 improved battery performance to provide a range of 230 to 253 miles. The Model S  
6 also monitors outside temperature, elevation changes, wind, driving speed, and heat  
7 and A/C use. If the monitoring software in the vehicle determines that the vehicle's  
8 range is insufficient to reach the destination, it will warn the driver well in advance.  
9 And the Model S allows for quick switching of batteries if necessary.

10 19. Other companies, including BMW NA, have offered loaner cars to EV  
11 owners for longer trips until cost-effective, long-range batteries can be developed.<sup>10</sup>

12 **B. BMW's REx Technology**

13 20. Until a battery that can offer extended range is developed, BMW AG has  
14 developed an optional Range Extender for its BMW i3.

15 21. The Range Extender is a 650cc gas-powered engine—essentially a BMW  
16 motorcycle engine—that runs a generator. The i3 without a range extender has a range  
17 of between 80 and 110 miles.

18 22. The REx engine is not designed to drive the wheels directly—it is merely  
19 supposed to produce electricity to charge the battery in order to maintain its charge.

20 23. Unlike another range-extender vehicle—the Chevy Volt—in which the 84  
21 horsepower motor kicks in regularly during the battery's life, the REx feature on U.S.-  
22 sold i3 vehicles is not activated until the initial charge is depleted to approximately  
23 6.5%.

24  
25  
26 <sup>9</sup> Amber Healy, *End of Road Seen for Electric Car Range Anxiety* (Nov. 4, 2015)  
27 (citing Tao Liu et al., *Cycling Li-O<sub>2</sub> batteries via LiOH formation and decomposition*,  
SCIENCE (Oct. 30, 2015)).

28 <sup>10</sup> *BMW I – Flex Mobility*, BMW USA (Jan. 12, 2015), <https://youtu.be/uecysSIfoio?list=PLEC63D2C2050DA7D6>.

1           24. On information and belief, when designing the REx feature on the i3—  
2 well before the release of the 2014 model year—BMW AG understood that under  
3 certain conditions, activation of the REx feature at 6.5% remaining charge would be  
4 too late for the small engine to maintain the charge and normal driving performance of  
5 the vehicle.

6           25. With that in mind, BMW AG added an option for drivers to activate the  
7 Range Extender earlier—when the charge was 75% or less:<sup>11</sup>



17           26. On information and belief, well before the release of the 2014 model year  
18 i3, BMW AG and BMW NA worked jointly and purposefully to remove the *hold-*  
19 *state-of-charge* mode from vehicles offered for sale in the U.S. They did so because  
20 the California Air Resources Board (CARB) has issued a “zero-emission-vehicle  
21 mandate” requiring automakers to allocate 15% of sales to zero-emissions vehicles by  
22 2025. Under this mandate, BMW can earn credits for range-extended i3s as if they  
23 were pure battery-electric cars rather than hybrids—but only so long as the electric  
24 range meets or exceeds the gas range.

25           27. On information and belief, in 2013 or earlier, BMW NA and BMW AG  
26 negotiated with the California Center for Sustainable Energy—which administers the

27

28 <sup>11</sup> Tom Moloughney, *BMW i3 REx*, Inside EVs, <http://insideevs.com/bmw-i3-rex-new-details-us-dealer-training-session/> (last accessed Oct. 17, 2016).

1 clean vehicle rebate program of CARB—to be able to make necessary changes to the  
2 U.S. model of the BMW i3 REx so that it qualifies under the clean vehicle rebate  
3 program.

4 28. The original version of the European BMW i3 REx did not meet this  
5 criteria for approval, so BMW AG modified, or caused to be modified, the software of  
6 the European Model to fit under the special criteria: BMW AG removed the function  
7 enabling a manual start of the Range Extender, limited the use of the fuel tank to  
8 1.9 gallons, and programmed the Range Extender to start only automatically when the  
9 vehicle charge drops to 6.5%. These modifications to the software enabled the U.S.  
10 version of the BMW i3 REx to become eligible for the rebates and tax credits defined  
11 by specific criteria under the federal and California regulations.

12 29. The result is that, while the Chevy Volt and the European-market BMW  
13 i3 are reportedly able to maintain full performance under virtually all conditions, the  
14 U.S.-market BMW i3 goes into “limp mode,” where the vehicle slows rapidly, cannot  
15 accelerate, and, as some consumers report, does not have functioning brake lights.  
16 This renders the Affected Vehicles inherently unsafe and dangerous for Plaintiffs,  
17 class members, their passenger(s), and persons in other vehicles travelling behind the  
18 REx vehicles on the roadways.

19 30. In 2011, if not before, BMW AG road tested the i3 REx vehicles with the  
20 updated software for the U.S. market to learn about the impact of the changes made  
21 based on the criteria set by the clean vehicle rebate program. Through those tests,  
22 BMW AG gained exclusive knowledge that the U.S.-market BMW i3 REx lost power  
23 when the REx engine was activated, causing sudden, unintended deceleration. BMW  
24 AG shared this information with BMW NA as the distributor of BMW vehicles, their  
25 parts, and software. BMW NA thus learned about the defect before the start of  
26 distribution and sale of each of the BMW i3 REx vehicles.

1 **C. BMW NA Falsely Marketed Its i3 REx Option in Collaboration With, and**  
2 **At the Direction of, BMW AG**

3 31. The BMW i3 Range Extender is marketed specifically to address range  
4 anxiety.

5 32. BMW NA conducts its advertising through its website, brochures, and  
6 dealer communications in consultation with, and at the direction of, BMW AG.

7 33. BMW NA's website is national in scope and available at all hours of the  
8 day to anyone with access to the Internet.

9 34. BMW NA's brochures and dealer communication training materials are  
10 distributed nationwide to its network of more than 300 authorized dealers.

11 35. According to BMW NA's website, the REx option allows vehicle owners  
12 to "breathe a little easier on drives where charging stations are not readily available."<sup>12</sup>

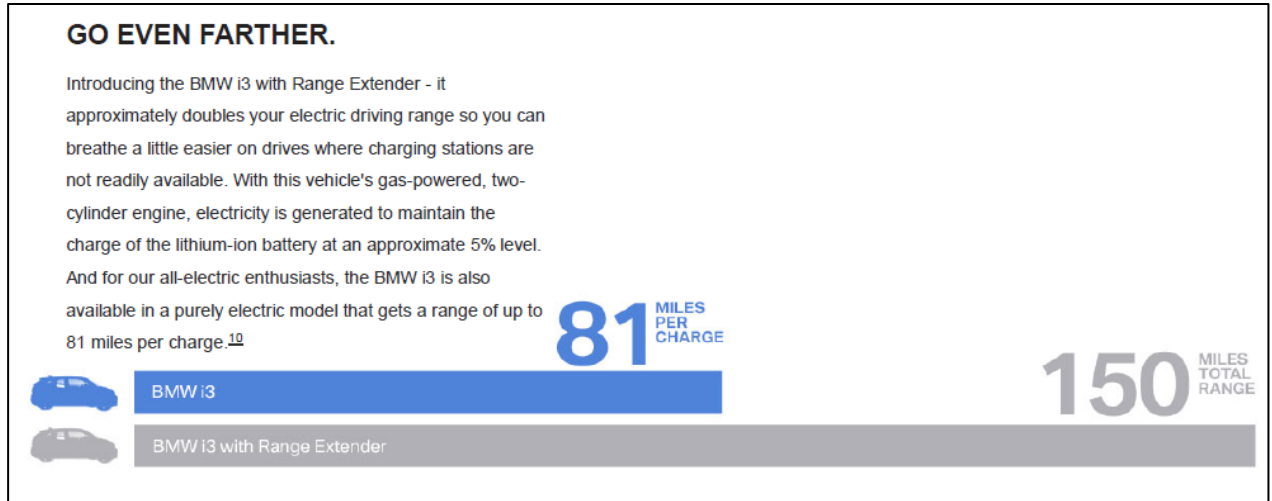
13 36. Likewise, the brochure for the 2014 BMW i3 with Range Extender  
14 reiterates that it "adds peace of mind by helping to eliminate range anxiety when  
15 charging stations are not readily available."

16 37. "The nice part about the i3," says Rich Steinber, Manager of Electric  
17 Vehicle Operations and Strategy for BMW NA, "is that we're also offering as an  
18 option what we call a REx, a range extender, . . . which will essentially allow you to  
19 double the range of the EV."<sup>13</sup>

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27 <sup>12</sup> BMW i3, <http://www.bmwusa.com/bmw/bmwi/i3> (last accessed Oct. 17, 2016).

28 <sup>13</sup> *BMW i3. Born Electric*, BMW USA (Dec. 1, 2011), [https://youtu.be/Dk6\\_kCQtdNE?list=PL39D68E2F790A6865](https://youtu.be/Dk6_kCQtdNE?list=PL39D68E2F790A6865).

1 38. BMW NA broadly boasted about the performance of the i3 coupled with  
 2 the Range Extender. On its website, BMW uses a graphic to illustrate its claim that the  
 3 Range Extender extends the range from approximately 81 miles per charge to 150  
 4 miles per charge.<sup>14</sup>



13 39. BMW NA further promises customers that the BMW i3 Range Extender,  
 14 when activated, “maintains the charge level of the high-voltage battery at a constant  
 15 level.”<sup>15</sup>

16 40. And in the Technical Specification for the BMW i3, BMW NA claimed  
 17 that the range in everyday driving for the i3 with “Range Extender” is between 130<sup>16</sup>  
 18 and 140<sup>17</sup> miles farther than the i3 without the optional “Range Extender.”

19 41. But neither BMW NA nor BMW AG tell consumers that when the Range  
 20 Extender is activated, the charge level of the battery can drop well below 6.5%—  
 21

22 \_\_\_\_\_  
 23 <sup>14</sup> BMW i3, <http://www.bmwusa.com/vehicles/bmwi/i3.html> (last accessed May 23, 2016).

24 <sup>15</sup> BMW i3 Range Extender, [http://www.bmw.com/com/en/newvehicles/i/i3/2016/showroom/drive\\_technology.html#rangeextender](http://www.bmw.com/com/en/newvehicles/i/i3/2016/showroom/drive_technology.html#rangeextender).

25 <sup>16</sup> *Technical Specifications for the BMW i3 (94Ah)*, valid from 07/2016, available at  
 26 <https://www.press.bmwgroup.com/global/article/detail/T0259598EN/technical-specifications-for-the-bmw-i3-94ah-valid-from-07/2016?language=en>.

27 <sup>17</sup> *Specifications of the BMW i3*, valid from 03/2014, available at <https://www.press.bmwgroup.com/global/article/detail/T0189822EN/specifications-of-the-bmw-i3-valid-from-03/2014>.  
 28

1 sometimes as low as 1% or 2%. And the vehicle cannot maintain the speed and  
2 performance consistent with normal or safe operation.

3 42. As a result, the vehicle enters a harrowing “limp mode,” a sudden, severe,  
4 and dangerous loss in power, because the Range Extender does not produce enough  
5 power for the vehicle to maintain normal performance.

6 43. For example, if the vehicle is traveling uphill and the battery reaches  
7 approximately 6.5%, thereby activating the Range Extender, the battery charge will  
8 drop and the speed of the vehicle will suddenly and rapidly decrease. Likewise, if the  
9 vehicle has an increased load of passengers and the battery reaches approximately  
10 6.5%, thereby activating the Range Extender, the battery charge will drop and the  
11 speed of the vehicle will suddenly and rapidly decrease.

12 44. Plaintiffs have experienced such a loss in power. Plaintiff Dr. Roberson,  
13 for example, experiences “limp mode” frequently, having to use hazard lights because  
14 her vehicle slows to a dangerously low speed. And once, in the summer of 2015,  
15 plaintiff Joel Green was driving on a two-lane freeway at approximately 75 mph. After  
16 just a few minutes of driving in the Range Extender mode, his vehicle’s power  
17 appeared to abruptly cut out. Mr. Green’s vehicle speed was suddenly reduced to  
18 35 mph no matter how much he tried to engage the vehicle accelerator. Due to this  
19 drastic reduction in speed, another driver behind him blasted his vehicle’s horn and  
20 nearly rear-ended Mr. Green.

21 45. Dr. Roberson’s and Mr. Green’s experiences are by no means isolated;  
22 other consumers have had similar experiences. In fact, there are blogs and other  
23 websites where consumers have complained of the exact same defect.

24 46. For example, as early as October 2014, Consumer Reports published an  
25 article calling the BMW i3 REx “the little engine that could.”<sup>18</sup> In that article, a BMW  
26

27 <sup>18</sup> *BMW i3 Range Extender Has the Little Engine That Could, Testing Shows*,  
28 CONSUMER REPORTS (Oct. 9, 2014), <http://www.consumerreports.org/cro/news/2014/10/bmw-i3-has-the-little-engine-that-could/index.htm>.

1 NA spokesperson acknowledged the problem and promised a software update in the  
2 spring of 2014. The articles states, “Recently, one of our drivers tromped on the pedal  
3 to pass a truck on a hilly two-lane highway. The i3 began to lose power without  
4 warning, subjecting the driver to more exposure in the oncoming lane.”<sup>19</sup> And  
5 Autoconnectedcar.com published a review titled, “Why I’m Returning my BMW i3  
6 After Three Months,” addressing the same problem—the inability of the i3 REx model  
7 to maintain performance while the Range Extender is engaged. “[T]he last straw,”  
8 describes the reviewer, “came when I was driving back from the Inland Empire, I was  
9 in the fast lane on the freeway. I ran out of battery power and the gasoline extension  
10 started. I couldn’t keep up with traffic and I had to pull over.”<sup>20</sup>

11 47. Likewise, the database maintained by the National Highway Traffic  
12 Administration (NHTSA) contains similar complaints by consumers detailing  
13 harrowing “limp mode” experiences:

14 I WAS TRAVELING DOWN A FREEWAY AT 75 MPH  
15 USING MY ELECTRIC CAR. AS THE BATTERY WAS  
16 ALMOST OUT OF JUICE, I KNEW THE FUEL RANGE  
17 EXTENDER WOULD KICK IN. HOWEVER, WHEN THE  
18 EXTENDER KICKED IN, MY MPH IMMEDIATELY  
19 STARTED TO DROP. WITHIN THE 15 SECONDS, I  
20 WAS DOWN TO 35 MPH FROM THE 75  
21 I WAS TRAVELING. I HAD THE ACCELERATOR  
22 FLOORED, BUT COULD NOT GET ANY POWER TO  
23 KEEP UP WITH THE FLOW OF TRAFFIC . . . . THANK  
24 GOODNESS THERE WAS NOT A CAR FOLLOWING  
25 TO CLOSE OR A SEMI TRUCK. I WOULD BE DEAD  
26 OR IN A SERIOUS ACIDENT IF THERE WAS.<sup>21</sup>

27 TEST DRIVING THIS BMW I3, I NOTICED THE REX  
28 RANGE EXTENDER ENGINE WAS DANGEROUSLY  
SLOW. THE 34 HP SCOOTER ENGINE IS A HAZARD  
IN TRAFFIC. I ALSO NOTICED THE BRAKE LIGHTS

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<sup>19</sup> *Id.*

<sup>20</sup> *Review: Why I’m Returning my BMW i3 after Three Months*, AUTO CONNECTED CAR NEWS (Apr. 12, 2015), <http://www.autoconnectedcar.com/2015/04/review-why-im-returning-my-bmw-i3-after-three-months/>.

<sup>21</sup> NHTSA Complaint Database, ID No. 10817494.



1                   WOULD NOT COME ON WHEN SLOWING TO A  
2                   STOP.<sup>22</sup>

3                   WITHOUT ANY WARNING FROM THE CAR, I  
4                   EXPERIENCED A SUDDEN AND DRAMATIC  
5                   REDUCTION IN POWER, WITH THE CAR SLOWING  
6                   FROM APPROXIMATELY 50MPH TO 25MPH EVEN  
7                   UNDER FULL THROTTLE. I TURNED ON MY  
8                   HAZARD BLINKERS AS APPROACHING CARS  
9                   HONKED AND SWERVED TO AVOID US. WITH NO  
10                  SHOULDERS, WE HAD TO “LIMP” TO THE NEXT  
11                  TURNOUT. THIS WAS EXTREMELY ALARMING AND  
12                  POTENTIALLY DANGEROUS . . . . MOST SHOCKING  
13                  OF ALL, I SPOKE WITH BMW’S INTERNAL “I  
14                  CONCIERGE” PRODUCT TEAM WHO INFORMED ME  
15                  THAT THIS WAS NORMAL OPERATION FOR THIS  
16                  VEHICLE. I LEARNED THAT THE I3 HAS A SPECIAL  
17                  MODE TO SAFELY DEAL WITH HILLS, BUT THIS  
18                  WAS REMOVED FROM THE US CAR IN ORDER TO  
19                  MAXIMIZE CALIFORNIA “CREDITS.” MONEY  
20                  TRUMPS SAFETY.<sup>23</sup>

21                  48.     BMW has done nothing to correct its false representation about the so-  
22                  called Range Extender. Having spoken about extended range by advertising the  
23                  increase from 80 to 150 miles, and by naming the small engine a *Range Extender* in  
24                  the technical specifications portion of its website, BMW has a created on obligation to  
25                  its consumers to tell the whole truth about the operation of its REx engine. Despite  
26                  knowing that the engine is defective and unsafe, BMW has failed to disclose the defect  
27                  or to correct its false representation.

28                  **D.     BMW Violated the Motor Vehicle Safety Act**

                  49.     The Motor Vehicle Safety Act requires immediate action when a  
                  manufacturer determines or should determine that a safety defect exists. *United States*  
                  *v. General Motors Corp.*, 574 F. Supp. 1047, 1050 (D.D.C. 1983). A safety defect is  
                  defined by regulation to include any defect that creates an “unreasonable risk of  
                  accidents occurring because of the design, construction, or performance of a motor

<sup>22</sup> NHTSA Complaint Database, ID No. 10861225.

<sup>23</sup> NHTSA Complaint Database, ID No. 10676147.

1 vehicle” or “unreasonable risk of death or injury in an accident.” 49 U.S.C.  
2 § 30102(a)(8). Within five days of learning about a safety defect, a manufacturer must  
3 notify NHTSA and provide a description of the vehicles potentially containing the  
4 defect, including “make, line, model year, [and] the inclusive dates (month and year)  
5 of manufacture,” a description of how these vehicles differ from similar vehicles not  
6 included in the recall, and “a summary of all warranty claims, field or service reports,  
7 and other information” that formed the basis of the determination that the defect was  
8 safety related. 49 U.S.C. § 30118(c); 49 C.F.R. § 573.6(b)–(c). Then, “within a  
9 reasonable time” after deciding that a safety issue exists, the manufacturer must notify  
10 the owners of the defective vehicles. 49 C.F.R. §§ 577.5(a), 577.7(a). Violating these  
11 notification requirements can result in a maximum civil penalty of \$15,000,000.  
12 49 U.S.C. § 30165(a)(1).

13 50. Even before the i3 with REx feature was released for sale into the U.S.  
14 marketplace, BMW NA and BMW AG knew that the activation of the small REx  
15 engine at 6.5% creates an unreasonable risk of accidents by causing sudden,  
16 unexpected deceleration.

17 51. BMW NA and BMW AG knew this because vehicle manufacturers,  
18 including BMW NA and BMW AG, do extensive pre-sale testing of their vehicles.  
19 BMW NA and BMW AG engineers are tasked with performing industry-standard tests  
20 called Failure Mode and Effects Analyses (FMEA) to determine what failures may  
21 arise and how to repair and prevent these failures in the future. On information and  
22 belief, BMW AG and BMW NA performed FMEA and related testing and found that  
23 the REx engine could not maintain the charge-level of the battery, the normal  
24 performance of the vehicle, or even the safe operation of the vehicle when activated.

25 52. BMW also performs road tests under virtually all driving conditions.  
26 “The ultimate test for any vehicle,” says BMW NA’s website, “is how it performs on  
27 the road.” BMW NA’s website further claims that its “associates take a long, hard  
28 look at the vehicles we’re producing today in order to take their performance to the

1 next level tomorrow.” Like other manufacturers, BMW NA and BMW AG receive  
2 feedback from employees who test-drive the vehicles in real-world conditions. On  
3 information and belief, BMW NA and BMW AG received pre-sale test results and  
4 feedback from its employees operating the vehicles in real-world driving conditions  
5 that the REx engine could not maintain the charge-level of the battery, the normal  
6 performance of the vehicle, or even the safe operation of the vehicle when activated.

7 53. Knowing that the REx engine could not maintain the charge-level of the  
8 battery, the normal performance of the vehicle, or even the safe operation of the  
9 vehicle when it’s activated at 6.5% battery charge, BMW AG engineers created an  
10 optional *hold state of charge* feature that it made available on the European-market i3  
11 REx vehicles.

12 54. In order to receive a credit under California’s zero-emission vehicle  
13 mandate, BMW NA and BMW AG worked together before the release of the 2014  
14 model year i3 REx to remove the *hold-state-of-charge* feature from i3 REx vehicles  
15 sold in the United States.

16 55. Despite knowing since before the release of the 2014 BMW i3 REx that  
17 the REx engine is a safety hazard, neither BMW NA nor BMW AG have, to date,  
18 complied with the obligations triggered by the Safety Act. BMW NA and BMW AG  
19 are therefore in violation of the Motor Vehicle Safety Act.

## 20 **E. BMW AG and BMW NA Profited from Their Fraud**

21 56. A crucial element in the “success story” of the BMW i3, according to a  
22 BMW AG press release, has been that it is the only EV worldwide with an optional  
23 Range Extender. “In many cases—especially among customers who still had their  
24 reservations about buying an electric car—the choice of the additional small  
25 combustion engine tipped the balance in favour of the BMW i3.”<sup>24</sup>

26 \_\_\_\_\_  
27 <sup>24</sup> BMW Group Press Release, *The BMW i3 turns two* [ ] (Nov. 12, 2015), available  
28 at <https://www.press.bmwgroup.com/global/article/detail/T0242822EN/the-bmw-i3-turns-two-time-for-an-interim-review-in-germany-the-bmw-i3-has-been-the-best-selling-electric-car-since-it-was-launched-in-the-worldwide-ranking-it-stands-third>.

1           57. A November 2014 BMW AG press release confirmed that “Demand for  
2 this electric vehicle, which can optionally be supplied with a range extender, is  
3 outstripping expectations.”<sup>25</sup>

4           58. Installing the defective Range Extender system in the Affected Vehicles  
5 and concealing its defective nature caused consumers to purchase or lease the BMW i3  
6 as opposed to electric or hybrid vehicles with a similar driving range produced by  
7 other companies, giving BMW NA and BMW AG a competitive advantage over other  
8 car manufacturers and distributors.

9           59. The California Office of Transportation and Air Quality/Environmental  
10 Protection Agency provides for a \$7,500 tax credit to consumers of the BMW i3 REx.  
11 The California Air Resources Board classifies the BMW i3 REx as a Transitional Zero  
12 Emission Vehicle (TZEV) and provides for a \$2,500 rebate to consumers of BMW i3  
13 REx.

14           60. Touting these credits while concealing the true range of the BMW i3 REx  
15 allows BMW NA, in consultation with and at the direction of BMW AG, to charge a  
16 substantial premium for the Affected Vehicles. For example, the starting MSRP for a  
17 2016 BMW i3 all-electric vehicle is \$42,400. The starting MSRP for a 2016 BMW i3  
18 with Range Extender is \$46,250, a premium of \$3,850 per Class member for the  
19 Range Extender option.

20 **F. BMW’s False Advertising and Fraud Has Profoundly Harmed Owners of**  
21 **Affected Vehicles**

22           61. BMW NA was primarily responsible for advertising the i3 in the United  
23 States. On information and belief, all of BMW’s advertising for the i3 was conducted  
24 in consultation with and at the direction of BMW AG.

25  
26  
27 <sup>25</sup> BMW Group Press Release, *BMW i3 wins Green Car of the Year Award 2015* []  
28 (Nov. 21, 2014), available at <https://www.press.bmwgroup.com/global/article/detail/T0196751EN/bmw-i3-wins-green-car-of-the-year-award-2015-numerous-accollades-highlight-the-success-of-the-bmw-i3-in-its-first-year-on-the-market>.

1           62. Class members paid large premiums to purchase and lease the Affected  
2 Vehicles. They paid these premiums as a result of BMW NA’s false claims—made in  
3 consultation with and at the direction of BMW AG—that the Range Extender would  
4 double the range of the i3. The difference in the MSRP of the REx model directly and  
5 proportionally increased the agreed-upon cash value of the vehicles, which directly  
6 and proportionally increases the monthly lease and/or purchase, interest, and tax  
7 payments. Class members were harmed from the day they drove their Affected  
8 Vehicle off the lot because they did not get what they paid for.

9           63. In addition, as a direct result of the disclosure of the Range Extender  
10 defect, Affected Vehicles have sharply decreased in value and are essentially  
11 unsalable. Each Class member therefore suffered a direct pecuniary loss in the form of  
12 the decreased value of their Affected Vehicle.

13           64. The loss in value is particularly acute and affects Class members because  
14 they do not want to own unsafe cars that cannot maintain battery charge and cannot  
15 reach their intended destination. Extended range was the core of BMW NA’s  
16 marketing efforts and a driving factor in purchase decisions. Class members want to  
17 sell their Affected Vehicles but they cannot do so without incurring substantial losses.

18           65. Moreover, many Class members purchased their vehicles with financing  
19 in the form of car loans or leases. The drop in value of Affected Vehicles has caused  
20 their financing to be underwater, meaning that the Class members will have to pay  
21 money over and above whatever they can sell their vehicle for.

22           66. In addition, many Class members purchased very expensive extended  
23 warranties for their Affected Vehicles, intending to own the vehicles for many years  
24 beyond the initial warranty. However, as a result of the Range Extender defect, Class  
25 members no longer want to own the Affected Vehicles and when they sell them, in  
26 addition to losses from the vehicles being worth much less as a result of the defect,  
27 they will lose the value of the extended warranties that they purchased.

28

1           67. Further compounding the harm to Class members is that as of the date of  
2 this filing, neither BMW NA nor BMW AG has provided guidance directly to  
3 customers or to their dealer network. Concerned owners of Affected Vehicles have  
4 been told absolutely nothing about what will happen to their cars, what BMW intends  
5 to do, or what owners should do. Instead, calls to dealers and BMW NA itself either  
6 go unanswered or are answered with “don’t use the REx feature.”

7           68. As a result of BMW NA’s and BMW AG’s unfair, deceptive, and/or  
8 fraudulent business practices and their failure to disclose that the defective Range  
9 Extender fails to extend range, and rather puts the vehicle in a dangerous “limp  
10 mode,” owners and/or lessees of the Affected Vehicles have suffered losses in money  
11 and/or property. Had Plaintiffs and Class members known of the defect at the time  
12 they purchased or leased their Affected Vehicles, they would not have purchased or  
13 leased those vehicles, or would have paid substantially less for the vehicles than they  
14 did.

15           69. The Affected Vehicles’ loss in value and both BMW NA’s and BMW  
16 AG’s ineffective response to their customers is particularly acute because Class  
17 members do not want to own cars that enter “limp mode” and cannot safely reach their  
18 intended destination. Range was the core of BMW NA’s marketing efforts, directed by  
19 BMW AG, and a driving factor in Class members’ purchase decisions.

### 20                               **III. JURISDICTION**

21           70. This Court has subject matter jurisdiction pursuant to the Class Action  
22 Fairness Act of 2005, 28 U.S.C. § 1332(d), because the proposed Class consists of 100  
23 or more members; the amount in controversy exceeds \$5,000,000, exclusive of costs  
24 and interest; and minimal diversity exists. This Court also has supplemental  
25 jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

### 26                               **IV. VENUE**

27           71. Venue is proper in this District under 28 U.S.C. § 1391 because a  
28 substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in

1 this District. Plaintiff Dr. Glynda Roberson resides in this District and purchased her  
2 Affected Vehicle in this District. BMW has marketed, advertised, sold, and leased the  
3 Affected Vehicles within this District.

4 **V. PARTIES**

5 **A. California Plaintiffs**

6 72. Plaintiff Barry Braverman is a resident of Scotts Valley, California. Mr.  
7 Braverman leased a 2016 BMW i3 with Range Extender at Stevens Creek BMW in  
8 Santa Clara, California, on February 20, 2016. He leased the vehicle because of its  
9 claimed range of 150 miles. Mr. Braverman believed that BMW's i3 would be a good  
10 value because of its extended range. He leased the vehicle after reviewing BMW's  
11 website touting the REx feature and claiming that the range of the i3 REx is extended  
12 to 150 miles. Mr. Braverman relied on these representations when leasing the BMW i3  
13 with the Range Extender option. Neither BMW NA's website nor its authorized dealer  
14 representatives told Mr. Braverman that the vehicle could not maintain normal driving  
15 performance, speed, or battery charge under certain driving conditions while the REx  
16 engine was activated. Nor did any BMW NA or BMW AG representative tell Mr.  
17 Braverman that the Range Extender could jeopardize his safety by dangerously  
18 slowing his vehicle in highway traffic. Had BMW NA and BMW AG disclosed said  
19 information on the BMW website or through their network of dealer representatives,  
20 Mr. Braverman would have learned about the power loss prior to entering the lease  
21 and would not have leased the vehicle, or would have paid less for it. Mr. Braverman  
22 still leases his 2016 BMW i3 with Range Extender. Unknown to Mr. Braverman at the  
23 time the vehicle was leased, the vehicle was equipped with a defective Range  
24 Extender that caused the vehicle to go into "limp mode" when the Range Extender  
25 was activated. The defect in the Range Extender has caused Mr. Braverman out-of-  
26 pocket losses, future attempted repairs, loss of warranty value, and diminished value  
27 of his vehicle. BMW knew that the defective Range Extender put the vehicle in "limp  
28

1 mode” and did not effectively extend its range or maintain the state of battery charge,  
2 but did not disclose this defect to Mr. Braverman.

3 73. Plaintiff Hakop Demirchyan is a resident of Los Angeles County,  
4 California. On March 8, 2015, Mr. Demirchyan leased a 2014 BMW i3 with Range  
5 Extender from Pacific BMW in Valencia, California. He leased the vehicle because of  
6 its claimed range of 150 miles. Mr. Demirchyan believed that BMW’s i3 would be a  
7 good value because of its extended range. He leased the vehicle after reviewing  
8 representations on BMW NA’s website where he read about the difference in range of  
9 the fully electric BMW i3 model and the BMW i3 REx model. Mr. Demirchyan read  
10 on BMW NA’s website that the model with the range extender has longer driving  
11 range per charge than the model without the range extender. On March 8, 2015,  
12 immediately before entering the lease, Mr. Demirchyan discussed the differences  
13 between the driving range of BMW i3 REx and the fully electric BMW i3 with the  
14 salespeople at Pacific BMW, an authorized BMW dealer and repair facility. Neither  
15 BMW’s website nor its authorized dealer representatives told Mr. Demirchyan that the  
16 vehicle could not maintain normal driving performance, speed, or battery charge under  
17 certain driving conditions while the REx engine was activated. Nor did any BMW  
18 representative tell Mr. Demirchyan that the Range Extender could jeopardize his  
19 safety by dangerously slowing his vehicle in highway traffic. Mr. Demirchyan relied  
20 on these representations and omissions when leasing the BMW i3 with the Range  
21 Extender option. Had BMW NA and BMW AG disclosed said information on the  
22 BMW website or through their network of dealer representatives, Mr. Demirchyan  
23 would have learned about the power loss prior to entering the lease and would not  
24 have leased the vehicle, or would have paid less for it. Mr. Demirchyan still leases his  
25 BMW i3 with Range Extender. Unknown to Mr. Demirchyan at the time the vehicle  
26 was leased, the vehicle was equipped with a defective Range Extender that caused the  
27 vehicle to go into “limp mode” when the Range Extender was activated. Since leasing  
28 the vehicle, Mr. Demirchyan has experienced “limp mode” on both steep terrain and



1 on flat surfaces. In less than six (6) months and 7,000 miles of using the vehicle,  
2 Mr. Demirchyan experienced the defect when his BMW i3 REx suddenly decelerated  
3 and was unable to accelerate and to maintain speeds above 35-40 mph. The defect in  
4 the Range Extender has caused Mr. Demirchyan out-of-pocket losses, future attempted  
5 repairs, loss of warranty value, and diminished value of the vehicle. BMW knew that  
6 the defective Range Extender put the vehicle in “limp mode” and did not effectively  
7 extend its range or maintain the state of battery charge, but did not disclose this defect  
8 to Mr. Demirchyan, so Mr. Demirchyan leased the vehicle on the reasonable, but  
9 mistaken, belief that the Range Extender extended the normal performance of the  
10 vehicle to 150 miles. Mr. Demirchyan has attempted to resolve this issue with BMW  
11 with no success. Immediately after experiencing the power loss, Mr. Demirchyan  
12 presented his vehicle to a BMW authorized dealer while the vehicle was still under  
13 BMW NA’s express warranty coverage period. On the first documented repair attempt  
14 of the power loss defect, which occurred on August 8, 2015, with 6,160 miles on the  
15 odometer, Pacific BMW—the authorized BMW dealer where Mr. Demirchyan  
16 presented his vehicle for repairs—stated that it could not duplicate Mr. Demirchyan’s  
17 concern and that the vehicle was operating as designed. On the second documented  
18 repair attempt of the defect, which occurred on August 14, 2015, with 6,328 miles on  
19 the odometer, Pacific BMW submitted an online inquiry to BMW NA technicians  
20 through BMW’s internal PUMA issue reporting and resolution system. BMW NA’s  
21 technicians responded to the inquiry by stating that the vehicle was operating as  
22 designed and provided Pacific BMW with an “Operating Strategy Document” to  
23 “Better explain vehicle operation” to Mr. Demirchyan. Thus, despite several repeated  
24 attempts to repair the power loss defect, BMW NA, through its authorized dealers,  
25 refused and/or were unwilling to repair the vehicle, within a reasonable number of  
26 attempts.

27 74. Plaintiff Joel Green is a resident of Valencia, California. On January 31,  
28 2015, Mr. Green leased a 2014 BMW i3 with Range Extender from Valencia BMW in

1 Valencia, California. He leased the vehicle because of its claimed range of 150 miles.  
2 Mr. Green believed that BMW's i3 would be a good value because of its extended  
3 range. He leased the vehicle after reviewing representations on BMW's website at the  
4 webpages that contained both a general overview of the BMW i3, which claimed that  
5 the REx feature extended the range of the i3 from 81 miles on the vehicle's electric  
6 battery alone to 150 miles using the fuel-powered Range Extender, and the technical  
7 specifications, which labeled the small motor as a "Range Extender." Mr. Green relied  
8 on these representations when leasing the BMW i3 with the Range Extender option.  
9 Neither BMW's website nor its authorized dealer representatives told Mr. Green that  
10 the vehicle could not maintain normal driving performance, speed, or battery charge  
11 under certain driving conditions while the REx engine was activated. Nor did any  
12 BMW representative tell Mr. Green that the Range Extender could jeopardize his  
13 safety by dangerously slowing his vehicle in highway traffic. Had BMW NA and  
14 BMW AG disclosed said information on the BMW website or through their network  
15 of dealer representatives, Mr. Green would have learned about the power loss prior to  
16 entering the lease and would not have leased the vehicle, or would have paid less for  
17 it. Mr. Green still leases his BMW i3 with Range Extender. Unknown to Mr. Green at  
18 the time the vehicle was leased, the vehicle was equipped with a defective Range  
19 Extender that caused the vehicle to go into "limp mode" when the Range Extender  
20 was activated. Since leasing the vehicle, Mr. Green has experienced "limp mode" on  
21 both steep terrain and on flat surfaces. The defect in the Range Extender has caused  
22 Mr. Green out-of-pocket losses, future attempted repairs, loss of warranty value, and  
23 diminished value of the vehicle. BMW knew that the defective Range Extender put the  
24 vehicle in "limp mode" and did not effectively extend its range or maintain the state of  
25 battery charge, but did not disclose this defect to Mr. Green, so Mr. Green leased the  
26 vehicle on the reasonable, but mistaken, belief that the Range Extender extended the  
27 normal performance of the vehicle to 150 miles. Mr. Green has attempted to resolve  
28 this issue with BMW with no success. On three separate occasions before the

1 Complaint was filed, Mr. Green contacted his BMW dealership to attempt to fix this  
2 issue. To date, BMW has done nothing to remedy the deceleration defect in  
3 Mr. Green's BMW i3 REx, and his vehicle still experiences the deceleration defect.

4 75. Plaintiff Chevay Jones is a resident of El Cajon, California. On October  
5 14, 2015, Mr. Jones leased a 2015 BMW i3 with Range Extender from El Cajon  
6 BMW in El Cajon, California. He leased the vehicle because of its claimed range of  
7 150 miles. Mr. Jones believed that BMW's i3 would be a good value because of its  
8 extended range. Mr. Jones still leases his BMW i3 with Range Extender. Neither  
9 BMW's website nor its authorized dealer representatives told Mr. Jones that the  
10 vehicle could not maintain normal driving performance, speed, or battery charge under  
11 certain driving conditions while the REx engine was activated. Nor did any BMW  
12 representative tell Mr. Jones that the Range Extender could jeopardize his safety by  
13 dangerously slowing his vehicle in highway traffic. Had BMW NA or BMW AG  
14 disclosed said information on the BMW website or through their network of dealer  
15 representatives, Mr. Jones would have learned about the power loss prior to entering  
16 the lease and would not have leased the vehicle, or would have paid less for it.  
17 Unknown to Mr. Jones at the time the vehicle was leased, the vehicle was equipped  
18 with a defective Range Extender that caused the vehicle to go into "limp mode" when  
19 the Range Extender was activated. Since leasing the vehicle, Mr. Jones has  
20 experienced "limp mode" on both steep terrain and on flat surfaces. The defect in the  
21 Range Extender has caused Mr. Jones out-of-pocket losses, future attempted repairs,  
22 loss of warranty value, and diminished value of his vehicle. BMW knew that the  
23 defective Range Extender put the vehicle in "limp mode" and did not effectively  
24 extend its range or maintain the state of battery charge, but did not disclose this defect  
25 to Mr. Jones, so Mr. Jones leased the vehicle on the reasonable, but mistaken, belief  
26 that the Range Extender extended the normal performance of the vehicle to 150 miles.  
27 Mr. Jones has attempted to resolve this issue with BMW with no success. On multiple  
28 occasions, Mr. Jones contacted his BMW dealership to attempt to fix this issue. To

1 date, nothing has been done to remedy the deceleration defect in Mr. Jones' i3 REx,  
2 and his vehicle still experiences the deceleration defect.

3 76. Plaintiff Dr. Glynda Roberson is a resident of Mira Loma, California.  
4 Dr. Roberson leased a BMW i3 with Range Extender from an authorized BMW  
5 dealership in California. She leased the vehicle because of its claimed range of 150  
6 miles. Dr. Roberson believed that BMW's i3 would be a good value because of its  
7 extended range. She leased the vehicle after reviewing BMW's website and speaking  
8 with BMW dealer representatives, both of whom told her that the REx feature  
9 extended the range of the i3 from 80 to 150 miles. Dr. Roberson relied on these  
10 representations when leasing the BMW i3 with the Range Extender option. Neither  
11 BMW's website nor its authorized dealer representatives told Dr. Roberson that the  
12 vehicle could not maintain normal driving performance, speed, or battery charge under  
13 certain driving conditions while the REx engine was activated. Nor did any BMW  
14 representative tell Dr. Roberson that the Range Extender could jeopardize her safety  
15 by dangerously slowing her vehicle in highway traffic. Had BMW NA and BMW AG  
16 disclosed said information on the BMW website or through their network of dealer  
17 representatives, Dr. Roberson would have learned about the power loss prior to  
18 entering the lease and would not have leased the vehicle, or would have paid less for  
19 it. Dr. Roberson still leases her BMW i3 with Range Extender. Unknown to Dr.  
20 Roberson at the time the vehicle was leased, the vehicle was equipped with a defective  
21 Range Extender that caused the vehicle to go into "limp mode" when the Range  
22 Extender was activated. Since leasing the vehicle, Dr. Roberson has experienced "limp  
23 mode" often. The defect in the Range Extender has caused Dr. Roberson out-of-pocket  
24 losses, future attempted repairs, loss of warranty value, and diminished value of her  
25 vehicle. BMW knew that the defective Range Extender put the vehicle in "limp mode"  
26 and did not effectively extend its range or maintain the state of battery charge, but did  
27 not disclose this defect to Dr. Roberson, so Dr. Roberson leased the vehicle on the  
28 reasonable, but mistaken, belief that the Range Extender extended the normal

1 performance of the vehicle to 150 miles. Had Dr. Roberson known of the defect, she  
2 would have paid less for her vehicle, or would not have leased it at all.

3 77. Plaintiff Edo Tsoar is a resident of Agoura Hills, California. Mr. Tsoar  
4 leased a 2015 BMW i3 with Range Extender at Bob Smith BMW in Calabasas,  
5 California, on January 27, 2016. He leased the vehicle because of its claimed range of  
6 150 miles. Mr. Tsoar believed that BMW's i3 would be a good value because of its  
7 extended range. He leased the vehicle after reviewing BMW's website and speaking  
8 with authorized BMW dealer representatives, both of whom told him that the REx  
9 feature extended the range of the i3 to 150 miles. Mr. Tsoar relied on these  
10 representations when leasing the BMW i3 with the Range Extender option. Neither  
11 BMW's website nor its dealer representatives told Mr. Tsoar that the vehicle could not  
12 maintain normal driving performance, speed, or battery charge under certain driving  
13 conditions while the REx engine was activated. Nor did any BMW representative tell  
14 Mr. Tsoar that the Range Extender could jeopardize his safety by dangerously slowing  
15 his vehicle in highway traffic. Had BMW NA and BMW AG disclosed said  
16 information on the BMW website or through their network of dealer representatives,  
17 Mr. Tsoar would have learned about the power loss prior to entering the lease and  
18 would not have leased the vehicle, or would have paid less for it. Mr. Tsoar still leases  
19 his 2015 BMW i3 with Range Extender. Unknown to Mr. Tsoar at the time the vehicle  
20 was leased, the vehicle was equipped with a defective Range Extender that caused the  
21 vehicle to go into "limp mode" when the Range Extender was activated.

22 Approximately two months after he leased the vehicle, Mr. Tsoar spoke with a  
23 representative at an authorized BMW dealership and requested repair. The BMW  
24 Genius at the dealership told him that there was nothing that BMW could do, and that  
25 BMW would not attempt a repair or terminate the lease. Mr. Tsoar again contacted the  
26 dealership to request repair in February 2016 and was denied. The defect in the Range  
27 Extender has caused Mr. Tsoar out-of-pocket losses, future attempted repairs, loss of  
28 warranty value, and diminished value of his vehicle. BMW knew that the defective

1 Range Extender put the vehicle in “limp mode” and did not effectively extend its  
2 range or maintain the state of battery charge, but did not disclose this defect to  
3 Mr. Tsoar, so Mr. Tsoar leased the vehicle on the reasonable, but mistaken, belief that  
4 the Range Extender extended the normal performance of the vehicle to 150 miles.

5 78. Plaintiff Peter Weinstein is a resident of Corvallis, Oregon. Mr.  
6 Weinstein leased a 2014 BMW i3 with Range Extender at BMW of San Rafael in San  
7 Rafael, California, on April 29, 2015. He leased the vehicle because of its claimed  
8 range of 150 miles. Mr. Weinstein believed that BMW’s i3 would be a good value  
9 because of its extended range. He leased the vehicle after reviewing BMW’s website  
10 and the website of its authorized dealer BMW of San Rafael, both of whom told him  
11 that the REx feature extended the range of the i3 to 150 miles. Mr. Weinstein relied on  
12 these representations when leasing the BMW i3 with the Range Extender option.  
13 Neither BMW’s website nor its authorized dealer representatives told Mr. Weinstein  
14 that the vehicle could not maintain normal driving performance, speed, or battery  
15 charge under certain driving conditions while the REx engine was activated. Nor did  
16 any BMW representative tell Mr. Weinstein that the Range Extender could jeopardize  
17 his safety by dangerously slowing his vehicle in highway traffic. Had BMW NA and  
18 BMW AG disclosed said information on the BMW website or through their network  
19 of dealer representatives, Mr. Weinstein would have learned about the power loss  
20 prior to entering the lease and would not have leased the vehicle, or would have paid  
21 less for it. Mr. Weinstein still leases his 2014 BMW i3 with Range Extender.  
22 Unknown to Mr. Weinstein at the time the vehicle was leased, the vehicle was  
23 equipped with a defective Range Extender that caused the vehicle to go into “limp  
24 mode” when the Range Extender was activated. The defect in the Range Extender has  
25 caused Mr. Weinstein out-of-pocket losses, future attempted repairs, loss of warranty  
26 value, and diminished value of his vehicle. BMW knew that the defective Range  
27 Extender put the vehicle in “limp mode” and did not effectively extend its range, but  
28 did not disclose this defect to Mr. Weinstein, so Mr. Weinstein leased the vehicle on

1 the reasonable, but mistaken, belief that the Range Extender extended the normal  
2 performance of the vehicle to 150 miles. Mr. Weinstein contacted his BMW  
3 dealership to attempt to fix this issue. To date, BMW has done nothing to remedy the  
4 deceleration defect.

5 **B. Colorado Plaintiff**

6 79. Plaintiff Thomas Munk is a resident of Phoenix, Arizona. Mr. Munk  
7 leased a new 2015 BMW i3 with Range Extender at Gebhard BMW in Boulder,  
8 Colorado, in 2015. He leased the vehicle because of its claimed range of 150 miles.  
9 Mr. Munk believed that BMW's i3 would be a good value because of its extended  
10 range. He leased the vehicle after reviewing BMW's website and speaking with  
11 authorized BMW dealer representatives, both of whom told him that the REx feature  
12 extended the range of the i3 to 150 miles. Mr. Munk relied on these representations  
13 when leasing the BMW i3 with the Range Extender option. Neither BMW's website  
14 nor its dealer representatives told Mr. Munk that the vehicle could not maintain  
15 normal driving performance, speed, or battery charge under certain driving conditions  
16 while the REx engine was activated. Nor did any BMW representative tell Mr. Munk  
17 that the Range Extender could jeopardize his safety by dangerously slowing his  
18 vehicle in highway traffic. Had BMW NA and BMW AG disclosed said information  
19 on the BMW website or through their network of dealer representatives, Mr. Munk  
20 would have learned about the power loss prior to entering the lease and would not  
21 have leased the vehicle, or would have paid less for it. Mr. Munk still leases his 2015  
22 BMW i3 with Range Extender. Unknown to Mr. Munk at the time the vehicle was  
23 leased, the vehicle was equipped with a defective Range Extender that caused the  
24 vehicle to go into "limp mode" when the Range Extender was activated. The defect in  
25 the Range Extender has caused Mr. Munk out-of-pocket losses, future attempted  
26 repairs, loss of warranty value, and diminished value of his vehicle. BMW knew that  
27 the defective Range Extender put the vehicle in "limp mode" and did not effectively  
28 extend its range or maintain the state of battery charge, but did not disclose this defect

1 to Mr. Munk, so Mr. Munk leased the vehicle on the reasonable, but mistaken, belief  
2 that the Range Extender extended the normal performance of the vehicle to 150 miles.  
3 Since leasing his vehicle in 2015, Mr. Munk has repeatedly attempted to get an  
4 authorized BMW dealership in Arizona to repair his vehicle, but dealership  
5 representatives have told him on more than two occasions that his BMW i3 REx  
6 operates normally and they will not make any modification or repair.

### 7 **C. Florida Plaintiffs**

8 80. Plaintiff Peter Bernard is a resident of Palm Harbor, Florida. Mr. Bernard  
9 leased a 2015 BMW i3 with Range Extender at Ferman BMW in Palm Harbor,  
10 Florida, on August 31, 2015. He leased the vehicle because of its claimed range of 150  
11 miles. Mr. Bernard believed that BMW's i3 would be a good value because of its  
12 extended range. He leased the vehicle after speaking with an authorized BMW dealer  
13 who told him that the REx feature extended the range of the i3 to 150 miles. Mr.  
14 Bernard relied on these representations when leasing the BMW i3 with the Range  
15 Extender option. Neither BMW's website nor its dealer representatives told Mr.  
16 Bernard that the vehicle could not maintain normal driving performance, speed, or  
17 battery charge under certain driving conditions while the REx engine was activated.  
18 Nor did any BMW representative tell Mr. Bernard that the Range Extender could  
19 jeopardize his safety by dangerously slowing his vehicle in highway traffic. Had  
20 BMW NA and BMW AG disclosed said information on the BMW website or through  
21 their network of dealer representatives, Mr. Bernard would have learned about the  
22 power loss prior to entering the lease and would not have leased the vehicle, or would  
23 have paid less for it. Mr. Bernard still leases his 2015 BMW i3 with Range Extender.  
24 Unknown to Mr. Bernard at the time the vehicle was leased, the vehicle was equipped  
25 with a defective Range Extender that caused the vehicle to go into "limp mode" when  
26 the Range Extender was activated. The defect in the Range Extender has caused Mr.  
27 Bernard out-of-pocket losses, future attempted repairs, loss of warranty value, and  
28 diminished value of his vehicle. BMW knew that the defective Range Extender put the



1 vehicle in “limp mode” and did not effectively extend its range or maintain the state of  
2 battery charge, but did not disclose this defect to Mr. Bernard, so Mr. Bernard leased  
3 the vehicle on the reasonable, but mistaken, belief that the Range Extender extended  
4 the normal performance of the vehicle to 150 miles.

5 81. Plaintiff Lawrence Curcio is a resident of Pompano Beach, Florida.  
6 Mr. Curcio leased a 2015 BMW i3 with Range Extender at Ft. Lauderdale BMW in  
7 Ft. Lauderdale, Florida, on November 7, 2015. He leased the vehicle because of its  
8 claimed range of 150 miles. Mr. Curcio believed that BMW’s i3 would be a good  
9 value because of its extended range. He leased the vehicle after performing extensive  
10 research, which included reviewing representations on BMW’s website claiming the  
11 REx feature extended the range of the i3 to 150 miles. Mr. Curcio relied on these  
12 representations when leasing the BMW i3 with the Range Extender option. Neither  
13 BMW’s website nor its dealer representatives told Mr. Curcio that the vehicle could  
14 not maintain normal driving performance, speed, or battery charge under certain  
15 driving conditions while the REx engine was activated. Nor did any BMW  
16 representative tell Mr. Curcio that the Range Extender could jeopardize his safety by  
17 dangerously slowing his vehicle in highway traffic. Had BMW NA and BMW AG  
18 disclosed said information on the BMW website or through their network of dealer  
19 representatives, Mr. Curcio would have learned about the power loss prior to entering  
20 the lease and would not have leased the vehicle, or would have paid less for it.  
21 Mr. Curcio still leases his 2015 BMW i3 with Range Extender. Unknown to  
22 Mr. Curcio at the time the vehicle was leased, the vehicle was equipped with a  
23 defective Range Extender that caused the vehicle to go into “limp mode” when the  
24 Range Extender was activated. The defect in the Range Extender has caused  
25 Mr. Curcio out-of-pocket losses, future attempted repairs, loss of warranty value, and  
26 diminished value of his vehicle. BMW knew that the defective Range Extender put the  
27 vehicle in “limp mode” and did not effectively extend its range or maintain the state of  
28 battery charge, but did not disclose this defect to Mr. Curcio, so Mr. Curcio leased the

1 vehicle on the reasonable, but mistaken, belief that the Range Extender extended the  
2 normal performance of the vehicle to 150 miles.

3 **D. Georgia Plaintiff**

4 82. Plaintiff Naveen Parmeshwar is a resident of Simpsonville, South  
5 Carolina. Mr. Parmeshwar purchased a 2015 BMW i3 with Range Extender at Critz  
6 Car Dealership in Savannah, Georgia, on March 28, 2016. He purchased the vehicle  
7 because of its claimed range of 150 miles. Mr. Parmeshwar believed that BMW's i3  
8 would be a good value because of its extended range. He purchased the vehicle after  
9 reviewing BMW's website and speaking with authorized BMW dealer representatives,  
10 both of whom told him that the REx feature extended the range of the i3 to 150 miles.  
11 Mr. Parmeshwar relied on these representations when purchasing the BMW i3 with  
12 the Range Extender option. Neither BMW's website nor its dealer representatives told  
13 Mr. Parmeshwar that the vehicle could not maintain normal driving performance,  
14 speed, or battery charge under certain driving conditions while the REx engine was  
15 activated. Nor did any BMW representative tell Mr. Parmeshwar that the Range  
16 Extender could jeopardize his safety by dangerously slowing his vehicle in highway  
17 traffic. Had BMW NA and BMW AG disclosed said information on the BMW website  
18 or through their network of dealer representatives, Mr. Parmeshwar would have  
19 learned about the power loss prior to purchasing his vehicle and would not have  
20 purchased the vehicle, or would have paid less for it. Mr. Parmeshwar still owns his  
21 2015 BMW i3 with Range Extender. Unknown to Mr. Parmeshwar at the time the  
22 vehicle was purchased, the vehicle was equipped with a defective Range Extender that  
23 caused the vehicle to go into "limp mode" when the Range Extender was activated.  
24 The defect in the Range Extender has caused Mr. Parmeshwar out-of-pocket losses,  
25 future attempted repairs, loss of warranty value, and diminished value of his vehicle.  
26 BMW knew that the defective Range Extender put the vehicle in "limp mode" and did  
27 not effectively extend its range, but did not disclose this defect to Mr. Parmeshwar, so  
28

1 Mr. Parmeshwar leased the vehicle on the reasonable, but mistaken, belief that the  
2 Range Extender extended the normal performance of the vehicle to 150 miles.

3 **E. Illinois Plaintiff**

4 83. Plaintiff Adeel Siddiqui is a resident of Hoffman Estates, Illinois.  
5 Mr. Siddiqui leased a 2015 BMW i3 with Range Extender at Elmhurst BMW in  
6 Elmhurst, Illinois, on December 6, 2015. He leased the vehicle because of its claimed  
7 range of 150 miles. Mr. Siddiqui believed that BMW's i3 would be a good value  
8 because of its extended range. He leased the vehicle after reviewing BMW's website  
9 claiming that the REX feature extended the range of the i3 from 80 miles to 150 miles.  
10 Mr. Siddiqui makes frequent weekend trips to the city (Chicago), for groceries, seeing  
11 friends, et cetera. And his plan was to have the REX as a backup for those times when  
12 he was using the vehicle for reasons other than driving to and from work. Mr. Siddiqui  
13 thus relied on BMW's representations when leasing the BMW i3 with the Range  
14 Extender option. Neither BMW's website nor its authorized dealer representatives told  
15 Mr. Siddiqui that the vehicle could not maintain normal driving performance, speed,  
16 or battery charge under certain driving conditions while the REX engine was activated.  
17 Nor did any BMW representative tell Mr. Siddiqui that the Range Extender could  
18 jeopardize his safety by dangerously slowing his vehicle in highway traffic. Had  
19 BMW NA and BMW AG disclosed said information on the BMW website or through  
20 their network of dealer representatives, Mr. Siddiqui would have learned about the  
21 power loss prior to entering the lease and would not have leased the vehicle, or would  
22 have paid less for it. Mr. Siddiqui still leases his 2015 BMW i3 with Range Extender.  
23 Unknown to Mr. Siddiqui at the time the vehicle was leased, the vehicle was equipped  
24 with a defective Range Extender that caused the vehicle to go into "limp mode" when  
25 the Range Extender was activated. The defect in the Range Extender has caused  
26 Mr. Siddiqui out-of-pocket losses, future attempted repairs, loss of warranty value, and  
27 diminished value of his vehicle. BMW knew that the defective Range Extender put the  
28 vehicle in "limp mode" and did not effectively extend its range or maintain the state of

1 battery charge, but did not disclose this defect to Mr. Siddiqui, so Mr. Siddiqui leased  
2 the vehicle on the reasonable, but mistaken, belief that the Range Extender extended  
3 the normal performance of the vehicle to 150 miles. Mr. Siddiqui has presented his  
4 2015 i3 to an authorized BMW dealership for repair and they refused to modify or  
5 repair the REx feature.

6 **F. Michigan Plaintiff**

7 84. Plaintiff Charles Olsen is a resident of Chicago, Illinois. Mr. Olsen  
8 purchased a 2014 BMW i3 with Range Extender at Sharp BMW in Detroit, Michigan,  
9 on August 12, 2014. He purchased the vehicle because of its claimed range of 150  
10 miles. Mr. Olsen believed that BMW's i3 would be a good value because of its  
11 extended range. He purchased the vehicle after reviewing BMW's website and  
12 speaking with authorized BMW dealer representatives, both of whom told him that the  
13 REx feature extended the range of the i3 to 150 miles. Mr. Olsen relied on these  
14 representations when purchasing the BMW i3 with the Range Extender option.  
15 Neither BMW's website nor its dealer representatives told Mr. Olsen that the vehicle  
16 could not maintain normal driving performance, speed, or battery charge under certain  
17 driving conditions while the REx engine was activated. Nor did any BMW  
18 representative tell Mr. Olsen that the Range Extender could jeopardize his safety by  
19 dangerously slowing his vehicle in highway traffic. Mr. Olsen still owns his 2014  
20 BMW i3 with Range Extender. Had BMW NA and BMW AG disclosed said  
21 information on the BMW website or through their network of dealer representatives,  
22 Mr. Olsen would have learned about the power loss prior to purchasing the vehicle and  
23 would not have purchased the vehicle, or would have paid less for it. Unknown to  
24 Mr. Olsen at the time the vehicle was purchased, the vehicle was equipped with a  
25 defective Range Extender that caused the vehicle to go into "limp mode" when the  
26 Range Extender was activated. The defect in the Range Extender has caused  
27 Mr. Olsen out-of-pocket losses, future attempted repairs, loss of warranty value, and  
28 diminished value of his vehicle. BMW knew that the defective Range Extender put the

1 vehicle in “limp mode” and did not effectively extend its range, but did not disclose  
2 this defect to Mr. Olsen, so Mr. Olsen leased the vehicle on the reasonable, but  
3 mistaken, belief that the Range Extender extended the normal performance of the  
4 vehicle to 150 miles.

5 **G. Ohio Plaintiff**

6 85. Plaintiff Robert Desatnik is a resident of Lyndhurst, Ohio. Mr. Desatnik  
7 bought a new 2015 BMW i3 with Range Extender at Classic BMW in Willoughby,  
8 Ohio, in May 2015. He purchased the vehicle because of its claimed range of 150  
9 miles. Mr. Desatnik believed that BMW’s i3 would be a good value because of its  
10 extended range. He purchased the vehicle after speaking with authorized BMW dealer  
11 representatives who told him that the REx feature extended the range of the i3 to 150  
12 miles. Mr. Desatnik relied on these representations when purchasing the BMW i3 with  
13 the Range Extender option. Neither BMW’s website nor its dealer representatives told  
14 Mr. Desatnik that the vehicle could not maintain normal driving performance, speed,  
15 or battery charge under certain driving conditions while the REx engine was activated.  
16 Nor did any BMW representative tell Mr. Desatnik that the Range Extender could  
17 jeopardize his safety by dangerously slowing his vehicle in highway traffic. Had  
18 BMW NA and BMW AG disclosed said information on the BMW website or through  
19 their network of dealer representatives, Mr. Desatnik would have learned about the  
20 power loss prior to purchasing the vehicle and would not have purchased the vehicle,  
21 or would have paid less for it. Mr. Desatnik still owns his 2015 BMW i3 with Range  
22 Extender. Unknown to Mr. Desatnik at the time the vehicle was purchased, the vehicle  
23 was equipped with a defective Range Extender that caused the vehicle to go into “limp  
24 mode” when the Range Extender was activated. The defect in the Range Extender has  
25 caused Mr. Desatnik out-of-pocket losses, future attempted repairs, loss of warranty  
26 value, and diminished value of his vehicle. BMW knew that the defective Range  
27 Extender put the vehicle in “limp mode” and did not effectively extend its range or  
28 maintain the state of battery charge, but did not disclose this defect to Mr. Desatnik, so

1 Mr. Desatnik leased the vehicle on the reasonable, but mistaken, belief that the Range  
2 Extender extended the normal performance of the vehicle to 150 miles. In February  
3 2016, Mr. Desatnik took his vehicle to an authorized BMW dealer for repair, and the  
4 dealer representative told him that there was no issue with the vehicle and that he  
5 would not repair or modify the REX feature.

#### 6 **H. Tennessee Plaintiff**

7 86. Plaintiff Eric Wonderly is a resident of Brentwood, Tennessee.  
8 Mr. Wonderly leased a 2014 BMW i3 with Range Extender at Grayson BMW in  
9 Knoxville, Tennessee, in October 2014. He leased the vehicle because of its claimed  
10 range of 150 miles. Mr. Wonderly believed that BMW's i3 would be a good value  
11 because of its extended range. He leased the vehicle after reviewing BMW's website  
12 and speaking with authorized BMW dealer representatives, both of whom told him  
13 that the REX feature extended the range of the i3 to 150 miles. Mr. Wonderly relied on  
14 these representations when leasing the BMW i3 with the Range Extender option.  
15 Neither BMW's website nor its dealer representatives told Mr. Wonderly that the  
16 vehicle could not maintain normal driving performance, speed, or battery charge under  
17 certain driving conditions while the REX engine was activated. Nor did any BMW  
18 representative tell Mr. Wonderly that the Range Extender could jeopardize his safety  
19 by dangerously slowing his vehicle in highway traffic. Had BMW NA and BMW AG  
20 disclosed said information on the BMW website or through their network of dealer  
21 representatives, Mr. Wonderly would have learned about the power loss prior to  
22 entering the lease and would not have leased the vehicle, or would have paid less for  
23 it. On the street where Mr. Wonderly lives, he can only achieve 15-20 mph when the  
24 REX is operating due to the grade—this is in a 30 mph zone. At least once the REX  
25 activated in the middle of a busy intersection and experienced a lag/loss of power and  
26 the feeling of stalling in the intersection while cars are approaching. Mr. Wonderly  
27 still leases his 2014 BMW i3 with Range Extender. Unknown to Mr. Wonderly at the  
28 time the vehicle was leased, the vehicle was equipped with a defective Range

1 Extender that caused the vehicle to go into “limp mode” when the Range Extender  
2 was activated. The defect in the Range Extender has caused Mr. Wonderly out-of-  
3 pocket losses, future attempted repairs, loss of warranty value, and diminished value  
4 of his vehicle. BMW NA and BMW AG knew that the defective Range Extender put  
5 the vehicle in “limp mode” and did not effectively extend its range or maintain the  
6 state of battery charge, but did not disclose this defect to Mr. Wonderly, so  
7 Mr. Wonderly leased the vehicle on the reasonable, but mistaken, belief that the Range  
8 Extender extended the normal performance of the vehicle to 150 miles.

9 **I. Texas Plaintiff**

10 87. Plaintiff John Lingsweiler is a resident of College Station, Texas.  
11 Mr. Lingsweiler leased a 2015 BMW i3 with Range Extender at BMW of Brazos  
12 Valley, in Bryan, Texas, on February 15, 2016. He leased the vehicle because of its  
13 claimed range of 150 miles. Mr. Lingsweiler believed that BMW’s i3 would be a good  
14 value because of its extended range. He leased the vehicle after speaking with  
15 authorized BMW dealer representatives who told him that the REX feature extended  
16 the range of the i3. Mr. Lingsweiler relied on these representations when leasing the  
17 BMW i3 with the Range Extender option. Neither BMW’s website nor its dealer  
18 representatives told Mr. Lingsweiler that the vehicle could not maintain normal  
19 driving performance, speed, or battery charge under certain driving conditions while  
20 the REX engine was activated. Nor did any BMW representative tell Mr. Lingsweiler  
21 that the Range Extender could jeopardize his safety by dangerously slowing his  
22 vehicle in highway traffic. Had BMW NA and BMW AG disclosed said information  
23 on the BMW website or through their network of dealer representatives,  
24 Mr. Lingsweiler would have learned about the power loss prior to entering the lease  
25 and would not have leased the vehicle, or would have paid less for it. Mr. Lingsweiler  
26 still leases his 2015 BMW i3 with Range Extender. Unknown to Mr. Lingsweiler at  
27 the time the vehicle was leased, the vehicle was equipped with a defective Range  
28 Extender that caused the vehicle to go into “limp mode” when the Range Extender

1 was activated. The defect in the Range Extender has caused Mr. Lingsweiler out-of-  
2 pocket losses, future attempted repairs, loss of warranty value, and diminished value  
3 of his vehicle. BMW knew that the defective Range Extender put the vehicle in “limp  
4 mode” and did not effectively extend its range, but did not disclose this defect to  
5 Mr. Lingsweiler, so Mr. Lingsweiler leased the vehicle on the reasonable, but  
6 mistaken, belief that the Range Extender extended the normal performance of the  
7 vehicle to 150 miles.

8 **J. Utah Plaintiff**

9 88. Plaintiff Steve Ridges is a resident of Rexburg, Idaho. Mr. Ridges leased  
10 a 2015 BMW i3 with Range Extender at BMW of Pleasant Grove in Pleasant Grove,  
11 Utah, on July 31, 2015. He leased the vehicle because of its claimed range of 150  
12 miles. Mr. Ridges believed that BMW’s i3 would be a good value because of its  
13 extended range. He leased the vehicle after reviewing BMW’s website, which claimed  
14 that the REx feature extended maintains the i3’s battery charge level when activated.  
15 Mr. Ridges relied on these representations when leasing the BMW i3 with the Range  
16 Extender option. Neither BMW’s website nor its dealer representatives told  
17 Mr. Ridges that the vehicle could not maintain normal driving performance, speed, or  
18 battery charge under certain driving conditions while the REx engine was activated.  
19 Nor did any BMW representative tell Mr. Ridges that the Range Extender could  
20 jeopardize his safety by dangerously slowing his vehicle in highway traffic. Had  
21 BMW NA and BMW AG disclosed said information on the BMW website or through  
22 their network of dealer representatives, Mr. Ridges would have learned about the  
23 power loss prior to entering the lease and would not have leased the vehicle, or would  
24 have paid less for it. Mr. Ridges still leases his 2015 BMW i3 with Range Extender.  
25 Unknown to Mr. Ridges at the time the vehicle was leased, the vehicle was equipped  
26 with a defective Range Extender that caused the vehicle to go into “limp mode” when  
27 the Range Extender was activated. The defect in the Range Extender has caused  
28 Mr. Ridges out-of-pocket losses, future attempted repairs, loss of warranty value, and



1 diminished value of his vehicle. BMW knew that the defective Range Extender put the  
2 vehicle in “limp mode” and did not effectively extend its range or maintain the state of  
3 battery charge, but did not disclose this defect to Mr. Ridges, so Mr. Ridges leased the  
4 vehicle on the reasonable, but mistaken, belief that the Range Extender extended the  
5 normal performance of the vehicle to 150 miles. Mr. Ridges has presented his vehicle  
6 for repair at a BMW authorized dealership at least three times, starting in October  
7 2015, and BMW representatives have refused to modify or repair the REx defect.

8 **K. Washington Plaintiff**

9 89. Plaintiff Brandon Redmond is a resident of Twin Falls, Idaho. While he  
10 was a resident of Twin Falls, Idaho, Mr. Redmond leased a 2015 BMW i3 with Range  
11 Extender from a dealership in Spokane, Washington, in June 2015. He leased the  
12 vehicle because of its claimed range of 150 miles. Mr. Redmond believed that BMW’s  
13 i3 would be a good value because of its extended range. He leased the vehicle after  
14 reviewing BMW’s website and speaking with authorized BMW dealer representatives,  
15 both of whom told him that the REx feature extended the range of the i3 to 150 miles.  
16 Mr. Redmond relied on these representations when leasing the BMW i3 with the  
17 Range Extender option. Neither BMW’s website nor its dealer representatives told  
18 Mr. Redmond that the vehicle could not maintain normal driving performance, speed,  
19 or battery charge under certain driving conditions while the REx engine was activated.  
20 Nor did any BMW representative tell Mr. Redmond that the Range Extender could  
21 jeopardize his safety by dangerously slowing his vehicle in highway traffic.  
22 Mr. Redmond still leases his BMW i3 with Range Extender. Unknown to  
23 Mr. Redmond at the time the vehicle was leased, the vehicle was equipped with a  
24 defective Range Extender that caused the vehicle to go into “limp mode” when the  
25 Range Extender was activated. The defect in the Range Extender has caused  
26 Mr. Redmond out-of-pocket losses, future attempted repairs, loss of warranty value,  
27 and diminished value of his vehicle. BMW knew that the defective Range Extender  
28 put the vehicle in “limp mode” and did not effectively extend its range or maintain the

1 state of battery charge, but did not disclose this defect to Mr. Redmond, so  
2 Mr. Redmond leased the vehicle on the reasonable, but mistaken, belief that the Range  
3 Extender extended the normal performance of the vehicle to 150 miles.

4 **L. Defendants**

5 90. BMW of North America, LLC (“BMW NA”) is a corporation doing  
6 business in all 50 states (including the District of Columbia) and is organized under  
7 the laws of the Delaware, with its principal place of business located at 300 Chestnut  
8 Ridge Road, Woodcliff Lake, New Jersey.

9 91. Bayerische Motoren Werke Aktiengesellschaft, doing business as BMW  
10 Group and/or BMW AG (“BMW AG”), has its principal place of business in Munich,  
11 Germany. BMW AG is a corporation organized under the laws of Germany and it is  
12 the parent corporation of BMW NA.

13 92. BMW AG is engaged in the business of designing, engineering,  
14 manufacturing, testing, marketing, supplying, selling, and distributing motor vehicles,  
15 including the Affected Vehicles, in the United States.

16 93. BMW AG is and was at all relevant times doing business in a continuous  
17 manner through a chain of distribution and dealers throughout the United States,  
18 including within the Central District of California in the State of California by selling,  
19 advertising, promoting, and distributing BMW motor vehicles, including the Affected  
20 Vehicles.

21 94. BMW AG is the parent of, controls, and communicates with BMW NA  
22 concerning virtually all aspects of the Affected Vehicles distributed in the United  
23 States.

24 95. BMW NA—directed by and in collaboration with BMW AG—develops,  
25 distributes, markets, advertises, and sells BMW-branded goods and vehicles, their  
26 parts, and their software in the United States, which are designed, manufactured, and  
27 developed by its parent company, BMW AG.

28

1           96. BMW NA and BMW AG were and are at all times relevant to the  
2 allegations in this Complaint working in concert under the common objective to  
3 engage in the scheme described in this Complaint. Both BMW NA and BMW AG  
4 were and are the agents of each other and have acted and act for their common goals  
5 and profit. Therefore, all acts and knowledge ascribed to one of BMW NA or BMW  
6 AG are properly imputed to the other. BMW NA and BMW AG are referred to  
7 collectively herein as BMW.

8           97. BMW NA has a system of authorized BMW dealerships throughout the  
9 United States through which it distributes, markets, advertises, and sells BMW-  
10 branded goods and vehicles.

11           98. BMW NA's authorized dealerships are tightly controlled by BMW NA  
12 and are the agents of BMW NA. BMW NA controls the marketing practices of BMW-  
13 authorized dealerships, the repair facilities within those dealerships, and even the  
14 appearance of said dealerships. Additionally, BMW NA trains the personnel at BMW-  
15 authorized dealerships.

16           99. At all times relevant to this action, BMW AG and BMW NA  
17 manufactured, marketed, distributed, sold, leased, and warranted the Affected  
18 Vehicles under the BMW brand name throughout the United States. BMW and/or its  
19 parents, affiliates, and agents designed, manufactured, and installed the defective  
20 Range Extender systems in the Affected Vehicles. BMW and/or its parents, affiliates,  
21 and agents developed and disseminated the owner's manuals and warranty booklets,  
22 advertisements, and other promotional materials relating to the Affected Vehicles.

## 23           **VI. TOLLING OF THE STATUTE OF LIMITATIONS**

### 24           **A. Discovery Rule Tolling**

25           100. Class members had no way of knowing about BMW's defective Range  
26 Extender. Plainly, BMW was intent on expressly hiding its behavior from regulators  
27 and consumers. This is the quintessential case for tolling.  
28

1           101. Within the time period of any applicable statutes of limitation, Plaintiffs  
2 and members of the proposed classes could not have discovered through the exercise  
3 of reasonable diligence that BMW was concealing the conduct complained of herein  
4 and misrepresenting the company's true position with respect to the safety and  
5 performance of its vehicles.

6           102. Within the time period of any applicable statutes of limitation, Plaintiffs  
7 and the other Class members could not have discovered through the exercise of  
8 reasonable diligence that BMW was concealing the Range Extender defect.

9           103. For these reasons, all applicable statutes of limitation have been tolled by  
10 operation of the discovery rule with respect to claims as to all vehicles identified  
11 herein.

12 **B. Estoppel**

13           104. BMW was under a continuous duty to disclose to Plaintiffs and the other  
14 Class members the true character, quality, and nature of the Range Extender in the  
15 vehicles at issue.

16           105. BMW knowingly, affirmatively, and actively concealed the true nature,  
17 quality, and character of the Range Extender in the vehicles at issue.

18           106. Based on the foregoing, BMW is estopped from relying on any statutes of  
19 limitations in defense of this action.

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## VII. CLASS ALLEGATIONS

107. Plaintiffs bring this action pursuant to the provisions of Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, on behalf of themselves and the following proposed classes:

### **Nationwide Class**

All persons or entities who purchased or leased an “Affected Vehicle” before May 17, 2016, and who either (i) still own or lease the Affected Vehicle, or (ii) sold the Affected Vehicle before May 17, 2016. Affected Vehicles include the Model Years 2014–2016 BMW i3 with Range Extender.

### **California Class**

All persons or entities who purchased or leased an “Affected Vehicle” in the state of California before May 17, 2016, and who either (i) still own or lease the Affected Vehicle, or (ii) sold the Affected Vehicle before May 17, 2016. Affected Vehicles include the Model Years 2014–2016 BMW i3 with Range Extender.

### **Colorado Class**

All persons or entities who purchased or leased an “Affected Vehicle” in the state of Colorado before May 17, 2016, and who either (i) still own or lease the Affected Vehicle, or (ii) sold the Affected Vehicle before May 17, 2016. Affected Vehicles include the Model Years 2014–2016 BMW i3 with Range Extender.

### **Georgia Class**

All persons or entities who purchased or leased an “Affected Vehicle” in the state of Georgia before May 17, 2016, and who either (i) still own or lease the Affected Vehicle, or (ii) sold the Affected Vehicle before May 17, 2016. Affected Vehicles include the Model Years 2014–2016 BMW i3 with Range Extender.

### **Florida Class**

All persons or entities who purchased or leased an “Affected Vehicle” in the state of Florida before May 17, 2016, and who either (i) still own or lease the Affected Vehicle, or (ii) sold the Affected Vehicle before May 17, 2016. Affected Vehicles include the Model Years 2014–2016 BMW i3 with Range Extender.

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**Illinois Class**

All persons or entities who purchased or leased an “Affected Vehicle” in the state of Illinois before May 17, 2016, and who either (i) still own or lease the Affected Vehicle, or (ii) sold the Affected Vehicle before May 17, 2016. Affected Vehicles include the Model Years 2014–2016 BMW i3 with Range Extender.

**Michigan Class**

All persons or entities who purchased or leased an “Affected Vehicle” in the state of Michigan before May 17, 2016, and who either (i) still own or lease the Affected Vehicle, or (ii) sold the Affected Vehicle before May 17, 2016. Affected Vehicles include the Model Years 2014–2016 BMW i3 with Range Extender.

**Ohio Class**

All persons or entities who purchased or leased an “Affected Vehicle” in the state of Ohio before May 17, 2016, and who either (i) still own or lease the Affected Vehicle, or (ii) sold the Affected Vehicle before May 17, 2016. Affected Vehicles include the Model Years 2014–2016 BMW i3 with Range Extender.

**Tennessee Class**

All persons or entities who purchased or leased an “Affected Vehicle” in the state of Tennessee before May 17, 2016, and who either (i) still own or lease the Affected Vehicle, or (ii) sold the Affected Vehicle before May 17, 2016. Affected Vehicles include the Model Years 2014–2016 BMW i3 with Range Extender.

**Texas Class**

All persons or entities who purchased or leased an “Affected Vehicle” in the state of Texas before May 17, 2016, and who either (i) still own or lease the Affected Vehicle, or (ii) sold the Affected Vehicle before May 17, 2016. Affected Vehicles include the Model Years 2014–2016 BMW i3 with Range Extender.

**Utah Class**

All persons or entities who purchased or leased an “Affected Vehicle” in the state of Utah before May 17, 2016, and who either (i) still own or lease the Affected Vehicle, or (ii) sold the Affected Vehicle before May 17, 2016. Affected Vehicles include the Model Years 2014–2016 BMW i3 with Range Extender.

1                    **Washington Class**

2                    All persons or entities who purchased or leased an “Affected  
3                    Vehicle” in the state of Washington before May 17, 2016,  
4                    and who either (i) still own or lease the Affected Vehicle, or  
5                    (ii) sold the Affected Vehicle before May 17, 2016. Affected  
6                    Vehicles include the Model Years 2014–2016 BMW i3 with  
7                    Range Extender.

8                    108. Excluded from the Classes are BMW NA and BMW AG, their  
9                    employees, co-conspirators, officers, directors, legal representatives, heirs, successors,  
10                    wholly- or partly-owned, and their subsidiaries and affiliates, BMW dealers, Class  
11                    counsel and their employees, and the judicial officers and their immediate family  
12                    members and associated court staff assigned to this case, all persons who make a  
13                    timely election to be excluded from the Classes; governmental entities; and the judge  
14                    to whom this case is assigned and his/her immediate family.

15                    109. Certification of Plaintiffs’ claims for classwide treatment is appropriate  
16                    because Plaintiffs can prove the elements of their claims on a classwide basis using the  
17                    same evidence as would be used to prove those elements in individual actions alleging  
18                    the same claims.

19                    110. This action has been brought and may be properly maintained on behalf  
20                    of the Class proposed herein under Federal Rule of Civil Procedure 23.

21                    111. Numerosity. Federal Rule of Civil Procedure 23(a)(1): The members of  
22                    the Class are so numerous and geographically dispersed that individual joinder of all  
23                    Class members is impracticable. While Plaintiffs are informed and believe that there  
24                    are many thousands of members of the Class, the precise number of Class members is  
25                    unknown to Plaintiffs, but may be ascertained from BMW NA’s and BMW AG’s  
26                    books and records. Class members may be notified of the pendency of this action by  
27                    recognized, Court-approved notice dissemination methods, which may include U.S.  
28                    Mail, electronic mail, Internet postings, and/or published notice.

                  112. Commonality and Predominance. Federal Rule of Civil Procedure  
23(a)(2) and (b)(3): This action involves common questions of law and fact, which

1 predominate over any questions affecting individual Class members, including,  
2 without limitation:

- 3 a. Whether BMW NA or BMW AG engaged in the conduct  
4 alleged herein;
- 5 b. Whether BMW NA or BMW AG designed, advertised,  
6 marketed, distributed, leased, sold, or otherwise placed  
7 Affected Vehicles into the stream of commerce in the  
8 United States;
- 9 c. Whether the Range Extender system in the Affected  
10 Vehicles contains a safety defect;
- 11 d. Whether BMW NA or BMW AG knew about the defect  
12 in the Range Extender and, if so, how long BMW NA or  
13 BMW AG have known;
- 14 e. Whether BMW NA or BMW AG designed,  
15 manufactured, marketed, and distributed Affected  
16 Vehicles with a defective Range Extender;
- 17 f. Whether BMW NA's or BMW AG's conduct violates  
18 consumer protection statutes, false advertising laws, sales  
19 contracts, warranty laws, and other laws as asserted  
20 herein;
- 21 g. Whether Plaintiffs and the other Class members overpaid  
22 for their Affected Vehicles;
- 23 h. Whether Plaintiffs and the other Class members are  
24 entitled to equitable relief, including, but not limited to,  
25 restitution or injunctive relief; and
- 26 i. Whether Plaintiffs and the other Class members are  
27 entitled to damages and other monetary relief and, if so,  
28 in what amount.

23 113. Typicality. Federal Rule of Civil Procedure 23(a)(3): Plaintiffs' claims  
24 are typical of the other Class members' claims because, among other things, all Class  
25 members were comparably injured through BMW NA's and BMW AG's wrongful  
26 conduct as described above.

27 114. Adequacy. Federal Rule of Civil Procedure 23(a)(4): Plaintiffs are  
28 adequate Class representatives because their interests do not conflict with the interests



1 of the other members of the Class they seek to represent; Plaintiffs have retained  
2 counsel competent and experienced in complex class action litigation; and Plaintiffs  
3 intend to prosecute this action vigorously. The interests of the Class will be fairly and  
4 adequately protected by Plaintiffs and their counsel.

5 115. Declaratory and Injunctive Relief. Federal Rule of Civil Procedure  
6 23(b)(2): BMW NA and BMW AG have acted or refused to act on grounds generally  
7 applicable to Plaintiffs and the other members of the Class, thereby making  
8 appropriate final injunctive relief and declaratory relief, as described below, with  
9 respect to the Class as a whole.

10 116. Superiority. Federal Rule of Civil Procedure 23(b)(3): A class action is  
11 superior to any other available means for the fair and efficient adjudication of this  
12 controversy, and no unusual difficulties are likely to be encountered in the  
13 management of this class action. The damages or other financial detriment suffered by  
14 Plaintiffs and the other Class members are relatively small compared to the burden and  
15 expense that would be required to individually litigate their claims against BMW NA  
16 and BMW AG, so it would be impracticable for the members of the Class to  
17 individually seek redress for BMW NA's and BMW AG's wrongful conduct. Even if  
18 Class members could afford individual litigation, the court system could not.  
19 Individualized litigation creates a potential for inconsistent or contradictory  
20 judgments, and increases the delay and expense to all parties and the court system.  
21 By contrast, the class action device presents far fewer management difficulties, and  
22 provides the benefits of single adjudication, economy of scale, and comprehensive  
23 supervision by a single court.

**VIII. VIOLATIONS ALLEGED**

**A. Nationwide**

**COUNT I**

**VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT  
(15 U.S.C. § 2301, *et seq.*)**

117. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

118. This claim is brought on behalf of the Nationwide Class.

119. Plaintiffs are “consumers” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(3).

120. BMW NA and BMW AG are “supplier[s]” and “warrantor[s]” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(4)–(5).

121. The Affected Vehicles are “consumer products” within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(1).

122. 15 U.S.C. § 2301(d)(1) provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with a written or implied warranty.

123. BMW NA and BMW AG’s express warranties are written warranties within the meaning of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301(6). The Affected Vehicles’ implied warranties are covered under 15 U.S.C. § 2301(7).

124. BMW NA and BMW AG breached these warranties, as described in more detail above. Without limitation, the Affected Vehicles are equipped with a defective “Range Extender” that does nothing of the sort and puts vehicle occupants’ safety in jeopardy. The Affected Vehicles share a common design defect in that the Range Extender fails to operate as represented by BMW NA and BMW AG.

125. Plaintiffs and the other Class members have had sufficient direct dealings with either BMW NA and BMW AG or their agents (*e.g.*, dealerships and technical support) to establish privity of contract between BMW NA and BMW AG on one hand, and Plaintiffs and each of the other Class members on the other hand.

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

8 126. Affording BMW NA and BMW AG a reasonable opportunity to cure  
9 their breach of written warranties would be unnecessary and futile here.

10 127. At the time of sale or lease of each Affected Vehicle, BMW NA and  
11 BMW AG knew, should have known, or were reckless in not knowing of their  
12 misrepresentations and omissions concerning the Affected Vehicles' inability to  
13 perform as warranted, but nonetheless failed to rectify the situation and/or disclose the  
14 defective design. Under the circumstances, the remedies available under any informal  
15 settlement procedure would be inadequate and any requirement that Plaintiffs resort to  
16 an informal dispute resolution procedure and/or afford BMW NA and BMW AG a  
17 reasonable opportunity to cure their breach of warranties is excused and thereby  
18 deemed satisfied.

19 128. Plaintiffs and the other Class members would suffer economic hardship if  
20 they returned their Affected Vehicles but did not receive the return of all payments  
21 made by them. Because BMW NA and BMW AG are refusing to acknowledge any  
22 revocation of acceptance and return immediately any payments made, Plaintiffs and  
23 the other Class members have not re-accepted their Affected Vehicles by retaining  
24 them.

25 129. The amount in controversy of Plaintiffs' individual claims meets or  
26 exceeds the sum of \$25. The amount in controversy of this action exceeds the sum of  
27 \$50,000, exclusive of interest and costs, computed on the basis of all claims to be  
28 determined in this lawsuit.

1           130. Plaintiffs, individually and on behalf of the other Class members, seek all  
2 damages permitted by law, including diminution in value of the Affected Vehicles, in  
3 an amount to be proven at trial.

4 **B. California**

5 **COUNT I**

6 **VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW**  
7 **(CAL. BUS. & PROF. CODE § 17200, *et seq.*)**

8           131. Plaintiffs reallege and incorporate by reference all paragraphs as though  
9 fully set forth herein.

10           132. Plaintiffs Barry Braverman, Hakop Demirchyan, Joel Green, Chevay  
11 Jones, Dr. Glynda Roberson, Edo Tsoar, and Peter Weinstein bring this Count on  
12 behalf of themselves and the California Class.

13           133. California’s Unfair Competition Law (“UCL”), CAL. BUS. & PROF. CODE  
14 § 17200, *et seq.*, proscribes acts of unfair competition, including “any unlawful, unfair  
15 or fraudulent business act or practice and unfair, deceptive, untrue or misleading  
16 advertising.”

17           134. BMW NA and BMW AG’s conduct, as described herein, was and is in  
18 violation of the UCL. BMW NA and BMW AG’s conduct violates the UCL in at least  
19 the following ways:

- 20           a. By knowingly and intentionally concealing from  
21 Plaintiffs and the other Class members that the Affected  
22 Vehicles suffer from a design defect while obtaining  
23 money from Plaintiffs and the Class;
- 24           b. By marketing Affected Vehicles as possessing functional  
25 and defect-free Range Extender systems;
- 26           c. By violating federal laws, including the Motor Vehicle  
27 Safety Act and NHTSA regulations, by failing to recall  
28 vehicles that contain a safety defect; and
- d. By violating other California laws, including California  
laws governing false advertising and consumer  
protection.

1 135. BMW NA and BMW AG’s misrepresentations and omissions alleged  
2 herein caused Plaintiffs and the other Class members to make their purchases or leases  
3 of their Affected Vehicles. Absent these misrepresentations and omissions, Plaintiffs  
4 and the other Class members would not have purchased or leased these vehicles,  
5 would not have purchased or leased these Affected Vehicles at the prices they paid,  
6 and/or would have purchased or leased less expensive alternative vehicles that did not  
7 contain defective Range Extenders.

8 136. Accordingly, Plaintiffs and the other Class members have suffered injury  
9 in fact, including lost money or property, as a result of BMW NA and BMW AG’s  
10 misrepresentations and omissions.

11 137. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent acts or  
12 practices by BMW NA and BMW AG under CAL. BUS. & PROF. CODE § 17200.

13 138. Plaintiffs request that this Court enter such orders or judgments as may be  
14 necessary to enjoin BMW NA and BMW AG from continuing their unfair, unlawful,  
15 and/or deceptive practices, and to restore to Plaintiffs and members of the Class any  
16 money they acquired by unfair competition, including restitution and/or restitutionary  
17 disgorgement, as provided in CAL. BUS. & PROF. CODE §§ 17203 & 3345; and for such  
18 other relief set forth below.

19 **COUNT II**

20 **VIOLATION OF CALIFORNIA’S CONSUMERS LEGAL REMEDIES ACT**  
21 **(CAL. BUS. & PROF. CODE § 1750, et seq.)**

22 139. Plaintiffs reallege and incorporate by reference all paragraphs as though  
23 fully set forth herein.

24 140. Plaintiffs Barry Braverman, Hakop Demirchyan, Joel Green, Chevay  
25 Jones, Dr. Glynda Roberson, Edo Tsoar, and Peter Weinstein bring this Count on  
26 behalf of themselves and the California Class.

27 141. California’s Consumers Legal Remedies Act (“CLRA”), CAL. BUS. &  
28 PROF. CODE § 1750, et seq., proscribes “unfair methods of competition and unfair or

1 deceptive acts or practices undertaken by any person in a transaction intended to result  
2 or which results in the sale or lease of goods or services to any consumer.”

3 142. The Affected Vehicles are “goods” as defined in CAL. BUS. & PROF.  
4 CODE § 1761(a).

5 143. Plaintiffs and the other Class members are “consumers” as defined in  
6 CAL. BUS. & PROF. CODE § 1761(d), and Plaintiffs, the other Class members, BMW  
7 NA, and BMW AG are “persons” as defined in CAL. BUS. & PROF. CODE § 1761(c).

8 144. As alleged above, BMW NA and BMW AG made numerous  
9 representations concerning the benefits, efficiency, performance, and safety features of  
10 the Range Extender systems that were misleading.

11 145. In purchasing or leasing the Affected Vehicles, Plaintiffs and the other  
12 Class members were deceived by BMW NA and BMW AG’s failure to disclose that  
13 the Affected Vehicles were equipped with defective Range Extenders.

14 146. BMW NA and BMW AG’s conduct, as described herein, was and is in  
15 violation of the CLRA. BMW NA and BMW AG’s conduct violates at least the  
16 following enumerated CLRA provisions:

- 17 a. CAL. CIV. CODE § 1770(a)(2): Misrepresenting the  
18 approval or certification of goods;
- 19 b. CAL. CIV. CODE § 1770(a)(5): Representing that goods  
20 have sponsorship, approval, characteristics, uses,  
benefits, or quantities which they do not have;
- 21 c. CAL. CIV. CODE § 1770(a)(7): Representing that goods  
22 are of a particular standard, quality, or grade, if they are  
of another;
- 23 d. CAL. CIV. CODE § 1770(a)(9): Advertising goods with  
24 intent not to sell them as advertised; and
- 25 e. CAL. CIV. CODE § 1770(a)(16): Representing that goods  
26 have been supplied in accordance with a previous  
representation when they have not.

1           147. Plaintiffs and the other Class members have suffered injury in fact and  
2 actual damages resulting from BMW NA and BMW AG’s material omissions and  
3 misrepresentations because they paid an inflated purchase or lease price for the  
4 Affected Vehicles.

5           148. BMW NA and BMW AG knew, should have known, or were reckless in  
6 not knowing of the defective design and/or manufacture of the Range Extender, and  
7 that the Affected Vehicles were not suitable for their intended use.

8           149. The facts concealed and omitted by BMW NA and BMW AG to  
9 Plaintiffs and the other Class members—that BMW NA and BMW AG’s pre-sale  
10 testing proved the REx feature to be incapable of maintaining battery charge or the  
11 safe performance of the BMW i3—are material in that a reasonable consumer would  
12 have considered them to be important in deciding whether to purchase or lease the  
13 Affected Vehicles or pay a lower price. Had Plaintiffs and the other Class members  
14 known about the defective nature of the Affected Vehicles, they would not have  
15 purchased or leased the Affected Vehicles or would not have paid the prices they paid.

16           150. Under CAL. CIV. CODE § 1780(a), Plaintiffs and the California Class seek  
17 monetary relief against BMW NA and BMW AG measured as the diminution of the  
18 value of their vehicles caused by BMW NA and BMW AG’s violations of the CLRA  
19 as alleged herein.

20           151. Under CAL. CIV. CODE § 1780(b), Plaintiffs seek an additional award  
21 against BMW NA and BMW AG of up to \$5,000 for each California Class member  
22 who qualifies as a “senior citizen” or “disabled person” under the CLRA. BMW NA  
23 and BMW AG knew or should have known that their conduct was directed to one or  
24 more California Class members who are senior citizens or disabled persons. BMW NA  
25 and BMW AG’s conduct caused one or more of these senior citizens or disabled  
26 persons to suffer a substantial loss of property set aside for retirement or for personal  
27 or family care and maintenance, or assets essential to the health or welfare of the  
28 senior citizen or disabled person. One or more California Class members who are

1 senior citizens or disabled persons are substantially more vulnerable to BMW NA and  
2 BMW AG's conduct because of age, poor health or infirmity, impaired understanding,  
3 restricted mobility, or disability, and each of them suffered substantial physical,  
4 emotional, or economic damage resulting from BMW NA and BMW AG's conduct.

5 152. Plaintiffs also seek punitive damages against BMW NA and BMW AG  
6 because they carried out reprehensible conduct with willful and conscious disregard of  
7 the rights and safety of others, subjecting Plaintiffs and the California Class to  
8 potential cruel and unjust hardship as a result. BMW NA and BMW AG intentionally  
9 and willfully deceived Plaintiffs on life-or-death matters, and concealed material facts  
10 that only BMW NA and BMW AG knew. BMW NA and BMW AG's unlawful  
11 conduct constitutes malice, oppression, and fraud, warranting punitive damages under  
12 CAL. CIV. CODE § 3294. For at least six years, BMW NA and BMW AG knowingly  
13 installed a defective Range Extender in order to induce customers to purchase the i3.  
14 This deception jeopardized the safety of i3 drivers and other drivers on the roads of  
15 California. BMW NA and BMW AG's intentional deception and the safety-critical  
16 impact of the defective Range Extenders warrant exemplary damages for the sake of  
17 example and by way of punishing the Defendant.

18 153. Plaintiffs further seek an order enjoining BMW NA and BMW AG's  
19 unfair or deceptive acts or practices, restitution, punitive damages, costs of court,  
20 attorneys' fees under CAL. CIV. CODE § 1780(e), and any other just and proper relief  
21 available under the CLRA.

22 154. Certain Plaintiffs have sent a letter complying with CAL. CIV. CODE  
23 § 1780(b).

### 24 **COUNT III**

#### 25 **VIOLATION OF CALIFORNIA'S FALSE ADVERTISING LAW** 26 **(CAL. BUS. & PROF. CODE § 17500, *et seq.*)**

27 155. Plaintiffs reallege and incorporate by reference all paragraphs as though  
28 fully set forth herein.



1           156. Plaintiffs Barry Braverman, Hakop Demirchyan, Joel Green, Chevay  
2 Jones, Dr. Glynda Roberson, Edo Tsoar, and Peter Weinstein bring this Count on  
3 behalf of themselves and the California Class.

4           157. CAL. BUS. & PROF. CODE § 17500 states: “It is unlawful for any . . .  
5 corporation . . . with intent directly or indirectly to dispose of real or personal property  
6 . . . to induce the public to enter into any obligation relating thereto, to make or  
7 disseminate or cause to be made or disseminated . . . from this state before the public  
8 in any state, in any newspaper or other publication, or any advertising device, . . . or in  
9 any other manner or means whatever, including over the Internet, any statement . . .  
10 which is untrue or misleading, and which is known, or which by the exercise of  
11 reasonable care should be known, to be untrue or misleading.”

12           158. BMW NA and BMW AG caused to be made or disseminated through  
13 California and the United States, through advertising, marketing, and other  
14 publications, statements that were untrue or misleading, and which were known, or  
15 which by the exercise of reasonable care should have been known to BMW NA and  
16 BMW AG, to be untrue and misleading to consumers, including Plaintiffs and the  
17 other Class members.

18           159. BMW NA and BMW AG have violated CAL. BUS. & PROF. CODE  
19 § 17500 because the misrepresentations and omissions regarding the safety, reliability,  
20 and functionality of Affected Vehicles, as set forth in this Complaint, were material  
21 and likely to deceive a reasonable consumer.

22           160. Plaintiffs and the other Class members have suffered an injury in fact,  
23 including the loss of money or property, as a result of BMW NA and BMW AG’s  
24 unfair, unlawful, and/or deceptive practices. In purchasing or leasing their Affected  
25 Vehicles, Plaintiffs and the other Class members relied on the misrepresentations  
26 and/or omissions of BMW NA and BMW AG with respect to the safety, performance,  
27 and reliability of the Affected Vehicles. BMW NA and BMW AG’s representations  
28 turned out not to be true because the Affected Vehicles are distributed with faulty and

1 defective Range Extender systems, rendering essential vehicle functions inoperative.  
2 Had Plaintiffs and the other Class members known this, they would not have  
3 purchased or leased their Affected Vehicles and/or paid as much for them.  
4 Accordingly, Plaintiffs and the other Class members overpaid for their Affected  
5 Vehicles and did not receive the benefit of their bargain.

6 161. All of the wrongful conduct alleged herein occurred, and continues to  
7 occur, in the conduct of BMW NA and BMW AG's business. BMW NA and BMW  
8 AG's wrongful conduct is part of a pattern or generalized course of conduct that is still  
9 perpetuated and repeated, both in the state of California and nationwide.

10 162. Plaintiffs, individually and on behalf of the other Class members, request  
11 that this Court enter such orders or judgments as may be necessary to enjoin BMW  
12 NA and BMW AG from continuing their unfair, unlawful, and/or deceptive practices  
13 and to restore to Plaintiffs and the other Class members any money BMW NA and  
14 BMW AG acquired by unfair competition, including restitution and/or restitutionary  
15 disgorgement, and for such other relief set forth below.

16 **COUNT IV**

17 **FRAUD BY CONCEALMENT**

18 163. Plaintiffs reallege and incorporate by reference all paragraphs as though  
19 fully set forth herein.

20 164. Plaintiffs Barry Braverman, Hakop Demirchyan, Joel Green, Chevay  
21 Jones, Dr. Glynda Roberson, Edo Tsoar, and Peter Weinstein bring this Count on  
22 behalf of themselves and the California Class.

23 165. BMW NA and BMW AG concealed and suppressed material facts  
24 concerning the quality of their vehicles and the BMW brand.

25 166. BMW NA and BMW AG concealed and suppressed material facts  
26 concerning the safety, performance, and quality of the Affected Vehicles. As alleged  
27 in this Complaint, notwithstanding their promise that the "Range Extender" maintains  
28 the state of battery charge and extends the BMW i3's range, BMW NA and BMW AG

1 knowingly and intentionally designed and incorporated the REx feature that could not  
2 maintain battery charge or safe operation of the vehicle.

3 167. BMW NA and BMW AG did so in order to boost confidence in their  
4 vehicles and falsely assure purchasers and lessees of BMW vehicles that BMW is a  
5 reputable manufacturer and that BMW NA and BMW AG stand behind their vehicles  
6 after they are sold, and that their vehicles are safe, reliable, and perform as promised.  
7 The false representations were material to consumers, both because they concerned the  
8 safety of the Affected Vehicles and because the representations played a significant  
9 role in the value of the vehicles.

10 168. Plaintiffs and California Class members viewed advertising on BMW NA  
11 and BMW AG's website and other forums that promised extended range and  
12 maintenance of the battery's charge. They had no way of knowing that BMW NA and  
13 BMW AG's representations were false and gravely misleading. Plaintiffs and  
14 California Class members did not and could not unravel BMW NA and BMW AG's  
15 deception on their own.

16 169. BMW NA and BMW AG had a duty to disclose the true performance of  
17 the BMW i3 because knowledge of the scheme and its details were known and/or  
18 accessible only to BMW NA and BMW AG; BMW NA and BMW AG had superior  
19 knowledge and access to the facts; and BMW NA and BMW AG knew the facts were  
20 not known to, or reasonably discoverable by, Plaintiffs and the California Class. BMW  
21 NA and BMW AG also had a duty to disclose because they made many general  
22 affirmative representations about the about the qualities of their vehicles with respect  
23 to vehicle range, starting with references to them as *extended range* vehicles, as set  
24 forth above, which were misleading, deceptive, and incomplete without the disclosure  
25 of the additional facts set forth above regarding the actual performance of their  
26 vehicles, their actual decision to put sales and profits over safety, and their actual  
27 practices with respect to the vehicles at issue. Having volunteered to provide  
28 information to Plaintiffs, BMW NA and BMW AG had the duty to disclose not just

1 the partial truth, but the entire truth. These omitted and concealed facts were material  
2 because they directly impact the safety and the value of the Affected Vehicles  
3 purchased or leased by Plaintiffs and the California Class. Whether a vehicle is safe to  
4 drive, and whether that vehicle's manufacturer tells the truth with respect to the  
5 vehicle's performance and range are material concerns to a consumer, as evidenced by  
6 the approximately \$4,000 premium paid for the BMW i3s equipped with the optional  
7 REx feature.

8 170. BMW NA and BMW AG actively concealed and/or suppressed these  
9 material facts, in whole or in part, to pad and protect their profits and to avoid the  
10 perception that their vehicles did not or could not maintain the state of battery charge  
11 and safely reach the range of other electric vehicles on the market, which perception  
12 would hurt the brand's image and cost BMW NA and BMW AG money, and they did  
13 so at the expense of Plaintiffs and the California Class.

14 171. On information and belief, BMW NA and BMW AG have still not made  
15 full and adequate disclosures and continue to defraud Plaintiffs and the  
16 California Class by concealing material information regarding the safety and  
17 performance of their vehicles.

18 172. Plaintiffs and the California Class were unaware of these omitted material  
19 facts and would not have acted as they did if they had known of the concealed and/or  
20 suppressed facts, in that they would not have purchased the REx feature-equipped  
21 vehicles manufactured by BMW NA and BMW AG, and/or would not have continued  
22 to drive their Affected Vehicles or would have taken other affirmative steps. Plaintiffs'  
23 and the California Class members' actions were justified. BMW NA and BMW AG  
24 were in exclusive control of the material facts and such facts were not known to the  
25 public, Plaintiffs, or the California Class.

26 173. Because of the concealment and/or suppression of the facts, Plaintiffs and  
27 the California Class sustained damage because they did not receive the value for the  
28 approximately \$4,000 premium paid, and they own vehicles that diminished in value

1 as a result of BMW NA and BMW AG's concealment of, and failure to timely  
2 disclose, the actual safety and performance of the BMW i3 with REx feature. Had they  
3 been aware of the true safety and performance of the Affected Vehicles, Plaintiffs and  
4 Class members who purchased or leased the Affected Vehicles would have paid less  
5 for their vehicles or would not have purchased or leased them at all.

6 174. The value of all California Class members' Affected Vehicles has  
7 diminished as a result of BMW NA and BMW AG's fraudulent concealment of the  
8 true capabilities of the REx feature, which has greatly tarnished the BMW brand and  
9 made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let  
10 alone pay what otherwise would have been fair market value for the vehicles. In  
11 addition, Class members are entitled to damages for loss of use, costs of additional  
12 fuel, costs of unused warranties, and other damages to be proven at trial.

13 175. Accordingly, BMW NA and BMW AG are liable to the California Class  
14 for damages in an amount to be proven at trial.

15 176. BMW NA and BMW AG's acts were done maliciously, oppressively,  
16 deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the  
17 California Class members' rights and well-being to enrich BMW NA and BMW AG.  
18 BMW NA and BMW AG's conduct warrants an assessment of punitive damages in an  
19 amount sufficient to deter such conduct in the future, which amount is to be  
20 determined according to proof.

21 **COUNT V**

22 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
23 **(CAL. COM. CODE § 2314)**

24 177. Plaintiffs reallege and incorporate by reference all paragraphs as though  
25 fully set forth herein.

26 178. Plaintiffs Barry Braverman, Hakop Demirchyan, Joel Green, Chevay  
27 Jones, Dr. Glynda Roberson, Edo Tsoar, and Peter Weinstein bring this Count on  
28 behalf of themselves and the California Class.

1           179. BMW NA and BMW AG are and were at all relevant times merchants  
2 with respect to motor vehicles under CAL. COM. CODE § 2014.

3           180. A warranty that the Affected Vehicles were in merchantable condition is  
4 implied by law in the instant transactions, pursuant to CAL. COM. CODE § 2314. These  
5 Affected Vehicles, when sold and at all times thereafter, were not in merchantable  
6 condition and are not fit for the ordinary purpose for which cars are used. Specifically,  
7 the Affected Vehicles are inherently defective in that the Range Extender system was  
8 not adequately designed, manufactured, and tested.

9           181. BMW NA and BMW AG were provided notice of these issues by  
10 complaints lodged by consumers with NHTSA and Consumer Reports—which vehicle  
11 manufacturers like BMW NA and BMW AG routinely monitor—before or within a  
12 reasonable amount of time after the allegations of Affected Vehicle defects became  
13 public.

14           182. Plaintiffs and the other Class members have had sufficient direct dealings  
15 with either BMW NA and BMW AG or their agents (*e.g.*, dealerships and technical  
16 support) to establish privity of contract between BMW NA and BMW AG on one  
17 hand, and Plaintiffs and each of the other Class members on the other hand.  
18 Nonetheless, privity is not required here because Plaintiffs and each of the other Class  
19 members are intended third-party beneficiaries of contracts between BMW NA and  
20 BMW AG and their dealers, and specifically, of BMW NA and BMW AG’s implied  
21 warranties. The dealers were not intended to be the ultimate consumers of the Affected  
22 Vehicles and have no rights under the warranty agreements provided with the Affected  
23 Vehicles; the warranty agreements were designed for and intended to benefit the  
24 consumers only.

25           183. As a direct and proximate result of BMW NA and BMW AG’s breach of  
26 the warranties of merchantability, Plaintiffs and the other Class members have been  
27 damaged in an amount to be proven at trial.

28

**COUNT VI**

**VIOLATION OF THE SONG-BEVERLY CONSUMER WARRANTY ACT  
FOR BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY  
(CAL. CIV. CODE §§ 1791.1 & 1792)**

184. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

185. Plaintiffs Barry Braverman, Joel Green, Chevay Jones, Dr. Glynda Roberson, Edo Tsoar, and Peter Weinstein bring this Count on behalf of the California Class.

186. Plaintiffs and the other Class members who purchased or leased the Affected Vehicles in California are “buyers” within the meaning of CAL. CIV. CODE § 1791(b).

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

188. BMW NA and BMW AG are “manufacturers” of the Affected Vehicles within the meaning of CAL. CIV. CODE § 1791(j).

189. BMW NA and BMW AG impliedly warranted to Plaintiffs and the other Class members that their Affected Vehicles were “merchantable” within the meaning of CAL. CIV. CODE §§ 1791.1(a) & 1792; however, the Affected Vehicles do not have the quality that a buyer would reasonably expect.

190. CAL. CIV. CODE § 1791.1(a) states:

“Implied warranty of merchantability” or “implied warranty that goods are merchantable” means that the consumer goods meet each of the following:

- (1) Pass without objection in the trade under the contract description.
- (2) Are fit for the ordinary purposes for which such goods are used.
- (3) Are adequately contained, packaged, and labeled.
- (4) Conform to the promises or affirmations of fact made on the container or label.

1           191. The Affected Vehicles would not pass without objection in the  
2 automotive trade because of the defects in the Affected Vehicles' Range Extender  
3 system. Specifically, the Range Extenders do not extend the range of the vehicle and  
4 render essential vehicle functions inoperative. In addition, the Range Extender was not  
5 adequately designed, manufactured, and tested.

6           192. Because of the defects in the Affected Vehicles' Range Extender system,  
7 they are not in merchantable condition and thus not fit for ordinary purposes.

8           193. The Affected Vehicles are not adequately labeled because the labeling  
9 fails to disclose the defects in the Affected Vehicles' Range Extender system.

10           194. BMW NA and BMW AG breached the implied warranty of  
11 merchantability by manufacturing and selling Affected Vehicles containing defects  
12 associated with the Range Extender system. Furthermore, these defects have caused  
13 Plaintiffs and the other Class members to not receive the benefit of their bargain and  
14 have caused Affected Vehicles to depreciate in value.

15           195. As a direct and proximate result of BMW NA and BMW AG's breach of  
16 the implied warranty of merchantability, Plaintiffs and the other Class members  
17 received goods whose defective condition substantially impairs their value to Plaintiffs  
18 and the other Class members. Plaintiffs and the other Class members have been  
19 damaged as a result of the diminished value of BMW NA and BMW AG's products,  
20 the products' malfunctioning, and the nonuse of their Affected Vehicles.

21           196. Plaintiffs and the other Class members have had sufficient direct dealings  
22 with either BMW NA and BMW AG or their agents (*e.g.*, dealerships and technical  
23 support) to establish privity of contract between BMW NA and BMW AG on one  
24 hand, and Plaintiffs and each of the other Class members on the other hand.  
25 Nonetheless, privity is not required here because Plaintiffs and each of the other Class  
26 members are intended third-party beneficiaries of contracts between BMW NA and  
27 BMW AG and their dealers, and specifically, of BMW NA and BMW AG's implied  
28 warranties. The dealers were not intended to be the ultimate consumers of the Affected



1 Vehicles and have no rights under the warranty agreements provided with the Affected  
2 Vehicles; the warranty agreements were designed for and intended to benefit the  
3 consumers only.

4 197. Pursuant to CAL. CIV. CODE §§ 1791.1(d) & 1794, Plaintiffs and the other  
5 Class members are entitled to damages and other legal and equitable relief, including,  
6 at their election, the purchase price of their Affected Vehicles, or the overpayment or  
7 diminution in value of their Affected Vehicles.

8 198. Pursuant to CAL. CIV. CODE § 1794, Plaintiffs and the other Class  
9 members are entitled to costs and attorneys' fees.

10 **COUNT VII**

11 **VIOLATION OF THE SONG-BEVERLY CONSUMER WARRANTY ACT**  
12 **FOR BREACH OF EXPRESS WARRANTIES**  
**(CAL. CIV. CODE §§ 1791.2 & 1793.2(D))**

13 199. Plaintiffs reallege and incorporate by reference all paragraphs as though  
14 fully set forth herein.

15 200. Plaintiffs Joel Green, Hakop Demirchyan, Chevay Jones, Dr. Glynda  
16 Roberson, and Edo Tsoar bring this Count on behalf of themselves and the California  
17 Class.

18 201. Plaintiffs and the other Class members who purchased or leased the  
19 Affected Vehicles in California are “buyers” within the meaning of CAL. CIV. CODE  
20 § 1791(b).

21 202. The Affected Vehicles are “consumer goods” within the meaning of CAL.  
22 CIV. CODE § 1791(a).

23 203. BMW NA and BMW AG are “manufacturers” of the Affected Vehicles  
24 within the meaning of CAL. CIV. CODE § 1791(j).

25 204. BMW NA, at the direction of and in consultation with BMW AG, made  
26 express warranties to Plaintiffs and other Class members within the meaning of CAL.  
27 CIV. CODE § 1791(2) & 1793(2).

28

1           205. As manufacturers of light-duty vehicles, BMW NA and BMW AG were  
2 required to provide these warranties to purchasers of BMW i3 vehicles.

3           206. In connection with the purchase or lease of each one of its new vehicles,  
4 BMW NA provides an express New Vehicle Limited Warranty (NVLW) for a period  
5 of four years or 50,000 miles, whichever occurs first. This NVLW exists to cover  
6 “defect in materials or workmanship.” The warranty’s reference to “workmanship”  
7 incorporates design as well as implementation of those designs in the manufacturing  
8 process. BMW AG’s design decisions—made here with BMW NA’s knowledge—are  
9 incorporated into each step of the manufacturing process, such that a defect in the  
10 design of the REx system is indistinguishable from a manufacturing defect.

11           207. BMW NA’s California Emission Control Warranty, which applies to  
12 purchasers in California, provides that: “If any emission-related part on your vehicle is  
13 defective, the part will be repaired or replaced by BMW NA.”

14           208. The defective parts implicated by this lawsuit are emission-related parts  
15 as described in detail above. For example, the software coding that controls the Range  
16 Extender was modified by BMW NA and BMW AG specifically to conform to the  
17 California Air Resources Board’s zero-emissions vehicle standards.

18           209. In addition to the Emissions Control Warranty, BMW NA and BMW AG,  
19 through advertisements, brochures, and statements made by authorized dealers,  
20 warranted several attributes and qualities as detailed above, such as:

- 21           a. REx extends the range from approximately 81 miles per charge to  
22           150 miles per charge.
- 23           b. REx “will essentially allow you to double the range of the EV.”
- 24           c. Range in everyday driving for BMW i3 with REx is between 130  
25           and 140 miles farther than the BMW i3 without the optional REx.

26           210. As set forth above in detail, the Affected Vehicles are inherently  
27 defective in that there are defects in the REx system that substantially impair the use,  
28

1 value, and safety of the Affected Vehicles to reasonable consumers like Plaintiffs and  
2 the California Class.

3 211. Plaintiffs Joel Green, Chevay Jones, Dr. Glynda Roberson, and Edo Tsoar  
4 and other Class members delivered their Affected Vehicles to BMW NA or its  
5 authorized repair facilities for repair of the defects and/or notified BMW NA in  
6 writing of the need for repair of the defects because they reasonably could not deliver  
7 the Affected Vehicles to BMW or its authorized repair facility due to fear of the REx  
8 system defect.

9 212. BMW NA and its authorized repair facilities failed and continue to fail to  
10 repair the Affected Vehicles to match BMW NA's written warranties after a  
11 reasonable number of opportunities to do so.

12 213. Plaintiffs and the other Class members gave BMW NA or its authorized  
13 repair facilities at least two opportunities to fix the defects unless only one repair  
14 attempt was possible because the vehicle was later destroyed or because BMW NA or  
15 its authorized repair facility refused to attempt the repair.

16 214. BMW NA did not promptly replace or buy back the Affected Vehicles of  
17 Plaintiffs and the other Class members.

18 215. As a result of BMW NA's breach of its express warranties, Plaintiffs and  
19 the other Class members received goods whose dangerous condition substantially  
20 impairs their value to Plaintiffs and the other Class members. Plaintiffs and the other  
21 Class members have been damaged as a result of the diminished value of BMW NA's  
22 products, the products' malfunctioning, and the nonuse of their Affected Vehicles.

23 216. Pursuant to CAL. CIV. CODE §§ 1793(2) & 1794, Plaintiffs and the other  
24 Class members are entitled to damages and other legal and equitable relief including,  
25 at their election, the purchase price of their Affected Vehicles, or the overpayment or  
26 diminution in value of their Affected Vehicles.

27 217. Pursuant TO CAL. CIV. CODE § 1794, Plaintiffs and the other Class  
28 members are entitled to costs and attorneys' fees.

1 **C. Colorado**

2 **COUNT I**

3 **VIOLATIONS OF THE COLORADO CONSUMER PROTECTION ACT**  
4 **(COLO. REV. STAT. § 6-1-101, *et seq.*)**

5 218. Plaintiffs reallege and incorporate by reference all paragraphs as though  
6 fully set forth herein.

7 219. Plaintiff Thomas Munk brings this Count on behalf of himself and the  
8 Colorado Class.

9 220. BMW NA and BMW AG are “persons” under § 6-1-102(6) of the  
10 Colorado Consumer Protection Act (“Colorado CPA”), COLO. REV. STAT. § 6-1-101,  
11 *et seq.*

12 221. Plaintiff and Colorado Class members are “consumers” for purposes of  
13 COLO. REV. STAT § 6-1-113(1)(a) who purchased or leased one or more Affected  
14 Vehicles.

15 222. The Colorado CPA prohibits deceptive trade practices in the course of a  
16 person’s business. BMW NA and BMW AG engaged in deceptive trade practices  
17 prohibited by the Colorado CPA, including: (1) knowingly making a false  
18 representation as to the characteristics, uses, and benefits of the Affected Vehicles that  
19 had the capacity or tendency to deceive Colorado Class members; (2) representing that  
20 the Affected Vehicles are of a particular standard, quality, and grade even though  
21 BMW NA and BMW AG knew or should have known they are not; (3) advertising the  
22 Affected Vehicles with the intent not to sell them as advertised; and (4) failing to  
23 disclose material information concerning the Affected Vehicles that was known to  
24 BMW NA and BMW AG at the time of advertisement or sale with the intent to induce  
25 Colorado Class members to purchase, lease, or retain the Affected Vehicles.

26 223. In the course of business, BMW NA and BMW AG willfully failed to  
27 disclose and actively concealed the defective Range Extender discussed herein and  
28 otherwise engaged in activities with a tendency or capacity to deceive. BMW NA and

1 BMW AG also engaged in unlawful trade practices by employing deception, deceptive  
2 acts or practices, fraud, misrepresentations, or concealment, suppression, or omission  
3 of any material fact with intent that others rely upon such concealment, suppression, or  
4 omission, in connection with the sale of Affected Vehicles.

5 224. BMW NA and BMW AG knew they had installed a defective Range  
6 Extender and knew that the Range Extender did not extend the normal operation of the  
7 vehicle for double the range, as advertised. BMW NA and BMW AG knew this for at  
8 least two years but concealed all of that information.

9 225. BMW NA and BMW AG were also aware that they valued profits over  
10 safety, and that BMW was manufacturing, selling, and distributing vehicles  
11 throughout the United States that did not perform as advertised and jeopardized the  
12 safety of the vehicles' occupants. BMW NA and BMW AG concealed this information  
13 as well.

14 226. By failing to disclose that the defective Range Extender did not extend  
15 the normal operation of the vehicle or double the range, by marketing BMW vehicles  
16 as safe, reliable, and of high quality, and by presenting BMW as a reputable  
17 manufacturer that valued safety and stood behind their vehicles after they were sold,  
18 BMW NA and BMW AG engaged in deceptive business practices in violation of the  
19 Colorado CPA.

20 227. BMW NA and BMW AG's unfair or deceptive acts or practices were  
21 likely to and did in fact deceive reasonable consumers, including Plaintiff and the  
22 other Class members, about the true performance of the BMW i3 with Range  
23 Extender, the quality of the BMW brand, the devaluing of safety and performance at  
24 BMW NA and BMW AG, and the true value of the Affected Vehicles.

25 228. BMW NA and BMW AG intentionally and knowingly misrepresented  
26 material facts regarding the Affected Vehicles with intent to mislead Plaintiff and the  
27 Colorado Class.  
28

1           229. BMW NA and BMW AG knew or should have known that their conduct  
2 violated the Colorado CPA.

3           230. As alleged above, BMW NA and BMW AG made material statements  
4 about the safety and performance of the Affected Vehicles and the BMW brand that  
5 were either false or misleading.

6           231. BMW NA and BMW AG owed Plaintiff and the Class a duty to disclose  
7 the true safety, performance, and reliability of the Affected Vehicles, and the  
8 devaluing of safety and performance at BMW NA and BMW AG, because BMW NA  
9 and BMW AG:

- 10           a. Possessed exclusive knowledge that they valued  
11 profits and cost-cutting over safety and performance,  
12 and that they were manufacturing, selling, and  
distributing vehicles throughout the United States that  
did not perform as advertised;
- 13           b. Intentionally concealed the foregoing from Plaintiff  
14 and the Class; and/or
- 15           c. Made incomplete representations about the safety and  
16 performance of the Affected Vehicles generally, and  
the defective Range Extender in particular, while  
17 purposefully withholding material facts from Plaintiff  
and the Class that contradicted these representations.

18           232. Because BMW NA and BMW AG fraudulently concealed the defective  
19 Range Extender and the true performance of the BMW i3 with Range Extender,  
20 resulting in a raft of negative publicity once the defects finally began to be disclosed,  
21 the value of the Affected Vehicles has greatly diminished. In light of the stigma  
22 attached to those vehicles by BMW NA and BMW AG's conduct, they are now worth  
23 significantly less than they otherwise would be.

24           233. BMW NA and BMW AG's fraudulent use of the defective Range  
25 Extender and the true performance of BMW i3 with Range Extender were material to  
26 Plaintiff and the Colorado Class. A vehicle made by a reputable manufacturer of safe,  
27 high-performing, long-range electric vehicles is safer and worth more than an  
28

1 otherwise comparable vehicle made by a disreputable manufacturer of unsafe, short-  
2 range electric vehicles that conceals defects rather than promptly remedying them.

3 234. Plaintiff and the Colorado Class suffered ascertainable loss caused by  
4 BMW NA and BMW AG's misrepresentations and their concealment of and failure to  
5 disclose material information. Class members who purchased the Affected Vehicles  
6 either would have paid less for their vehicles or would not have purchased or leased  
7 them at all but for BMW NA and BMW AG's violations of the Colorado CPA.

8 235. BMW NA and BMW AG had an ongoing duty to all BMW customers to  
9 refrain from unfair and deceptive practices under the Colorado CPA. All owners of  
10 Affected Vehicles suffered ascertainable loss in the form of the diminished value of  
11 their vehicles as a result of BMW NA and BMW AG's deceptive and unfair acts and  
12 practices made in the course of BMW NA and BMW AG's business.

13 236. BMW NA and BMW AG's violations present a continuing risk to  
14 Plaintiff as well as to the general public. BMW NA and BMW AG's unlawful acts and  
15 practices complained of herein affect the public interest.

16 237. As a direct and proximate result of BMW NA and BMW AG's violations  
17 of the Colorado CPA, Plaintiff and the Colorado Class have suffered injury-in-fact  
18 and/or actual damage.

19 238. Pursuant to COLO. REV. STAT. § 6-1-113, Plaintiff, individually and on  
20 behalf of the Colorado Class, seeks monetary relief against BMW NA and BMW AG  
21 measured as the greater of (a) actual damages in an amount to be determined at trial  
22 and discretionary trebling of such damages, or (b) statutory damages in the amount of  
23 \$500 for each Plaintiff and each Colorado Class member.

24 239. Plaintiff also seeks an order enjoining BMW NA and BMW AG's unfair  
25 and/or deceptive acts or practices, punitive damages, and attorneys' fees, and any  
26 other just and proper relief available under the Colorado CPA.

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**COUNT II**

**FRAUD BY CONCEALMENT**

240. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

241. Plaintiff Thomas Munk brings this Count on behalf of himself and the Colorado Class.

242. BMW NA and BMW AG concealed and suppressed material facts concerning the quality of BMW vehicles and the BMW brand.

243. BMW NA and BMW AG concealed and suppressed material facts concerning the safety, performance, and quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding their promises that the “Range Extender” maintains the state of battery charge and extends the BMW i3’s range, BMW NA and BMW AG knowingly and intentionally designed and incorporated the REx feature that could not maintain battery charge or safe operation of the vehicle.

244. BMW NA and BMW AG did so in order to boost confidence in their vehicles and falsely assure purchasers and lessees of BMW vehicles that BMW is a reputable manufacturer that stands behind its vehicles after they are sold, and that their vehicles are safe, reliable, and perform as promised. The false representations were material to consumers, both because they concerned the safety of the Affected Vehicles and because the representations played a significant role in the value of the vehicles.

245. Plaintiff and Colorado Class members viewed advertising on BMW NA and BMW AG’s website and other forums that promised extended range and maintenance of the battery’s charge. They had no way of knowing that BMW NA and BMW AG’s representations were false and gravely misleading. Plaintiff and Colorado Class members did not and could not unravel BMW NA and BMW AG’s deception on their own.



1           246. BMW NA and BMW AG had a duty to disclose the true performance of  
2 the BMW i3 because knowledge of the scheme and its details were known and/or  
3 accessible only to BMW NA and BMW AG; BMW NA and BMW AG had superior  
4 knowledge and access to the facts; and BMW NA and BMW AG knew the facts were  
5 not known to, or reasonably discoverable, by Plaintiff and the Colorado Class. BMW  
6 NA and BMW AG also had a duty to disclose because they made many general  
7 affirmative representations about the about the qualities of their vehicles with respect  
8 to vehicle range, starting with references to them as *extended range* vehicles, as set  
9 forth above, which were misleading, deceptive, and incomplete without the disclosure  
10 of the additional facts set forth above regarding the actual performance of their  
11 vehicles, their actual decision to put sales and profits over safety, and their actual  
12 practices with respect to the vehicles at issue. Having volunteered to provide  
13 information to Plaintiff, BMW NA and BMW AG had the duty to disclose not just the  
14 partial truth, but the entire truth. These omitted and concealed facts were material  
15 because they directly impact the safety and the value of the Affected Vehicles  
16 purchased or leased by Plaintiff and the Colorado Class. Whether a vehicle is safe to  
17 drive, and whether that vehicle's manufacturer tells the truth with respect to the  
18 vehicles performance and range are material concerns to a consumer, as evidenced by  
19 the approximately \$4,000 premium paid for the BMW i3s equipped with the optional  
20 REx feature.

21           247. BMW NA and BMW AG actively concealed and/or suppressed these  
22 material facts, in whole or in part, to pad and protect their profits and to avoid the  
23 perception that their vehicles did not or could not maintain the state of battery charge  
24 and safely reach the range of other electric vehicles on the market, which perception  
25 would hurt the brand's image and cost BMW NA and BMW AG money, and they did  
26 so at the expense of Plaintiff and the Colorado Class.

27           248. On information and belief, BMW NA and BMW AG have still not made  
28 full and adequate disclosures and continue to defraud Plaintiff and the Colorado Class

1 by concealing material information regarding the safety and performance of their  
2 vehicles.

3 249. Plaintiff and the Colorado Class were unaware of these omitted material  
4 facts and would not have acted as they did if they had known of the concealed and/or  
5 suppressed facts, in that they would not have purchased the REx feature-equipped  
6 vehicles manufactured by BMW NA and BMW AG, and/or would not have continued  
7 to drive their Affected Vehicles or would have taken other affirmative steps. Plaintiff's  
8 and the Colorado Class members' actions were justified. BMW NA and BMW AG  
9 were in exclusive control of the material facts and such facts were not known to the  
10 public, Plaintiff, or the Colorado Class.

11 250. Because of the concealment and/or suppression of the facts, Plaintiff and  
12 the Colorado Class sustained damage because they did not receive the value for the  
13 approximately \$4,000 premium paid, and they own vehicles that diminished in value  
14 as a result of BMW NA and BMW AG's concealment of, and failure to timely  
15 disclose, the actual safety and performance of the BMW i3 with REx feature. Had they  
16 been aware of the true safety and performance of the Affected Vehicles, Plaintiff and  
17 Class members who purchased or leased the Affected Vehicles would have paid less  
18 for their vehicles or would not have purchased or leased them at all.

19 251. The value of all Colorado Class members' Affected Vehicles has  
20 diminished as a result of BMW NA and BMW AG's fraudulent concealment of the  
21 true capabilities of the REx feature, which has greatly tarnished the BMW brand and  
22 made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let  
23 alone pay what otherwise would have been fair market value for the vehicles. In  
24 addition, Class members are entitled to damages for loss of use, costs of additional  
25 fuel, costs of unused warranties, and other damages to be proven at trial.

26 252. Accordingly, BMW NA and BMW AG are liable to the Colorado Class  
27 for damages in an amount to be proven at trial.  
28

1 253. BMW NA and BMW AG’s acts were done maliciously, oppressively,  
2 deliberately, with intent to defraud, and in reckless disregard of Plaintiff’s and the  
3 Colorado Class members’ rights and well-being to enrich BMW NA and BMW AG.  
4 BMW NA and BMW AG’s conduct warrants an assessment of punitive damages in an  
5 amount sufficient to deter such conduct in the future, which amount is to be  
6 determined according to proof.

7 **COUNT III**

8 **BREACH OF EXPRESS WARRANTY**  
9 **(COLO. REV. STAT. § 4-2-313)**

10 254. Plaintiffs reallege and incorporate by reference all paragraphs as though  
11 fully set forth herein.

12 255. Plaintiff Thomas Munk brings this Count on behalf of himself and the  
13 Colorado Class.

14 256. BMW NA and BMW AG are and were at all relevant times merchants  
15 with respect to motor vehicles.

16 257. In connection with the purchase or lease of each one of its new vehicles,  
17 BMW NA provides an express New Vehicle Limited Warranty (NVLW) for a period  
18 of four years or 50,000 miles, whichever occurs first. This NVLW exists to cover  
19 “defect in materials or workmanship.” The warranty’s reference to “workmanship”  
20 incorporates design as well as implementation of those designs in the manufacturing  
21 process. BMW AG’s design decisions—made here with BMW NA’s knowledge—are  
22 incorporated into each step of the manufacturing process, such that a defect in the  
23 design of the REx system is indistinguishable from a manufacturing defect.

24 258. In addition to the New Vehicle Limited Warranty, BMW NA and BMW  
25 AG, through advertisements, brochures, and statements made by authorized dealers,  
26 warranted several attributes and qualities as detailed above, such as:

- 27 a. REx extends the range from approximately 81 miles per charge to  
28 150 miles per charge.

- 1           b.     REx “will essentially allow you to double the range of the EV.”
- 2           c.     Range in everyday driving for BMW i3 with REx is between 130
- 3                 and 140 miles farther than the BMW i3 without the optional REx.

4           259. As manufacturers of light-duty vehicles, BMW NA and BMW AG were  
5 required to provide these warranties to purchasers of BMW i3 vehicles.

6           260. BMW NA and BMW AG’s warranties formed the basis of the bargain  
7 that was reached when Plaintiff and other Class members purchased or leased their  
8 Affected Vehicles equipped with the defective Range Extender system from BMW  
9 NA and BMW AG.

10          261. Plaintiff and the Class members experienced defects within the warranty  
11 period. Despite the existence of warranties, BMW NA and BMW AG failed to inform  
12 Plaintiff and Class members that the Affected Vehicles were defectively designed and  
13 failed to fix the defective Range Extender free of charge.

14          262. BMW NA and BMW AG breached the express warranty promising to  
15 repair and correct a manufacturing defect or materials or workmanship of any part  
16 supplied by BMW NA and BMW AG. BMW NA and BMW AG have not repaired or  
17 adjusted, and have been unable to repair or adjust, the Affected Vehicles’ materials  
18 and workmanship defects.

19          263. Affording BMW NA and BMW AG a reasonable opportunity to cure  
20 their breach of written warranties would be unnecessary and futile here.

21          264. Furthermore, the limited warranty promising to repair and/or correct a  
22 manufacturing defect fails in its essential purpose because the contractual remedy is  
23 insufficient to make Plaintiff and the other Class members whole and because BMW  
24 NA and BMW AG have failed and/or have refused to adequately provide the promised  
25 remedies within a reasonable time.

26          265. Accordingly, recovery by Plaintiff and the other Class members is not  
27 limited to the limited warranty promising to repair and/or correct a manufacturing  
28

1 defect, and Plaintiff, individually and on behalf of the other Class members, seeks all  
2 remedies as allowed by law.

3 266. Also, as alleged in more detail herein, at the time BMW NA and BMW  
4 AG warranted and sold the Affected Vehicles, they knew that the Affected Vehicles  
5 did not conform to BMW NA and BMW AG's warranties and were inherently  
6 defective, and BMW NA and BMW AG wrongfully and fraudulently concealed  
7 material facts regarding the Affected Vehicles. Plaintiff and the other Class members  
8 were therefore induced to purchase or lease the Affected Vehicles under false and/or  
9 fraudulent pretenses.

10 267. Moreover, many of the injuries flowing from the Affected Vehicles  
11 cannot be resolved through the limited remedy of "replacements or adjustments," as  
12 many incidental and consequential damages have already been suffered due to BMW  
13 NA and BMW AG's fraudulent conduct as alleged herein, and due to their failure  
14 and/or continued failure to provide such limited remedy within a reasonable time, and  
15 any limitation on Plaintiff's and the other Class members' remedies would be  
16 insufficient to make Plaintiff and the other Class members whole.

17 268. BMW NA and BMW AG were provided notice of these issues by  
18 numerous complaints filed against them, including the instant Complaint, within a  
19 reasonable amount of time after the defect was discovered.

20 269. As a direct and proximate result of BMW NA and BMW AG's breach of  
21 express warranties, Plaintiff and the other Class members have been damaged in an  
22 amount to be determined at trial.

23 **COUNT IV**

24 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
25 **(COLO. REV. STAT. § 4-2-314)**

26 270. Plaintiffs reallege and incorporate by reference all paragraphs as though  
27 fully set forth herein.  
28

1           271. Plaintiff Thomas Munk brings this Count on behalf of himself and the  
2 Colorado Class.

3           272. BMW NA and BMW AG are and were at all relevant times merchants  
4 with respect to motor vehicles.

5           273. A warranty that the Affected Vehicles were in merchantable condition is  
6 implied by law in the instant transactions. These Affected Vehicles, when sold and at  
7 all times thereafter, were not in merchantable condition and are not fit for the ordinary  
8 purpose for which vehicles are used. Specifically, the Affected Vehicles are inherently  
9 defective in that the Range Extender system was not adequately designed,  
10 manufactured, and tested.

11           274. BMW NA and BMW AG were provided notice of these issues by  
12 complaints lodged by consumers with NHTSA—which vehicle manufacturers like  
13 BMW NA and BMW AG routinely monitor—before or within a reasonable amount of  
14 time after the allegations of Affected Vehicle defects became public.

15           275. Plaintiff and the other Class members have had sufficient direct dealings  
16 with either BMW NA and BMW AG or their agents (*e.g.*, dealerships and technical  
17 support) to establish privity of contract between BMW NA and BMW AG on one  
18 hand, and Plaintiff and each of the other Class members on the other hand.  
19 Nonetheless, privity is not required here because Plaintiff and each of the other Class  
20 members are intended third-party beneficiaries of contracts between BMW NA and  
21 BMW AG and their dealers, and specifically, of BMW's implied warranties. The  
22 dealers were not intended to be the ultimate consumers of the Affected Vehicles and  
23 have no rights under the warranty agreements provided with the Affected Vehicles;  
24 the warranty agreements were designed for and intended to benefit the consumers  
25 only.

26           276. As a direct and proximate result of BMW NA and BMW AG's breach of  
27 the warranties of merchantability, Plaintiff and the other Class members have been  
28 damaged in an amount to be proven at trial.

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**COUNT V**  
**UNJUST ENRICHMENT**

277. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

278. In the event that no adequate legal remedy is available, Plaintiff Thomas Munk brings this Count in the alternative on behalf of himself and the Colorado Class.

279. BMW NA and BMW AG have received and retained a benefit from Plaintiff and the Class and inequity has resulted.

280. BMW NA and BMW AG have benefitted from selling and leasing defective cars whose value was artificially inflated by BMW NA and BMW AG's concealment of the defective Range Extender at a profit, and Plaintiff and the Class have overpaid for the cars and been forced to pay other costs.

281. Thus, all Colorado Class members conferred a benefit on BMW NA and BMW AG.

282. It is inequitable for BMW NA and BMW AG to retain these benefits.

283. Plaintiff and the Class were not aware of the true facts about the Affected Vehicles and did not benefit from BMW NA and BMW AG's conduct.

284. BMW NA and BMW AG knowingly accepted the benefits of their unjust conduct.

285. As a result of BMW NA and BMW AG's conduct, the amount of their unjust enrichment should be disgorged, in an amount according to proof.

**D. Florida**

**COUNT I**  
**VIOLATION OF FLORIDA'S UNFAIR &  
DECEPTIVE TRADE PRACTICES ACT**  
**(FLA. STAT. § 501.201, et seq.)**

286. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

1           287. Plaintiffs Peter Bernard and Lawrence Curcio bring this Count on behalf  
2 of themselves and the Florida Class.

3           288. Plaintiffs and Class members are “consumers” within the meaning of the  
4 Florida Unfair and Deceptive Trade Practices Act (“FUDTPA”), FLA. STAT.  
5 § 501.203(7).

6           289. BMW NA and BMW AG engaged in “trade or commerce” within the  
7 meaning of FLA. STAT. § 501.203(8).

8           290. The FUDTPA prohibits “[u]nfair methods of competition,  
9 unconscionable acts or practices, and unfair or deceptive acts or practices in the  
10 conduct of any trade or commerce.” FLA. STAT. § 501.204(1).

11           291. In the course of business, BMW NA and BMW AG willfully failed to  
12 disclose and actively concealed the defective Range Extender discussed herein and  
13 otherwise engaged in activities with a tendency or capacity to deceive. BMW NA and  
14 BMW AG also engaged in unlawful trade practices by employing deception, deceptive  
15 acts or practices, fraud, misrepresentations, or concealment, suppression, or omission  
16 of any material fact with intent that others rely upon such concealment, suppression, or  
17 omission, in connection with the sale of Affected Vehicles.

18           292. BMW NA and BMW AG knew they had installed a defective Range  
19 Extender and knew that the Range Extender did not extend the normal operation of the  
20 vehicle for double the range, as advertised. BMW NA and BMW AG knew this for at  
21 least two years, but concealed all of that information.

22           293. BMW NA and BMW AG were also aware that they valued profits over  
23 safety, and that they were manufacturing, selling, and distributing vehicles throughout  
24 the United States that did not perform as advertised and jeopardized the safety of the  
25 vehicles’ occupants. BMW NA and BMW AG concealed this information as well.

26           294. By failing to disclose that the defective Range Extender did not extend  
27 the normal operation of the vehicle or double the range, by marketing BMW vehicles  
28 as safe, reliable, and of high quality, and by presenting BMW as a reputable



1 manufacturer that valued safety and stood behind their vehicles after they were sold,  
2 BMW NA and BMW AG engaged in deceptive business practices in violation of the  
3 FUDTPA.

4 295. BMW NA and BMW AG's unfair or deceptive acts or practices were  
5 likely to and did in fact deceive reasonable consumers, including Plaintiffs and the  
6 other Class members, about the true performance of the BMW i3 with Range  
7 Extender, the quality of the BMW brand, the devaluing of safety and performance at  
8 BMW NA and BMW AG, and the true value of the Affected Vehicles.

9 296. BMW NA and BMW AG intentionally and knowingly misrepresented  
10 material facts regarding the Affected Vehicles with intent to mislead Plaintiffs and the  
11 Florida Class.

12 297. BMW NA and BMW AG knew or should have known that their conduct  
13 violated the FUDTPA.

14 298. As alleged above, BMW NA and BMW AG made material statements  
15 about the safety and performance of the Affected Vehicles and the BMW brand that  
16 were either false or misleading.

17 299. BMW NA and BMW AG owed Plaintiffs a duty to disclose the true  
18 safety, performance, and reliability of the Affected Vehicles, and the devaluing of  
19 safety and performance at BMW NA and BMW AG, because BMW NA and BMW  
20 AG:

- 21 a. Possessed exclusive knowledge that they valued  
22 profits and cost-cutting over safety and performance,  
23 and that they were manufacturing, selling, and  
distributing vehicles throughout the United States that  
did not perform as advertised;
- 24 b. Intentionally concealed the foregoing from and the  
25 Class; and/or
- 26 c. Made incomplete representations about the safety and  
27 performance of the Affected Vehicles generally, and  
the defective Range Extender in particular, while  
28 purposefully withholding material facts from and the  
Class that contradicted these representations.

1           300. Because BMW NA and BMW AG fraudulently concealed the defective  
2 Range Extender and the true performance of the BMW i3 with Range Extender,  
3 resulting in a raft of negative publicity once the defects finally began to be disclosed,  
4 the value of the Affected Vehicles has greatly diminished. In light of the stigma  
5 attached to those vehicles by BMW NA and BMW AG's conduct, they are now worth  
6 significantly less than they otherwise would be.

7           301. BMW NA and BMW AG's fraudulent use of the defective Range  
8 Extender and the true performance of BMW i3 with Range Extender were material to  
9 Plaintiffs and the Florida Class. A vehicle made by a reputable manufacturer of safe,  
10 high-performing, long-range electric vehicles is safer and worth more than an  
11 otherwise comparable vehicle made by a disreputable manufacturer of unsafe, short-  
12 range electric vehicles that conceals defects rather than promptly remedying them.

13           302. Plaintiffs and the Florida Class suffered ascertainable loss caused by  
14 BMW NA and BMW AG's misrepresentations and their concealment of and failure to  
15 disclose material information. Class members who purchased the Affected Vehicles  
16 either would have paid less for their vehicles or would not have purchased or leased  
17 them at all but for BMW NA and BMW AG's violations of the FUDTPA.

18           303. BMW NA and BMW AG had an ongoing duty to all BMW customers to  
19 refrain from unfair and deceptive practices under the FUDTPA. All owners of  
20 Affected Vehicles suffered ascertainable loss in the form of the diminished value of  
21 their vehicles as a result of BMW NA and BMW AG's deceptive and unfair acts and  
22 practices made in the course of BMW NA and BMW AG's business.

23           304. BMW NA and BMW AG's violations present a continuing risk to  
24 Plaintiffs as well as to the general public. BMW NA and BMW AG's unlawful acts  
25 and practices complained of herein affect the public interest.

26           305. As a direct and proximate result of BMW NA and BMW AG's violations  
27 of the FUDTPA, Plaintiffs and the Florida Class have suffered injury-in-fact and/or  
28 actual damage.

1 306. Plaintiffs and the Florida Class are entitled to recover their actual  
2 damages under FLA. STAT. § 501.211(2) and attorneys’ fees under FLA. STAT.  
3 § 501.2105(1).

4 307. Plaintiffs also seek an order enjoining BMW NA and BMW AG’s unfair  
5 and/or deceptive acts or practices, punitive damages, and attorneys’ fees, and any  
6 other just and proper relief available under the FUDTPA.

7 **COUNT II**

8 **FRAUD BY CONCEALMENT**

9 308. Plaintiffs reallege and incorporate by reference all paragraphs as though  
10 fully set forth herein.

11 309. Plaintiffs Peter Bernard and Lawrence Curcio bring this Count on behalf  
12 of themselves and the Florida Class.

13 310. BMW NA and BMW AG concealed and suppressed material facts  
14 concerning the quality of their vehicles and the BMW brand.

15 311. BMW NA and BMW AG concealed and suppressed material facts  
16 concerning the safety, performance, and quality of the Affected Vehicles. As alleged  
17 in this Complaint, notwithstanding their promises that the “Range Extender” maintains  
18 the state of battery charge and extends the BMW i3’s range, BMW NA and BMW AG  
19 knowingly and intentionally designed and incorporated the REx feature that could not  
20 maintain battery charge or safe operation of the vehicle.

21 312. BMW NA and BMW AG did so in order to boost confidence in their  
22 vehicles and falsely assure purchasers and lessees of BMW vehicles that BMW is a  
23 reputable manufacturer that stands behind its vehicles after they are sold, and that their  
24 vehicles are safe, reliable, and perform as promised. The false representations were  
25 material to consumers, both because they concerned the safety of the Affected  
26 Vehicles and because the representations played a significant role in the value of the  
27 vehicles.

28

1           313. Plaintiffs and Florida Class members viewed advertising on BMW NA  
2 and BMW AG's website and other forums that promised extended range and  
3 maintenance of the battery's charge. They had no way of knowing that BMW NA and  
4 BMW AG's representations were false and gravely misleading. Plaintiffs and Florida  
5 Class members did not and could not unravel BMW NA and BMW AG's deception on  
6 their own.

7           314. BMW NA and BMW AG had a duty to disclose the true performance of  
8 the BMW i3 because knowledge of the scheme and its details were known and/or  
9 accessible only to BMW NA and BMW AG; BMW NA and BMW AG had superior  
10 knowledge and access to the facts; and BMW NA and BMW AG knew the facts were  
11 not known to, or reasonably discoverable, by Plaintiffs and the Florida Class. BMW  
12 NA and BMW AG also had a duty to disclose because they made many general  
13 affirmative representations about the about the qualities of their vehicles with respect  
14 to vehicle range, starting with references to them as *extended range* vehicles, as set  
15 forth above, which were misleading, deceptive, and incomplete without the disclosure  
16 of the additional facts set forth above regarding the actual performance of their  
17 vehicles, their actual decision to put sales and profits over safety, and their actual  
18 practices with respect to the vehicles at issue. Having volunteered to provide  
19 information to Plaintiffs, BMW NA and BMW AG had the duty to disclose not just  
20 the partial truth, but the entire truth. These omitted and concealed facts were material  
21 because they directly impact the safety and the value of the Affected Vehicles  
22 purchased or leased by Plaintiffs and the Florida Class. Whether a vehicle is safe to  
23 drive, and whether that vehicle's manufacturer tells the truth with respect to the  
24 vehicles performance and range are material concerns to a consumer, as evidenced by  
25 the approximately \$4,000 premium paid for the BMW i3s equipped with the optional  
26 REx feature.

27           315. BMW NA and BMW AG actively concealed and/or suppressed these  
28 material facts, in whole or in part, to pad and protect their profits and to avoid the

1 perception that their vehicles did not or could not maintain the state of battery charge  
2 and safely reach the range of other electric vehicles on the market, which perception  
3 would hurt the brand's image and cost BMW NA and BMW AG money, and they did  
4 so at the expense of Plaintiffs and the Florida Class.

5 316. On information and belief, BMW NA and BMW AG have still not made  
6 full and adequate disclosures and continue to defraud Plaintiffs and the Florida Class  
7 by concealing material information regarding the safety and performance of their  
8 vehicles.

9 317. Plaintiffs and the Florida Class were unaware of these omitted material  
10 facts and would not have acted as they did if they had known of the concealed and/or  
11 suppressed facts, in that they would not have purchased the REx feature-equipped  
12 vehicles manufactured by BMW NA and BMW AG, and/or would not have continued  
13 to drive their Affected Vehicles or would have taken other affirmative steps. Plaintiffs'  
14 and the Florida Class members' actions were justified. BMW NA and BMW AG were  
15 in exclusive control of the material facts and such facts were not known to the public,  
16 Plaintiffs, or the Florida Class.

17 318. Because of the concealment and/or suppression of the facts, Plaintiffs and  
18 the Florida Class sustained damage because they did not receive the value for the  
19 approximately \$4,000 premium paid, and they own vehicles that diminished in value  
20 as a result of BMW NA and BMW AG's concealment of, and failure to timely  
21 disclose, the actual safety and performance of the BMW i3 with REx feature. Had they  
22 been aware of the true safety and performance of the Affected Vehicles, Plaintiffs and  
23 Class members who purchased or leased the Affected Vehicles would have paid less  
24 for their vehicles or would not have purchased or leased them at all.

25 319. The value of all Florida Class members' Affected Vehicles has  
26 diminished as a result of BMW NA and BMW AG's fraudulent concealment of the  
27 true capabilities of the REx feature, which has greatly tarnished the BMW brand and  
28 made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let

1 alone pay what otherwise would have been fair market value for the vehicles. In  
2 addition, Class members are entitled to damages for loss of use, costs of additional  
3 fuel, costs of unused warranties, and other damages to be proven at trial.

4 320. Accordingly, BMW NA and BMW AG are liable to the Florida Class for  
5 damages in an amount to be proven at trial.

6 321. BMW NA and BMW AG's acts were done maliciously, oppressively,  
7 deliberately, with intent to defraud, and in reckless disregard of Plaintiffs' and the  
8 Florida Class members' rights and well-being to enrich BMW NA and BMW AG.  
9 BMW NA and BMW AG's conduct warrants an assessment of punitive damages in an  
10 amount sufficient to deter such conduct in the future, which amount is to be  
11 determined according to proof.

### 12 **COUNT III**

#### 13 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY** 14 **(FLA. STAT. § 672.314)**

15 322. Plaintiffs reallege and incorporate by reference all paragraphs as though  
16 fully set forth herein.

17 323. Plaintiffs Peter Bernard and Lawrence Curcio bring this Count on behalf  
18 of themselves and the Florida Class.

19 324. BMW NA and BMW AG are and were at all relevant times merchants  
20 with respect to motor vehicles.

21 325. A warranty that the Affected Vehicles were in merchantable condition is  
22 implied by law in the instant transactions. These Affected Vehicles, when sold and at  
23 all times thereafter, were not in merchantable condition and are not fit for the ordinary  
24 purpose for which vehicles are used. Specifically, the Affected Vehicles are inherently  
25 defective in that the Range Extender system was not adequately designed,  
26 manufactured, and tested.

27 326. BMW NA and BMW AG were provided notice of these issues by  
28 complaints lodged by consumers with NHTSA—which vehicle manufacturers like

1 BMW NA and BMW AG routinely monitor—before or within a reasonable amount of  
2 time after the allegations of Affected Vehicle defects became public.

3 327. Plaintiffs and the other Class members have had sufficient direct dealings  
4 with either BMW NA and BMW AG or their agents (*e.g.*, dealerships and technical  
5 support) to establish privity of contract between BMW NA and BMW AG on one  
6 hand, and Plaintiffs and each of the other Class members on the other hand.

7 Nonetheless, privity is not required here because Plaintiffs and each of the other Class  
8 members are intended third-party beneficiaries of contracts between BMW NA and  
9 BMW AG and their dealers, and specifically, of BMW NA and BMW AG’s implied  
10 warranties. The dealers were not intended to be the ultimate consumers of the Affected  
11 Vehicles and have no rights under the warranty agreements provided with the Affected  
12 Vehicles; the warranty agreements were designed for and intended to benefit the  
13 consumers only.

14 328. As a direct and proximate result of BMW NA and BMW AG’s breach of  
15 the warranties of merchantability, Plaintiffs and the other Class members have been  
16 damaged in an amount to be proven at trial.

17 **COUNT IV**

18 **UNJUST ENRICHMENT**

19 329. Plaintiffs reallege and incorporate by reference all paragraphs as though  
20 fully set forth herein.

21 330. In the event that no adequate legal remedy is available, Plaintiffs Peter  
22 Bernard and Lawrence Curcio bring this Count in the alternative on behalf of  
23 themselves and the Florida Class.

24 331. BMW NA and BMW AG have received and retained a benefit from  
25 Plaintiffs and inequity has resulted.

26 332. BMW NA and BMW AG have benefitted from selling and leasing  
27 defective cars whose value was artificially inflated by BMW NA and BMW AG’s  
28

1 concealment of the defective Range Extender at a profit, and Plaintiffs and the Class  
2 have overpaid for the cars and been forced to pay other costs.

3 333. Thus, all Florida Class members conferred a benefit on BMW NA and  
4 BMW AG.

5 334. It is inequitable for BMW NA and BMW AG to retain these benefits.

6 335. Plaintiffs and the Class were not aware of the true facts about the  
7 Affected Vehicles and did not benefit from BMW NA and BMW AG's conduct.

8 336. BMW NA and BMW AG knowingly accepted the benefits of their unjust  
9 conduct.

10 337. As a result of BMW NA and BMW AG's conduct, the amount of their  
11 unjust enrichment should be disgorged, in an amount according to proof.

12 **E. Georgia**

13 **COUNT I**

14 **VIOLATION OF GEORGIA'S FAIR BUSINESS PRACTICES ACT**  
15 **(GA. CODE ANN. § 10-1-390, *et seq.*)**

16 338. Plaintiffs reallege and incorporate by reference all paragraphs as though  
17 fully set forth herein.

18 339. Plaintiff Naveen Parmeshwar intends to assert a claim under the Georgia  
19 Fair Business Practices Act ("Georgia FBPA"), which declares "[u]nfair or deceptive  
20 acts or practices in the conduct of consumer transactions and consumer acts or  
21 practices in trade or commerce" to be unlawful, GA. CODE ANN. § 10-1-393(a),  
22 including but not limited to "representing that goods or services have sponsorship,  
23 approval, characteristics, ingredients, uses, benefits, or quantities that they do not  
24 have," "[r]epresenting that goods or services are of a particular standard, quality, or  
25 grade . . . if they are of another," and "[a]dvertising goods or services with intent not  
26 to sell them as advertised," GA. CODE ANN. § 10-1-393(b). Plaintiff will make a  
27 demand in satisfaction of GA. CODE ANN § 10-1-399(b), and may amend this  
28 Complaint to assert claims under the Georgia FBPA once the required time has



1 elapsed. This paragraph is included for purposes of notice only and is not intended to  
2 actually assert a claim under the Georgia FBPA.

3 **COUNT II**

4 **VIOLATION OF GEORGIA'S UNIFORM DECEPTIVE**  
5 **TRADE PRACTICES ACT**  
6 **(GA. CODE ANN. § 10-1-370, et seq.)**

7 340. Plaintiffs reallege and incorporate by reference all paragraphs as though  
8 fully set forth herein.

9 341. Plaintiff Naveen Parmeshwar brings this Count on behalf of himself and  
10 the Georgia Class.

11 342. BMW NA and BMW AG, Plaintiff, and members of the Georgia Class  
12 are "persons" within the meaning of the Georgia Uniform Deceptive Trade Practices  
13 Act ("Georgia UDTPA"), GA. CODE ANN § 10-1-371(5).

14 343. The Georgia UDTPA prohibits "deceptive trade practices," which include  
15 the "misrepresentation of standard or quality of goods or services," and "engaging in  
16 any other conduct which similarly creates a likelihood of confusion or of  
17 misunderstanding." GA. CODE ANN § 10-1-372(a)

18 344. In the course of business, BMW NA and BMW AG willfully failed to  
19 disclose and actively concealed the defective Range Extender discussed herein and  
20 otherwise engaged in activities with a tendency or capacity to deceive. BMW NA and  
21 BMW AG also engaged in unlawful trade practices by employing deception, deceptive  
22 acts or practices, fraud, misrepresentations, or concealment, suppression, or omission  
23 of any material fact with intent that others rely upon such concealment, suppression, or  
24 omission, in connection with the sale of Affected Vehicles.

25 345. BMW NA and BMW AG knew they had installed a defective Range  
26 Extender and knew that the Range Extender did not extend the normal operation of the  
27 vehicle for double the range, as advertised. BMW NA and BMW AG knew this for at  
28 least two years, but concealed all of that information.

1           346. BMW NA and BMW AG were also aware that they valued profits over  
2 safety, and that they were manufacturing, selling, and distributing vehicles throughout  
3 the United States that did not perform as advertised and jeopardized the safety of the  
4 vehicles' occupants. BMW NA and BMW AG concealed this information as well.

5           347. By failing to disclose that the defective Range Extender did not extend  
6 the normal operation of the vehicle or double the range, by marketing BMW vehicles  
7 as safe, reliable, and of high quality, and by presenting BMW as a reputable  
8 manufacturer that valued safety and stood behind their vehicles after they were sold,  
9 BMW NA and BMW AG engaged in deceptive business practices in violation of the  
10 Georgia UDTPA.

11           348. BMW NA and BMW AG's unfair or deceptive acts or practices were  
12 likely to and did in fact deceive reasonable consumers, including Plaintiff and the  
13 other Class members, about the true performance of the BMW i3 with Range  
14 Extender, the quality of the BMW brand, the devaluing of safety and performance at  
15 BMW NA and BMW AG, and the true value of the Affected Vehicles.

16           349. BMW NA and BMW AG intentionally and knowingly misrepresented  
17 material facts regarding the Affected Vehicles with intent to mislead Plaintiff and the  
18 Georgia Class.

19           350. BMW NA and BMW AG knew or should have known that their conduct  
20 violated the Georgia UDTPA.

21           351. As alleged above, BMW NA and BMW AG made material statements  
22 about the safety and performance of the Affected Vehicles and the BMW brand that  
23 were either false or misleading.

24           352. BMW NA and BMW AG owed Plaintiff a duty to disclose the true safety,  
25 performance, and reliability of the Affected Vehicles, and the devaluing of safety and  
26 performance at BMW NA and BMW AG, because BMW NA and BMW AG:

- 27           a. Possessed exclusive knowledge that they valued  
28 profits and cost-cutting over safety and performance,  
and that they were manufacturing, selling, and

1 distributing vehicles throughout the United States that  
2 did not perform as advertised;

3 b. Intentionally concealed the foregoing from and the  
4 Class; and/or

5 c. Made incomplete representations about the safety and  
6 performance of the Affected Vehicles generally, and  
7 the defective Range Extender in particular, while  
8 purposefully withholding material facts from and the  
9 Class that contradicted these representations.

10 353. Because BMW NA and BMW AG fraudulently concealed the defective  
11 Range Extender and the true performance of the BMW i3 with Range Extender,  
12 resulting in a raft of negative publicity once the defects finally began to be disclosed,  
13 the value of the Affected Vehicles has greatly diminished. In light of the stigma  
14 attached to those vehicles by BMW NA and BMW AG's conduct, they are now worth  
15 significantly less than they otherwise would be.

16 354. BMW NA and BMW AG's fraudulent use of the defective Range  
17 Extender and the true performance of BMW i3 with Range Extender were material to  
18 Plaintiff and the Georgia Class. A vehicle made by a reputable manufacturer of safe,  
19 high-performing, long-range electric vehicles is safer and worth more than an  
20 otherwise comparable vehicle made by a disreputable manufacturer of unsafe, short-  
21 range electric vehicles that conceals defects rather than promptly remedying them.

22 355. Plaintiff and the Georgia Class suffered ascertainable loss caused by  
23 BMW NA and BMW AG's misrepresentations and their concealment of and failure to  
24 disclose material information. Class members who purchased the Affected Vehicles  
25 either would have paid less for their vehicles or would not have purchased or leased  
26 them at all but for BMW NA and BMW AG's violations of the Georgia UDTPA.

27 356. BMW NA and BMW AG had an ongoing duty to all BMW customers to  
28 refrain from unfair and deceptive practices under the Georgia UDTPA. All owners of  
Affected Vehicles suffered ascertainable loss in the form of the diminished value of  
their vehicles as a result of BMW NA and BMW AG's deceptive and unfair acts and  
practices made in the course of BMW NA and BMW AG's business.

1 357. BMW NA and BMW AG’s violations present a continuing risk to  
2 Plaintiff as well as to the general public. BMW NA and BMW AG’s unlawful acts and  
3 practices complained of herein affect the public interest.

4 358. As a direct and proximate result of BMW NA and BMW AG’s violations  
5 of the Georgia UDTPA, Plaintiff and the Georgia Class have suffered injury-in-fact  
6 and/or actual damage.

7 359. Plaintiff also seeks an order enjoining BMW NA and BMW AG’s unfair,  
8 unlawful, and/or deceptive practices, attorneys’ fees, and any other just and proper  
9 relief available under the Georgia UDTPA per GA. CODE ANN. § 10-1-373.

10 **COUNT III**

11 **FRAUD BY CONCEALMENT**

12 360. Plaintiffs reallege and incorporate by reference all paragraphs as though  
13 fully set forth herein.

14 361. Plaintiff Naveen Parmeshwar brings this Count on behalf of himself and  
15 the Georgia Class.

16 362. BMW NA and BMW AG concealed and suppressed material facts  
17 concerning the quality of their vehicles and the BMW brand.

18 363. BMW NA and BMW AG concealed and suppressed material facts  
19 concerning the safety, performance, and quality of the Affected Vehicles. As alleged  
20 in this Complaint, notwithstanding their promises that the “Range Extender” maintains  
21 the state of battery charge and extends the BMW i3’s range, BMW NA and BMW AG  
22 knowingly and intentionally designed and incorporated the REx feature that could not  
23 maintain battery charge or safe operation of the vehicle.

24 364. BMW NA and BMW AG did so in order to boost confidence in their  
25 vehicles and falsely assure purchasers and lessees of BMW vehicles that BMW is a  
26 reputable manufacturer that stands behind its vehicles after they are sold, and that their  
27 vehicles are safe, reliable, and perform as promised. The false representations were  
28 material to consumers, both because they concerned the safety of the Affected

1 Vehicles and because the representations played a significant role in the value of the  
2 vehicles.

3 365. Plaintiff and Georgia Class members viewed advertising on BMW NA  
4 and BMW AG's website and other forums that promised extended range and  
5 maintenance of the battery's charge. They had no way of knowing that BMW NA and  
6 BMW AG's representations were false and gravely misleading. Plaintiff and Georgia  
7 Class members did not and could not unravel BMW NA and BMW AG's deception on  
8 their own.

9 366. BMW NA and BMW AG had a duty to disclose the true performance of  
10 the BMW i3 because knowledge of the scheme and its details were known and/or  
11 accessible only to BMW NA and BMW AG; BMW NA and BMW AG had superior  
12 knowledge and access to the facts; and BMW NA and BMW AG knew the facts were  
13 not known to, or reasonably discoverable, by Plaintiff and the Georgia Class. BMW  
14 NA and BMW AG also had a duty to disclose because they made many general  
15 affirmative representations about the about the qualities of their vehicles with respect  
16 to vehicle range, starting with references to them as *extended range* vehicles, as set  
17 forth above, which were misleading, deceptive, and incomplete without the disclosure  
18 of the additional facts set forth above regarding the actual performance of their  
19 vehicles, their actual decision to put sales and profits over safety, and their actual  
20 practices with respect to the vehicles at issue. Having volunteered to provide  
21 information to Plaintiff, BMW NA and BMW AG had the duty to disclose not just the  
22 partial truth, but the entire truth. These omitted and concealed facts were material  
23 because they directly impact the safety and the value of the Affected Vehicles  
24 purchased or leased by Plaintiff and the Georgia Class. Whether a vehicle is safe to  
25 drive, and whether that vehicle's manufacturer tells the truth with respect to the  
26 vehicles performance and range are material concerns to a consumer, as evidenced by  
27 the approximately \$4,000 premium paid for the BMW i3s equipped with the optional  
28 REx feature.

1           367. BMW NA and BMW AG actively concealed and/or suppressed these  
2 material facts, in whole or in part, to pad and protect their profits and to avoid the  
3 perception that their vehicles did not or could not maintain the state of battery charge  
4 and safely reach the range of other electric vehicles on the market, which perception  
5 would hurt the brand's image and cost BMW NA and BMW AG money, and they did  
6 so at the expense of Plaintiff and the Georgia Class.

7           368. On information and belief, BMW NA and BMW AG have still not made  
8 full and adequate disclosures and continue to defraud Plaintiff and the Georgia Class  
9 by concealing material information regarding the safety and performance of their  
10 vehicles.

11           369. Plaintiff and the Georgia Class were unaware of these omitted material  
12 facts and would not have acted as they did if they had known of the concealed and/or  
13 suppressed facts, in that they would not have purchased the REx feature-equipped  
14 vehicles manufactured by BMW NA and BMW AG, and/or would not have continued  
15 to drive their Affected Vehicles or would have taken other affirmative steps. Plaintiff's  
16 and the Georgia Class members' actions were justified. BMW NA and BMW AG  
17 were in exclusive control of the material facts and such facts were not known to the  
18 public, Plaintiff, or the Georgia Class.

19           370. Because of the concealment and/or suppression of the facts, Plaintiff and  
20 the Georgia Class sustained damage because they did not receive the value for the  
21 approximately \$4,000 premium paid, and they own vehicles that diminished in value  
22 as a result of BMW NA and BMW AG's concealment of, and failure to timely  
23 disclose, the actual safety and performance of the BMW i3 with REx feature. Had they  
24 been aware of the true safety and performance of the Affected Vehicles, Plaintiff and  
25 Class members, who purchased or leased the Affected Vehicles, would have paid less  
26 for their vehicles or would not have purchased or leased them at all.

27           371. The value of all Georgia Class members' Affected Vehicles has  
28 diminished as a result of BMW NA and BMW AG's fraudulent concealment of the

1 true capabilities of the REx feature, which has greatly tarnished the BMW brand and  
2 made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let  
3 alone pay what otherwise would have been fair market value for the vehicles. In  
4 addition, Class members are entitled to damages for loss of use, costs of additional  
5 fuel, costs of unused warranties, and other damages to be proven at trial.

6 372. Accordingly, BMW NA and BMW AG are liable to the Georgia Class for  
7 damages in an amount to be proven at trial.

8 373. BMW NA and BMW AG's acts were done maliciously, oppressively,  
9 deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and the  
10 Georgia Class members' rights and well-being to enrich BMW NA and BMW AG.  
11 BMW NA and BMW AG's conduct warrants an assessment of punitive damages in an  
12 amount sufficient to deter such conduct in the future, which amount is to be  
13 determined according to proof.

#### 14 **COUNT IV**

#### 15 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY** 16 **(GA. CODE ANN. § 11-2-314)**

17 374. Plaintiffs reallege and incorporate by reference all paragraphs as though  
18 fully set forth herein.

19 375. Plaintiff Naveen Parmeshwar brings this Count on behalf of himself and  
20 the Georgia Class.

21 376. BMW NA and BMW AG are and were at all relevant times merchants  
22 with respect to motor vehicles.

23 377. A warranty that the Affected Vehicles were in merchantable condition is  
24 implied by law in the instant transactions. These Affected Vehicles, when sold and at  
25 all times thereafter, were not in merchantable condition and are not fit for the ordinary  
26 purpose for which vehicles are used. Specifically, the Affected Vehicles are inherently  
27 defective in that the Range Extender system was not adequately designed,  
28 manufactured, and tested.

1 378. BMW NA and BMW AG were provided notice of these issues by  
2 complaints lodged by consumers with NHTSA—which vehicle manufacturers like  
3 BMW NA and BMW AG routinely monitor—before or within a reasonable amount of  
4 time after the allegations of Affected Vehicle defects became public.

5 379. Plaintiff and the other Class members have had sufficient direct dealings  
6 with either BMW NA and BMW AG or their agents (*e.g.*, dealerships and technical  
7 support) to establish privity of contract between BMW NA and BMW AG on one  
8 hand, and Plaintiff and each of the other Class members on the other hand.  
9 Nonetheless, privity is not required here because Plaintiff and each of the other Class  
10 members are intended third-party beneficiaries of contracts between BMW NA and  
11 BMW AG and their dealers, and specifically, of BMW NA and BMW AG’s implied  
12 warranties. The dealers were not intended to be the ultimate consumers of the Affected  
13 Vehicles and have no rights under the warranty agreements provided with the Affected  
14 Vehicles; the warranty agreements were designed for and intended to benefit the  
15 consumers only.

16 380. As a direct and proximate result of BMW NA and BMW AG’s breach of  
17 the warranties of merchantability, Plaintiff and the other Class members have been  
18 damaged in an amount to be proven at trial.

19 **F. Illinois**

20 **COUNT I**

21 **VIOLATION OF THE ILLINOIS CONSUMER FRAUD AND**  
22 **DECEPTIVE BUSINESS PRACTICES ACT**  
**(815 ILL. COMP. STAT. 505/1, et seq. & 720 ILL. COMP. STAT. 295/1A)**

23 381. Plaintiffs reallege and incorporate by reference all paragraphs as though  
24 fully set forth herein.

25 382. Plaintiff Adeel Siddiqui brings this Count on behalf of himself and the  
26 Illinois Class.

27 383. Plaintiff and the Illinois Class are “consumers” as that term is defined in  
28 815 Ill. Comp. Stat. 505/1(e).



1           384. BMW NA and BMW AG’s acts or practices as set forth above occurred  
2 in the conduct of “trade” or “commerce” under 815 ILL. COMP. STAT. 505/2.

3           385. BMW NA and BMW AG participated in misleading, false, or deceptive  
4 acts that violated the Illinois CFA. By willfully failing to disclose and actively  
5 concealing the defective Range Extender, BMW NA and BMW AG engaged in  
6 deceptive business practices prohibited by the Illinois CFA, including “the use or  
7 employment of any deception, fraud, false pretense, false promise, misrepresentation  
8 or the concealment, suppression or omission of any material fact, with intent that  
9 others rely upon the concealment, suppression or omission of such material fact . . . in  
10 the conduct of any trade or commerce . . . whether any person has in fact been misled,  
11 deceived or damaged thereby.” 815 ILL. COMP. STAT. 505/2.

12           386. In the course of business, BMW NA and BMW AG willfully failed to  
13 disclose and actively concealed the defective Range Extender discussed herein and  
14 otherwise engaged in activities with a tendency or capacity to deceive. BMW NA and  
15 BMW AG also engaged in unlawful trade practices by employing deception, deceptive  
16 acts or practices, fraud, misrepresentations, or concealment, suppression or omission  
17 of any material fact with intent that others rely upon such concealment, suppression or  
18 omission, in connection with the sale of Affected Vehicles.

19           387. BMW NA and BMW AG knew they had installed a defective Range  
20 Extender and knew that the Range Extender did not extend the normal operation of the  
21 vehicle for double the range, as advertised. BMW NA and BMW AG knew this for at  
22 least two years, but concealed all of that information.

23           388. BMW NA and BMW AG were also aware that they valued profits over  
24 safety, and that they were manufacturing, selling, and distributing vehicles throughout  
25 the United States that did not perform as advertised and jeopardized the safety of the  
26 vehicles’ occupants. BMW NA and BMW AG concealed this information as well.

27           389. By failing to disclose that the defective Range Extender did not extend  
28 the normal operation of the vehicle or double the range, by marketing BMW vehicles

1 as safe, reliable, and of high quality, and by presenting BMW as a reputable  
2 manufacturer that valued safety and stood behind their vehicles after they were sold,  
3 BMW NA and BMW AG engaged in deceptive business practices in violation of the  
4 Illinois CFA.

5 390. BMW NA and BMW AG's unfair or deceptive acts or practices were  
6 likely to and did in fact deceive reasonable consumers, including Plaintiff and the  
7 other Class members, about the true performance of the BMW i3 with Range  
8 Extender, the quality of the BMW brand, the devaluing of safety and performance at  
9 BMW NA and BMW AG, and the true value of the Affected Vehicles.

10 391. BMW NA and BMW AG intentionally and knowingly misrepresented  
11 material facts regarding the Affected Vehicles with intent to mislead Plaintiff and the  
12 Illinois Class.

13 392. BMW NA and BMW AG knew or should have known that their conduct  
14 violated the Illinois CFA.

15 393. As alleged above, BMW NA and BMW AG made material statements  
16 about the safety and performance of the Affected Vehicles and the BMW brand that  
17 were either false or misleading.

18 394. BMW NA and BMW AG owed Plaintiff a duty to disclose the true safety,  
19 performance, and reliability of the Affected Vehicles, and the devaluing of safety and  
20 performance at BMW NA and BMW AG, because BMW NA and BMW AG:

- 21 a. Possessed exclusive knowledge that they valued  
22 profits and cost-cutting over safety and performance,  
23 and that they were manufacturing, selling, and  
distributing vehicles throughout the United States that  
did not perform as advertised;
- 24 b. Intentionally concealed the foregoing from and the  
25 Class; and/or
- 26 c. Made incomplete representations about the safety and  
27 performance of the Affected Vehicles generally, and  
the defective Range Extender in particular, while  
28 purposefully withholding material facts from and the  
Class that contradicted these representations.

1           395. Because BMW NA and BMW AG fraudulently concealed the defective  
2 Range Extender and the true performance of the BMW i3 with Range Extender,  
3 resulting in a raft of negative publicity once the defects finally began to be disclosed,  
4 the value of the Affected Vehicles has greatly diminished. In light of the stigma  
5 attached to those vehicles by BMW NA and BMW AG's conduct, they are now worth  
6 significantly less than they otherwise would be.

7           396. BMW NA and BMW AG's fraudulent use of the defective Range  
8 Extender and the true performance of BMW i3 with Range Extender were material to  
9 Plaintiff and the Illinois Class. A vehicle made by a reputable manufacturer of safe,  
10 high-performing, long-range electric vehicles is safer and worth more than an  
11 otherwise comparable vehicle made by a disreputable manufacturer of unsafe, short-  
12 range electric vehicles that conceals defects rather than promptly remedying them.

13           397. Plaintiff and the Illinois Class suffered ascertainable loss caused by  
14 BMW NA and BMW AG's misrepresentations and their concealment of and failure to  
15 disclose material information. Class members who purchased the Affected Vehicles  
16 either would have paid less for their vehicles or would not have purchased or leased  
17 them at all but for BMW NA and BMW AG's violations of the Illinois CFA.

18           398. BMW NA and BMW AG had an ongoing duty to all BMW customers to  
19 refrain from unfair and deceptive practices under the Illinois CFA. All owners of  
20 Affected Vehicles suffered ascertainable loss in the form of the diminished value of  
21 their vehicles as a result of BMW NA and BMW AG's deceptive and unfair acts and  
22 practices made in the course of BMW NA and BMW AG's business.

23           399. BMW NA and BMW AG's violations present a continuing risk to  
24 Plaintiff as well as to the general public. BMW NA and BMW AG's unlawful acts and  
25 practices complained of herein affect the public interest.

26           400. As a direct and proximate result of BMW NA and BMW AG's violations  
27 of the Illinois CFA, Plaintiff and the Illinois Class have suffered injury-in-fact and/or  
28 actual damage.

1 401. Pursuant to 815 ILL. COMP. STAT. 505/10(a), Plaintiff, individually and on  
2 behalf of the other Class members, seeks monetary relief against BMW NA and BMW  
3 AG in the amount of actual damages, as well as punitive damages, because BMW NA  
4 and BMW AG acted with fraud and/or malice and/or were grossly negligent.

5 402. Plaintiff also seeks an order enjoining BMW NA and BMW AG’s unfair  
6 and/or deceptive acts or practices, punitive damages, and attorneys’ fees, and any  
7 other just and proper relief available under 815 ILL. COMP. STAT. § 505/1, *et seq.*

8 **COUNT II**

9 **FRAUD BY CONCEALMENT**

10 403. Plaintiffs reallege and incorporate by reference all paragraphs as though  
11 fully set forth herein.

12 404. Plaintiff Adeel Siddiqui brings this Count on behalf of himself and the  
13 Illinois Class.

14 405. BMW NA and BMW AG concealed and suppressed material facts  
15 concerning the quality of their vehicles and the BMW brand.

16 406. BMW NA and BMW AG concealed and suppressed material facts  
17 concerning the safety, performance, and quality of the Affected Vehicles. As alleged  
18 in this Complaint, notwithstanding their promises that the “Range Extender” maintains  
19 the state of battery charge and extends the BMW i3’s range, BMW NA and BMW AG  
20 knowingly and intentionally designed and incorporated the REx feature that could not  
21 maintain battery charge or safe operation of the vehicle.

22 407. BMW NA and BMW AG did so in order to boost confidence in their  
23 vehicles and falsely assure purchasers and lessees of BMW vehicles that BMW is a  
24 reputable manufacturer that stands behind its vehicles after they are sold, and that their  
25 vehicles are safe, reliable, and perform as promised. The false representations were  
26 material to consumers, both because they concerned the safety of the Affected  
27 Vehicles and because the representations played a significant role in the value of the  
28 vehicles.

1           408. Plaintiff and Illinois Class members viewed advertising on BMW NA and  
2 BMW AG's website and other forums that promised extended range and maintenance  
3 of the battery's charge. They had no way of knowing that BMW NA and BMW AG's  
4 representations were false and gravely misleading. Plaintiff and Illinois Class  
5 members did not and could not unravel BMW NA and BMW AG's deception on their  
6 own.

7           409. BMW NA and BMW AG had a duty to disclose the true performance of  
8 the BMW i3 because knowledge of the scheme and its details were known and/or  
9 accessible only to BMW NA and BMW AG; BMW NA and BMW AG had superior  
10 knowledge and access to the facts; and BMW NA and BMW AG knew the facts were  
11 not known to, or reasonably discoverable, by Plaintiff and the Illinois Class. BMW  
12 NA and BMW AG also had a duty to disclose because they made many general  
13 affirmative representations about the qualities of their vehicles with respect to vehicle  
14 range, starting with references to them as *extended range* vehicles, as set forth above,  
15 which were misleading, deceptive, and incomplete without the disclosure of the  
16 additional facts set forth above regarding the actual performance of their vehicles,  
17 their actual decision to put sales and profits over safety, and their actual practices with  
18 respect to the vehicles at issue. Having volunteered to provide information to Plaintiff,  
19 BMW NA and BMW AG had the duty to disclose not just the partial truth, but the  
20 entire truth. These omitted and concealed facts were material because they directly  
21 impact the safety and the value of the Affected Vehicles purchased or leased by  
22 Plaintiff and the Illinois Class. Whether a vehicle is safe to drive, and whether that  
23 vehicle's manufacturer tells the truth with respect to the vehicles performance and  
24 range are material concerns to a consumer, as evidenced by the approximately \$4,000  
25 premium paid for the BMW i3s equipped with the optional REx feature.

26           410. BMW NA and BMW AG actively concealed and/or suppressed these  
27 material facts, in whole or in part, to pad and protect their profits and to avoid the  
28 perception that their vehicles did not or could not maintain the state of battery charge

1 and safely reach the range of other electric vehicles on the market, which perception  
2 would hurt the brand's image and cost BMW NA and BMW AG money, and they did  
3 so at the expense of Plaintiff and the Illinois Class.

4 411. On information and belief, BMW NA and BMW AG have still not made  
5 full and adequate disclosures and continue to defraud Plaintiff and the Illinois Class by  
6 concealing material information regarding the safety and performance of their  
7 vehicles.

8 412. Plaintiff and the Illinois Class were unaware of these omitted material  
9 facts and would not have acted as they did if they had known of the concealed and/or  
10 suppressed facts, in that they would not have purchased the REx feature-equipped  
11 vehicles manufactured by BMW NA and BMW AG, and/or would not have continued  
12 to drive their Affected Vehicles or would have taken other affirmative steps. Plaintiff's  
13 and the Illinois Class members' actions were justified. BMW NA and BMW AG were  
14 in exclusive control of the material facts and such facts were not known to the public,  
15 Plaintiff, or the Illinois Class.

16 413. Because of the concealment and/or suppression of the facts, Plaintiff and  
17 the Illinois Class sustained damage because they did not receive the value for the  
18 approximately \$4,000 premium paid, and they own vehicles that diminished in value  
19 as a result of BMW NA and BMW AG's concealment of, and failure to timely  
20 disclose, the actual safety and performance of the BMW i3 with REx feature. Had they  
21 been aware of the true safety and performance of the Affected Vehicles, Plaintiff and  
22 other Class members, who purchased or leased the Affected Vehicles, would have  
23 paid less for their vehicles or would not have purchased or leased them at all.

24 414. The value of all Illinois Class members' Affected Vehicles has  
25 diminished as a result of BMW NA and BMW AG's fraudulent concealment of the  
26 true capabilities of the REx feature, which has greatly tarnished the BMW brand and  
27 made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let  
28 alone pay what otherwise would have been fair market value for the vehicles. In

1 addition, Class members are entitled to damages for loss of use, costs of additional  
2 fuel, costs of unused warranties, and other damages to be proven at trial.

3 415. Accordingly, BMW NA and BMW AG are liable to the Illinois Class for  
4 damages in an amount to be proven at trial.

5 416. BMW NA and BMW AG’s acts were done maliciously, oppressively,  
6 deliberately, with intent to defraud, and in reckless disregard of Plaintiff’s and the  
7 Illinois Class members’ rights and well-being to enrich BMW NA and BMW AG.  
8 BMW NA and BMW AG’s conduct warrants an assessment of punitive damages in an  
9 amount sufficient to deter such conduct in the future, which amount is to be  
10 determined according to proof.

11 **COUNT III**

12 **BREACH OF EXPRESS WARRANTY**  
13 **(810 ILL. COMP. STAT 5/2-313)**

14 417. Plaintiffs reallege and incorporate by reference all paragraphs as though  
15 fully set forth herein.

16 418. Plaintiff Adeel Siddiqui brings this Count on behalf of himself and the  
17 Illinois Class.

18 419. BMW NA and BMW AG are and were at all relevant times merchants  
19 with respect to motor vehicles.

20 420. 420. In connection with the purchase or lease of each one of its new  
21 vehicles, BMW NA provides an express New Vehicle Limited Warranty (NVLW) for  
22 a period of four years or 50,000 miles, whichever occurs first. This NVLW exists to  
23 cover “defect in materials or workmanship.” The warranty’s reference to  
24 “workmanship” incorporates design as well as implementation of those designs in the  
25 manufacturing process. BMW AG’s design decisions—made here with BMW NA’s  
26 knowledge—are incorporated into each step of the manufacturing process, such that a  
27 defect in the design of the REx system is indistinguishable from a manufacturing  
28 defect.

1           421. In addition to the New Vehicle Limited Warranty, BMW NA and BMW  
2 AG, through advertisements, brochures, and statements made by authorized dealers,  
3 warranted several attributes and qualities as detailed above, such as:

- 4           a. REx extends the range from approximately 81 miles per charge to  
5           150 miles per charge.  
6           b. REx “will essentially allow you to double the range of the EV.”  
7           c. Range in everyday driving for BMW i3 with REx is between 130  
8           and 140 miles farther than the BMW i3 without the optional REx.

9           422. As manufacturers of light-duty vehicles, BMW NA and BMW AG were  
10 required to provide these warranties to purchasers of BMW i3 vehicles.

11           423. BMW NA and BMW AG’s warranties formed the basis of the bargain  
12 that was reached when Plaintiff and other Class members purchased or leased their  
13 Affected Vehicles equipped with the defective Range Extender system from BMW  
14 NA and BMW AG.

15           424. Plaintiff and the Class members experienced defects within the warranty  
16 period. Despite the existence of warranties, BMW NA and BMW AG failed to inform  
17 Plaintiff and Class members that the Affected Vehicles were defectively designed and  
18 failed to fix the defective Range Extender free of charge.

19           425. BMW NA and BMW AG breached the express warranty promising to  
20 repair and correct a manufacturing defect or materials or workmanship of any part  
21 supplied by BMW NA and BMW AG. BMW NA and BMW AG have not repaired or  
22 adjusted, and have been unable to repair or adjust, the Affected Vehicles’ materials  
23 and workmanship defects.

24           426. Affording BMW NA and BMW AG a reasonable opportunity to cure  
25 their breach of written warranties would be unnecessary and futile here.

26           427. Furthermore, the limited warranty promising to repair and/or correct a  
27 manufacturing defect fails in its essential purpose because the contractual remedy is  
28 insufficient to make Plaintiff and the other Class members whole and because BMW



1 NA and BMW AG have failed and/or have refused to adequately provide the promised  
2 remedies within a reasonable time.

3 428. Accordingly, recovery by Plaintiff and the other Class members is not  
4 limited to the limited warranty promising to repair and/or correct a manufacturing  
5 defect, and Plaintiff, individually and on behalf of the other Class members, seeks all  
6 remedies as allowed by law.

7 429. Also, as alleged in more detail herein, at the time BMW NA and BMW  
8 AG warranted and sold the Affected Vehicles, they knew that the Affected Vehicles  
9 did not conform to BMW NA and BMW AG's warranties and were inherently  
10 defective and BMW NA and BMW AG wrongfully and fraudulently concealed  
11 material facts regarding the Affected Vehicles. Plaintiff and the other Class members  
12 were therefore induced to purchase or lease the Affected Vehicles under false and/or  
13 fraudulent pretenses.

14 430. Moreover, many of the injuries flowing from the Affected Vehicles  
15 cannot be resolved through the limited remedy of "replacements or adjustments," as  
16 many incidental and consequential damages have already been suffered due to BMW  
17 NA and BMW AG's fraudulent conduct as alleged herein, and due to their failure  
18 and/or continued failure to provide such limited remedy within a reasonable time, and  
19 any limitation on Plaintiff's and the other Class members' remedies would be  
20 insufficient to make Plaintiff and the other Class members whole.

21 431. BMW NA and BMW AG were provided notice of these issues by  
22 numerous complaints filed against them, including the instant Complaint, within a  
23 reasonable amount of time after the defect was discovered.

24 432. As a direct and proximate result of BMW NA and BMW AG's breach of  
25 express warranties, Plaintiff and the other Class members have been damaged in an  
26 amount to be determined at trial.

1 **G. Michigan**

2 **COUNT I**

3 **VIOLATION OF THE MICHIGAN CONSUMER PROTECTION ACT**  
4 **(MICH. COMP. LAWS § 445.903, et seq.)**

5 433. Plaintiffs reallege and incorporate by reference all paragraphs as though  
6 fully set forth herein.

7 434. Plaintiff Charles Olsen brings this Count on behalf of himself and the  
8 Michigan Class.

9 435. Plaintiff and the Michigan Class members were “person[s]” within the  
10 meaning of the MICH. COMP. LAWS § 445.902(1)(d).

11 436. At all relevant times, BMW NA and BMW AG were “persons” engaged  
12 in “trade or commerce” within the meaning of the MICH. COMP. LAWS § 445.902(1)(d)  
13 and (g).

14 437. The Michigan Consumer Protection Act (“Michigan CPA”) prohibits  
15 “[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of  
16 trade or commerce . . . .” MICH. COMP. LAWS § 445.903(1). BMW NA and BMW AG  
17 engaged in unfair, unconscionable, or deceptive methods, acts or practices prohibited  
18 by the Michigan CPA, including: “(c) Representing that goods or services have . . .  
19 characteristics . . . that they do not have”; “(e) Representing that goods or services are  
20 of a particular standard . . . if they are of another”; “(i) Making false or misleading  
21 statements of fact concerning the reasons for, existence of, or amounts of price  
22 reductions”; “(s) Failing to reveal a material fact, the omission of which tends to  
23 mislead or deceive the consumer, and which fact could not reasonably be known by  
24 the consumer”; “(bb) Making a representation of fact or statement of fact material to  
25 the transaction such that a person reasonably believes the represented or suggested  
26 state of affairs to be other than it actually is”; and “(cc) Failing to reveal facts that are  
27 material to the transaction in light of representations of fact made in a positive  
28 manner.” MICH. COMP. LAWS § 445.903(1).

1           438. In the course of business, BMW NA and BMW AG willfully failed to  
2 disclose and actively concealed the defective Range Extender discussed herein and  
3 otherwise engaged in activities with a tendency or capacity to deceive. BMW NA and  
4 BMW AG also engaged in unlawful trade practices by employing deception, deceptive  
5 acts or practices, fraud, misrepresentations, or concealment, suppression, or omission  
6 of any material fact with intent that others rely upon such concealment, suppression, or  
7 omission, in connection with the sale of Affected Vehicles.

8           439. BMW NA and BMW AG knew they had installed a defective Range  
9 Extender and knew that the Range Extender did not extend the normal operation of the  
10 vehicle for double the range, as advertised. BMW NA and BMW AG knew this for at  
11 least two years, but concealed all of that information.

12           440. BMW NA and BMW AG were also aware that they valued profits over  
13 safety, and that they were manufacturing, selling, and distributing vehicles throughout  
14 the United States that did not perform as advertised and jeopardized the safety of the  
15 vehicles' occupants. BMW NA and BMW AG concealed this information as well.

16           441. By failing to disclose that the defective Range Extender did not extend  
17 the normal operation of the vehicle or double the range, by marketing BMW vehicles  
18 as safe, reliable, and of high quality, and by presenting BMW as a reputable  
19 manufacturer that valued safety and stood behind their vehicles after they were sold,  
20 BMW NA and BMW AG engaged in deceptive business practices in violation of the  
21 Michigan CPA.

22           442. BMW NA and BMW AG's unfair or deceptive acts or practices were  
23 likely to and did in fact deceive reasonable consumers, including Plaintiff and the  
24 other Class members, about the true performance of the BMW i3 with Range  
25 Extender, the quality of the BMW brand, the devaluing of safety and performance at  
26 BMW NA and BMW AG, and the true value of the Affected Vehicles.

1           443. BMW NA and BMW AG intentionally and knowingly misrepresented  
2 material facts regarding the Affected Vehicles with intent to mislead Plaintiff and the  
3 Michigan Class.

4           444. BMW NA and BMW AG knew or should have known that their conduct  
5 violated the Michigan CPA.

6           445. As alleged above, BMW NA and BMW AG made material statements  
7 about the safety and performance of the Affected Vehicles and the BMW brand that  
8 were either false or misleading.

9           446. BMW NA and BMW AG owed Plaintiff and the Class a duty to disclose  
10 the true safety, performance, and reliability of the Affected Vehicles, and the  
11 devaluing of safety and performance at BMW NA and BMW AG, because BMW NA  
12 and BMW AG:

- 13           a. Possessed exclusive knowledge that they valued  
14 profits and cost-cutting over safety and performance,  
15 and that they were manufacturing, selling, and  
distributing vehicles throughout the United States that  
did not perform as advertised;
- 16           b. Intentionally concealed the foregoing from Plaintiff  
17 and the Class; and/or
- 18           c. Made incomplete representations about the safety and  
19 performance of the Affected Vehicles generally, and  
20 the defective Range Extender in particular, while  
purposefully withholding material facts from Plaintiff  
and the Class that contradicted these representations.

21           447. Because BMW NA and BMW AG fraudulently concealed the defective  
22 Range Extender and the true performance of the BMW i3 with Range Extender,  
23 resulting in a raft of negative publicity once the defects finally began to be disclosed,  
24 the value of the Affected Vehicles has greatly diminished. In light of the stigma  
25 attached to those vehicles by BMW NA and BMW AG's conduct, they are now worth  
26 significantly less than they otherwise would be.

27           448. BMW NA and BMW AG's fraudulent use of the defective Range  
28 Extender and the true performance of BMW i3 with Range Extender were material to

1 Plaintiff and the Michigan Class. A vehicle made by a reputable manufacturer of safe,  
2 high-performing, long-range electric vehicles is safer and worth more than an  
3 otherwise comparable vehicle made by a disreputable manufacturer of unsafe, short-  
4 range electric vehicles that conceals defects rather than promptly remedying them.

5 449. Plaintiff and the Michigan Class suffered ascertainable loss caused by  
6 BMW NA and BMW AG's misrepresentations and their concealment of and failure to  
7 disclose material information. Class members who purchased the Affected Vehicles  
8 either would have paid less for their vehicles or would not have purchased or leased  
9 them at all but for BMW NA and BMW AG's violations of the Michigan CPA.

10 450. BMW NA and BMW AG had an ongoing duty to all BMW customers to  
11 refrain from unfair and deceptive practices under the Michigan CPA. All owners of  
12 Affected Vehicles suffered ascertainable loss in the form of the diminished value of  
13 their vehicles as a result of BMW NA and BMW AG's deceptive and unfair acts and  
14 practices made in the course of BMW NA and BMW AG's business.

15 451. BMW NA and BMW AG's violations present a continuing risk to  
16 Plaintiff as well as to the general public. BMW NA and BMW AG's unlawful acts and  
17 practices complained of herein affect the public interest.

18 452. As a direct and proximate result of BMW NA and BMW AG's violations  
19 of the Michigan CPA, Plaintiff and the Michigan Class have suffered injury-in-fact  
20 and/or actual damage.

21 453. Plaintiff seeks injunctive relief to enjoin BMW NA and BMW AG from  
22 continuing their unfair and deceptive acts; monetary relief against BMW NA and  
23 BMW AG measured as the greater of (a) actual damages in an amount to be  
24 determined at trial and (b) statutory damages in the amount of \$250 for Plaintiff and  
25 each Michigan Class member; reasonable attorneys' fees; and any other just and  
26 proper relief available under MICH. COMP. LAWS § 445.911.

27 454. Plaintiff also seeks punitive damages against BMW NA and BMW AG  
28 because they carried out despicable conduct with willful and conscious disregard of

1 the rights and safety of others. BMW NA and BMW AG intentionally and willfully  
2 misrepresented the safety and reliability of the Affected Vehicles, concealed material  
3 facts that only they knew, and repeatedly promised Plaintiff and Michigan Class  
4 members that the Affected Vehicles were safe—all to avoid the expense and public  
5 relations nightmare of correcting a hazardous defect in the Affected Vehicles. BMW  
6 NA and BMW AG’s unlawful conduct constitutes malice, oppression, and fraud  
7 warranting punitive damages.

8 **COUNT II**  
9 **FRAUD BY CONCEALMENT**

10 455. Plaintiffs reallege and incorporate by reference all paragraphs as though  
11 fully set forth herein.

12 456. Plaintiff Charles Olsen brings this Count on behalf of himself and the  
13 Michigan Class.

14 457. BMW NA and BMW AG concealed and suppressed material facts  
15 concerning the quality of their vehicles and the BMW brand.

16 458. BMW NA and BMW AG concealed and suppressed material facts  
17 concerning the safety, performance, and quality of the Affected Vehicles. As alleged  
18 in this Complaint, notwithstanding their promises that the “Range Extender” maintains  
19 the state of battery charge and extends the BMW i3’s range, BMW NA and BMW AG  
20 knowingly and intentionally designed and incorporated the REx feature that could not  
21 maintain battery charge or safe operation of the vehicle.

22 459. BMW NA and BMW AG did so in order to boost confidence in their  
23 vehicles and falsely assure purchasers and lessees of BMW vehicles that BMW is a  
24 reputable manufacturer that stands behind its vehicles after they are sold, and that their  
25 vehicles are safe, reliable, and perform as promised. The false representations were  
26 material to consumers, both because they concerned the safety of the Affected  
27 Vehicles and because the representations played a significant role in the value of the  
28 vehicles.

1           460. Plaintiff and Michigan Class members viewed advertising on BMW NA  
2 and BMW AG’s website and other forums that promised extended range and  
3 maintenance of the battery’s charge. They had no way of knowing that BMW NA and  
4 BMW AG’s representations were false and gravely misleading. Plaintiff and Michigan  
5 Class members did not and could not unravel BMW NA and BMW AG’s deception on  
6 their own.

7           461. BMW NA and BMW AG had a duty to disclose the true performance of  
8 the BMW i3 because knowledge of the scheme and its details were known and/or  
9 accessible only to BMW NA and BMW AG; BMW NA and BMW AG had superior  
10 knowledge and access to the facts; and BMW NA and BMW AG knew the facts were  
11 not known to, or reasonably discoverable, by Plaintiff and the Michigan Class. BMW  
12 NA and BMW AG also had a duty to disclose because they made many general  
13 affirmative representations about the about the qualities of their vehicles with respect  
14 to vehicle range, starting with references to them as *extended range* vehicles, as set  
15 forth above, which were misleading, deceptive, and incomplete without the disclosure  
16 of the additional facts set forth above regarding the actual performance of their  
17 vehicles, their actual decision to put sales and profits over safety, and their actual  
18 practices with respect to the vehicles at issue. Having volunteered to provide  
19 information to Plaintiff, BMW NA and BMW AG had the duty to disclose not just the  
20 partial truth, but the entire truth. These omitted and concealed facts were material  
21 because they directly impact the safety and the value of the Affected Vehicles  
22 purchased or leased by Plaintiff and the Michigan Class. Whether a vehicle is safe to  
23 drive, and whether that vehicle’s manufacturer tells the truth with respect to the  
24 vehicles performance and range are material concerns to a consumer, as evidenced by  
25 the approximately \$4,000 premium paid for the BMW i3s equipped with the optional  
26 REx feature.

27           462. BMW NA and BMW AG actively concealed and/or suppressed these  
28 material facts, in whole or in part, to pad and protect their profits and to avoid the

1 perception that their vehicles did not or could not maintain the state of battery charge  
2 and safely reach the range of other electric vehicles on the market, which perception  
3 would hurt the brand's image and cost BMW NA and BMW AG money, and they did  
4 so at the expense of Plaintiff and the Michigan Class.

5 463. On information and belief, BMW NA and BMW AG have still not made  
6 full and adequate disclosures and continue to defraud Plaintiff and the Michigan Class  
7 by concealing material information regarding the safety and performance of their  
8 vehicles.

9 464. Plaintiff and the Michigan Class were unaware of these omitted material  
10 facts and would not have acted as they did if they had known of the concealed and/or  
11 suppressed facts, in that they would not have purchased the REx feature-equipped  
12 vehicles manufactured by BMW NA and BMW AG, and/or would not have continued  
13 to drive their Affected Vehicles or would have taken other affirmative steps. Plaintiff's  
14 and the Michigan Class members' actions were justified. BMW NA and BMW AG  
15 were in exclusive control of the material facts and such facts were not known to the  
16 public, Plaintiff, or the Michigan Class.

17 465. Because of the concealment and/or suppression of the facts, Plaintiff and  
18 the Michigan Class sustained damage because they did not receive the value for the  
19 approximately \$4,000 premium paid, and they own vehicles that diminished in value  
20 as a result of BMW NA and BMW AG's concealment of, and failure to timely  
21 disclose, the actual safety and performance of the BMW i3 with REx feature. Had they  
22 been aware of the true safety and performance of the Affected Vehicles, Plaintiff and  
23 other Class members, who purchased or leased the Affected Vehicles, would have  
24 paid less for their vehicles or would not have purchased or leased them at all.

25 466. The value of all Michigan Class members' Affected Vehicles has  
26 diminished as a result of BMW NA and BMW AG's fraudulent concealment of the  
27 true capabilities of the REx feature, which has greatly tarnished the BMW brand and  
28 made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let



1 alone pay what otherwise would have been fair market value for the vehicles. In  
2 addition, Class members are entitled to damages for loss of use, costs of additional  
3 fuel, costs of unused warranties, and other damages to be proven at trial.

4 467. Accordingly, BMW NA and BMW AG are liable to the Michigan Class  
5 for damages in an amount to be proven at trial.

6 468. BMW NA and BMW AG's acts were done maliciously, oppressively,  
7 deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and the  
8 Michigan Class members' rights and well-being to enrich BMW NA and BMW AG.  
9 BMW NA and BMW AG's conduct warrants an assessment of punitive damages in an  
10 amount sufficient to deter such conduct in the future, which amount is to be  
11 determined according to proof.

### 12 **COUNT III**

#### 13 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY** 14 **(MICH. COMP. LAWS § 440.2314)**

15 469. Plaintiffs reallege and incorporate by reference all paragraphs as though  
16 fully set forth herein.

17 470. Plaintiff Charles Olsen brings this Count on behalf of himself and the  
18 Michigan Class.

19 471. BMW NA and BMW AG are and were at all relevant times merchants  
20 with respect to motor vehicles.

21 472. A warranty that the Affected Vehicles were in merchantable condition is  
22 implied by law in the instant transactions. These Affected Vehicles, when sold and at  
23 all times thereafter, were not in merchantable condition and are not fit for the ordinary  
24 purpose for which vehicles are used. Specifically, the Affected Vehicles are inherently  
25 defective in that the Range Extender system was not adequately designed,  
26 manufactured, and tested.

27 473. BMW NA and BMW AG were provided notice of these issues by  
28 complaints lodged by consumers with NHTSA—which vehicle manufacturers like

1 BMW NA and BMW AG routinely monitor—before or within a reasonable amount of  
2 time after the allegations of Affected Vehicle defects became public.

3 474. As a direct and proximate result of BMW NA and BMW AG’s breach of  
4 the warranties of merchantability, Plaintiff and the other Class members have been  
5 damaged in an amount to be proven at trial.

6 **COUNT IV**

7 **UNJUST ENRICHMENT**

8 475. Plaintiffs reallege and incorporate by reference all paragraphs as though  
9 fully set forth herein.

10 476. In the event that no adequate legal remedy exists, Plaintiff Charles Olsen  
11 brings this Count in the alternative on behalf of himself and the Michigan Class.

12 477. BMW NA and BMW AG have received and retained a benefit from  
13 Plaintiff and the Class and inequity has resulted.

14 478. BMW NA and BMW AG have benefitted from selling and leasing  
15 defective cars whose value was artificially inflated by BMW NA and BMW AG’s  
16 concealment of the defective Range Extender at a profit, and Plaintiff and the Class  
17 have overpaid for the cars and been forced to pay other costs.

18 479. Thus, all Michigan Class members conferred a benefit on BMW NA and  
19 BMW AG.

20 480. It is inequitable for BMW NA and BMW AG to retain these benefits.

21 481. Plaintiff and the Class were not aware of the true facts about the Affected  
22 Vehicles, and did not benefit from BMW NA and BMW AG’s conduct.

23 482. BMW NA and BMW AG knowingly accepted the benefits of their unjust  
24 conduct.

25 483. As a result of BMW NA and BMW AG’s conduct, the amount of their  
26 unjust enrichment should be disgorged, in an amount according to proof.  
27  
28

1 **H. Ohio**

2 **COUNT I**

3 **VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT**  
4 **(OHIO REV. CODE § 1345.01, *et seq.*)**

5 484. Plaintiffs reallege and incorporate by reference all paragraphs as though  
6 fully set forth herein.

7 485. Plaintiff Robert Desatnik brings this Count on behalf of himself and the  
8 Ohio Class.

9 486. Plaintiff and the other Ohio Class members are “consumers” as defined  
10 by the Ohio Consumer Sales Practices Act, OHIO REV. CODE § 1345.01 (“OCSPA”).  
11 BMW NA and BMW AG are “suppliers” as defined by the OCSPA. Plaintiff’s and the  
12 other Ohio Class members’ purchases or leases of Affected Vehicles were “consumer  
13 transactions” as defined by the OCSPA.

14 487. By willfully failing to disclose and actively concealing the defective  
15 Range Extender, BMW NA and BMW AG engaged in deceptive business practices  
16 prohibited by the OCSPA, including (1) representing that Affected Vehicles have  
17 characteristics, uses, benefits, and qualities which they do not have, (2) representing  
18 that Affected Vehicles are of a particular standard, quality, and grade when they are  
19 not, (3) advertising Affected Vehicles with the intent not to sell them as advertised,  
20 and (4) engaging in acts or practices which are otherwise unfair, misleading, false, or  
21 deceptive to the consumer.

22 488. In the course of business, BMW NA and BMW AG willfully failed to  
23 disclose and actively concealed the defective Range Extender discussed herein and  
24 otherwise engaged in activities with a tendency or capacity to deceive. BMW NA and  
25 BMW AG also engaged in unlawful trade practices by employing deception, deceptive  
26 acts or practices, fraud, misrepresentations, or concealment, suppression, or omission  
27 of any material fact with intent that others rely upon such concealment, suppression, or  
28 omission, in connection with the sale of Affected Vehicles.

1           489. BMW NA and BMW AG knew they had installed a defective Range  
2 Extender and knew that the Range Extender did not extend the normal operation of the  
3 vehicle for double the range, as advertised. BMW NA and BMW AG knew this for at  
4 least two years, but concealed all of that information.

5           490. BMW NA and BMW AG were also aware that they valued profits over  
6 safety, and that they were manufacturing, selling, and distributing vehicles throughout  
7 the United States that did not perform as advertised and jeopardized the safety of the  
8 vehicles' occupants. BMW NA and BMW AG concealed this information as well.

9           491. By failing to disclose that the defective Range Extender did not extend  
10 the normal operation of the vehicle or double the range, by marketing BMW vehicles  
11 as safe, reliable, and of high quality, and by presenting BMW as a reputable  
12 manufacturer that valued safety and stood behind its vehicles after they were sold,  
13 BMW NA and BMW AG engaged in deceptive business practices in violation of the  
14 Ohio Consumer Sales Practices Act.

15           492. BMW NA and BMW AG's unfair or deceptive acts or practices were  
16 likely to and did in fact deceive reasonable consumers, including Plaintiff and the  
17 other Class members, about the true performance of the BMW i3 with Range  
18 Extender, the quality of the BMW brand, the devaluing of safety and performance at  
19 BMW NA and BMW AG, and the true value of the Affected Vehicles.

20           493. BMW NA and BMW AG intentionally and knowingly misrepresented  
21 material facts regarding the Affected Vehicles with intent to mislead Plaintiff and the  
22 Ohio Class.

23           494. BMW NA and BMW AG knew or should have known that their conduct  
24 violated the Ohio Consumer Sales Practices Act.

25           495. As alleged above, BMW NA and BMW AG made material statements  
26 about the safety and performance of the Affected Vehicles and the BMW brand that  
27 were either false or misleading.  
28

1           496. BMW NA and BMW AG owed Plaintiff a duty to disclose the true safety,  
2 performance, and reliability of the Affected Vehicles, and the devaluing of safety and  
3 performance at BMW NA and BMW AG, because BMW NA and BMW AG:

- 4           a. Possessed exclusive knowledge that they valued  
5 profits and cost-cutting over safety and performance,  
6 and that they were manufacturing, selling, and  
7 distributing vehicles throughout the United States that  
8 did not perform as advertised;
- 9           b. Intentionally concealed the foregoing from and the  
10 Class; and/or
- 11           c. Made incomplete representations about the safety and  
12 performance of the Affected Vehicles generally, and  
13 the defective Range Extender in particular, while  
14 purposefully withholding material facts from and the  
15 Class that contradicted these representations.

16           497. Because BMW NA and BMW AG fraudulently concealed the defective  
17 Range Extender and the true performance of the BMW i3 with Range Extender,  
18 resulting in a raft of negative publicity once the defects finally began to be disclosed,  
19 the value of the Affected Vehicles has greatly diminished. In light of the stigma  
20 attached to those vehicles by BMW NA and BMW AG's conduct, they are now worth  
21 significantly less than they otherwise would be.

22           498. The Ohio Attorney General has made available for public inspection prior  
23 state court decisions which have held that the acts and omissions of BMW NA and  
24 BMW AG in this Complaint, including, but not limited to, the failure to honor both  
25 implied warranties and express warranties, the making and distribution of false,  
26 deceptive, and/or misleading representations, and the concealment and/or non-  
27 disclosure of a dangerous defect, constitute deceptive sales practices in violation of the  
28 OCSPA. These cases include, but are not limited to, the following:

- 29           a. *Mason v. Mercedes Benz USA, LLC* (OPIF #10002382);
- 30           b. *State ex rel. Betty D. Montgomery v. Volkswagen Motor Co.* (OPIF  
31 #10002123);
- 32           c. *State ex rel. Betty D. Montgomery v. Bridgestone/Firestone, Inc.*  
33 (OPIF #10002025);

- 1 d. *Bellinger v. Hewlett-Packard Co.*, No. 20744, 2002 Ohio App.  
LEXIS 1573 (Ohio Ct. App. Apr. 10, 2002) (OPIF #10002077);
- 2 e. *Borrer v. MarineMax of Ohio*, No. OT-06-010, 2007 Ohio App.  
3 LEXIS 525 (Ohio Ct. App. Feb. 9, 2007) (OPIF #10002388);
- 4 f. *State ex rel. Jim Petro v. Craftmatic Organization, Inc.* (OPIF  
5 #10002347);
- 6 g. *Mark J. Craw Volkswagen, et al. v. Joseph Airport Toyota, Inc.*  
(OPIF #10001586);
- 7 h. *State ex rel. William J. Brown v. Harold Lyons, et al.* (OPIF  
8 #10000304);
- 9 i. *Brinkman v. Mazda Motor of America, Inc.* (OPIF #10001427);
- 10 j. *Khouri v. Don Lewis* (OPIF #100001995);
- 11 k. *Mosley v. Performance Mitsubishi aka Automanage* (OPIF  
12 #10001326);
- 13 l. *Walls v. Harry Williams dba Butch's Auto Sales* (OPIF  
14 #10001524); and
- 15 m. *Brown v. Spears* (OPIF #10000403).

16 499. As a result of its violations of the OCSPA, as detailed above, BMW NA  
17 and BMW AG caused actual damage to Plaintiff and, if not stopped, will continue to  
18 harm Plaintiff. Plaintiff currently owns or leases, or within the class period has owned  
19 or leased, an Affected Vehicle that is defective. Defects associated with the REx  
20 feature have caused the value of Affected Vehicles to decrease.

21 500. Plaintiff and the Ohio Class sustained damages as a result of BMW NA  
22 and BMW AG's unlawful acts and are therefore entitled to damages and other relief as  
23 provided under the OCSPA.

24 501. Plaintiff also seeks court costs and attorneys' fees as a result of BMW  
25 NA and BMW AG's violations of the OCSPA, as provided in OHIO REV. CODE  
26 § 1345.09.  
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**COUNT II**  
**FRAUD BY CONCEALMENT**

502. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set forth herein.

503. Plaintiff Robert Desatnik brings this Count on behalf of himself and the Ohio Class.

504. BMW NA and BMW AG concealed and suppressed material facts concerning the quality of their vehicles and the BMW brand.

505. BMW NA and BMW AG concealed and suppressed material facts concerning the safety, performance, and quality of the Affected Vehicles. As alleged in this Complaint, notwithstanding their promises that the “Range Extender” maintains the state of battery charge and extends the BMW i3’s range, BMW NA and BMW AG knowingly and intentionally designed and incorporated the REx feature that could not maintain battery charge or safe operation of the vehicle.

506. BMW NA and BMW AG did so in order to boost confidence in their vehicles and falsely assure purchasers and lessees of BMW vehicles that BMW is a reputable manufacturer that stands behind its vehicles after they are sold, and that their vehicles are safe, reliable, and perform as promised. The false representations were material to consumers, both because they concerned the safety of the Affected Vehicles and because the representations played a significant role in the value of the vehicles.

507. Plaintiff and Ohio Class members viewed advertising on BMW NA and BMW AG’s website and other forums that promised extended range and maintenance of the battery’s charge. They had no way of knowing that BMW NA and BMW AG’s representations were false and gravely misleading. Plaintiff and Ohio Class members did not and could not unravel BMW NA and BMW AG’s deception on their own.

508. BMW NA and BMW AG had a duty to disclose the true performance of the BMW i3 because knowledge of the scheme and its details were known and/or

1 accessible only to BMW NA and BMW AG; BMW NA and BMW AG had superior  
2 knowledge and access to the facts; and BMW NA and BMW AG knew the facts were  
3 not known to, or reasonably discoverable, by Plaintiff and the Ohio Class. BMW NA  
4 and BMW AG also had a duty to disclose because they made many general  
5 affirmative representations about the about the qualities of their vehicles with respect  
6 to vehicle range, starting with references to them as *extended range* vehicles, as set  
7 forth above, which were misleading, deceptive, and incomplete without the disclosure  
8 of the additional facts set forth above regarding the actual performance of their  
9 vehicles, their actual decision to put sales and profits over safety, and their actual  
10 practices with respect to the vehicles at issue. Having volunteered to provide  
11 information to Plaintiff, BMW NA and BMW AG had the duty to disclose not just the  
12 partial truth, but the entire truth. These omitted and concealed facts were material  
13 because they directly impact the safety and the value of the Affected Vehicles  
14 purchased or leased by Plaintiff and the Ohio Class. Whether a vehicle is safe to drive,  
15 and whether that vehicle's manufacturer tells the truth with respect to the vehicles  
16 performance and range are material concerns to a consumer, as evidenced by the  
17 approximately \$4,000 premium paid for the BMW i3s equipped with the optional REx  
18 feature.

19 509. BMW NA and BMW AG actively concealed and/or suppressed these  
20 material facts, in whole or in part, to pad and protect their profits and to avoid the  
21 perception that their vehicles did not or could not maintain the state of battery charge  
22 and safely reach the range of other electric vehicles on the market, which perception  
23 would hurt the brand's image and cost BMW NA and BMW AG money, and they did  
24 so at the expense of Plaintiff and the Ohio Class.

25 510. On information and belief, BMW NA and BMW AG have still not made  
26 full and adequate disclosures and continue to defraud Plaintiff and the Ohio Class by  
27 concealing material information regarding the safety and performance of their  
28 vehicles.



1           511. Plaintiff and the Ohio Class were unaware of these omitted material facts  
2 and would not have acted as they did if they had known of the concealed and/or  
3 suppressed facts, in that they would not have purchased the REx feature-equipped  
4 vehicles manufactured by BMW NA and BMW AG, and/or would not have continued  
5 to drive their Affected Vehicles or would have taken other affirmative steps. Plaintiff's  
6 and the Ohio Class members' actions were justified. BMW NA and BMW AG were in  
7 exclusive control of the material facts and such facts were not known to the public,  
8 Plaintiff, or the Ohio Class.

9           512. Because of the concealment and/or suppression of the facts, Plaintiff and  
10 the Ohio Class sustained damage because they did not receive the value for the  
11 approximately \$4,000 premium paid, and they own vehicles that diminished in value  
12 as a result of BMW NA and BMW AG's concealment of, and failure to timely  
13 disclose, the actual safety and performance of the BMW i3 with REx feature. Had they  
14 been aware of the true safety and performance of the Affected Vehicles, Plaintiff and  
15 other Class members, who purchased or leased the Affected Vehicles, would have  
16 paid less for their vehicles or would not have purchased or leased them at all.

17           513. The value of all Ohio Class members' Affected Vehicles has diminished  
18 as a result of BMW NA and BMW AG's fraudulent concealment of the true  
19 capabilities of the REx feature, which has greatly tarnished the BMW brand and made  
20 any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone  
21 pay what otherwise would have been fair market value for the vehicles. In addition,  
22 Class members are entitled to damages for loss of use, costs of additional fuel, costs of  
23 unused warranties, and other damages to be proven at trial.

24           514. Accordingly, BMW NA and BMW AG are liable to the Ohio Class for  
25 damages in an amount to be proven at trial.

26           515. BMW NA and BMW AG's acts were done maliciously, oppressively,  
27 deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and the  
28 Ohio Class members' rights and well-being to enrich BMW NA and BMW AG. BMW

1 NA and BMW AG’s conduct warrants an assessment of punitive damages in an  
2 amount sufficient to deter such conduct in the future, which amount is to be  
3 determined according to proof.

4 **COUNT III**

5 **BREACH OF EXPRESS WARRANTY**  
6 **(OHIO REV. CODE § 1302.26, et seq.) (U.C.C. § 2-313)**

7 516. Plaintiffs reallege and incorporate by reference all paragraphs as though  
8 fully set forth herein.

9 517. Plaintiff Robert Desatnik brings this Count on behalf of himself and the  
10 Ohio Class.

11 518. BMW NA and BMW AG are and were at all relevant times merchants  
12 with respect to motor vehicles.

13 519. 519. In connection with the purchase or lease of each one of its new  
14 vehicles, BMW NA provides an express New Vehicle Limited Warranty (NVLW) for  
15 a period of four years or 50,000 miles, whichever occurs first. This NVLW exists to  
16 cover “defect in materials or workmanship.” The warranty’s reference to  
17 “workmanship” incorporates design as well as implementation of those designs in the  
18 manufacturing process. BMW AG’s design decisions—made here with BMW NA’s  
19 knowledge—are incorporated into each step of the manufacturing process, such that a  
20 defect in the design of the REx system is indistinguishable from a manufacturing  
21 defect.

22 520. In addition to the New Vehicle Limited Warranty, BMW NA and BMW  
23 AG, through advertisements, brochures, and statements made by authorized dealers,  
24 warranted several attributes and qualities as detailed above, such as:

- 25 a. REx extends the range from approximately 81 miles per charge to  
26 150 miles per charge.  
27 b. REx “will essentially allow you to double the range of the EV.”  
28

1           c.     Range in everyday driving for BMW i3 with REx is between 130  
2                     and 140 miles farther than the BMW i3 without the optional REx.

3           521. As manufacturers of light-duty vehicles, BMW NA and BMW AG were  
4 required to provide these warranties to purchasers of BMW i3 vehicles.

5           522. BMW NA and BMW AG's warranties formed the basis of the bargain  
6 that was reached when Plaintiff and other Class members purchased or leased their  
7 Affected Vehicles equipped with the defective Range Extender system from BMW  
8 NA and BMW AG.

9           523. Plaintiff and the Class members experienced defects within the warranty  
10 period. Despite the existence of warranties, BMW NA and BMW AG failed to inform  
11 Plaintiff and Class members that the Affected Vehicles were defectively designed and  
12 failed to fix the defective Range Extender free of charge.

13           524. BMW NA and BMW AG breached the express warranty promising to  
14 repair and correct a manufacturing defect or materials or workmanship of any part  
15 supplied by BMW NA and BMW AG. BMW NA and BMW AG have not repaired or  
16 adjusted, and have been unable to repair or adjust, the Affected Vehicles' materials  
17 and workmanship defects.

18           525. Affording BMW NA and BMW AG a reasonable opportunity to cure  
19 their breach of written warranties would be unnecessary and futile here.

20           526. Furthermore, the limited warranty promising to repair and/or correct a  
21 manufacturing defect fails in its essential purpose because the contractual remedy is  
22 insufficient to make Plaintiff and the other Class members whole and because BMW  
23 NA and BMW AG have failed and/or have refused to adequately provide the promised  
24 remedies within a reasonable time.

25           527. Accordingly, recovery by Plaintiff and the other Class members is not  
26 limited to the limited warranty promising to repair and/or correct a manufacturing  
27 defect, and Plaintiff, individually and on behalf of the other Class members, seeks all  
28 remedies as allowed by law.

1           528. Also, as alleged in more detail herein, at the time BMW NA and BMW  
2 AG warranted and sold the Affected Vehicles, they knew that the Affected Vehicles  
3 did not conform to BMW NA and BMW AG’s warranties and were inherently  
4 defective and BMW NA and BMW AG wrongfully and fraudulently concealed  
5 material facts regarding the Affected Vehicles. Plaintiff and the other Class members  
6 were therefore induced to purchase or lease the Affected Vehicles under false and/or  
7 fraudulent pretenses.

8           529. Moreover, many of the injuries flowing from the Affected Vehicles  
9 cannot be resolved through the limited remedy of “replacements or adjustments,” as  
10 many incidental and consequential damages have already been suffered due to BMW  
11 NA and BMW AG’s fraudulent conduct as alleged herein, and due to their failure  
12 and/or continued failure to provide such limited remedy within a reasonable time, and  
13 any limitation on Plaintiff’s and the other Class members’ remedies would be  
14 insufficient to make Plaintiff and the other Class members whole.

15           530. BMW NA and BMW AG were provided notice of these issues by  
16 numerous complaints filed against them, including the instant Complaint, within a  
17 reasonable amount of time after the defect was discovered.

18           531. As a direct and proximate result of BMW NA and BMW AG’s breach of  
19 express warranties, Plaintiff and the other Class members have been damaged in an  
20 amount to be determined at trial.

21   **COUNT V**

22   **UNJUST ENRICHMENT**

23           532. Plaintiffs reallege and incorporate by reference all paragraphs as though  
24 fully set forth herein.

25           533. Plaintiff Robert Desatnik brings this Count in the alternative on behalf of  
26 himself and the Ohio Class.

1           534. To the extent that a valid contract between the parties exists, it does not  
2 fully govern the subject matter of this suit, which alleges fraudulent  
3 misrepresentations and omissions—conduct which has taken place “off the contract.”

4           535. BMW NA and BMW AG have received and retained a benefit from  
5 Plaintiff and the Class and inequity has resulted.

6           536. BMW NA and BMW AG have benefitted from selling and leasing  
7 defective cars whose value was artificially inflated by BMW NA and BMW AG’s  
8 concealment of the defective Range Extender at a profit, and Plaintiff and the Class  
9 have overpaid for the cars and been forced to pay other costs.

10           537. Thus, all Ohio Class members conferred a benefit on BMW NA and  
11 BMW AG.

12           538. It is inequitable for BMW NA and BMW AG to retain these benefits.

13           539. Plaintiff was not aware of the true facts about the Affected Vehicles and  
14 did not benefit from BMW NA and BMW AG’s conduct.

15           540. BMW NA and BMW AG knowingly accepted the benefits of their unjust  
16 conduct.

17           541. As a result of BMW NA and BMW AG’s conduct, the amount of their  
18 unjust enrichment should be disgorged, in an amount according to proof.

19 **I. Tennessee**

20 **COUNT I**

21 **VIOLATION OF TENNESSEE CONSUMER PROTECTION ACT**  
22 **(TENN. CODE § 47-18-101, *et seq.*)**

23           542. Plaintiffs reallege and incorporate by reference all paragraphs as though  
24 fully set forth herein.

25           543. Plaintiff Eric Wonderly brings this Count on behalf of himself and the  
26 Tennessee Class.

27           544. Plaintiff and the Tennessee Class are “natural persons” and “consumers”  
28 within the meaning of TENN. CODE § 47-18-103(2).

1           545. Defendants are each a “person” within the meaning of TENN. CODE § 47-  
2 18-103(2).

3           546. BMW NA and BMW AG’s conduct complained of herein affected  
4 “trade,” “commerce” or “consumer transactions” within the meaning of TENN. CODE  
5 § 47-18-103(19).

6           547. The Tennessee Consumer Protection Act (“Tennessee CPA”) prohibits  
7 “[u]nfair or deceptive acts or practices affecting the conduct of any trade or  
8 commerce,” including but not limited to: “Representing that goods or services have  
9 . . . characteristics, [or] . . . benefits . . . that they do not have . . .”; “Representing that  
10 goods or services are of a particular standard, quality or grade . . . if they are of  
11 another”; and “Advertising goods or services with intent not to sell them as  
12 advertised.” TENN. CODE § 47-18-104. BMW NA and BMW AG violated the  
13 Tennessee CPA by engaging in unfair or deceptive acts, including representing that  
14 Affected Vehicles have characteristics or benefits that they did not have; representing  
15 that Affected Vehicles are of a particular standard, quality, or grade when they are of  
16 another; and advertising Affected Vehicles with intent not to sell them as advertised.

17           548. In the course of business, BMW NA and BMW AG willfully failed to  
18 disclose and actively concealed the defective Range Extender discussed herein and  
19 otherwise engaged in activities with a tendency or capacity to deceive. BMW NA and  
20 BMW AG also engaged in unlawful trade practices by employing deception, deceptive  
21 acts or practices, fraud, misrepresentations, or concealment, suppression, or omission  
22 of any material fact with intent that others rely upon such concealment, suppression, or  
23 omission, in connection with the sale of Affected Vehicles.

24           549. BMW NA and BMW AG knew they had installed a defective Range  
25 Extender and knew that the Range Extender did not extend the normal operation of the  
26 vehicle for double the range, as advertised. BMW NA and BMW AG knew this for at  
27 least two years, but concealed all of that information.

28

1           550. BMW NA and BMW AG were also aware that they valued profits over  
2 safety, and that they were manufacturing, selling, and distributing vehicles throughout  
3 the United States that did not perform as advertised and jeopardized the safety of the  
4 vehicles' occupants. BMW NA and BMW AG concealed this information as well.

5           551. By failing to disclose that the defective Range Extender did not extend  
6 the normal operation of the vehicle or double the range, by marketing BMW vehicles  
7 as safe, reliable, and of high quality, and by presenting BMW as a reputable  
8 manufacturer that valued safety and stood behind its vehicles after they were sold,  
9 BMW NA and BMW AG engaged in deceptive business practices in violation of the  
10 Tennessee CPA.

11           552. BMW NA and BMW AG's unfair or deceptive acts or practices were  
12 likely to and did in fact deceive reasonable consumers, including Plaintiff and the  
13 other Class members, about the true performance of the BMW i3 with Range  
14 Extender, the quality of the BMW brand, the devaluing of safety and performance at  
15 BMW NA and BMW AG, and the true value of the Affected Vehicles.

16           553. BMW NA and BMW AG intentionally and knowingly misrepresented  
17 material facts regarding the Affected Vehicles with intent to mislead Plaintiff and the  
18 Tennessee Class.

19           554. BMW NA and BMW AG knew or should have known that their conduct  
20 violated the Tennessee CPA.

21           555. As alleged above, BMW NA and BMW AG made material statements  
22 about the safety and performance of the Affected Vehicles and the BMW brand that  
23 were either false or misleading.

24           556. BMW NA and BMW AG owed Plaintiff a duty to disclose the true safety,  
25 performance, and reliability of the Affected Vehicles, and the devaluing of safety and  
26 performance at BMW NA and BMW AG, because BMW NA and BMW AG:

- 27           a. Possessed exclusive knowledge that they valued  
28 profits and cost-cutting over safety and performance,  
and that they were manufacturing, selling, and

1 distributing vehicles throughout the United States that  
2 did not perform as advertised;

- 3 b. Intentionally concealed the foregoing from and the  
4 Class; and/or  
5 c. Made incomplete representations about the safety and  
6 performance of the Affected Vehicles generally, and  
7 the defective Range Extender in particular, while  
8 purposefully withholding material facts from and the  
9 Class that contradicted these representations.

7 557. Because BMW NA and BMW AG fraudulently concealed the defective  
8 Range Extender and the true performance of the BMW i3 with Range Extender,  
9 resulting in a raft of negative publicity once the defects finally began to be disclosed,  
10 the value of the Affected Vehicles has greatly diminished. In light of the stigma  
11 attached to those vehicles by BMW NA and BMW AG's conduct, they are now worth  
12 significantly less than they otherwise would be.

13 558. BMW NA and BMW AG's fraudulent use of the defective Range  
14 Extender and the true performance of BMW i3 with Range Extender were material to  
15 Plaintiff and the Tennessee Class. A vehicle made by a reputable manufacturer of safe,  
16 high-performing, long-range electric vehicles is safer and worth more than an  
17 otherwise comparable vehicle made by a disreputable manufacturer of unsafe, short-  
18 range electric vehicles that conceals defects rather than promptly remedying them.

19 559. Plaintiff and the Tennessee Class suffered ascertainable loss caused by  
20 BMW NA and BMW AG's misrepresentations and their concealment of and failure to  
21 disclose material information. Class members who purchased the Affected Vehicles  
22 either would have paid less for their vehicles or would not have purchased or leased  
23 them at all but for BMW NA and BMW AG's violations of the Tennessee CPA.

24 560. BMW NA and BMW AG had an ongoing duty to all BMW customers to  
25 refrain from unfair and deceptive practices under the Tennessee CPA. All owners of  
26 Affected Vehicles suffered ascertainable loss in the form of the diminished value of  
27 their vehicles as a result of BMW NA and BMW AG's deceptive and unfair acts and  
28 practices made in the course of BMW NA and BMW AG's business.



1 561. BMW NA and BMW AG's violations present a continuing risk to  
2 Plaintiff as well as to the general public. BMW NA and BMW AG's unlawful acts and  
3 practices complained of herein affect the public interest.

4 562. As a direct and proximate result of BMW NA and BMW AG's violations  
5 of the Tennessee CPA, Plaintiff and the Tennessee Class have suffered injury-in-fact  
6 and/or actual damage.

7 563. Pursuant to TENN. CODE § 47-18-109(a), Plaintiff, individually and on  
8 behalf of the other Class members, seeks monetary relief against BMW NA and BMW  
9 AG measured as actual damages in an amount to be determined at trial, treble damages  
10 as a result of BMW NA and BMW AG's willful or knowing violations, and any other  
11 just and proper relief available under the Tennessee CPA.

12 **COUNT II**  
13 **FRAUD BY CONCEALMENT**

14 564. Plaintiffs reallege and incorporate by reference all paragraphs as though  
15 fully set forth herein.

16 565. Plaintiff Eric Wonderly brings this Count on behalf of himself and the  
17 Tennessee Class.

18 566. BMW NA and BMW AG concealed and suppressed material facts  
19 concerning the quality of their vehicles and the BMW brand.

20 567. BMW NA and BMW AG concealed and suppressed material facts  
21 concerning the safety, performance, and quality of the Affected Vehicles. As alleged  
22 in this Complaint, notwithstanding their promises that the "Range Extender" maintains  
23 the state of battery charge and extends the BMW i3's range, BMW NA and BMW AG  
24 knowingly and intentionally designed and incorporated the REx feature that could not  
25 maintain battery charge or safe operation of the vehicle.

26 568. BMW NA and BMW AG did so in order to boost confidence in their  
27 vehicles and falsely assure purchasers and lessees of BMW vehicles that BMW is a  
28 reputable manufacturer that stands behind its vehicles after they are sold, and that their

1 vehicles are safe, reliable, and perform as promised. The false representations were  
2 material to consumers, both because they concerned the safety of the Affected  
3 Vehicles and because the representations played a significant role in the value of the  
4 vehicles.

5 569. Plaintiff and Tennessee Class members viewed advertising on BMW NA  
6 and BMW AG's website and other forums that promised extended range and  
7 maintenance of the battery's charge. They had no way of knowing that BMW NA and  
8 BMW AG's representations were false and gravely misleading. Plaintiff and  
9 Tennessee Class members did not and could not unravel BMW NA and BMW AG's  
10 deception on their own.

11 570. BMW NA and BMW AG had a duty to disclose the true performance of  
12 the BMW i3 because knowledge of the scheme and its details were known and/or  
13 accessible only to BMW NA and BMW AG; BMW NA and BMW AG had superior  
14 knowledge and access to the facts; and BMW NA and BMW AG knew the facts were  
15 not known to, or reasonably discoverable, by Plaintiff and the Tennessee Class. BMW  
16 NA and BMW AG also had a duty to disclose because they made many general  
17 affirmative representations about the about the qualities of their vehicles with respect  
18 to vehicle range, starting with references to them as *extended range* vehicles, as set  
19 forth above, which were misleading, deceptive, and incomplete without the disclosure  
20 of the additional facts set forth above regarding the actual performance of their  
21 vehicles, their actual decision to put sales and profits over safety, and their actual  
22 practices with respect to the vehicles at issue. Having volunteered to provide  
23 information to Plaintiff, BMW NA and BMW AG had the duty to disclose not just the  
24 partial truth, but the entire truth. These omitted and concealed facts were material  
25 because they directly impact the safety and the value of the Affected Vehicles  
26 purchased or leased by Plaintiff and the Tennessee Class. Whether a vehicle is safe to  
27 drive, and whether that vehicle's manufacturer tells the truth with respect to the  
28 vehicles performance and range are material concerns to a consumer, as evidenced by

1 the approximately \$4,000 premium paid for the BMW i3s equipped with the optional  
2 REx feature.

3 571. BMW NA and BMW AG actively concealed and/or suppressed these  
4 material facts, in whole or in part, to pad and protect their profits and to avoid the  
5 perception that their vehicles did not or could not maintain the state of battery charge  
6 and safely reach the range of other electric vehicles on the market, which perception  
7 would hurt the brand's image and cost BMW NA and BMW AG money, and they did  
8 so at the expense of Plaintiff and the Tennessee Class.

9 572. On information and belief, BMW NA and BMW AG have still not made  
10 full and adequate disclosures and continue to defraud Plaintiff and the  
11 Tennessee Class by concealing material information regarding the safety and  
12 performance of their vehicles.

13 573. Plaintiff and the Tennessee Class were unaware of these omitted material  
14 facts and would not have acted as they did if they had known of the concealed and/or  
15 suppressed facts, in that they would not have purchased the REx feature-equipped  
16 vehicles manufactured by BMW NA and BMW AG, and/or would not have continued  
17 to drive their Affected Vehicles or would have taken other affirmative steps. Plaintiff's  
18 and the Tennessee Class members' actions were justified. BMW NA and BMW AG  
19 were in exclusive control of the material facts and such facts were not known to the  
20 public, Plaintiff, or the Tennessee Class.

21 574. Because of the concealment and/or suppression of the facts, Plaintiff and  
22 the Tennessee Class sustained damage because they did not receive the value for the  
23 approximately \$4,000 premium paid, and they own vehicles that diminished in value  
24 as a result of BMW NA and BMW AG's concealment of, and failure to timely  
25 disclose, the actual safety and performance of the BMW i3 with REx feature. Had they  
26 been aware of the true safety and performance of the Affected Vehicles, Plaintiff and  
27 other Class members, who purchased or leased the Affected Vehicles, would have  
28 paid less for their vehicles or would not have purchased or leased them at all.



1           582. Thus, all Tennessee Class members conferred a benefit on BMW NA and  
2 BMW AG.

3           583. It is inequitable for BMW NA and BMW AG to retain these benefits.

4           584. Plaintiff was not aware of the true facts about the Affected Vehicles, and  
5 did not benefit from BMW NA and BMW AG’s conduct.

6           585. BMW NA and BMW AG knowingly accepted the benefits of their unjust  
7 conduct.

8           586. As a result of BMW NA and BMW AG’s conduct, the amount of their  
9 unjust enrichment should be disgorged, in an amount according to proof.

10 **J. Texas**

11 **COUNT I**

12 **VIOLATIONS OF THE DECEPTIVE TRADE PRACTICES ACT**  
13 **(TEX. BUS. & COM. CODE § 17.41, *et seq.*)**

14           587. Plaintiffs reallege and incorporate by reference all paragraphs as though  
15 fully set forth herein.

16           588. Plaintiff John Lingsweiler brings this Count on behalf of himself and the  
17 Texas Class.

18           589. Plaintiff and the Texas Class are individuals, partnerships and  
19 corporations with assets of less than \$25 million (or are controlled by corporations or  
20 entities with less than \$25 million in assets). *See* TEX. BUS. & COM. CODE § 17.41.

21           590. The Texas Deceptive Trade Practices-Consumer Protection Act (“Texas  
22 DTPA”) provides a private right of action to a consumer where the consumer suffers  
23 economic damage as the result of either (i) the use of false, misleading or deceptive  
24 act or practice specifically enumerated in TEX. BUS. & COM. CODE § 17.46(b); (ii)  
25 “breach of an express or implied warranty”; or (iii) “an unconscionable action or  
26 course of action by any person.” TEX. BUS. & COM. CODE § 17.50(a)(2) & (3).

27           591. An “unconscionable action or course of action,” means “an act or practice  
28 which, to a consumer’s detriment, takes advantage of the lack of knowledge, ability,

1 experience, or capacity of the consumer to a grossly unfair degree.” TEX. BUS. & COM.  
2 CODE § 17.45(5). As detailed herein, BMW NA and BMW AG have engaged in an  
3 unconscionable action or course of action and thereby caused economic damages to  
4 the Texas Class.

5 592. BMW NA and BMW AG have also breached the implied warranty of  
6 merchantability and the express warranty with respect to the Texas Class, as set forth  
7 below.

8 593. In the course of business, BMW NA and BMW AG willfully failed to  
9 disclose and actively concealed the defective Range Extender discussed herein and  
10 otherwise engaged in activities with a tendency or capacity to deceive. BMW NA and  
11 BMW AG also engaged in unlawful trade practices by employing deception, deceptive  
12 acts or practices, fraud, misrepresentations, or concealment, suppression, or omission  
13 of any material fact with intent that others rely upon such concealment, suppression, or  
14 omission, in connection with the sale of Affected Vehicles.

15 594. BMW NA and BMW AG knew they had installed a defective Range  
16 Extender and knew that the Range Extender did not extend the normal operation of the  
17 vehicle for double the range, as advertised. BMW NA and BMW AG knew this for at  
18 least two years, but concealed all of that information.

19 595. BMW NA and BMW AG were also aware that they valued profits over  
20 safety, and that they were manufacturing, selling, and distributing vehicles throughout  
21 the United States that did not perform as advertised and jeopardized the safety of the  
22 vehicles’ occupants. BMW NA and BMW AG concealed this information as well.

23 596. By failing to disclose that the defective Range Extender did not extend  
24 the normal operation of the vehicle or double the range, by marketing BMW vehicles  
25 as safe, reliable, and of high quality, and by presenting BMW as a reputable  
26 manufacturer that valued safety and stood behind its vehicles after they were sold,  
27 BMW NA and BMW AG engaged in deceptive business practices in violation of the  
28 Texas DTPA.

1           597. BMW NA and BMW AG's unfair or deceptive acts or practices were  
2 likely to and did in fact deceive reasonable consumers, including Plaintiff and the  
3 other Class members, about the true performance of the BMW i3 with Range  
4 Extender, the quality of the BMW brand, the devaluing of safety and performance at  
5 BMW NA and BMW AG, and the true value of the Affected Vehicles.

6           598. BMW NA and BMW AG intentionally and knowingly misrepresented  
7 material facts regarding the Affected Vehicles with intent to mislead Plaintiff and the  
8 Texas Class.

9           599. BMW NA and BMW AG knew or should have known that their conduct  
10 violated the Texas DTPA.

11           600. As alleged above, BMW NA and BMW AG made material statements  
12 about the safety and performance of the Affected Vehicles and the BMW brand that  
13 were either false or misleading.

14           601. BMW NA and BMW AG owed Plaintiff and the Class a duty to disclose  
15 the true safety, performance, and reliability of the Affected Vehicles, and the  
16 devaluing of safety and performance at BMW NA and BMW AG, because BMW NA  
17 and BMW AG:

- 18           a. Possessed exclusive knowledge that they valued  
19 profits and cost-cutting over safety and performance,  
20 and that they were manufacturing, selling, and  
distributing vehicles throughout the United States that  
did not perform as advertised;
- 21           b. Intentionally concealed the foregoing from Plaintiff  
22 and the Class; and/or
- 23           c. Made incomplete representations about the safety and  
24 performance of the Affected Vehicles generally, and  
the defective Range Extender in particular, while  
25 purposefully withholding material facts from Plaintiff  
and the Class that contradicted these representations.

26           602. Because BMW NA and BMW AG fraudulently concealed the defective  
27 Range Extender and the true performance of the BMW i3 with Range Extender,  
28 resulting in a raft of negative publicity once the defects finally began to be disclosed,

1 the value of the Affected Vehicles has greatly diminished. In light of the stigma  
2 attached to those vehicles by BMW NA and BMW AG's conduct, they are now worth  
3 significantly less than they otherwise would be.

4 603. BMW NA and BMW AG's fraudulent use of the defective Range  
5 Extender and the true performance of BMW i3 with Range Extender were material to  
6 Plaintiff and the Texas Class. A vehicle made by a reputable manufacturer of safe,  
7 high-performing, long-range electric vehicles is safer and worth more than an  
8 otherwise comparable vehicle made by a disreputable manufacturer of unsafe, short-  
9 range electric vehicles that conceals defects rather than promptly remedying them.

10 604. Plaintiff and the Texas Class suffered ascertainable loss caused by BMW  
11 NA and BMW AG's misrepresentations and their concealment of and failure to  
12 disclose material information. Class members who purchased the Affected Vehicles  
13 either would have paid less for their vehicles or would not have purchased or leased  
14 them at all but for BMW NA and BMW AG's violations of the Texas DTPA.

15 605. BMW NA and BMW AG had an ongoing duty to all BMW customers to  
16 refrain from unfair and deceptive practices under the Texas DTPA. All owners of  
17 Affected Vehicles suffered ascertainable loss in the form of the diminished value of  
18 their vehicles as a result of BMW NA and BMW AG's deceptive and unfair acts and  
19 practices made in the course of BMW NA and BMW AG's business.

20 606. BMW NA and BMW AG's violations present a continuing risk to  
21 Plaintiff as well as to the general public. BMW NA and BMW AG's unlawful acts and  
22 practices complained of herein affect the public interest.

23 607. As a direct and proximate result of BMW NA and BMW AG's violations  
24 of the Texas DTPA, Plaintiff and the Texas Class have suffered injury-in-fact and/or  
25 actual damage.

26 608. Pursuant to TEX. BUS. & COM. CODE § 17.50(a)(1) and (b), Plaintiff and  
27 the Texas Class seek monetary relief against BMW NA and BMW AG measured as  
28 actual damages in an amount to be determined at trial, treble damages for BMW NA



1 and BMW AG's knowing violations of the Texas DTPA, and any other just and proper  
2 relief available under the Texas DTPA.

3 609. Alternatively, or additionally, pursuant to TEX. BUS. & COM. CODE  
4 § 17.50(b)(3) & (4), Plaintiff and all other Texas Class members who purchased  
5 vehicles from BMW NA and BMW AG are entitled to disgorgement or to rescission  
6 or to any other relief necessary to restore any money or property that was acquired  
7 from them based on violations of the Texas DTPA or which the Court deems proper.

8 610. The Texas Plaintiff and the Texas Class are also entitled to recover court  
9 costs and reasonable and necessary attorneys' fees under § 17.50(d) of the Texas  
10 DTPA.

11 611. On May 27, 2016, certain Plaintiffs sent a letter complying with TEX.  
12 BUS. & COM. CODE § 17.505(a)

13 **COUNT II**  
14 **FRAUD BY CONCEALMENT**

15 612. Plaintiffs reallege and incorporate by reference all paragraphs as though  
16 fully set forth herein.

17 613. Plaintiff John Lingsweiler brings this Count on behalf of himself and the  
18 Texas Class.

19 614. BMW NA and BMW AG concealed and suppressed material facts  
20 concerning the quality of their vehicles and the BMW brand.

21 615. BMW NA and BMW AG concealed and suppressed material facts  
22 concerning the safety, performance, and quality of the Affected Vehicles. As alleged  
23 in this Complaint, notwithstanding their promises that the "Range Extender" maintains  
24 the state of battery charge and extends the BMW i3's range, BMW NA and BMW AG  
25 knowingly and intentionally designed and incorporated the REx feature that could not  
26 maintain battery charge or safe operation of the vehicle.

27 616. BMW NA and BMW AG did so in order to boost confidence in their  
28 vehicles and falsely assure purchasers and lessees of BMW NA and BMW AG

1 vehicles that BMW is a reputable manufacturer that stands behind its vehicles after  
2 they are sold, and that their vehicles are safe, reliable, and perform as promised. The  
3 false representations were material to consumers, both because they concerned the  
4 safety of the Affected Vehicles and because the representations played a significant  
5 role in the value of the vehicles.

6 617. Plaintiff and Texas Class members viewed advertising on BMW NA and  
7 BMW AG's website and other forums that promised extended range and maintenance  
8 of the battery's charge. They had no way of knowing that BMW NA and BMW AG's  
9 representations were false and gravely misleading. Plaintiff and Texas Class members  
10 did not and could not unravel BMW NA and BMW AG's deception on their own.

11 618. BMW NA and BMW AG had a duty to disclose the true performance of  
12 the BMW i3 because knowledge of the scheme and its details were known and/or  
13 accessible only to BMW NA and BMW AG; BMW NA and BMW AG had superior  
14 knowledge and access to the facts; and BMW NA and BMW AG knew the facts were  
15 not known to, or reasonably discoverable, by Plaintiff and the Texas Class. BMW NA  
16 and BMW AG also had a duty to disclose because they made many general  
17 affirmative representations about the about the qualities of their vehicles with respect  
18 to vehicle range, starting with references to them as *extended range* vehicles, as set  
19 forth above, which were misleading, deceptive, and incomplete without the disclosure  
20 of the additional facts set forth above regarding the actual performance of their  
21 vehicles, their actual decision to put sales and profits over safety, and their actual  
22 practices with respect to the vehicles at issue. Having volunteered to provide  
23 information to Plaintiff, BMW NA and BMW AG had the duty to disclose not just the  
24 partial truth, but the entire truth. These omitted and concealed facts were material  
25 because they directly impact the safety and the value of the Affected Vehicles  
26 purchased or leased by Plaintiff and the Texas Class. Whether a vehicle is safe to  
27 drive, and whether that vehicle's manufacturer tells the truth with respect to the  
28 vehicles performance and range are material concerns to a consumer, as evidenced by

1 the approximately \$4,000 premium paid for the BMW i3s equipped with the optional  
2 REx feature.

3 619. BMW NA and BMW AG actively concealed and/or suppressed these  
4 material facts, in whole or in part, to pad and protect their profits and to avoid the  
5 perception that their vehicles did not or could not maintain the state of battery charge  
6 and safely reach the range of other electric vehicles on the market, which perception  
7 would hurt the brand's image and cost BMW NA and BMW AG money, and they did  
8 so at the expense of Plaintiff and the Texas Class.

9 620. On information and belief, BMW NA and BMW AG have still not made  
10 full and adequate disclosures and continue to defraud Plaintiff and the Texas Class by  
11 concealing material information regarding the safety and performance of their  
12 vehicles.

13 621. Plaintiff and the Texas Class were unaware of these omitted material  
14 facts and would not have acted as they did if they had known of the concealed and/or  
15 suppressed facts, in that they would not have purchased the REx feature-equipped  
16 vehicles manufactured by BMW NA and BMW AG, and/or would not have continued  
17 to drive their Affected Vehicles or would have taken other affirmative steps. Plaintiff's  
18 and the Texas Class members' actions were justified. BMW NA and BMW AG were  
19 in exclusive control of the material facts and such facts were not known to the public,  
20 Plaintiff, or the Texas Class.

21 622. Because of the concealment and/or suppression of the facts, Plaintiff and  
22 the Texas Class sustained damage because they did not receive the value for the  
23 approximately \$4,000 premium paid, and they own vehicles that diminished in value  
24 as a result of BMW NA and BMW AG's concealment of, and failure to timely  
25 disclose, the actual safety and performance of the BMW i3 with REx feature. Had they  
26 been aware of the true safety and performance of the Affected Vehicles, Plaintiff and  
27 other Class members, who purchased or leased the Affected Vehicles, would have  
28 paid less for their vehicles or would not have purchased or leased them at all.



1 incorporates design as well as implementation of those designs in the manufacturing  
2 process. BMW AG’s design decisions—made here with BMW NA’s knowledge—are  
3 incorporated into each step of the manufacturing process, such that a defect in the  
4 design of the REx system is indistinguishable from a manufacturing defect.

5 630. In addition to the New Vehicle Limited Warranty, BMW NA and BMW  
6 AG, through advertisements, brochures, and statements made by authorized dealers,  
7 warranted several attributes and qualities as detailed above, such as:

- 8 a. REx extends the range from approximately 81 miles per charge to  
9 150 miles per charge.
- 10 b. REx “will essentially allow you to double the range of the EV.”
- 11 c. Range in everyday driving for BMW i3 with REx is between 130  
12 and 140 miles farther than the BMW i3 without the optional REx.

13 631. As manufacturers of light-duty vehicles, BMW NA and BMW AG were  
14 required to provide these warranties to purchasers of BMW i3 vehicles.

15 632. BMW NA and BMW AG’s warranties formed the basis of the bargain  
16 that was reached when Plaintiff and other Class members purchased or leased their  
17 Affected Vehicles equipped with the defective Range Extender system from BMW  
18 NA and BMW AG.

19 633. Plaintiff and the Class members experienced defects within the warranty  
20 period. Despite the existence of warranties, BMW NA and BMW AG failed to inform  
21 Plaintiff and Class members that the Affected Vehicles were defectively designed and  
22 failed to fix the defective Range Extender free of charge.

23 634. BMW NA and BMW AG breached the express warranty promising to  
24 repair and correct a manufacturing defect or materials or workmanship of any part  
25 supplied by BMW NA and BMW AG. BMW NA and BMW AG have not repaired or  
26 adjusted, and have been unable to repair or adjust, the Affected Vehicles’ materials  
27 and workmanship defects.

28

1           635. Affording BMW NA and BMW AG a reasonable opportunity to cure  
2 their breach of written warranties would be unnecessary and futile here.

3           636. Furthermore, the limited warranty promising to repair and/or correct a  
4 manufacturing defect fails in its essential purpose because the contractual remedy is  
5 insufficient to make Plaintiff and the other Class members whole and because BMW  
6 NA and BMW AG have failed and/or have refused to adequately provide the promised  
7 remedies within a reasonable time.

8           637. Accordingly, recovery by Plaintiff and the other Class members is not  
9 limited to the limited warranty promising to repair and/or correct a manufacturing  
10 defect, and Plaintiff, individually and on behalf of the other Class members, seeks all  
11 remedies as allowed by law.

12           638. Also, as alleged in more detail herein, at the time BMW NA and BMW  
13 AG warranted and sold the Affected Vehicles, they knew that the Affected Vehicles  
14 did not conform to BMW NA and BMW AG's warranties and were inherently  
15 defective and BMW NA and BMW AG wrongfully and fraudulently concealed  
16 material facts regarding the Affected Vehicles. Plaintiff and the other Class members  
17 were therefore induced to purchase or lease the Affected Vehicles under false and/or  
18 fraudulent pretenses.

19           639. Moreover, many of the injuries flowing from the Affected Vehicles  
20 cannot be resolved through the limited remedy of "replacements or adjustments," as  
21 many incidental and consequential damages have already been suffered due to BMW  
22 NA and BMW AG's fraudulent conduct as alleged herein, and due to their failure  
23 and/or continued failure to provide such limited remedy within a reasonable time, and  
24 any limitation on Plaintiff's and the other Class members' remedies would be  
25 insufficient to make Plaintiff and the other Class members whole.

26           640. BMW NA and BMW AG were provided notice of these issues by  
27 numerous complaints filed against them, including the instant Complaint, within a  
28 reasonable amount of time after the defect was discovered.



1 **COUNT V**

2 **UNJUST ENRICHMENT**

3 648. Plaintiffs reallege and incorporate by reference all paragraphs as though  
4 fully set forth herein.

5 649. Plaintiff John Lingsweiler brings this Count on behalf of himself and the  
6 Texas Class.

7 650. BMW NA and BMW AG have received and retained a benefit from  
8 Plaintiff and the Class and inequity has resulted.

9 651. BMW NA and BMW AG have benefitted from selling and leasing  
10 defective cars whose value was artificially inflated by BMW NA and BMW AG's  
11 concealment of the defective Range Extender at a profit, and Plaintiff and the Class  
12 have overpaid for the cars and been forced to pay other costs.

13 652. Thus, all Texas Class members conferred a benefit on BMW NA and  
14 BMW AG.

15 653. It is inequitable for BMW NA and BMW AG to retain these benefits.

16 654. Plaintiff and the Class were not aware of the true facts about the Affected  
17 Vehicles, and did not benefit from BMW NA and BMW AG's conduct.

18 655. BMW NA and BMW AG knowingly accepted the benefits of their unjust  
19 conduct.

20 656. As a result of BMW NA and BMW AG's conduct, the amount of their  
21 unjust enrichment should be disgorged, in an amount according to proof.

22 **K. Utah**

23 **COUNT I**

24 **VIOLATION OF UTAH CONSUMER SALES PRACTICES ACT**  
25 **(UTAH CODE ANN. § 13-11-1, et seq.)**

26 657. Plaintiffs reallege and incorporate by reference all paragraphs as though  
27 fully set forth herein.

28



1           658. Plaintiff Steve Ridges brings this Count on behalf of himself and the Utah  
2 Class.

3           659. BMW NA and BMW AG are “suppliers” under the Utah Consumer Sales  
4 Practices Act (“Utah CSPA”), UTAH CODE ANN. § 13-11-3.

5           660. UTAH CODE ANN. § 13-11-3.

6           661. Utah Class members are “persons” under UTAH CODE ANN. § 13-11-3.

7           662. The sale of the Affected Vehicles to the Utah Class members was a  
8 “consumer transaction” within the meaning of UTAH CODE ANN. § 13-11-3.

9           663. The Utah CSPA makes unlawful any “deceptive act or practice by a  
10 supplier in connection with a consumer transaction” under UTAH CODE ANN. § 13-11-  
11 4. Specifically, “a supplier commits a deceptive act or practice if the supplier  
12 knowingly or intentionally: (a) indicates that the subject of a consumer transaction has  
13 sponsorship, approval, performance characteristics, accessories, uses, or benefits, if it  
14 has not” or “(b) indicates that the subject of a consumer transaction is of a particular  
15 standard, quality, grade, style, or model, if it is not.” UTAH CODE ANN. § 13-11-4. “An  
16 unconscionable act or practice by a supplier in connection with a consumer  
17 transaction” also violates the Utah CSPA. UTAH CODE ANN. § 13-11-5.

18           664. In the course of business, BMW NA and BMW AG willfully failed to  
19 disclose and actively concealed the defective Range Extender discussed herein and  
20 otherwise engaged in activities with a tendency or capacity to deceive. BMW NA and  
21 BMW AG also engaged in unlawful trade practices by employing deception, deceptive  
22 acts or practices, fraud, misrepresentations, or concealment, suppression, or omission  
23 of any material fact with intent that others rely upon such concealment, suppression, or  
24 omission, in connection with the sale of Affected Vehicles.

25           665. BMW NA and BMW AG knew they had installed a defective Range  
26 Extender and knew that the Range Extender did not extend the normal operation of the  
27 vehicle for double the range, as advertised. BMW NA and BMW AG knew this for at  
28 least two years, but concealed all of that information.

1           666. BMW NA and BMW AG were also aware that they valued profits over  
2 safety, and that they were manufacturing, selling, and distributing vehicles throughout  
3 the United States that did not perform as advertised and jeopardized the safety of the  
4 vehicles' occupants. BMW NA and BMW AG concealed this information as well.

5           667. By failing to disclose that the defective Range Extender did not extend  
6 the normal operation of the vehicle or double the range, by marketing BMW vehicles  
7 as safe, reliable, and of high quality, and by presenting BMW as a reputable  
8 manufacturer that valued safety and stood behind its vehicles after they were sold,  
9 BMW NA and BMW AG engaged in deceptive business practices in violation of the  
10 Utah CSPA.

11           668. BMW NA and BMW AG's unfair or deceptive acts or practices were  
12 likely to and did in fact deceive reasonable consumers, including Plaintiff and the  
13 other Class members, about the true performance of the BMW i3 with Range  
14 Extender, the quality of the BMW brand, the devaluing of safety and performance at  
15 BMW NA and BMW AG, and the true value of the Affected Vehicles.

16           669. BMW NA and BMW AG intentionally and knowingly misrepresented  
17 material facts regarding the Affected Vehicles with intent to mislead Plaintiff and the  
18 Utah Class.

19           670. BMW NA and BMW AG knew or should have known that their conduct  
20 violated the Utah CSPA.

21           671. As alleged above, BMW NA and BMW AG made material statements  
22 about the safety and performance of the Affected Vehicles and the BMW brand that  
23 were either false or misleading.

24           672. BMW NA and BMW AG owed Plaintiff and the Class a duty to disclose  
25 the true safety, performance, and reliability of the Affected Vehicles, and the  
26 devaluing of safety and performance at BMW NA and BMW AG, because BMW NA  
27 and BMW AG:  
28

- 1 a. Possessed exclusive knowledge that they valued  
2 profits and cost-cutting over safety and performance,  
3 and that they were manufacturing, selling, and  
4 distributing vehicles throughout the United States that  
5 did not perform as advertised;
- 6 b. Intentionally concealed the foregoing from Plaintiff  
7 and the Class; and/or
- 8 c. Made incomplete representations about the safety and  
9 performance of the Affected Vehicles generally, and  
10 the defective Range Extender in particular, while  
11 purposefully withholding material facts from Plaintiff  
12 and the Class that contradicted these representations.

13 673. Because BMW NA and BMW AG fraudulently concealed the defective  
14 Range Extender and the true performance of the BMW i3 with Range Extender,  
15 resulting in a raft of negative publicity once the defects finally began to be disclosed,  
16 the value of the Affected Vehicles has greatly diminished. In light of the stigma  
17 attached to those vehicles by BMW NA and BMW AG's conduct, they are now worth  
18 significantly less than they otherwise would be.

19 674. BMW NA and BMW AG's fraudulent use of the defective Range  
20 Extender and the true performance of BMW i3 with Range Extender were material to  
21 Plaintiff and the Utah Class. A vehicle made by a reputable manufacturer of safe,  
22 high-performing, long-range electric vehicles is safer and worth more than an  
23 otherwise comparable vehicle made by a disreputable manufacturer of unsafe, short-  
24 range electric vehicles that conceals defects rather than promptly remedying them.

25 675. Plaintiff and the Utah Class suffered ascertainable loss caused by BMW  
26 NA and BMW AG's misrepresentations and their concealment of and failure to  
27 disclose material information. Class members who purchased the Affected Vehicles  
28 either would have paid less for their vehicles or would not have purchased or leased  
them at all but for BMW NA and BMW AG's violations of the Utah CSPA.

676. BMW NA and BMW AG had an ongoing duty to all BMW customers to  
refrain from unfair and deceptive practices under the Utah CSPA. All owners of  
Affected Vehicles suffered ascertainable loss in the form of the diminished value of

1 their vehicles as a result of BMW NA and BMW AG's deceptive and unfair acts and  
2 practices made in the course of BMW NA and BMW AG's business.

3 677. BMW NA and BMW AG's violations present a continuing risk to  
4 Plaintiff as well as to the general public. BMW NA and BMW AG's unlawful acts and  
5 practices complained of herein affect the public interest.

6 678. As a direct and proximate result of BMW NA and BMW AG's violations  
7 of the Utah CSPA, Plaintiff and the Utah Class have suffered injury-in-fact and/or  
8 actual damage.

9 679. Pursuant to UTAH CODE ANN. § 13-11-4, Plaintiff and the Utah Class seek  
10 monetary relief against BMW NA and BMW AG measured as the greater of (a) actual  
11 damages in an amount to be determined at trial and (b) statutory damages in the  
12 amount of \$2,000 for each Plaintiff and each Utah Class member, reasonable  
13 attorneys' fees, and any other just and proper relief available under the Utah CSPA.

## 14 **COUNT II**

### 15 **FRAUD BY CONCEALMENT**

16 680. Plaintiffs reallege and incorporate by reference all paragraphs as though  
17 fully set forth herein.

18 681. Plaintiff Steve Ridges brings this Count on behalf of himself and the Utah  
19 Class.

20 682. BMW NA and BMW AG concealed and suppressed material facts  
21 concerning the quality of their vehicles and the BMW brand.

22 683. BMW NA and BMW AG concealed and suppressed material facts  
23 concerning the safety, performance, and quality of the Affected Vehicles. As alleged  
24 in this Complaint, notwithstanding their promises that the "Range Extender" maintains  
25 the state of battery charge and extends the BMW i3's range, BMW NA and BMW AG  
26 knowingly and intentionally designed and incorporated the REx feature that could not  
27 maintain battery charge or safe operation of the vehicle.  
28

1           684. BMW NA and BMW AG did so in order to boost confidence in their  
2 vehicles and falsely assure purchasers and lessees of BMW vehicles that BMW is a  
3 reputable manufacturer that stands behind its vehicles after they are sold, and that their  
4 vehicles are safe, reliable, and perform as promised. The false representations were  
5 material to consumers, both because they concerned the safety of the Affected  
6 Vehicles and because the representations played a significant role in the value of the  
7 vehicles.

8           685. Plaintiff and Utah Class members viewed advertising on BMW NA and  
9 BMW AG's website and other forums that promised extended range and maintenance  
10 of the battery's charge. They had no way of knowing that BMW NA and BMW AG's  
11 representations were false and gravely misleading. Plaintiff and Utah Class members  
12 did not and could not unravel BMW NA and BMW AG's deception on their own.

13           686. BMW NA and BMW AG had a duty to disclose the true performance of  
14 the BMW i3 because knowledge of the scheme and its details were known and/or  
15 accessible only to BMW NA and BMW AG; BMW NA and BMW AG had superior  
16 knowledge and access to the facts; and BMW NA and BMW AG knew the facts were  
17 not known to, or reasonably discoverable, by Plaintiff and the Utah Class. BMW NA  
18 and BMW AG also had a duty to disclose because they made many general  
19 affirmative representations about the about the qualities of their vehicles with respect  
20 to vehicle range, starting with references to them as *extended range* vehicles, as set  
21 forth above, which were misleading, deceptive, and incomplete without the disclosure  
22 of the additional facts set forth above regarding the actual performance of their  
23 vehicles, their actual decision to put sales and profits over safety, and their actual  
24 practices with respect to the vehicles at issue. Having volunteered to provide  
25 information to Plaintiff, BMW NA and BMW AG had the duty to disclose not just the  
26 partial truth, but the entire truth. These omitted and concealed facts were material  
27 because they directly impact the safety and the value of the Affected Vehicles  
28 purchased or leased by Plaintiff and the Utah Class. Whether a vehicle is safe to drive,

1 and whether that vehicle's manufacturer tells the truth with respect to the vehicles  
2 performance and range are material concerns to a consumer, as evidenced by the  
3 approximately \$4,000 premium paid for the BMW i3s equipped with the optional REx  
4 feature.

5 687. BMW NA and BMW AG actively concealed and/or suppressed these  
6 material facts, in whole or in part, to pad and protect their profits and to avoid the  
7 perception that their vehicles did not or could not maintain the state of battery charge  
8 and safely reach the range of other electric vehicles on the market, which perception  
9 would hurt the brand's image and cost BMW NA and BMW AG money, and they did  
10 so at the expense of Plaintiff and the Utah Class.

11 688. On information and belief, BMW NA and BMW AG have still not made  
12 full and adequate disclosures and continue to defraud Plaintiff and the Utah Class by  
13 concealing material information regarding the safety and performance of their  
14 vehicles.

15 689. Plaintiff and the Utah Class were unaware of these omitted material facts  
16 and would not have acted as they did if they had known of the concealed and/or  
17 suppressed facts, in that they would not have purchased the REx feature-equipped  
18 vehicles manufactured by BMW NA and BMW AG, and/or would not have continued  
19 to drive their Affected Vehicles or would have taken other affirmative steps. Plaintiff's  
20 and the Utah Class members' actions were justified. BMW NA and BMW AG were in  
21 exclusive control of the material facts and such facts were not known to the public,  
22 Plaintiff, or the Utah Class.

23 690. Because of the concealment and/or suppression of the facts, Plaintiff and  
24 the Utah Class sustained damage because they did not receive the value for the  
25 approximately \$4,000 premium paid, and they own vehicles that diminished in value  
26 as a result of BMW NA and BMW AG's concealment of, and failure to timely  
27 disclose, the actual safety and performance of the BMW i3 with REx feature. Had they  
28 been aware of the true safety and performance of the Affected Vehicles, Plaintiff and

1 other Class members, who purchased or leased the Affected Vehicles, would have  
2 paid less for their vehicles or would not have purchased or leased them at all.

3 691. The value of all Utah Class members' Affected Vehicles has diminished  
4 as a result of BMW NA and BMW AG's fraudulent concealment of the true  
5 capabilities of the REx feature, which has greatly tarnished the BMW brand and made  
6 any reasonable consumer reluctant to purchase any of the Affected Vehicles, let alone  
7 pay what otherwise would have been fair market value for the vehicles. In addition,  
8 Class members are entitled to damages for loss of use, costs of additional fuel, costs of  
9 unused warranties, and other damages to be proven at trial.

10 692. Accordingly, BMW NA and BMW AG are liable to the Utah Class for  
11 damages in an amount to be proven at trial.

12 693. BMW NA and BMW AG's acts were done maliciously, oppressively,  
13 deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and the  
14 Utah Class members' rights and well-being to enrich BMW NA and BMW AG. BMW  
15 NA and BMW AG's conduct warrants an assessment of punitive damages in an  
16 amount sufficient to deter such conduct in the future, which amount is to be  
17 determined according to proof.

### 18 **COUNT III**

#### 19 **BREACH OF EXPRESS WARRANTY** 20 **(UTAH CODE ANN. § 70A-2-313)**

21 694. Plaintiffs reallege and incorporate by reference all paragraphs as though  
22 fully set forth herein.

23 695. Plaintiff Steve Ridges brings this Count on behalf of himself and the Utah  
24 Class.

25 696. BMW NA and BMW AG are and were at all relevant times "merchants"  
26 with respect to motor vehicles under UTAH CODE ANN. § 70A-2-104(1) and "sellers"  
27 of motor vehicles under UTAH CODE ANN. § 70A-2-313.  
28

1           697. The Affected Vehicles are and were at all relevant times “goods” within  
2 the meaning of UTAH CODE ANN. §§ 70A-2-105(1) and 70A-2-313.

3           698. In connection with the purchase or lease of each one of its new vehicles,  
4 BMW NA provides an express New Vehicle Limited Warranty (NVLW) for a period  
5 of four years or 50,000 miles, whichever occurs first. This NVLW exists to cover  
6 “defect in materials or workmanship.” The warranty’s reference to “workmanship”  
7 incorporates design as well as implementation of those designs in the manufacturing  
8 process. BMW AG’s design decisions—made here with BMW NA’s knowledge—are  
9 incorporated into each step of the manufacturing process, such that a defect in the  
10 design of the REx system is indistinguishable from a manufacturing defect.

11           699. In addition to the New Vehicle Limited Warranty, BMW NA and BMW  
12 AG, through advertisements, brochures, and statements made by authorized dealers,  
13 warranted several attributes and qualities as detailed above, such as:

- 14           a. REx extends the range from approximately 81 miles per charge to  
15           150 miles per charge.  
16           b. REx “will essentially allow you to double the range of the EV.”  
17           c. Range in everyday driving for BMW i3 with REx is between 130  
18           and 140 miles farther than the BMW i3 without the optional REx.

19           700. As manufacturers of light-duty vehicles, BMW NA and BMW AG were  
20 required to provide these warranties to purchasers of BMW i3 vehicles.

21           701. BMW NA and BMW AG’s warranties formed the basis of the bargain  
22 that was reached when Plaintiff and other Class members purchased or leased their  
23 Affected Vehicles equipped with the defective Range Extender system from BMW  
24 NA and BMW AG.

25           702. Plaintiff and the Class members experienced defects within the warranty  
26 period. Despite the existence of warranties, BMW NA and BMW AG failed to inform  
27 Plaintiff and Class members that the Affected Vehicles were defectively designed and  
28 failed to fix the defective Range Extender free of charge.



1           703. BMW NA and BMW AG breached the express warranty promising to  
2 repair and correct a manufacturing defect or materials or workmanship of any part  
3 supplied by BMW NA and BMW AG. BMW NA and BMW AG have not repaired or  
4 adjusted, and have been unable to repair or adjust, the Affected Vehicles' materials  
5 and workmanship defects.

6           704. Affording BMW NA and BMW AG a reasonable opportunity to cure  
7 their breach of written warranties would be unnecessary and futile here.

8           705. Furthermore, the limited warranty promising to repair and/or correct a  
9 manufacturing defect fails in its essential purpose because the contractual remedy is  
10 insufficient to make Plaintiff and the other Class members whole and because BMW  
11 NA and BMW AG have failed and/or have refused to adequately provide the promised  
12 remedies within a reasonable time.

13           706. Accordingly, recovery by Plaintiff and the other Class members is not  
14 limited to the limited warranty promising to repair and/or correct a manufacturing  
15 defect, and Plaintiff, individually and on behalf of the other Class members, seeks all  
16 remedies as allowed by law.

17           707. Also, as alleged in more detail herein, at the time BMW NA and BMW  
18 AG warranted and sold the Affected Vehicles, they knew that the Affected Vehicles  
19 did not conform to BMW NA and BMW AG's warranties and were inherently  
20 defective and BMW NA and BMW AG wrongfully and fraudulently concealed  
21 material facts regarding the Affected Vehicles. Plaintiff and the other Class members  
22 were therefore induced to purchase or lease the Affected Vehicles under false and/or  
23 fraudulent pretenses.

24           708. Moreover, many of the injuries flowing from the Affected Vehicles  
25 cannot be resolved through the limited remedy of "replacements or adjustments," as  
26 many incidental and consequential damages have already been suffered due to BMW  
27 NA and BMW AG's fraudulent conduct as alleged herein, and due to their failure  
28 and/or continued failure to provide such limited remedy within a reasonable time, and

1 any limitation on Plaintiff's and the other Class members' remedies would be  
2 insufficient to make Plaintiff and the other Class members whole.

3 709. Finally, due to BMW NA and BMW AG's breach of warranty as set forth  
4 herein, Plaintiff and the other Class members assert as an additional and/or alternative  
5 remedy, revocation of acceptance of the goods, and for a return to Plaintiff and the  
6 other Class members of the purchase price of all Affected Vehicles currently owned,  
7 and for such other incidental and consequential damages as allowed.

8 710. BMW NA and BMW AG were provided notice of these issues by  
9 numerous complaints filed against them, including the instant Complaint, within a  
10 reasonable amount of time after the defect was discovered.

11 711. As a direct and proximate result of BMW NA and BMW AG's breach of  
12 express warranties, Plaintiff and the other Class members have been damaged in an  
13 amount to be determined at trial.

14 **COUNT IV**

15 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**  
16 **(UTAH CODE ANN. § 70A-2-314)**

17 712. Plaintiffs reallege and incorporate by reference all paragraphs as though  
18 fully set forth herein.

19 713. Plaintiff Steve Ridges brings this Count on behalf of himself and the Utah  
20 Class.

21 714. BMW NA and BMW AG are and were at all relevant times merchants  
22 with respect to motor vehicles.

23 715. A warranty that the Affected Vehicles were in merchantable condition is  
24 implied by law in the instant transactions. These Affected Vehicles, when sold and at  
25 all times thereafter, were not in merchantable condition and are not fit for the ordinary  
26 purpose for which vehicles are used. Specifically, the Affected Vehicles are inherently  
27 defective in that the Range Extender system was not adequately designed,  
28 manufactured, and tested.



1           726. As a result of BMW NA and BMW AG’s conduct, the amount of their  
2 unjust enrichment should be disgorged, in an amount according to proof.

3 **L. Washington**

4 **COUNT I**

5 **VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT**  
6 **(WASH. REV. CODE § 19.86.010, et seq.)**

7           727. Plaintiffs reallege and incorporate by reference all paragraphs as though  
8 fully set forth herein.

9           728. Plaintiff Brandon Redmond brings this Count on behalf of himself and  
10 the Washington Class.

11           729. BMW NA and BMW AG, Plaintiff, and members of the Washington  
12 Class are each a “person” under WASH. REV. CODE § 19.86.010(1) (“Washington  
13 CPA”).

14           730. BMW NA and BMW AG’s acts or practices as set forth above occurred  
15 in the conduct of “trade” or “commerce” under WASH. REV. CODE § 19.86.010(2).

16           731. BMW NA and BMW AG participated in misleading, false, or deceptive  
17 acts that violated the Washington CPA. By willfully failing to disclose and actively  
18 concealing the defective Range Extender, BMW NA and BMW AG engaged in  
19 deceptive business practices prohibited by the Washington CPA, including: employing  
20 deception, deceptive acts or practices, fraud, misrepresentations, or concealment,  
21 suppression, or omission of any material fact with intent that others rely upon such  
22 concealment, suppression, or omission, in connection with the sale of Affected  
23 Vehicles.

24           732. In the course of business, BMW NA and BMW AG willfully failed to  
25 disclose and actively concealed the defective Range Extender, as discussed herein, and  
26 otherwise engaged in activities with a tendency or capacity to deceive. BMW NA and  
27 BMW AG also engaged in unlawful trade practices by employing deception, deceptive  
28 acts or practices, fraud, misrepresentations, or concealment, suppression, or omission

1 of any material fact with intent that others rely upon such concealment, suppression, or  
2 omission, in connection with the sale of Affected Vehicles.

3 733. BMW NA and BMW AG knew they had installed a defective Range  
4 Extender and knew that the Range Extender did not extend the normal operation of the  
5 vehicle for double the range, as advertised. BMW NA and BMW AG knew this for at  
6 least two years, but concealed all of that information.

7 734. BMW NA and BMW AG were also aware that they valued profits over  
8 safety, and that they were manufacturing, selling, and distributing vehicles throughout  
9 the United States that did not perform as advertised and jeopardized the safety of the  
10 vehicles' occupants. BMW NA and BMW AG concealed this information as well.

11 735. By failing to disclose that the defective Range Extender did not extend  
12 the normal operation of the vehicle or double the range, by marketing BMW vehicles  
13 as safe, reliable, and of high quality, and by presenting BMW as a reputable  
14 manufacturer that valued safety and stood behind its vehicles after they were sold,  
15 BMW NA and BMW AG engaged in deceptive business practices in violation of the  
16 Washington CPA.

17 736. BMW NA and BMW AG's unfair or deceptive acts or practices were  
18 likely to and did in fact deceive reasonable consumers, including Plaintiff and the  
19 other Class members, about the true performance of the BMW i3 with Range  
20 Extender, the quality of the BMW brand, the devaluing of safety and performance at  
21 BMW NA and BMW AG, and the true value of the Affected Vehicles.

22 737. BMW NA and BMW AG intentionally and knowingly misrepresented  
23 material facts regarding the Affected Vehicles with intent to mislead Plaintiff and the  
24 Washington Class.

25 738. BMW NA and BMW AG knew or should have known that their conduct  
26 violated the Washington CPA.  
27  
28

1           739. As alleged above, BMW NA and BMW AG made material statements  
2 about the safety and performance of the Affected Vehicles and the BMW brand that  
3 were either false or misleading.

4           740. BMW NA and BMW AG owed Plaintiff a duty to disclose the true safety,  
5 performance, and reliability of the Affected Vehicles and the devaluing of safety and  
6 performance at BMW NA and BMW AG because BMW NA and BMW AG:

- 7           a. Possessed exclusive knowledge that they valued  
8 profits and cost-cutting over safety and performance,  
9 and that they were manufacturing, selling, and  
10 distributing vehicles throughout the United States that  
11 did not perform as advertised;
- 12           b. Intentionally concealed the foregoing from and the  
13 Class; and/or
- 14           c. Made incomplete representations about the safety and  
15 performance of the Affected Vehicles generally, and  
16 the defective Range Extender in particular, while  
17 purposefully withholding material facts from and the  
18 Class that contradicted these representations.

19           741. Because BMW NA and BMW AG fraudulently concealed the defective  
20 Range Extender and the true performance of the BMW i3 with Range Extender,  
21 resulting in a raft of negative publicity once the defects finally began to be disclosed,  
22 the value of the Affected Vehicles has greatly diminished. In light of the stigma  
23 attached to those vehicles by BMW NA and BMW AG's conduct, they are now worth  
24 significantly less than they otherwise would be.

25           742. BMW NA and BMW AG's fraudulent use of the defective Range  
26 Extender and the true performance of BMW i3 with Range Extender were material to  
27 Plaintiff and the Washington Class. A vehicle made by a reputable manufacturer of  
28 safe, high-performing, long-range electric vehicles is safer and worth more than an  
otherwise comparable vehicle made by a disreputable manufacturer of unsafe, short-  
range electric vehicles that conceals defects rather than promptly remedying them.

743. Plaintiff and the Washington Class suffered ascertainable loss caused by  
BMW NA and BMW AG's misrepresentations and their concealment of and failure to

1 disclose material information. Class members who purchased the Affected Vehicles  
2 either would have paid less for their vehicles or would not have purchased or leased  
3 them at all but for BMW NA and BMW AG's violations of the Washington CPA.

4 744. BMW NA and BMW AG had an ongoing duty to all BMW customers to  
5 refrain from unfair and deceptive practices under the Washington CPA. All owners of  
6 Affected Vehicles suffered ascertainable loss in the form of the diminished value of  
7 their vehicles as a result of BMW NA and BMW AG's deceptive and unfair acts and  
8 practices made in the course of BMW NA and BMW AG's business.

9 745. BMW NA and BMW AG's violations present a continuing risk to  
10 Plaintiff as well as to the general public. BMW NA and BMW AG's unlawful acts and  
11 practices complained of herein affect the public interest.

12 746. As a direct and proximate result of BMW NA and BMW AG's violations  
13 of the Washington CPA, Plaintiff and the Washington Class have suffered injury-in-  
14 fact and/or actual damage.

15 747. BMW NA and BMW AG's actions as set forth above induced Plaintiff  
16 and the Washington Class members to purchase their Affected Vehicles from BMW  
17 NA and BMW AG and/or pay a higher price for their Affected Vehicles than they  
18 otherwise would have.

19 748. Plaintiff and the Washington Class members were injured as a result of  
20 BMW NA and BMW AG's conduct. Due to BMW NA and BMW AG's deceptive or  
21 unfair conduct, Plaintiff and the Washington Class members overpaid for their  
22 Affected Vehicles and did not receive the benefit of their bargain. Their vehicles have  
23 also suffered a diminution in value.

24 749. Pursuant to WASH. REV. CODE § 19.86.095, Plaintiff will serve the  
25 Washington Attorney General with a copy of this Complaint, as Plaintiff, individually  
26 and on behalf of the other Class members, seeks injunctive relief.

27 750. As a direct and proximate result of BMW NA and BMW AG's breach of  
28 contract, Plaintiff and the Washington Class have been damaged in an amount to be

1 proven at trial, which shall include, but is not limited to, all compensatory damages,  
2 incidental and consequential damages, attorneys' fees, costs, treble damages, and other  
3 damages allowed by law.

4 **COUNT II**  
5 **FRAUD BY CONCEALMENT**

6 751. Plaintiffs reallege and incorporate by reference all paragraphs as though  
7 fully set forth herein.

8 752. Plaintiff Brandon Redmond brings this Count on behalf of himself and  
9 the Washington Class.

10 753. BMW NA and BMW AG concealed and suppressed material facts  
11 concerning the quality of their vehicles and the BMW brand.

12 754. BMW NA and BMW AG concealed and suppressed material facts  
13 concerning the safety, performance, and quality of the Affected Vehicles. As alleged  
14 in this Complaint, notwithstanding their promises that the "Range Extender" maintains  
15 the state of battery charge and extends the BMW i3's range, BMW NA and BMW AG  
16 knowingly and intentionally designed and incorporated the REx feature that could not  
17 maintain battery charge or safe operation of the vehicle.

18 755. BMW NA and BMW AG did so in order to boost confidence in their  
19 vehicles and falsely assure purchasers and lessees of BMW NA and BMW AG  
20 vehicles that BMW is a reputable manufacturer that stands behind its vehicles after  
21 they are sold, and that their vehicles are safe, reliable, and perform as promised. The  
22 false representations were material to consumers, both because they concerned the  
23 safety of the Affected Vehicles and because the representations played a significant  
24 role in the value of the vehicles.

25 756. Plaintiff and Washington Class members viewed advertising on BMW  
26 NA and BMW AG's website and other forums that promised extended range and  
27 maintenance of the battery's charge. They had no way of knowing that BMW NA and  
28 BMW AG's representations were false and gravely misleading. Plaintiff and



1 Washington Class members did not and could not unravel BMW NA and BMW AG's  
2 deception on their own.

3 757. BMW NA and BMW AG had a duty to disclose the true performance of  
4 the BMW i3 because knowledge of the scheme and its details were known and/or  
5 accessible only to BMW NA and BMW AG; BMW NA and BMW AG had superior  
6 knowledge and access to the facts; and BMW NA and BMW AG knew the facts were  
7 not known to, or reasonably discoverable, by Plaintiff and the Washington Class.  
8 BMW NA and BMW AG also had a duty to disclose because they made many general  
9 affirmative representations about the about the qualities of their vehicles with respect  
10 to vehicle range, starting with references to them as *extended range* vehicles, as set  
11 forth above, which were misleading, deceptive, and incomplete without the disclosure  
12 of the additional facts set forth above regarding the actual performance of their  
13 vehicles, their actual decision to put sales and profits over safety, and their actual  
14 practices with respect to the vehicles at issue. Having volunteered to provide  
15 information to Plaintiff, BMW NA and BMW AG had the duty to disclose not just the  
16 partial truth, but the entire truth. These omitted and concealed facts were material  
17 because they directly impact the safety and the value of the Affected Vehicles  
18 purchased or leased by Plaintiff and the Washington Class. Whether a vehicle is safe  
19 to drive, and whether that vehicle's manufacturer tells the truth with respect to the  
20 vehicles performance and range are material concerns to a consumer, as evidenced by  
21 the approximately \$4,000 premium paid for the BMW i3s equipped with the optional  
22 REx feature.

23 758. BMW NA and BMW AG actively concealed and/or suppressed these  
24 material facts, in whole or in part, to pad and protect their profits and to avoid the  
25 perception that their vehicles did not or could not maintain the state of battery charge  
26 and safely reach the range of other electric vehicles on the market, which perception  
27 would hurt the brand's image and cost BMW NA and BMW AG money, and they did  
28 so at the expense of Plaintiff and the Washington Class.

1           759. On information and belief, BMW NA and BMW AG have still not made  
2 full and adequate disclosures, and continue to defraud Plaintiff and the  
3 Washington Class by concealing material information regarding the safety and  
4 performance of their vehicles.

5           760. Plaintiff and the Washington Class were unaware of these omitted  
6 material facts and would not have acted as they did if they had known of the concealed  
7 and/or suppressed facts, in that they would not have purchased the REx feature-  
8 equipped vehicles manufactured by BMW NA and BMW AG, and/or would not have  
9 continued to drive their Affected Vehicles or would have taken other affirmative steps.  
10 Plaintiff's and the Washington Class members' actions were justified. BMW NA and  
11 BMW AG were in exclusive control of the material facts and such facts were not  
12 known to the public, Plaintiff, or the Washington Class.

13           761. Because of the concealment and/or suppression of the facts, Plaintiff and  
14 the Washington Class sustained damage because they did not receive the value for the  
15 approximately \$4,000 premium paid, and they own vehicles that diminished in value  
16 as a result of BMW NA and BMW AG's concealment of, and failure to timely  
17 disclose, the actual safety and performance of the BMW i3 with REx feature. Had they  
18 been aware of the true safety and performance of the Affected Vehicles, Plaintiff and  
19 other Class members, who purchased or leased the Affected Vehicles, would have  
20 paid less for their vehicles or would not have purchased or leased them at all.

21           762. The value of all Washington Class members' Affected Vehicles has  
22 diminished as a result of BMW NA and BMW AG's fraudulent concealment of the  
23 true capabilities of the REx feature, which has greatly tarnished the BMW brand and  
24 made any reasonable consumer reluctant to purchase any of the Affected Vehicles, let  
25 alone pay what otherwise would have been fair market value for the vehicles. In  
26 addition, Class members are entitled to damages for loss of use, costs of additional  
27 fuel, costs of unused warranties, and other damages to be proven at trial.

28

1 763. Accordingly, BMW NA and BMW AG are liable to the  
2 Washington Class for damages in an amount to be proven at trial.

3 764. BMW NA and BMW AG's acts were done maliciously, oppressively,  
4 deliberately, with intent to defraud, and in reckless disregard of Plaintiff's and the  
5 Washington Class members' rights and well-being to enrich BMW NA and BMW  
6 AG. BMW NA and BMW AG's conduct warrants an assessment of punitive damages  
7 in an amount sufficient to deter such conduct in the future, which amount is to be  
8 determined according to proof.

9 **COUNT III**  
10 **UNJUST ENRICHMENT**

11 765. Plaintiffs reallege and incorporate by reference all paragraphs as though  
12 fully set forth herein.

13 766. In the event that no adequate legal remedy is available, Plaintiff Brandon  
14 Redmond brings this Count in the alternative on behalf of himself and the Washington  
15 Class.

16 767. BMW NA and BMW AG have received and retained a benefit from the  
17 Plaintiff and inequity has resulted.

18 768. BMW NA and BMW AG have benefitted from selling and leasing  
19 defective cars whose value was artificially inflated by BMW NA and BMW AG's  
20 concealment of the defective Range Extender at a profit, and Plaintiff and other Class  
21 members have overpaid for the cars and been forced to pay other costs.

22 769. Thus, all Washington Class members conferred a benefit on BMW NA  
23 and BMW AG.

24 770. It is inequitable for BMW NA and BMW AG to retain these benefits.

25 771. Plaintiff and other Class members were not aware of the true facts about  
26 the Affected Vehicles and did not benefit from BMW NA and BMW AG's conduct.

27 772. BMW NA and BMW AG knowingly accepted the benefits of their unjust  
28 conduct.

1 773. As a result of BMW NA and BMW AG's conduct, the amount of their  
2 unjust enrichment should be disgorged, in an amount according to proof.

3 **REQUEST FOR RELIEF**

4 WHEREFORE, Plaintiffs, individually and on behalf of members of the Class,  
5 respectfully request that the Court enter judgment in their favor and against  
6 Defendants, as follows:

7 A. Certification of the proposed Class, including appointment of Plaintiffs'  
8 counsel as Class Counsel;

9 B. An order temporarily and permanently enjoining BMW NA and BMW  
10 AG from continuing the unlawful, deceptive, fraudulent, and unfair business practices  
11 alleged in this Complaint;

12 C. Injunctive relief in the form of a recall or free replacement program;

13 D. Equitable relief in the form of buyback of the Affected Vehicles;

14 E. Costs, restitution, damages, including punitive damages, penalties, and  
15 disgorgement in an amount to be determined at trial;

16 F. An order requiring BMW NA and BMW AG to pay both pre- and post-  
17 judgment interest on any amounts awarded;

18 G. An award of costs and attorneys' fees; and

19 H. Such other or further relief as may be appropriate.

20 **DEMAND FOR JURY TRIAL**

21 Plaintiffs hereby demand a jury trial for all claims so triable.  
22  
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1 DATED: March 6, 2017

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2 By /s/ Steve W. Berman

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24 *Plaintiffs' Executive Committee*

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