

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

No. 2:19-cv-12680 (ESK)(MAH)

THOMAS ISLEY, JEFFERY QUINN, VIPUL KHANNA, WALINGTON URENA, DANIEL GULICK, MICHAEL HENCHY JR., ANGELA BOVENZI, JONATHAN YEHUDA, and PAUL HOFFNER on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

BMW OF NORTH AMERICA, LLC

Defendant.

**PLAINTIFFS' UNOPPOSED MOTION FOR AN ORDER  
GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND  
CERTIFYING A SETTLEMENT CLASS**

For the reasons set forth in the Memorandum of Law submitted with this motion, Plaintiffs ask this Court to enter an Order: (1) conditionally certifying a class action with respect to the claims against Defendant pursuant to Federal Rules of Civil Procedure Rules 23(a) and 23(b)(3) for the purpose of effectuating a class action settlement of the claims against Defendant; (2) preliminarily approving the settlement; (3) directing notice to Settlement Class Members consistent with the notice plan in the Settlement Agreement; (4) appointing Bursor & Fisher, P.A. as Settlement Class Counsel; and (5) scheduling a final approval hearing.

Dated: July 23, 2021

Respectfully submitted,

By: /s/ Frederick J. Klorczyk III  
Frederick J. Klorczyk III

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**CERTIFICATE OF SERVICE**

I, Frederick J. Klorczyk III, hereby certify that on July 23, 2021, the foregoing motion and its accompanying materials were filed via the Court's ECF filing system, thereby electronically serving it on all counsel of record.

July 23, 2021

/s/ Frederick J. Klorczyk III  
Frederick J. Klorczyk III

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

THOMAS ISLEY, JEFFERY QUINN, VIPUL  
KHANNA, WALINGTON URENA, DANIEL  
GULICK, and MICHAEL HENCHY JR., on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

BMW OF NORTH AMERICA, LLC and  
BAVARIAN MOTOR WORKS AG,

Defendants.

Civil Action No.: 2:19-cv-12680(ESK)(MAH)

**ELECTRONICALLY FILED**

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR  
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

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**I. PRELIMINARY STATEMENT**

This case is largely a sequel to an earlier class action called *Bang v. BMW of N. Am. LLC*, D.N.J. Case No. 2:15-cv-06945, which culminated in a class settlement approved by Judge Arleo. The oil consumption issue here is the same issue as in *Bang* but involves later model year cars. The *Bang* settlement was fair and reasonable and approved by the Court. Plaintiffs' goal here was to reach a deal that provided benefits to those BMW owners who suffered from the same oil issue as in *Bang*, but were otherwise excluded from the approved class in *Bang*. The settlement benefits here do that.

Accordingly, this brief is submitted in support of the unopposed motion for preliminary approval of a class action Settlement Agreement (“Agreement”) between Plaintiffs Thomas Isley, Jeffery Quinn, Vipul Khanna, Walington Urena, Daniel Gulick, Michael Henchy Jr., Angela Bovenzi, Jonathan Yehuda, and Paul Hoffner (herein “Plaintiffs” or “Class Representatives”) and Defendant BMW of North America, LLC (“Defendant” or “BMW NA”). As described below, this Settlement includes a service action, reimbursement, and future purchase / lease credit.

The Settlement satisfies the requirements of Fed. R. Civ. P. 23 and is fair, reasonable, and adequate. Consequently, the Court should grant this motion, preliminarily approve the Settlement, approve the form of Notice and the notice program, and set the schedule for a Final Approval Hearing. A copy of the Agreement is attached to the Declaration of Frederick J. Klorczyk III (“Klorczyk Declaration”) as Exhibit 1.

The underlying litigation arises from the sale of BMW automobiles manufactured between 2013-2019 and which were equipped with an N63TU1 engine (the “Class Vehicles”).<sup>1</sup> Specifically, the Class Vehicles were equipped with BMW’s hot-vee configuration that saved space under the hood, but which caused excessive heat-soak to the N63TU1 engine and surrounding components. As a result, the N63TU1 engines consumed excessive amounts of engine

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<sup>1</sup> The Class Vehicles include the following BMW models: 2013-2019 650i/xi (TU1), 2013-2018 650i/xi Conv (TU1), 2013-2017 650 i/xi Coupe (TU1), 2013-2015 750i/xi (TU1), 2013-2015 750Li/Lxi (TU1), 2013-2017 550i/xi (TU1), 2014-2016 550i/xi GT (TU1), 2014-2018 X5 (TU1), and 2015-2019 X6 (TU1).

oil between regularly scheduled service visits, leading to an increased need for engine repairs or replacements – such as replacement of valve stem seals – as compared to other, similar vehicles not containing the N63TU1 engine.

The Settlement addresses the conduct complained of in the class action complaint and provides valuable benefits to the owners (putative Class Members) of approximately 70,000 Class Vehicles in the United States. The Settlement contains three benefit components.

First, there is a service action available to the Settlement Class Vehicles, that will enable a present owner or lessee of a Settlement Class Vehicle to secure the following services. For each future oil change at a BMW Center (pursuant to Condition-Based Service indicator) for the earlier of 10 years or 120,000 miles from the in-service date (whichever comes first), but in no event less than one year from the Effective Date of the settlement, Settlement Class Members will receive two free quarts of oil for top-offs between oil changes. Additionally, Settlement Class Members may receive up to three free Oil Consumption Tests in the earlier of 10 years or 120,000 miles from the in-service date (whichever comes first) but in no event less than one year from the Effective Date of the Settlement Class. After one failed Oil Consumption Test, BMW can, at its discretion, authorize the BMW Center to make one repair attempt or offer the customer an engine replacement pursuant to the schedule set out below. Likewise, if the vehicle is repaired and has a second Oil-Consumption Test failure, the customer will be offered an engine replacement per the schedule below.

Under this plan, no customer will be required to contribute to the costs of the replacement if the Class Vehicle engine is covered under warranty – either the New Vehicle Limited Warranty term or the Certified Pre-Owned Vehicle Warranty term. Otherwise, customer contribution for parts and labor will be pursuant to the following schedule:

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Odometer Mileage at time of failed Oil Consumption Test resulting in engine replacement		Customer Contribution (parts & labor)
Below	50,000	0%
50,001	60,000	5%
60,001	70,000	15%
70,001	80,000	27%
80,001	90,000	42%
90,001	100,000	55%
100,001	105,000	65%
105,001	110,000	70%
110,001	115,000	75%
115,001	120,000	85%
120,001	Above	100%

Second, there is a reimbursement program available to Settlement Class Members that will entitle them to reimbursement of the following expenses actually paid for by the Settlement Class Member. Class Members will be eligible to secure reimbursement for the cost of up to four oil changes (not to exceed \$95 each) with receipts or other appropriate proofs,<sup>2</sup> so long as the oil change took place within 12 months of the previous oil change. Class Members will also be eligible for reimbursement stemming from oil top offs, including \$10 per quart with receipts for a limit of 9 quarts per Class Member. Class Members will be required to demonstrate that they

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<sup>2</sup> In accordance with the Agreement, “appropriate proofs” includes (1) a legible repair order from an authorized BMW Center or independent repair facility licensed to perform such repairs that identifies the Class Vehicle and VIN, the part number(s) used, and the cost of the repair, with parts and labor separated; (2) proof of payment, in the form of a canceled check, credit-card receipt, credit-card statement, or receipt from the repairing entity demonstrating that the Settlement Class Member paid for the amount(s) sought for reimbursement; (3) the mileage of the Class Vehicle at the time of repair; (4) the nature of the repair and the part(s) used in the repair; and (5) the date of the repair.

purchased their vehicle within the earlier of 10 years or 120,000 miles from the in-service date and must show proof of prior oil consumption complaint to BMW NA.

Subject to appropriate proofs, Class Members will also be eligible for reimbursement for engine replacements in accordance with the above schedule if, prior to the Effective Date, and within the earlier of 10 years or 120,000 miles from in-service, a Settlement Class Member's vehicle failed one or more Oil Consumption Tests at a BMW Center, the BMW Center confirmed the oil consumption issue, and the customer replaced the engine at a BMW Center after the last failed Oil Consumption Test. Furthermore, each Settlement Class Member will be entitled to reimbursement of up to \$900 for a failed oil consumption test and subsequent repairs resulting therefrom at a BMW Center upon appropriate proof of the amounts that were actually paid by a Settlement Class Member prior to the Effective Date of the settlement.

Third, each Settlement Class Member may file a claim that will entitle them to one future purchase / lease credit subject to the following terms. Class Members may apply for a \$1,500 credit applicable for BMW 6 Series, 7 Series, X5, X6, or X7. Alternatively, Class Members may apply for a \$1,000 credit applicable to all other BMW models. Such credits will be valid for 1 year from the Effective Date and cannot not be used retroactively. These credits are also transferable to Class Members' immediate family or members of their household and are combinable with other applicable and then available and qualifying BMW purchase / lease incentives.

In addition to these terms, BMW NA will pay the costs of notice to the Class and for administration of claims. Pursuant to the Agreement, Settlement Class Counsel may apply for an award of attorney's fees, costs, and expenses of not more than \$1,900,000.00. This amount will be inclusive of incentive payments for Class Representatives of not more than \$3,000 each.

For these reasons, the proposed Settlement provides valuable relief to the Class and should be approved.

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## II. PROCEDURAL HISTORY OF THE CASE

On May 17, 2019, after months of pre-suit investigation, speaking with potential class members, and ascertaining the nature of the alleged Class Vehicle defects, Plaintiff Thomas Isley filed the initial class action complaints against BMW NA and Bayerische Motoren Werke Aktiengesellschaft (“BMW AG”) in the U.S. District Court for the District of New Jersey. The individual complaint counts included: Count I: Breach of Uniform Commercial Code § 2-313: Express Warranty; Count II: Breach of Uniform Commercial Code § 2-314: Implied Warranty; Count III: Unjust Enrichment; Count IV: Fraud by Omission; Count V: Violation of Magnuson-Moss Warranty Act, 15 U.S.C. § 2310(d)(1); Count VI: Violation of the New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-2; Count VII: Violation of State Consumer Fraud Acts;<sup>3</sup> and Count VIII: Breach of Uniform Commercial Code § 1-304: Breach of Implied Covenant of Good Faith and Fair Dealing.

On July 10, 2019, BMW NA filed a Motion to Dismiss. On July 22, 2019, Plaintiffs filed their First Amended Complaint, adding Jeffrey Quinn, Vipul Khanna, Walington Urena, Daniel Gulick, and Michael Henchy, Jr., as additional named parties. Plaintiffs also substituted in breach of California’s Song-Beverly Act, Cal. Civ. Code § 1790 et seq. and California Commercial Code § 2314 in place of Count II: Breach of Uniform Commercial Code § 2-314: Implied Warranty. Additionally, Plaintiffs added Count VIII: Violation of California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200-17210, Count IX: Deceptive Acts or Practices under New York General Business Law § 349, and Count X: False Advertising under New York General Business Law § 350.

On August 26, 2019, BMW NA filed a Motion to Dismiss Plaintiffs’ First Amended Complaint. The parties then stipulated to extend Plaintiff’s briefing schedule and filed an

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<sup>3</sup> Plaintiff alleged violation of the following Consumer Fraud Acts: California (Cal. Bus. & Prof. Code § 17200, *et seq.*); Florida (Fla. Stat. § 501.201, *et seq.*); Illinois (815 Ill. Comp. Stat. 505.1, *et seq.*); Massachusetts (Mass. Gen. Laws Ch. 93A, *et seq.*); Michigan (Mich. Comp. Laws § 445.901, *et seq.*); Minnesota (Minn. Stat. § 325F.67, *et seq.*); Missouri (Mo. Rev. Stat. § 407.010, *et seq.*); New Jersey (N.J. Stat. § 56:8-1, *et seq.*); New York (N.Y. Gen. Bus. Law § 349, *et seq.*); and Washington (Wash. Rev. Code § 19.86.010, *et seq.*).

application with the Court to this effect on September 20, 2019. Plaintiffs filed an opposition on September 23, 2019 and BMW NA replied on October 7, 2019.

On December 2, 2019, the parties submitted their Joint Discovery Plan followed by the Court's Pretrial Scheduling Order issued on December 4, 2019, setting a telephone conference for March 11, 2020. However, on February 14, 2020, the parties agreed to conduct a class mediation on March 24, 2020 before the Honorable Jose L. Linares, U.S.D.J. (Ret.). On February 19, 2020, the Court administratively terminated the Motion to Dismiss. On February 26, 2020, the parties jointly requested a stay of all deadlines pending completion of the mediation.

Notwithstanding the stay, the parties conducted discovery and exchanged documents and information.

On March 13, 2020, the onset of the COVID-19 pandemic and associated travel restrictions required the parties to re-schedule the mediation. The parties requested an additional 30 day stay in light of COVID-19 travel restrictions limiting various participants' ability to travel to attend mediation. The Court granted the joint request and rescheduled the telephonic status conference to May 11, 2020.

On April 17, 2020, the parties exchanged initial mediation statements. The parties also participated in an initial teleconference with Judge Linares on April 22, 2020. At that time, Judge Linares directed the parties to engage in direct negotiations and narrow the issues, which, as described further below, the parties did successfully over the coming months. On May 5, 2020, the parties filed a letter with the Court, apprising the Court of the parties' productive telephone conferences with Judge Linares.

On July 10, 2020, the parties exchanged updated mediation statements in advance of the July 21, 2020 Zoom mediation. However, on August 5, 2020, the parties informed the Court that the mediation that had been scheduled for July 21, 2020 had to be rescheduled to September 22, 2020.<sup>4</sup> The September 22, 2020 mediation session concluded with the parties agreeing on many

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<sup>4</sup> The mediation was rescheduled by the Honorable Jose L. Linares due to personal reasons.

terms, but a few remained outstanding. Over the coming months, the parties continued to negotiate the terms. On December 9, 2020, the parties wrote to the Court, advising that the parties had a further mediation session scheduled with Judge Linares to resolve one or two outstanding issues and requesting that the Court adjourn the telephone conference scheduled for December 14, 2020 until after the parties December 18, 2020 mediation session. On January 12, 2021, the Court held a telephonic status conference, and scheduled a follow up conference on February 26, 2021. At the parties' request, the Court converted this February conference into a settlement conference. With the Court's assistance, the parties were able to agree on all material terms of the settlement agreement that day.

All told, the parties engaged in extensive, vigorous discussions and arm's-length negotiations together with numerous exchanges of information and settlement proposals. As discussed, the parties also engaged the services of Judge Linares, an experienced and well-respected jurist, and participated in mediations on April 22, 2020, September 22, 2020, December 18, 2020, and then a settlement conference before the Court on February 26, 2021. Consequently, the parties were able to reach an agreement to resolve the case and disputes between them. Counsel for the parties did not discuss the appropriateness or amount of any application by Class Counsel for an award of attorney's fees and expenses until after the substantive terms of the Settlement had been negotiated at arm's-length and agreed upon.

### **III. SETTLEMENT TERMS ARE FAIR, REASONABLE AND ADEQUATE**

The Settlement Class herein is defined as follows: All current (as of the Effective Date) and former owners and lessees in the United States, including the District of Columbia and Puerto Rico, of certain of the following U.S.-specification BMW vehicles distributed for sale, registered, and operated in the United States, including the District of Columbia and Puerto Rico:

<b>Model Description</b>	<b>Model Years</b>
650i/xi (TU1)	2013 - 2019

650i/xi Convertible (TU1)	2013 - 2018
650i/xi Coupe (TU1)	2013 - 2017
750i/xi (TU1)	2013 - 2015
750Li/LXi (TU1)	2013 - 2015
550i/xi (TU1)	2014 - 2016
X5 (TU1)	2014 - 2018
X6 (TU1)	2015 - 2019

*\*Model Years are not fully indicative of actual Class Vehicles, which will depend on production ranges.*

#### **A. THE BENEFITS TO THE CLASS UNDER THE SETTLEMENT**

Under the Settlement terms, present owners or lessees of a Settlement Class Vehicle may secure the following services. For each future oil change at a BMW Center (pursuant to Condition-Based Service indicator) for the earlier of 10 years or 120,000 miles from the in-service date, but in no event less than one year from the Effective Date of the settlement, Settlement Class Members will receive two free quarts of oil for top-offs between oil changes. Additionally, Settlement Class Members may receive up to three free Oil Consumption Tests in the earlier of 10 years or 120,000 miles from in-service date, but in no event less than one year from the Effective Date of the Settlement Class. After one failed Oil Consumption Test, BMW can, at its discretion, authorize the BMW Center to make one repair attempt or offer the customer with an engine replacement pursuant to the schedule set out above. Likewise, if the vehicle is repaired and has a second Oil Consumption Test failure, the customer will be offered an engine replacement per the schedule set out above.

Under this plan, no customer will be required to contribute to the costs of the replacement if the Class Vehicle engine is covered under warranty – either the New Vehicle Limited Warranty term or the Certified Pre-Owned Vehicle Warranty term. Otherwise, customer contribution for parts and labor will be pursuant to the schedule set out above.

Additionally, there is a reimbursement program available to Settlement Class Members that will entitle them to reimbursement of the following expenses actually paid for by the Settlement Class Member. Class Members will be eligible to secure reimbursement for the cost of up to four oil changes (not to exceed \$95 each) with receipts or other appropriate proofs, so long



as the oil change took place within 12 months of the previous oil change. Class Members will also be eligible for reimbursement stemming from oil top offs, including \$10 per quart with receipts for a limit of 9 quarts per Class Member. Class Members will be required to demonstrate that they purchased their vehicle within the earlier of 10 years / 120,000 miles from the in-service date and must show proof of a prior oil consumption complaint to BMW NA.

In accordance with the Agreement, “appropriate proofs” include (1) a legible repair order from an authorized BMW Center or independent repair facility licensed to perform such repairs that identifies the Class Vehicle and VIN, the part number(s) used, and the cost of the repair, with parts and labor separated; (2) proof of payment, in the form of a canceled check, credit-card receipt, credit-card statement, or receipt from the repairing entity demonstrating that the Settlement Class Member paid for the amount(s) sought for reimbursement; (3) the mileage of the Class Vehicle at the time of repair; (4) the nature of the repair and the part(s) used in the repair; and (5) the date of the repair.

Subject to said proofs, Class Members will also be eligible for reimbursement for engine replacements in accordance with the above schedule if, prior to the Effective Date, and within the earlier of 10 years or 120,000 miles from in-service, a Settlement Class Member’s vehicle failed one or more Oil Consumption Tests at a BMW Center, the BMW Center confirmed the oil consumption issue, and the customer replaced the engine at a BMW Center after the last failed Oil Consumption Test. Furthermore, each Settlement Class Member will be entitled to reimbursement in the aggregate of up to \$900 for a failed oil consumption test and subsequent repairs resulting therefrom at a BMW Center upon appropriate proof of the amounts that were actually paid by a Settlement Class Member prior to the Effective Date of the settlement.

Moreover, each Settlement Class Member may file a claim that will entitle them to one future purchase / lease credit subject to the following terms. Class Members may apply for a \$1,500 credit applicable for BMW 6 Series, 7 Series, X5, X6, or X7. Alternatively, Class Members may apply for a \$1,000 credit applicable to all other BMW models. Such credits will be valid for 1 year from the Effective Date and cannot not be used retroactively. These credits are also

transferable to Class Members' immediate family or members of their household and are combinable with other applicable and then available and qualifying BMW purchase / lease incentives.

In addition to these terms, BMW NA will pay the costs of notice to the Class and for administration of claims. Pursuant to the Agreement, Settlement Class Counsel may apply for an award of attorney's fees, costs, and expenses of not more than \$1,900,000.00. This amount will be inclusive of incentive payments for Class Representatives of not more than \$3,000 each.

These Settlement benefits serve as consideration for the dismissal of this Action against BMW NA,<sup>5</sup> and the release of all claims by Plaintiffs and Settlement Class Members which takes effect on the Effective Date defined as the earliest of the following dates: (1) the date on which the time for appeal from the Final Judgment approving the Settlement has elapsed without any appeals being filed; or (2) the date on which all appeals from the Final Judgment approving this Settlement or from any appellate court decisions affirming the Final Judgment have been exhausted, and no further appeal may be taken.

## **B. NOTICE TO THE SETTLEMENT CLASS**

The parties negotiated and agreed upon a notice program that provides the best practicable notice under the circumstances. The Claim Administrator is to be selected and paid for by BMW NA. Within 10 days from the date of the Preliminary Approval Order, Defendants' Counsel will provide notice under the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715 to the States' Attorneys General.

Within 30 days after entry of the Preliminary Approval Order, the Claims Administrator will be responsible for establishing, maintaining, and administering a toll-free telephone number

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<sup>5</sup> The released parties include BMW NA and its direct and indirect parents, subsidiaries, affiliates, officers, directors, agents, authorized BMW dealers, attorneys, and all other persons or entities acting on their behalf, suppliers, licensees, distributors, assemblers, partners, component part designers, manufacturers, holding companies, joint ventures, and any individuals or entities involved in the chain of design, development, testing, manufacture, sale, assembly, distribution, marketing, advertising, financing, warranty, repair and maintenance of the Class Vehicles and their component parts.

dedicated to the Settlement which will provide information about the Settlement. The Claims Administrator will also establish and maintain a website dedicated to the Settlement which will provide (a) information about the Settlement and all relevant documents, including the Claim Form available for download; (b) an email address for Class Members to ask the Claims Administrator questions; and (c) an online claims submission portal and instructions on how Settlement Class Members may submit their claims by U.S. Mail or via the online submission portal. The website and toll-free telephone number will remain available until all claims decisions by the Claims Administrator and payment to claimants have been made.

Within 45 days after entry of the Preliminary Approval Order, BMW NA will also retain a third party to obtain mailing addresses from the applicable state motor vehicle agencies' registration databases to identify the last known addresses of all Settlement Class Members and provide the mailing addresses to the Claims Administrator. The Claims Administrator or the DMV records provider will use current U.S. Postal Service software and the National Change of Address database to update the address records so that Settlement Class Members' most recent addresses will be used to provide a Settlement Class Notice to those Settlement Class Members by a direct first-class mailing. If a Settlement Class Notice is returned to the Claims Administrator by the U.S. Postal Service because the address of the recipient is no longer valid, and the envelop contains a forwarding address, the Claims Administrator will re-send the Settlement Class Notice to the forwarding address within seven days of receiving the turned Settlement Class Notice.

The Settlement Class Notice will contain a plain and concise description of the nature of the Action, the history of the Action, the preliminary certification of the Settlement Class, and the proposed Settlement, including information on the identity of Settlement Class Members, how the proposed Settlement will provide relief to the Settlement Class Members, what claims are released under the proposed Settlement, and other relevant terms and conditions.

This Notice will also inform Settlement Class Members that they have the right to request exclusion from (opt out of) the Settlement. The Settlement Class Notice will also provide the deadlines and procedures for exercising this right. Similarly, the Notice will inform Settlement

Class Members of their right to object to the proposed Settlement and to appear at the Final Approval Hearing. The Settlement Notice will provide the deadlines and procedures for exercising these rights. Finally, the Settlement Notice will inform the Settlement Class Members about the amounts being sought by Settlement Class Counsel as attorneys' fees and expenses, as well as service payments to Settlement Class Representatives, and will explain what Defendant will pay and that such payment is in addition to, and will not reduce, the relief being made available to Settlement Class Members.

Plaintiffs request that the Court preliminarily certify a Settlement Class and preliminarily approve the proposed Settlement, permitting the Settlement Class to be given notice of the terms of the Settlement so that they can make an informed decision as to its merits. Accordingly, Plaintiffs request that the Court enter an order:

- (1) Preliminarily approving the Settlement as set forth in the Settlement Agreement;
- (2) Preliminarily certifying the Settlement Class;
- (3) Preliminarily appointing Interim Class Counsel as Settlement Class Counsel;
- (4) Approving the proposed Notice Plan; and
- (5) Scheduling a Final Fairness Hearing

#### **IV. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT**

##### **A. THE STANDARD FOR PRELIMINARY APPROVAL OF A SETTLEMENT CLASS**

The Third Circuit favors settlement of class action litigation. *See Ehrheart v. Verizon Wireless*, 609 F.3d 590, 595 (3d Cir. 2010) (“Settlement Agreements are to be encouraged because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the federal courts.”). Where the parties can resolve the litigation through good faith and arms-length negotiations, judicial resources can be preserved, and the public interest is furthered. *Bell*

*Atlantic v. Bolger*, 2 F.3d 1304, 1314 n.16 (3d Cir. 1993); *In re Pet Food Prods. Liab. Litig.*, 629 F.3d 333 (3d Cir. 2010) (quoting *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004)) (“We reaffirm the ‘overriding public interest is settling class action litigation.’”).

Judicial review of a proposed class action settlement consists of a two-step process. First, the court determines whether it should grant preliminary approval of the settlement. Second, after notice of the settlement is provided to the class, the court conducts a fairness hearing to determine whether it may grant approval of the settlement. Under the amendment to Fed. R. Civ. P. 23(e) which became effective December 1, 2018, preliminary approval requires that the parties proposing the settlement make a showing that the Court is likely able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal. *See* Fed. R. Civ. P. 23(e)(1)(B). Approval of any proposed settlement requires that the Court find that the settlement is “fair, reasonable and adequate” after considering whether:

- (A) The Class Representatives and Class Counsel have adequately represented the Class;
- (B) The Settlement was negotiated at arm’s length;
- (C) The relief provided for the Class is adequate, taking into account:
  - (i) the costs, risks, and delay or trial and appeal;
  - (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
  - (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and
  - (iv) any agreement required to be identified under Rule 23(e)(3);
- (D) The proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

These factors are essentially a combination of the factors considered under *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975) and *In re Prudential Insurance Company America Sales Practice*

*Litigation*, 148 F.3d 283, 323-24 (3d Cir. 1998). Each of these factors favor granting preliminary approval of the Settlement in this case.

**B. THE SETTLEMENT FOLLOWED ARM’S-LENGTH NEGOTIATIONS CONDUCTED IN GOOD FAITH BY WELL-INFORMED AND EXPERIENCED COUNSEL**

In this case, the Settlement did not occur until counsel conducted a thorough investigation of the underlying claims. Thereafter, the parties engaged in extensive, vigorous discussions and arm’s-length negotiations together with numerous exchanges of information and settlement proposals. The parties engaged the services of the Honorable Jose L. Linares, a well-respected mediator, and participated in multiple rounds of mediation, including on April 22, 2020, September 22, 2020, December 18, 2020, and then a settlement conference before the Court on February 26, 2021. Each of these sessions contributed to a resolution of the case.

Plaintiffs’ attorneys are well-seasoned trial and class action attorneys with substantial experience in class actions, including automobile class actions. *See* Klorczyk Decl. Ex. 2 (Bursor & Fisher, P.A. firm resume). These factors establish that subpoints A and B above have been satisfied. *See Glaberson v. Comcast Corp.*, 2014 WL 7008539, at \*4 (E.D. Pa. Dec. 12, 2014) (a settlement is presumed to be fair “when the negotiations were at arm’s length, there was sufficient discovery, and the proponents of the settlement are experienced in similar litigation”); *Alves v. Main*, 2012 WL 6043272, at \*22 (D.N.J. Dec. 4, 2013) (“The participation of an independent mediator in settlement negotiations virtually [e]nsures that the negotiations were conducted at arm’s length and without collusion between the parties.”), *aff’d*, 559 F. App’x 151 (3d Cir. 2014).

The Class Representatives have no conflict of interest with the remainder of the class, and they share the Class’s interest in obtaining recovery for themselves and other class members experiencing the N63TU1 engine’s excessive oil consumption. The Class Representatives have cooperated fully in providing relevant documents and discovery and have been actively engaged in the litigation.

**C. THE RELIEF PROVIDED TO THE CLASS IS ADEQUATE GIVEN THE COSTS, RISKS, AND DELAY OF TRIAL AND APPEAL**

The relief provided in the Settlement constitutes a valuable and substantial benefit to Class Members. The terms of the Settlement provide for a service action that will enable a present owner or lessee of a Settlement Class Vehicle with the earlier of up to 10 years or 120,000 miles to secure two free quarts of oil for top offs between oil changes and up to three free Oil Consumption Tests. Additionally, after one failed Oil Consumption Test, BMW NA can, at its discretion, authorize a BMW Center to make one repair attempt or offer the Class Member an engine replacement pursuant to the schedule outlined above. And, if the Settlement Class Vehicle is repaired and has a second Oil-Consumption Test failure, the Class Member will be entitled to an engine replacement as outlined in the schedule above. Furthermore, Settlement Class Members may file a claim with the required proofs which will entitle them to reimbursement for the costs of up to four oil changes (not to exceed \$95 each), reimbursement for top-offs (\$10 per quart with receipts and a 9-quart cap), as well as reimbursement for an engine replacement performed at a BMW Center and reimbursement in the aggregate of up to \$900 for a failed Oil Consumption Test and subsequent repair resulting therefrom at a BMW Center and supported by appropriate proof. Finally, Settlement Class Members will be entitled to one future purchase/lease credit of \$1,500 for a BMW 6 Series, 7 Series, X5, X6, or X7; or \$1,000 for all other BMW models.

Thus, the relief provided to the Class is more than adequate. Particularly given the costs and risks of surviving class certification of a nationwide class, a potential summary judgment motion, a battle of the experts and *Daubert* motion, deposing BMW AG's officials over-seas, a costly and potentially lengthy trial, and almost certain appeals. Hence, this factor is satisfied.

**D. THE PROPOSED METHOD OF DISTRIBUTING RELIEF TO THE CLASS, INCLUDING THE METHOD OF PROCESSING CLASS-MEMBER CLAIMS IS EFFICIENT AND EFFECTIVE AND TREATS CLASS MEMBERS EQUALLY**

The Settlement Administrator, paid for by BMW NA, is an experienced and well-respected Claims Administrator. Within 60 days after entry of the Preliminary Approval Order, the Claims Administrator will be responsible for establishing, maintaining, and administering a toll-free

telephone number dedicated to the Settlement which will provide information about the Settlement. The Claims Administrator will also establish and maintain a website dedicated to the Settlement which will provide (a) information about the Settlement and all relevant documents, including the Claim Form available for download; (b) an email address for Class Members to ask the Claims Administrator questions; and (c) an online claims submission portal and instructions on how Settlement Class Members may submit their claims by U.S. Mail or via the online submission portal. The website and toll-free telephone number will remain available until all claims decisions by the Claims Administrator and payment to claimants have been made.

Within 45 days after entry of the Preliminary Approval Order, BMW NA will also retain a third party to obtain mailing addresses from the applicable state motor vehicle agencies' registration databases to identify the last known addresses of all Settlement Class Members and provide the mailing addresses to the Claims Administrator. The Claims Administrator or the DMV records provider will use current U.S. Postal Service software and the National Change of Address database to update the address records so that Settlement Class Members' most recent addresses will be used to provide a Settlement Class Notice to those Settlement Class Members by a direct first-class mailing. If a Settlement Class Notice is returned to the Claims Administrator by the U.S. Postal Service because the address of the recipient is no longer valid, and the envelop contains a forwarding address, the Claims Administrator will re-send the Settlement Class Notice to the forwarding address within seven days of receiving the turned Settlement Class Notice.

The Settlement Class Notice will contain a plain and concise description of the nature of the Action, the history of the Action, the preliminary certification of the Settlement Class, and the proposed Settlement, including information on the identity of Settlement Class Members, how the proposed Settlement will provide relief to the Settlement Class Members, what claims are released under the proposed Settlement, and other relevant terms and conditions.

This Notice will also inform Settlement Class Members that they have the right to request exclusion from (opt out of) the Settlement. The Settlement Class Notice will also provide the deadlines and procedures for exercising this right. Similarly, the Notice will inform Settlement



Class Members of their right to object to the proposed Settlement and to appear at the Final Approval Hearing. The Settlement Notice will provide the deadlines and procedures for exercising these rights. Finally, the Settlement Notice will inform the Settlement Class Members about the amounts being sought by Settlement Class Counsel as attorneys' fees and expenses, as well as service payments to Settlement Class Representatives, and will explain what BMW NA will pay and that such payment is in addition to, and will not reduce, the relief being made available to Settlement Class Members.

This process is an efficient and effective way of providing Class Members the relief they need and deserve. Moreover, there are no sub-classes, and all class members have the ability to file claims equally.

**E. THE TERMS RELATED TO ATTORNEY'S FEES, TIMING OF PAYMENT, AND CLASS REPRESENTATIVE INCENTIVE AWARDS**

Under the terms of the Settlement, BMW NA will pay reasonable attorney's fees to Class Counsel within 30 days following the Court's order approving the Settlement and incentive payments for Class Representatives. The amount of attorney's fees, costs, and expenses will be determined by Magistrate Judge Kiel in an amount not to exceed \$1,900,000.00. This amount will be inclusive of the incentive payments for Class Representatives of not more than \$3,000 each (not to exceed \$27,000 in all).

**V. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED**

A class may be preliminarily certified for purposes of settlement if it conforms to the requirements of Fed. R. Civ. P. 23. *In re Baldwin-United Corp.*, 105 F.R.D. 475, 478 (S.D.N.Y. 1984); Newberg at § 13:64. *See also Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620-21 (1997); *In re Prudential Ins. Co. v. America Sales Litigation*, 148 F.3d 283, 307-308 (3d Cir. 1998); *In re Ins. Brokerage Antitrust Litig.*, 2007 WL 2589950 (D.N.J. 2007), *aff'd*, 579 F.3d 241 (3d Cir. 2009). The Settlement satisfies each of the four requirements for class certification under Rule 23(a) and Rule 23(b)(3).

**A. NUMEROSITY**

The numerosity requirement under Rule 23(a)(1) is satisfied where the class is so numerous that joinder of all class members is impracticable. *In re Prudential Ins.*, 148 F.3d at 309; *Zinberg v. Washington Bancorp, Inc.*, 138 F.R.D. 397, 406 (D.N.J. 1990). Here, there were approximately 70,230 Class Vehicles sold by BMW NA in the United States and Puerto Rico. Clearly, numerosity has been established.

**B. COMMONALITY**

To satisfy the commonality requirement under Rule 23(a)(2), Plaintiffs must demonstrate that “‘at least one question of fact or law’ is common to each member of [the] prospective class.” *Stewart v. Abraham*, 275 F.3d 220, 227 (3d Cir. 2001). Class members do not have to share identical claims or claims arising from the same operative facts. *See In re Prudential Ins.*, 148 F.3d at 319; *Baby Neal v. Casey*, 43 F.3d 48, 57 (3d Cir. 1994) (“Rule 23 [does] not require all plaintiffs actually to suffer the same injury; rather, the fact that the plaintiffs were subject to the injury, that they faced the immediate threat of these injuries, suffice[s] for Rule 23.”). The commonality standard of Rule 23(a)(2) is not a high bar. *Chiang v. Veneman*, 385 F.3d 256, 265 (3d Cir. 2004). Here, there are numerous common questions of law and fact, including:

- a) Whether the Class Vehicles are defective because they frequently burn, leak, and/or otherwise consume excessive amounts of engine oil;
- b) Whether the Oil Consumption Defect constitutes an unreasonable safety risk;
- c) Whether the Class Vehicles are defective because they are unreliable and in need or frequent repair;
- d) Whether the N63TU1 was defectively designed and/or manufactured;
- e) Whether BMW NA knew or should have known the Class Vehicles were defective before they were first sold to consumers;
- f) Whether BMW NA misrepresented or omitted material information regarding the quality and/or reliability of the Class Vehicles;
- g) Whether the Class Vehicles have conformed to reasonable buyers’ expectations;

- h) Whether BMW NA had a duty to inform purchasers of the Class Vehicles about the Oil Consumption Defect prior to sale;
- i) Whether as a result of BMW NA's concealment or failure to disclose material facts, Plaintiffs and Class Members acted to their detriment by purchasing Class Vehicles;
- j) Whether BMW NA breached the New Vehicle Limited Warranty; and
- k) Whether BMW NA breached the promises set forth in the BMW Maintenance Program.

Thus, commonality is satisfied.

### **C. TYPICALITY**

To satisfy the typicality requirement of Rule 23(a)(3), the claims or defenses of the representative parties must be typical of the claims or defenses of the class. *See Georgine v. Amchem Products, Inc.*, 83 F.3d 610, 631 (3d Cir. 1996). Typicality seeks to ensure that there are no conflicts between the class representative claims and the claims of the class members so that the “named plaintiffs have incentives that align with those of absent class members.” *Baby Neal*, 43 F.3d at 57.

Class claims arise out of ownership or lease of Class Vehicles which were equipped with BMW's hot-vee configuration that saved space under the hood, but which caused excessive heat-soak to the N63TU1 engine and surrounding components. As a result, the N63TU1 engines consumed excessive amounts of engine oil between regularly scheduled service visits, leading to an increased need for engine repairs or replacements – such as replacement of valve stem seals – as compared to other, similar vehicles not containing the N63TU1 engine. There are no defenses to Plaintiffs' claims that may be asserted by BMW NA that are unique or different from other proposed class members. Class Representatives were all exposed to the same acts and/or omissions. The factual basis of BMW NA's alleged misconduct is common to the members of the class and represent a common thread of fraudulent misconduct and deceptive trade practices

resulting in injury to all proposed Class Members. As there is no conflict between the Plaintiffs' claims and those of the class, the typicality requirement is satisfied.

**D. ADEQUACY OF REPRESENTATION**

Adequacy of representation is a two-part inquiry that applies to both Plaintiffs' Counsel and Plaintiffs. First, adequacy of representation asks whether Plaintiffs' attorneys are qualified, experienced, and able to conduct the litigation. *In re Prudential*, 148 F.3d at 312 (citing *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 800 (3d Cir. 1995)). Second, adequacy of representation "serves to uncover conflicts of interest between named parties and the class they seek to represent." *In re Prudential*, 148 F.3d at 312 (citing *Amchem Products v. Windsor*, 521 U.S. 591, 594 (1997)). Proposed Class Counsel have, in aggregate, nearly 22 years of experience concentrating in consumer class actions and have been appointed Class Counsel in numerous other class action proceedings. *See* Klorczyk Decl. Ex. 2 (Bursor & Fisher, P.A. firm resume). Neither Plaintiffs nor their attorneys have any interests that are contrary to or conflicting with the class members. Under these facts, the adequacy of representation prong has been satisfied.

**E. THE REQUIREMENTS OF RULE 23(b)(3) ARE SATISFIED**

The proposed class also meets the requirements of Rule 23(b)(3). Rule 23(b)(3) allows class certification of settlement classes where common questions of law and fact predominate over individual questions and class treatment is superior to individual litigation. When assessing predominance and superiority, the court may consider that the class will be certified for settlement purposes only and need not consider whether the case would be manageable if actually brought to trial. *Amchem Prods., Inc.*, 521 U.S. 591, 620 (1998); *Prudential*, 148 F.3d 283 at 321. In discussing predominance, the Third Circuit has reiterated that the focus of the "inquiry is on whether the defendant's conduct was common as to all of the class members, and whether all of the class members were harmed by the defendant's conduct." *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 298 (3d Cir. 2011) (*en banc*); *see also In re Mercedes-Benz Antitrust Litig.*, 213 F.R.D. 180, 187 (D.N.J. 2003); *In re Community Bank of N. Va.*, 418 F.3d 277, 309 (3d Cir. 2005). As

indicated by the Supreme Court in *Amchem*, “predominance is a test readily met in certain cases alleging consumer fraud . . .” 521 U.S. at 625.

Here, the core questions relate to whether alleged uniform defects in the Class Vehicles result in the consumption of excessive amounts of engine oil between regularly scheduled service visits, leading to an increased need for engine repairs or replacements – such as replacement of valve stem seals – as compared to other, similar vehicles not containing the N63TU1 engine, BMW NA’s alleged failure to disclose these purported defects, and its alleged deceptive advertising and marketing in violation of state consumer protection law. Accordingly, the predominance prong of Rule 23(b)(3) is satisfied.

The second prong of Rule 23(b)(3) is also readily satisfied. Here, class resolution is superior to other available methods for the fair and efficient adjudication of the controversy. *See In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 533 (3d Cir. 2004). The superiority requirement “asks the court to balance, in terms of fairness and efficiency, the merits of a class action against those alternative available methods of adjudication.” *Id.* at 534.

Rule 23(b)(3) sets forth certain factors that may be pertinent in considering whether a class action is a superior method by which to adjudicate a controversy. *See In re Mercedes-Benz*, 213 F.R.D. at 186 (“The Rule sets forth a non-exhaustive list of factors to be weighed.”). These factors include:

(A) the interests of members of the class in individually controlling the prosecution of defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the difficulties likely to be encountered in the management of a class action.

The Settlement Class satisfies the superiority requirements because of the large number of class members, and the relatively small value of each claim in relation to the expenses of prosecuting a lawsuit. The alternative to class treatment would be numerous individual lawsuits and/or multiple lawsuits for relatively small amounts of damages. This would be uneconomical

for potential plaintiffs because litigation costs would dwarf any potential recovery. Absent class action treatment, class members here probably would not obtain any relief. In contrast, a class action “facilitates spreading of the litigation costs among the numerous injured parties and encourages private enforcement of the statutes.” *Prudential*, 148 F.3d 283 at 315-316.

In the Third Circuit, there is an additional requirement of ascertainability; the class must be currently and readily ascertainable based on objective criteria. There must be a reliable and administratively feasible way to identify class members. *Coleman v. Commonwealth Land Title Ins. Co.*, 318 F.R.D. 275 (E.D. Pa. 2016). In this litigation, Class Members can be easily identified by VIN and registration records which establish the current and former ownership of Class Vehicles. Claim forms, which require proof of ownership and other records for reimbursement of claims further establish that this class is ascertainable under the Third Circuit’s requirements.

In sum, certification of the proposed Settlement Class is appropriate under Federal Rules of Civil Procedure 23(a) and 23(b)(3). This Court should certify the proposed class for purposes of settlement.

#### **VI. THE FORM AND MANNER OF NOTICE SHOULD BE APPROVED**

Under Fed. R. Civ. P. 23(e), Class Members are entitled to notice of any proposed settlement before it is ultimately approved by the Court. *Manual for Complex Litigation*, Fourth Ed., § 21.633. Under Rule 23(e) and relevant due process requirements, adequate notice must be given to all absent Class Members and potential class members to enable them to make an intelligent choice as to whether to opt-out of the class. *In re Prudential*, 148 F.3d 283 at 326-27. Neither Rule 23 nor due process considerations require actual notice to every class member in every case. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). Rather, “notice reasonably certain to reach most of those interested in objecting” is required “to safeguard the interests of all.” *Id.*

In this case, the parties have negotiated and agreed upon a comprehensive notice program consisting of several types of notice, including mailed notice and long-form notice on the

Settlement Website. Through these efforts, absent Class Members will receive adequate notice of the Settlement.

Finally, the Notice satisfies all legal requirements and provides a comprehensive explanation of the Settlement in simple, non-legalistic terms. The notice sets out all the information required by Rule 23(c), including, the nature of the action, the definition of the class, the class claims, issues or defenses, details informing class members that they may enter an appearance through an attorney if they desire; how to object; the time and manner of requesting exclusion; and the binding effect of the class judgment on members under Rule 23(c)(3).

Under Rule 23(c), the Court should consider the contents of class notice as well as the method of dissemination. *Bradburn Parent Teacher Store, Inc. v. 3M*, 513 F. Supp. 2d 322, 328 (E.D. Pa. 2007); *In re Prudential*, 148 F.3d 283 at 327. The requirements for the content and dissemination of the Notice have been satisfied and the Notice should be approved.

## **VII. CONCLUSION**

For all of the foregoing reasons, Plaintiffs respectfully request that the Court enter an Order that: (a) conditionally certifies a class for purposes of settlement pursuant to Rule 23(b)(3); (b) appoints the named Plaintiffs as Class Representatives and their attorneys, previously named as Interim Class Counsel, as Class Counsel; (c) grants preliminary approval and enters the Preliminary Approval Order attached to the Settlement Agreement as Exhibit 1; (d) directs notice to Settlement Class Members be provided in the manner contemplated by the Settlement Agreement; (e) approves the Claims Administrator; and (f) schedules a final fairness hearing for purposes of determining final approval of the Settlement, attorney's fees, and Class Representative Service Awards.

Dated: July 23, 2021

Respectfully submitted,

**BURSOR & FISHER, P.A.**

By:           /s/ Frederick J. Klorczyk III            
Frederick J. Klorczyk III

Frederick J. Klorczyk III

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*Attorneys for Plaintiffs and the  
Proposed Settlement Class*



**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

THOMAS ISLEY, JEFFERY QUINN, VIPUL  
KHANNA, WALINGTON URENA, DANIEL  
GULICK, and MICHAEL HENCHY JR., on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

BMW OF NORTH AMERICA, LLC and  
BAVARIAN MOTOR WORKS AG,

Defendants.

Civil Action No.: 2:19-cv-12680-ES-MAH

**ELECTRONICALLY FILED**

**DECLARATION OF FREDERICK J. KLORCZYK III IN SUPPORT OF MOTION FOR  
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

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*Attorneys for Plaintiffs*

I, Frederick J. Klorczyk III, declare as follows:

1. I am an attorney at law licensed to practice in the State of New Jersey and a member of the bar of this Court. I am a partner at Bursor & Fisher, P.A., counsel of record for Plaintiffs in this action. I make this declaration in support of Plaintiffs' motion for preliminary approval of class action settlement. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would competently testify thereto under oath.

2. Attached hereto as **Exhibit 1** is a true and correct copy of the Settlement Agreement in this case.

3. Attached hereto as **Exhibit 2** is a true and correct copy of Bursor & Fisher, P.A.'s current firm resume.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Executed on July 23, 2021, at New York, New York.

/s/ Frederick J. Klorczyk III  
Frederick J. Klorczyk III



**SETTLEMENT AGREEMENT AND RELEASE**

Plaintiffs Mr. Isley, Mr. Quinn, Mr. Khanna, Mr. Urena, Mr. Gulick, Mr. Henchy Ms. Bovenzi, Mr. Yehuda and Mr. Hoffner (collectively (“Plaintiffs”) or the “Class Representatives”), and Defendant BMW of North America, LLC (“BMW NA” or “Defendant”)(Plaintiffs and Defendant are collectively referred to as the “Parties”), hereby enter into this Settlement Agreement providing, subject to the approval of the Court, for the settlement of the claims herein described against Defendant (the “Settlement”).

**WHEREAS**, Plaintiffs filed a putative class action against Defendant in the United States District Court for the District of New Jersey (*Isley et al. v. BMW of North America, LLC, et al.*, Case No. 19-cv-12680-ES-ESK) on May 17, 2019 (the “Action”); and

**WHEREAS**, BMW NA filed a Motion to Dismiss (DE 5) on July 10, 2019; and

**WHEREAS**, Plaintiffs filed a First Amended Class Action Complaint (DE 6) on July 22, 2019; and

**WHEREAS**, BMW NA filed a Motion to Dismiss the First Amended Complaint (DE 11) on August 26, 2019; and

**WHEREAS**, the Court Administratively terminated the Motion to Dismiss because the Parties agreed to attend mediation (DE 25); and

**WHEREAS**, the Parties exchanged formal and informal discovery; and

**WHEREAS**, Plaintiffs and Defendant have conducted a thorough examination and investigation of the facts and law relating to the matters in the Action; and

**WHEREAS**, the Parties conducted extensive mediation sessions with retired United States District Judge Jose L. Linares; and

**WHEREAS**, the Parties attended a settlement conference before Magistrate Judge Edward S. Kiel on February 26, 2021 (DE 46); and

**WHEREAS**, after extensive, vigorous discussions and arm’s-length negotiations, and numerous exchanges of information and settlement proposals, the Parties were able to reach an agreement to resolve the Action and the disputes between them; and

**WHEREAS**, the Parties stipulated to the filing of a Second Amended Complaint (DE 48) on May 26, 2021; and

**WHEREAS**, for purposes of this settlement only, the Parties agree to the certification of a settlement class (“Class” or “Settlement Class”), subject to the Court’s approval, defined as follows:

All current (as of the Effective Date) and former owners and lessees in the United States, including the District of Columbia and Puerto Rico, of certain of the following U.S.-specification BMW vehicles distributed for sale, registered, and operated in the United States, including the District of Columbia and Puerto Rico:

<b>Model Description</b>	<b>Model Years</b>
650i/xi (TU1)	2013 - 2019
650i/xi Convertible (TU1)	2013 - 2018
650i/xi Coupe (TU1)	2013 - 2017
750i/xi (TU1)	2013 - 2015
750Li/LXi (TU1)	2013 - 2015
550i/xi (TU1)	2013 - 2017
550i/xi GT (TU1)	2014 - 2016
X5 (TU1)	2014 - 2018
X6 (TU1)	2015 - 2019

*\*Model Years are not fully indicative of actual Class Vehicles, which will depend on production ranges.*

**WHEREAS**, the Parties agree that the following persons and entities should be excluded from the Class: Defendant, as well as Defendant’s parents, affiliates, employees, officers, and directors, attorneys, agents, insurers, third-party providers of extended warranty/service contracts, franchised dealers and their owners and immediate family members, independent repair/service

facilities and their owners and immediate family members, fleet owners and operators, rental companies and vehicles, the attorneys representing Defendant in this case, the Judges and Mediator to whom this case is assigned and their immediate family members, all persons who request exclusion from (opt-out of) the Settlement, owners and lessees of vehicles purchased from salvage yards/junkyards/recyclers, vehicles that had a salvage title or deemed a total loss before a repair of any oil consumption related issue, anyone claiming personal injury or property damage other than to a Class Vehicle due to excessive oil consumption or through subrogation, all persons who previously released any claims encompassed in this Settlement, and owners and lessees of vehicles registered or transported outside the United States; and

**WHEREAS**, Defendant expressly denies any wrongdoing alleged in the pleadings and does not admit or concede any actual or potential fault, wrongdoing, or liability in connection with any facts or claims that have been or could have been alleged against it in the Action. Even though Defendant expressly denies any wrongdoing, Defendant has concluded that settlement is desirable in order to avoid the time, expense, and inherent uncertainties of defending protracted litigation and to resolve, finally and completely, all pending and potential claims of the Plaintiffs and all members of the Class which were or could have been asserted by Plaintiffs and the Class in the Action; and

**WHEREAS**, while Plaintiffs firmly believe in the merits of their case, Plaintiffs recognize the substantial benefits to Plaintiffs and the Class under the terms of this Settlement Agreement and the costs, risks, and uncertainty of protracted litigation, especially in complex actions such as this, as well as the difficulties and delays inherent in such litigation, and believe that it is in their interest, and the interest of all Class Members, to resolve the Action, and any and all claims asserted in the Action against Defendant, in order to provide effective relief promptly to Plaintiffs

and the Class in this Settlement Agreement; and

**WHEREAS**, the undersigned Parties believe that this Settlement Agreement offers significant benefits to Class Members and is fair, adequate, reasonable, and in the best interest of Class Members; and

**WHEREAS**, this Settlement Agreement is made and entered into by and among Plaintiffs individually and on behalf of the Class, and Defendant;

**NOW, THEREFORE**, it is hereby stipulated and agreed, by and between the undersigned Parties, as follows:

**I. DEFINITIONS.**

As used in this Settlement Agreement and the attached exhibits (which are an integral part of this Settlement Agreement and are incorporated in their entirety by reference), the following terms will have the meanings set forth below, unless this Settlement Agreement specifically provides otherwise. Where appropriate, terms used in the singular will be deemed to include the plural and vice versa.

A. **Action.** “Action” means the litigation entitled *Isley et al. v. BMW of North America, LLC, et al.*, Case No. 19-cv-12680-ES-ESK, pending in the United States District Court for the District of New Jersey.

B. **BMW NA.** “BMW NA” means Defendant BMW of North America, LLC.

C. **Claim Form.** “Claim Form” means a form in substantially the same form as that attached hereto as Exhibit “B.”

D. **Claim Validation Process.** “Claim Validation Process” means the process by which properly submitted claims which are conditionally approved by the Claims Administrator will be reviewed and validated by BMW NA to determine that (1) the Class Vehicle’s New

Passenger Vehicle Limited Warranty has not been invalidated, (2) the VIN number associated with the Claim matches the Settlement Class Member vehicle's VIN number, (3) neither BMW NA nor a BMW authorized dealer (i.e., "BMW Center" hereinafter) has previously paid for the same claim(s) being submitted for reimbursement, (4) the claim is for an item covered under this Settlement Agreement; (5) the claim is not for a vehicle excluded from the Settlement Class; (6) the claim for reimbursement has not been submitted by someone excluded from the Settlement Class under Section V herein; (7) in the event the Settlement Class Member has received "goodwill" or other cost/price adjustment, coupon, reimbursement, or refund from BMW NA, a BMW Center, any person or entity associated with Defendant, an insurer, or a provider of an extended service contract, then that amount will be applied against the amount of the claim submitted; and (8) the claim has not been fraudulently submitted.

E. **Claims Administrator.** "Claims Administrator" means Atticus, the third-party entity that Defendant has selected, and which Defendant will pay for, to administer the Settlement and the claims process.

F. **Claims Submission Period.** "Claims Submission Period" means the time period during which Class Members may submit claims which will commence with the mailing of the Settlement Class Notice and will conclude thirty (30) days after the Final Approval Order or the Effective Date, whichever is later.

G. **Class Representatives.** "Class Representatives" means Mr. Isley, Mr. Quinn, Mr. Khanna, Mr. Urena, Mr. Gulick, Mr. Henchy, Ms. Bovenzi, Mr. Yehuda and Mr. Hoffner.

H. **Class Vehicles.** "Class Vehicles" means certain of the following U.S.-specification BMW vehicles distributed for sale, registered, and operated in the United States, including the District of Columbia and Puerto Rico:



<b>Model Description</b>	<b>Model Years</b>
<b>Model Description</b>	<b>Model Years</b>
650i/xi (TU1)	2013 - 2019
650i/xi Convertible (TU1)	2013 - 2018
650i/xi Coupe (TU1)	2013 - 2017
750i/xi (TU1)	2013 - 2015
750Li/LXi (TU1)	2013 - 2015
550i/xi (TU1)	2013 - 2017
550i/xi GT (TU1)	2014 - 2016
X5 (TU1)	2014 - 2018
X6 (TU1)	2015 - 2019

*\*Model Years are not fully indicative of actual Class Vehicles, which will depend on production ranges.*

I. **Court.** “Court” means the United States District Court for the District of New Jersey, the Honorable Esther Salas, presiding, or Magistrate Judge Edward S. Kiel, or their duly appointed successor.

J. **Defendant.** “Defendant” means BMW NA, as well as their predecessors, successors, assigns, parents, affiliates, directors, officers, agents, attorneys, representatives, and employees.

K. **Defendant’ Counsel.** “Defendant’s Counsel” means Buchanan Ingersoll & Rooney PC.

L. **Effective Date.** “Effective Date” means the earliest of the following: (1) the date on which the time for appeal from the Final Judgment approving the settlement has elapsed without any appeals being filed; or (2) the date on which all appeals from the Final Judgment approving this Settlement or from any appellate court decisions affirming the Final Judgment have been exhausted, and no further appeal may be taken.

M. **Excess Oil Consumption.** “Excess Oil Consumption” means the use by a Class Vehicle of more engine oil than customary and expected for the Class Vehicles pursuant to the

Condition Based Service Indicator (“CBS”).

N. **Final Approval Hearing.** “Final Approval Hearing” means the hearing at which the Court will consider and decide whether to enter the Final Approval Order.

O. **Final Approval Motion.** “Final Approval Motion” means the motion Plaintiffs will file in support of the Court’s final approval of the Settlement.

P. **Final Approval Order.** “Final Approval Order” means the Court order that approves this Settlement Agreement and makes such other final rulings as are contemplated by this Settlement Agreement.

Q. **New Passenger Vehicle Limited Warranty Period.** “New Passenger Vehicle Limited Warranty Period” means four years or 50,000 miles from the date the Settlement Class Vehicle was first placed into service, whichever comes first, as provided in BMW NA’s New Passenger Vehicle Limited Warranty.

R. **Oil Top Ups.** “Oil Top Ups” means the adding of oil to a Class Vehicle between oil changes as required by the CBS.

S. **Objection Deadline.** “Objection Deadline” means the date agreed upon by the Parties, or otherwise ordered by the Court in the Preliminary Approval Order, by which any Class Members who wish to do so must object to the Settlement Agreement’s terms or provisions and submit any required statements, proof, or other materials and/or argument.

T. **Opt-Out Deadline.** “Opt-Out Deadline” means the date agreed upon by the Parties, or otherwise ordered by the Court in the Preliminary Approval Order, by which any Settlement Class Members who do not wish to be included in the Settlement Class and participate in the Settlement Agreement must complete the acts necessary to properly effect such election.

U. **Opt-Out List.** “Opt-Out List” means a written list prepared by Settlement Class

Counsel or the Claims Administrator of all Settlement Class Members who submit timely Requests for Exclusion.

V. **Parties.** “Parties” means the Plaintiffs and Defendant.

W. **Plaintiffs.** “Plaintiffs” means the Settlement Class Representatives, Mr. Isley, Mr. Quinn, Mr. Khanna, Mr. Urena, Mr. Gulick, Mr. Henchy, Ms. Bovenzi, Mr. Yehuda and Mr. Hoffner.

X. **Preliminary Approval Motion.** “Preliminary Approval Motion” means the motion Plaintiffs file in support of the Court’s preliminary approval of the Settlement.

Y. **Preliminary Approval Order.** “Preliminary Approval Order” means the order of the Court preliminarily approving this Settlement Agreement, a proposed version of which is attached hereto as **Exhibit “C.”**

Z. **Release.** “Release” means the release and waiver set forth in Section VII of this Settlement Agreement and in the Final Approval Order.

AA. **Request for Exclusion.** “Request for Exclusion” means any request by any Settlement Class Member to be excluded from (opt-out of) the Settlement.

BB. **Settlement.** “Settlement” means the agreement by the Parties to resolve the Action, the terms of which have been memorialized and provided for in this Settlement Agreement and all the exhibits attached hereto.

CC. **Settlement Agreement.** “Settlement Agreement” means this Settlement Agreement and all the exhibits attached hereto.

DD. **Settlement Class Counsel.** “Settlement Class Counsel” means Bursor & Fisher, P.A.

EE. **Settlement Class Counsel Fees and Expenses.** “Settlement Class Counsel Fees

and Expenses” means the reasonable attorneys’ fees and expenses, inclusive of Class Representative incentive payments, approved by the Court, to be paid by Defendant.

**FF. Settlement Class Members or Settlement Class.** “Settlement Class Members” or “Settlement Class” means all current (as of the Effective Date) and former owners and lessees of a Class Vehicle in the United States, including the District of Columbia and Puerto Rico who do not exclude themselves from (opt-out of) the class. Excluded from this definition are Defendant, as well as Defendant’s affiliates, employees, officers, and directors, attorneys, agents, insurers, third-party providers of extended warranty/service contracts, franchised dealers and their owners and immediate family members, independent repair/service facilities and their owners and immediate family members, fleet owners and operators, rental companies and vehicles, the attorneys representing Defendant in this case, the Judges and Mediator to whom this case is assigned and their immediate family members, all persons who request exclusion from (opt-out of) the Settlement, vehicles where the true mileage is unknown, owners and lessees of vehicles purchased from a salvage yard/junkyard/recycler, vehicles that had a salvage title or deemed a total loss before a repair of any oil consumption related issue , anyone claiming personal injury, property damage (other than to a Class Vehicle) or subrogation, all persons who previously released any claims encompassed in this Settlement, and owners or lessees of vehicles registered or transported outside the United States.

**GG. Settlement Class Notice.** “Settlement Class Notice” means the Court-approved form of notice to current and former owners and lessees of Settlement Class Vehicles, in substantially the same form as that attached hereto as Exhibit “A,” informing them of, among other things, the (i) preliminary approval of the Settlement; (ii) scheduling of the Final Approval Hearing; (iii) opportunity to submit a claim; (iv) opportunity to submit an objection; and (v)

opportunity to request exclusion.

HH. **Settlement Class Representatives.** “Settlement Class Representatives” means Mr. Isley, Mr. Quinn, Mr. Khanna, Mr. Urena, Mr. Gulick, Mr. Henchy and Ms. Bovenzi, Mr. Yehuda and Mr. Hoffner.

II. **Settlement Class Representative Service Payments.** “Settlement Class Representative Service Payments” means the reasonable service payments approved by the Court.

JJ. **Settlement Class Vehicles.** “Settlement Class Vehicles” means Class Vehicles currently or formerly owned or leased by Settlement Class Members.

KK. **VIN.** “VIN” means Vehicle Identification Number.

## II. **REQUIRED EVENTS.**

A. Promptly after execution of this Settlement Agreement by all Parties:

1. Settlement Class Counsel and Defendant’s Counsel will take all reasonable and necessary steps, subject to the Court’s availability, to obtain entry of the Preliminary Approval Order and the Final Approval Order as expeditiously as possible.

2. The Parties will seek entry of a Preliminary Approval Order in substantially the same form as that attached hereto as Exhibit “C.” Plaintiffs will file their Preliminary Approval Motion with the proposed Preliminary Approval Order and supporting documents. The Preliminary Approval Order will, among other things:

a. Certify a nationwide (United States, District of Columbia, and Puerto Rico) settlement-only class; approve Mr. Isley, Mr. Quinn, Mr. Khanna, Mr. Urena, Mr. Gulick, Mr. Henchy, Ms. Bovenzi, Mr. Yehuda and Mr. Hoffner as Settlement Class Representatives; and appoint their counsel as Settlement Class Counsel, pursuant to Fed. R. Civ. P. 23;

- b. Preliminarily approve the Settlement;
- c. Appoint the Claims Administrator;
- d. Require Defendant's Counsel to provide notice under the Class Action Fairness Act, 28 U.S.C. § 1715 to the States' Attorneys General within ten (10) days from the date of the Preliminary Approval Order, if they have not already done so;
- e. Require the Claims Administrator within sixty (60) days of the date of the Preliminary Approval Order to establish and maintain a website and 800 number, which will remain available until all claims decisions by the Claims Administrator and payment to claimants have been made;
- f. Require the dissemination of Settlement Class Notice within ninety (90) days of the date of the Preliminary Approval Order or such additional time as is reasonably required, and the taking of all necessary and appropriate steps to accomplish this task;
- g. Determine that the Settlement Class Notice complies with all legal requirements, including, but not limited to, the Due Process Clause of the United States Constitution;
- h. Schedule a date and time for a Final Approval Hearing, not less than one hundred and fifty (150) days after the date of the Preliminary Approval Order, to determine whether the Settlement should be finally approved by the Court;
- i. Set a deadline for all claims by Settlement Class Members to be submitted, thirty (30) days after the Final Approval Order or the Effective Date, whichever is later;
- j. Require Settlement Class Members who wish to exclude themselves from or object to the Settlement to submit an appropriate and timely written request for exclusion or objection by a date certain as specified in the Notice that will be one hundred and twenty (120)

days after the Preliminary Approval Order;

k. Require Settlement Class Members who wish to appear to object to the Settlement Agreement to submit an appropriate and timely written statement by a date certain as specified in the Notice that will be one hundred and twenty (120) days after the Preliminary Approval Order;

l. Require attorneys representing objecting Settlement Class Members, at the time the objection is filed, at the objecting Settlement Class Members' expense, to file a notice of appearance by a date certain as specified in the Notice that will be one hundred and twenty (120) days after the Preliminary Approval Order;

m. Require Settlement Class Counsel to file their motion for an award of attorneys' fees, inclusive of costs, expenses, and Settlement Class Representative Service Payments, one hundred and five (105) days after the Preliminary Approval Order. Defendant shall file any objection or opposition to the motion twenty (20) days thereafter. Settlement Class Counsel shall file any reply papers in response to the opposition and reply papers in response to any objections, one hundred and thirty-five (135) days after the Preliminary Approval Order;

n. Require Settlement Class Counsel to file their Final Approval Motion one-hundred and thirty five (135) days after the Preliminary Approval Order;

o. Require Defendant to file with the Court an affidavit no less than fifteen (15) days prior to the Final Approval Hearing from the Claims Administrator: (i) indicating the number of claims, requests for exclusion, and objections submitted by Settlement Class Members to date; and (ii) attesting that Settlement Class Notice was disseminated in a manner consistent with the terms of this Settlement Agreement and the Class Action Fairness Act, 28 U.S.C. §1711 *et seq.*, or those otherwise required by the Court; and

p. Issue other related orders as necessary to effectuate the preliminary approval of the Settlement Agreement.

3. After the Preliminary Approval Hearing, the Parties will seek to obtain from the Court a Final Approval Order in a form to be agreed upon by the Parties. The Final Approval Order will be determined by the Court but is expected to, among other things:

a. Find that the Court has personal jurisdiction over all Settlement Class Members, subject-matter jurisdiction over the claims asserted in the Action, and that venue is proper;

b. Approve the Settlement Agreement, pursuant to Fed. R. Civ. P. 23;

c. Finally certify the Settlement Class for settlement purposes only;

d. Find that the Settlement Class Notice was the best practicable notice and complied with all laws, including, but not limited to, the Due Process Clause of the United States Constitution;

e. Determine and award reasonable and agreed upon attorneys' fees, costs, and expenses and Settlement Class Representative Service Awards to be paid to Settlement Class Counsel;

f. Dismiss the Action with prejudice;

g. Incorporate the Release set forth in the Settlement Agreement and make the Release effective as of the date of the Final Approval Order;

h. Authorize the Parties to implement the terms of the Settlement Agreement;

i. Retain jurisdiction relating to the administration, consummation, enforcement, and interpretation of the Settlement Agreement, the Final Approval Order, and for



any other necessary purpose; and

j. Issue any related orders necessary to effectuate the final approval of the Settlement Agreement and its implementation.

4. The Parties will use their best efforts, consistent with the terms of this Settlement Agreement, to promptly obtain a Final Approval Order.

5. If the Court fails to issue the Preliminary Approval Order, or fails to issue the Final Approval Order without leave to resubmit, the terms of this Settlement Agreement are voidable by either Party. However, the Parties agree to use their best efforts, consistent with this Settlement Agreement, to cure any defect(s) identified by the Court.

6. The Parties acknowledge that prompt approval, consummation, and implementation of the Settlement set forth in this Settlement Agreement are essential. The Parties will cooperate with each other in good faith to carry out the purposes of and to effectuate this Settlement Agreement, will promptly perform their respective obligations hereunder, and will promptly take any and all actions and execute and deliver any and all additional documents and all other materials or information reasonably necessary or appropriate to carry out the terms of this Settlement Agreement and the transactions contemplated hereby.

7. Upon Entry of the Final Approval Order, the Action will be dismissed, on its merits and with prejudice, subject to the continuing jurisdiction of this Court, and Settlement Class Members will be forever barred and enjoined from pursuing any claims which have been resolved by this Settlement.

### **III. SETTLEMENT TERMS.**

#### **A. Automatic Relief.**

1. All Class Vehicles shall be entitled to the following:
  - a. For each future oil change (pursuant to the CBS) of a Class Vehicle at a BMW Center up to 10 years or 120,000 miles from the in-service date (whichever comes first) but in no event less than one (1) year from the Effective Date, Settlement Class Members will receive two (2) free quarts of oil to top-off their Class Vehicles between required engine oil services (pursuant to the CBS) .
  - b. Oil Consumption Tests
    - i. Settlement Class Members may receive up to three (3) free engine oil consumption tests for their Class Vehicles up to 10 years or 120,000 miles from the in-service date (whichever comes first) but in no event less than one (1) year from the Effective Date of the settlement.
      1. After one failed Oil Consumption Test of a Class Vehicle, and confirmation by an authorized BMW Center that the Class Vehicle has an oil consumption issue, BMW NA will, at its discretion, either authorize the BMW Center to make one engine repair attempt or offer customer an engine replacement per paragraph III (A)(1)(c) below.
      2. If after the BMW NA approved engine repair, the Class Vehicle returns and fails a second Oil-Consumption Test, the Settlement Class Member's Class Vehicle is entitled to an engine replacement per paragraph III (A)(1)(c) and its exclusions below.
  - c. Engine Replacement due to Excess Oil Consumption Contribution Schedule:
    - i. No Settlement Class Member contribution applies if the Class Vehicle engine is still covered under either the New Vehicle Limited Warranty term or the BMW Certified Pre-Owned warranty term.
    - ii. If there is no applicable warranty coverage the Settlement Class Member shall contribute to the total replacement cost, including parts and labor, in accordance with the schedule below:

Odometer Mileage at time of failed Oil Consumption Test resulting in engine replacement		Customer Contribution (parts & labor)
Below	50,000	0%
50,001	60,000	5%
60,001	70,000	15%
70,001	80,000	27%
80,001	90,000	42%
90,001	100,000	55%
100,001	105,000	65%
105,001	110,000	70%
110,001	115,000	75%
115,001	120,000	85%
120,001	Above	100%

- iii. Replacement N63TU1 engine will have improved components compared to engines produced before May 2017.
- iv. Subject to the mileage limitations above for all eligible Class Members, engine replacement contribution will only be made until the later of 10 years from the Class Vehicle's in-service date or 1 year from the Effective Date.
- v. In the event a Class Member's engine fails or otherwise needs replacing unrelated to Excess Oil Consumption the schedule above shall not apply and the Class Member will not be entitled to any contribution from BMW.

**B. Reimbursement of Costs Incurred Prior to the Effective Date.**

- 1. Each Settlement Class Member may file a claim with the required proofs that will entitle him/her to reimbursement of the following Class Vehicle related expenses incurred and actually paid by the Settlement Class Member:

- a. The cost of up to 4 engine oil changes (not to exceed \$95 each) with receipts or other appropriate proofs, so long as the engine oil change took place within 12 months of the previous oil change.
- b. Reimbursement for up to \$10 per quart for up to 9 quarts of oil engine used in Oil Top Ups of Class Vehicles provided:
  - i. Receipts are provided for the oil purchased;
  - ii. The oil was purchased within 10 years / 120,000 miles from in-service date (whichever comes first); and
  - iii. There is proof of prior oil consumption complaint to BMW NA for the Class Vehicle.
- c. Reimbursement for Engine Replacements as follows:
  - i. If, prior to the Effective Date, and within the earlier of 10 years or 120,000 miles from in-service date, (a) a Settlement Class Member's vehicle failed one or more Oil Consumption Tests at a BMW Center; (b) the BMW Center confirmed the Excess Oil Consumption; and (c) the customer replaced the engine at a BMW Center after the last failed Oil Consumption Test, then the Settlement Class Member shall be entitled to reimbursement for one (1) engine replacement subject to the contribution schedule in III A.1(c) above and, subject to the Class Member's providing of the required proofs.
- d. Reimbursement for Other Repairs or Diagnostic Tests:
  - i. Each Settlement Class Member shall be entitled to reimbursement of up to an aggregate of \$900 for a failed oil consumption test and subsequent repairs on a Class Vehicle at a BMW Center upon submission of required proof showing that the amounts were actually paid by a Settlement Class Member prior to the Effective Date of the settlement.

### **C. Credit Vouchers**

Each Settlement Class Member may file a claim to receive one credit voucher towards either one future purchase/lease credit for (a) \$1,500 for BMW 6 Series, 7 Series, X5, X6, X7; or (b) \$1,000 for all other BMW models. The voucher will be transferable to immediate family members (children, parents and siblings) or other members of the Class Member's household provided proof is provided that the Class member and person to whom the voucher is being

transferred reside in the same house. The voucher will not be valid retroactively, will be valid for 1 year from the Effective Date and may be combined with other applicable and then available and qualifying BMW purchase/lease incentives. Notwithstanding the foregoing, Class Member(s) cannot combine and use multiple credit vouchers made available as part of this Settlement in one lease or purchase transaction.

**D. Required Proof.**

1. In order for a claim to be eligible for reimbursement pursuant to Section III, Settlement Class Members must submit a Claim Form to the Claims Administrator that is post-marked during the Claims Submission Period or submitted through the online portal during the Claims Submission Period and include:

a. a legible repair order from an authorized BMW Center or independent repair facility licensed to perform such repairs that identifies a Settlement Class Vehicle and VIN, the part number(s) used, and the cost of the repair, with parts and labor separated;

b. proof of payment, in the form of a canceled check, credit-card receipt, credit-card statement, or receipt from the repairing entity demonstrating that the Settlement Class Member paid for the amount(s) sought for reimbursement;

c. the mileage of the Settlement Class Vehicle at the time of repair;

d. the nature of the repair and the part(s) used in the repair;

e. the date of repair; and

f. If the ownership/leasing records accessible to BMW NA and/or the Claims administrator do not match with the information submitted on a claim, or multiple claims for reimbursement for the same repair on the same Class Vehicle are received, the Class Member(s) seeking reimbursement will also have to provide documentation that identifies the owner/lessee of

the Class Vehicle (i.e., a true copy of a vehicle title, registration or proof of insurance coverage) at the time of the repair.

2. Reimbursement amounts will be reduced by goodwill or other adjustment, coupon, refund, or payment made by an authorized BMW Center, BMW NA, any person or entity associated with BMW NA, an insurer, or a provider of an extended service contract.

3. Limitations. Defendant does not warrant or guarantee any repairs performed at third-party repair shops or using non-OEM parts and, should any such repairs or parts fail after a Settlement Class Member has made a claim for reimbursement under the Settlement, the Settlement Class Member will not be entitled to submit an additional claim or be entitled to a service benefit for such repair.

**E. Claim Review and Processing, Claim Validation, and Appeal from Denial.**

1. Claim Review and Processing.

a. All claims properly submitted for reimbursement will be reviewed on a rolling basis upon receipt by the Claims Administrator, which will be responsible for conditionally approving the claim by ensuring that all information and documentation required under this Settlement Agreement has been submitted. The Claims Administrator will submit those properly supported and conditionally approved claims to BMW NA for the Claim Validation Process, pursuant to Section III.E.2, below.

b. Deficient Claims: Any Settlement Class Member whose claim is deemed deficient will receive from the Claims Administrator by first-class mail, postmarked within thirty (30) days of the determination that the claim is deficient, a written explanation stating the reason(s) the claim was deemed deficient, including steps the Settlement Class Member can take to cure the deficiencies, if possible. The Settlement Class Member receiving such notice will

be allowed thirty (30) days from mailing to cure the deficiency if possible. If the Settlement Class Member does not provide the materials identified in the Claims Administrator's letter or fails to respond to the Claims Administrator's letter, the claim will no longer be eligible for reimbursement or appeal.

2. Claim Validation Process: After Claim Review and Processing, the Claims Administrator will calculate the amount due to each Settlement Class Member for all claims approved as complying with the requirements of this Settlement Agreement. The Claims Administrator will, on a weekly rolling basis, submit those conditionally approved claims to Defendant for the Claim Validation Process to determine if there is any reason to believe that a claim is fraudulent or otherwise invalid. Within a rolling forty-five (45) days basis of Defendant's receipt from the Claims Administrator of the conditionally approved claims, Defendant may object to the approval of the claim based on evidence that:

a. the vehicle's warranty was voided because (i) the VIN has been altered or cannot be read; (ii) the vehicle was purchased from a salvage yard/junkyard/recycler, was declared a total loss, was sold for salvage purposes, or had a "salvage" title before a repair of any oil consumption related issue; (iii) the odometer of the vehicle was tampered with or the true mileage of the vehicle is unknown; or (iv) the vehicle has been used in any competitive racing event;

b. the VIN associated with the claim does not match the Settlement Class Member's vehicle's VIN;

c. the claim for reimbursement is for an item or service that is not covered under this Settlement Agreement;

d. the claim is for a vehicle excluded from the Settlement Class;

- e. the claim for reimbursement has already been made and paid (i.e., a duplicate claim);
- f. the claim for reimbursement is submitted by someone excluded from the Settlement Class;
- g. the claim is fraudulently submitted; or
- h. the Settlement Class Member has received “goodwill” or other cost/price adjustment, coupon, reimbursement, or refund from BMW NA, a BMW Center, any person or entity associated with Defendant, an insurer, or a provider of an extended service contract, in which case that amount will be applied against the amount of the claim submitted.

3. Denied Claims: Any Settlement Class Member whose claim is denied, in whole or in part, either by the Claims Administrator or Defendant, will receive from the Claims Administrator by first-class mail a written explanation stating the reason(s) for the denial. The Claims Administrator’s letter will also inform Settlement Class Members that they may appeal from a denial if they have a basis to do so and have timely submitted all required documentation in support of an eligible claim by submitting an appeal in writing to the Claims Administrator within thirty (30) days of mailing of the notice of denial.

4. Appeals from Claim Denial.

- a. Exclusions: Claims that were denied for failing to submit all required documentation in support of an eligible claim, either with the initial submission or within the additional time period after being notified of a deficiency by the Claims Administrator as provided in Section III.E.3, above, or for claims seeking reimbursement for an item or service that is not covered under this Settlement Agreement, are not eligible for appeal.
- b. Settlement Class Members must appeal in writing to the Claims



Administrator within thirty (30) days of mailing of the notice of the denial, setting forth in detail why the Settlement Class Member believes his or her claim should have been approved. On appeal, Settlement Class Members may not submit additional documents beyond those they submitted to the Claims Administrator in connection with their claim submissions (whether initial or as supplemented pursuant to Section III.E.1.). The Claims Administrator will maintain a file of all timely-submitted appeals from claim denials.

c. Thirty (30) days after the Claims Administrator sends the last claim denial letter, the Claims Administrator will provide Settlement Class Counsel and Defendant's Counsel with a list of all timely-submitted appeals and all documents related to such Settlement Class Members' appeals.

d. Settlement Class Counsel and Defendant's Counsel will review all timely filed appeals within thirty (30) days after receipt of the Claims Administrator's list of all timely-submitted appeals and all documents related to such Settlement Class Members' appeals. The Parties will conduct only one such review session, it being the intention of the Parties to resolve all appeals expeditiously, in good faith, and at one time.

e. If the Parties cannot agree on whether a timely-submitted appeal should be granted, the Parties agree to submit the claim for review to a third-party neutral, who will make the final and binding decision regarding the claim. Each party will bear its own costs in connection with such appeals.

5. Claim Payment: Beginning thirty (30) days after the Effective Date and on a rolling basis thereafter, the Claims Administrator will commence issuing payment for approved and validated Claims.

**IV. NOTIFICATION TO CLASS MEMBERS.**

A. Unless otherwise specified, Defendant will pay all costs related to the following notice program. Subject to the Court approving the same, notice dissemination will be commenced within ninety (90) days after entry of the Preliminary Approval Order):

1. Defendant will retain a third party to obtain mailing addresses from the applicable state motor vehicle agencies' registration databases to identify the last known addresses of all Settlement Class Members and provide the mailing addresses to the Claims Administrator.

2. The Claims Administrator or the DMV records provider will use current U.S. Postal Service software and the National Change of Address database to update the address records so that Settlement Class Members' most recent addresses will be used to provide a Settlement Class Notice to those Settlement Class Members by a direct first-class mailing. If a Settlement Class Notice is returned to the Claims Administrator by the U.S. Postal Service because the address of the recipient is no longer valid, and the envelope contains a forwarding address, the Claims Administrator will re-send the Settlement Class Notice to the forwarding address within seven (7) days of receiving the returned Settlement Class Notice.

B. Within sixty (60) days after entry of the Preliminary Approval Order, the Claims Administrator will be responsible for, without limitation: (a) establishing, maintaining, and administering a toll-free telephone number dedicated to the Settlement which will provide information about the Settlement and (b) establishing and maintaining a website dedicated to the Settlement which (i) will provide information about the Settlement and all relevant documents, including the Claim Form available for download; (ii) an email address for Class Members to ask the Claims Administrator questions; and (iii) will provide an online claims submission portal and instructions on how Settlement Class Members may submit their claims by U.S. Mail or via an

online submission portal. The website and toll-free telephone number will remain available until all claims decisions by the Claims Administrator and payment to claimants have been made.

C. Within ninety (90) days of the Preliminary Approval Order, or such longer period as may be required due to a delay in securing registration data from one or more state motor vehicle agencies the Claims Administrator will disseminate Settlement Class Notice to the Settlement Class as specified in the Preliminary Approval Order, and in compliance with all applicable laws, including, but not limited to, the Due Process Clause of the Constitution.

D. All costs associated with Settlement Administration will be paid by Defendant.

E. Contents of the Settlement Class Notice: The Settlement Class Notice, in a form substantially similar to the one attached to the Settlement Agreement as Exhibit "A," will advise Class Members of the following:

1. General Terms: The Settlement Class Notice will contain a plain and concise description of the nature of the Action, the history of the Action, the preliminary certification of the Settlement Class, and the proposed Settlement, including information on the identity of Settlement Class Members, how the proposed Settlement would provide relief to the Settlement Class Members, what claims are released under the proposed Settlement, and other relevant terms and conditions.

2. Exclusion/Opt-Out Rights: The Settlement Class Notice will inform Settlement Class Members that they have the right to request exclusion from (opt out of) the Settlement. The Settlement Class Notice will provide the deadlines and procedures for exercising this right.

3. Objection to Settlement: The Settlement Class Notice will inform Settlement Class Members of their right to object to the proposed Settlement and to appear at the

Final Approval Hearing. The Settlement Class Notice will provide the deadlines and procedures for exercising these rights.

4. Attorneys' Fees and Expenses, and Settlement Class Representative Service Payments: The Settlement Class Notice will inform Settlement Class Members about the amounts being sought by Settlement Class Counsel as attorneys' fees and expenses, as well as service payments to Settlement Class Representatives, and will explain what Defendant will pay and that such payment is in addition to and will not reduce the relief being made available to Settlement Class Members.

5. Claim Form: The Settlement Class Notice will include the Claim Form, in a form substantially similar to the one attached to the Settlement Agreement as Exhibit "B," which will inform the Settlement Class Member that he/she must fully complete and timely return the Claim Form and supporting documents within the Claim Period to be eligible to obtain a recovery.

6. Media Inquiries: If the media contacts any Party, that Party may respond to the inquiry.

**V. REQUESTS FOR EXCLUSION BY SETTLEMENT CLASS MEMBERS.**

A. The provisions of this paragraph will apply to any Request for Exclusion. Any Settlement Class Member may make a Request for Exclusion by mailing or delivering such request in writing to the Claims Administrator. Any Request for Exclusion must be postmarked and received not later than the Opt-Out Deadline specified in the Court's Preliminary Approval Order. Any Request for Exclusion must (1) state the Settlement Class Member's full name and current address; (2) identify the model year, model, and Vehicle Identification Number ("VIN") of his/her Class Vehicle(s) and the date(s) of purchase or lease; (3) specifically and clearly state his/her desire to be excluded from the Settlement and from the Settlement Class; and (4) include the Settlement

Class Member's signature.

B. Any Settlement Class Member who submits a timely Request for Exclusion may not file an objection to the Settlement and will be deemed to have waived any rights or benefits under this Settlement Agreement.

**VI. OBJECTIONS BY SETTLEMENT CLASS MEMBERS.**

A. Any Settlement Class Member who has not filed a timely written Request for Exclusion and who wishes to object to the fairness, adequacy, or reasonableness of this Settlement Agreement or the Settlement, or to the requested award of attorneys' fees and expenses, or Settlement Class Representative Service Payments, must file with the Clerk of the Court a written notice of objection by the Objection Deadline. To state a valid objection to the Settlement, an objecting Settlement Class Member must provide the following information in the Settlement Class Member's written objection: (1) his/her full name, current address, and current telephone number; (2) the model year and model of his/her Class Vehicle(s), as well as the VIN of his/her Class Vehicle(s) and the date(s) of purchase or lease; (3) whether the objection applies only to the objecting Class Member, to a specific subset of the Class, or to the entire Class; (4) a statement of the position(s) the objector wishes to assert, including the factual and legal grounds for the position; (5) provide copies of relevant repair history or other proof that the objector owns or leases, or has owned or leased, the Class Vehicles (*i.e.*, a true copy of a vehicle title, registration, or license receipt); and (6) any other documents that the objector wishes to submit in support of his/her position. If the objector wishes to appear and be heard at the Final Approval Hearing, he or she must file a notice of intention to appear at the Final Approval Hearing ("Notice of Intention to Appear") pursuant to the requirements of Section V.I.C.

B. To be valid, an objection also must include a detailed statement of each objection

asserted, including the grounds for objection. In addition, any Settlement Class Member objecting to the Settlement must provide a detailed statement of any objections to any other class action settlements submitted in any court, whether state, federal, or otherwise, in the United States in the previous five (5) years. If the Settlement Class Member has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she must affirmatively so state in the written materials provided in connection with the objection to this Settlement. Upon the filing of an objection, of their own choosing, Settlement Class Counsel may take the deposition of the objecting Settlement Class Member pursuant to the Federal Rules of Civil Procedure at an agreed-upon time and location, and to obtain any evidence relevant to the objection. Failure by an objector to make himself or herself available for deposition or comply with expedited discovery may result in the Court striking the objection. The Court may tax the costs of any such discovery to the objector or the objector's counsel if the Court determines that the objection is frivolous or is made for an improper purpose.

C. Finally, subject to approval of the Court, any objecting Settlement Class Member may appear, in person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, or object to any requests for attorneys' fees, expenses, or Settlement Class Representative Service Payments. The objecting Settlement Class Member must file with the Clerk of the Court and serve upon all counsel designated in the Settlement Class Notice a Notice of Intention to Appear by the Objection Deadline or on such other date that may be set forth in the Settlement Class Notice. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member (or his/her counsel) will present to the Court in connection with the Final Approval Hearing. Any Settlement Class Member who does not provide a Notice

of Intention to Appear in complete accordance with the deadlines and other specifications set forth in the Settlement Class Notice, and who has not filed an objection in complete accordance with the deadlines and other specifications set forth in this Settlement and the Settlement Class Notice, will be deemed to have waived any objections to the Settlement and will be barred from speaking or otherwise presenting any views at the Final Approval Hearing.

D. The agreed-upon procedures and requirements for filing objections in connection with the Final Approval Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Settlement Class Member's objection to the Settlement, in accordance with such Settlement Class Member's due process rights.

E. The Preliminary Approval Order and Settlement Class Notice will require all Settlement Class Members who have any objections to submit such notice of objection or request to be heard with the Court, and serve by mail or hand delivery such notice of objection or request to be heard upon Settlement Class Counsel, the Claims Administrator, and Defendant's Counsel at the addresses set forth in the Settlement Class Notice, by no later than the Objection Deadline.

F. The Preliminary Approval Order will further provide that objectors who fail properly and/or timely to file their objections with the Court, along with the required information and documentation set forth above, or to serve them as provided above, will not be heard during the Final Approval Hearing, and their objections will be waived and will not be considered by the Court.

G. Settlement Class Counsel will be responsible for addressing all objections.

H. Any Settlement Class Member who objects to the Settlement will be entitled to all of the benefits of the Settlement if this Settlement Agreement and the terms contained herein are approved, as long as the objecting Settlement Class Member complies with all the requirements of

this Settlement Agreement applicable to Settlement Class Members.

**VII. RELEASE, DISMISSAL OF ACTION, AND JURISDICTION OF COURT.**

The Parties agree to the following release and waiver, which will take effect upon the Effective Date:

A. By this Settlement Agreement and the following Release, the released parties include BMW NA and its direct and indirect parents, subsidiaries, affiliates, successors in interest, officers, directors, agents, authorized BMW dealers, attorneys, and all other persons or entities acting on their behalf; suppliers, licensors, licensees, distributors, assemblers, partners, component part designers, manufacturers, holding companies, joint ventures, and any individuals or entities involved in the chain of design, development, testing, manufacture, sale, assembly, distribution, marketing, advertising, financing, warranting, repair, and maintenance of the Settlement Class Vehicles and their component parts (“Released Parties”). The released claims refer to any and all claims, including demands, rights, liabilities, and causes of action, of every nature and description that were asserted or could have been asserted in this action, which relate to oil consumption in the Class Vehicles, excluding claims for property damage or personal injury (“Released Claims”). Upon the effective date of settlement, the representative class plaintiffs and Settlement Class Members shall each and do hereby forever release, discharge, waive, and covenant not to sue the Released Parties regarding any and all of the Released Claims. This release includes any such claims that the representative class plaintiffs and Settlement Class Members do not know of or suspect to exist in their favor at the time of this release and that, if known by them, might have affected their settlement and release of the Released Parties, or might have affected their decision not to object to this agreement. The foregoing waiver includes without limitation an express waiver, to the fullest extent permitted by New Jersey law, and any and all other state laws,



including of any and all rights conferred by section 1542 of the *California Civil Code*, which provides:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**

The foregoing waiver also includes without limitation an express waiver, to the fullest extent permitted by law, of any and all rights under any law of any state or territory of the United States, including the District of Columbia, and any federal law or principle of common law or equity, or of international foreign law, that is comparable to section 1542 of the *California Civil Code*. The representative class plaintiffs and Settlement Class Members recognize that even if they later discover facts in addition to or different from those they know or believe to be true, they nevertheless agree that upon entry of the final approval order and judgment, the representative class plaintiffs and Settlement Class Members fully, finally, and forever settle and release any and all of the Released Claims. The foregoing waiver and release was bargained for and is a material element of this Settlement Agreement.

B. The Settlement Class Representatives represent and warrant that they are the sole and exclusive owners of the claims they have asserted and are releasing under this Settlement Agreement. The Settlement Class Representatives further acknowledge that they have not assigned, pledged, or in any manner whatsoever sold, transferred, assigned, or encumbered any right, title, interest, or claim arising out of or in any way whatsoever pertaining to the Action, including, without limitation, any claim for benefits, proceeds, or value under the Action, and that the Settlement Class Representatives are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Action or in any benefits, proceeds, or values under the Action.

C. The Settlement Class Representatives further represent that, as of the date of this

agreement, they are not aware of any Settlement Class Members who have filed claims or actions for the relief sought in this Action, other than the Settlement Class Representatives.

D. Without in any way limiting its scope, this Release encompasses, by example and without limitation, any and all claims for attorneys' fees, costs, expert fees, consultant fees, interest, litigation fees, costs, or any other fees, costs, and/or disbursements incurred by Settlement Class Counsel or by Plaintiffs, except to the extent otherwise specified in the Settlement Agreement.

E. The Settlement Class Representatives expressly agree that this Release will be and may be raised as a complete defense to and will preclude any action or proceeding relating to the Released Claims.

F. This Settlement Agreement and Release does not affect the rights of Settlement Class Members who timely and properly request exclusion from (opt-out of) the Settlement.

G. The administration and consummation of the Settlement as embodied in this Settlement Agreement will be under the authority of the Court. The Court will retain jurisdiction to protect, preserve, and implement the Settlement Agreement including, but not limited to, the Release. The Court expressly retains jurisdiction to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement Agreement.

H. Upon the Effective Date: (1) the Settlement Agreement will be the exclusive remedy for any and all Settlement Class Members for Released Claims, except those who have properly requested exclusion from (opted out of) the Settlement in accordance with the terms and provisions hereof; (2) the Defendant will not be subject to liability or expense of any kind to any Settlement Class Member(s) for Released Claims except as set forth herein; and (3) Settlement

Class Members will be permanently barred from initiating, asserting, or prosecuting any and all Released Claims against Defendant in any federal or state court in the United States or any other tribunal.

I. Nothing in this Release will preclude any action to enforce the terms of the Settlement Agreement, including participation in any of the processes detailed herein.

**VIII. ATTORNEYS' FEES AND EXPENSES AND SERVICE PAYMENTS.**

A. All expenses incurred in administering this Settlement Agreement, including, without limitation, all attorneys' fees and costs, the cost of the Settlement Class Notice, and the cost of distributing and administering the benefits of the Settlement Agreement, will be paid by Defendant, subject to the limitations contained herein. The Settlement Class Counsel Fees and Expenses, and Class Representative Incentive Awards, if any, will be paid separate and apart from any relief provided to the Settlement Class.

B. As part of the resolution of the Action, the Parties have agreed that Settlement Class Counsel may apply for an award of attorneys' fees, inclusive of costs and expenses and Settlement Class Representative Service Payments, not to exceed \$1,900,000.00 in the aggregate. The Parties have further agreed that Settlement Class Counsel shall not seek payment of any amount for any fees, costs and expenses in excess of \$1,900,000.00 if awarded by the Court. The Settlement Class Counsel Fees and Expenses will be paid separate and apart from any relief provided to the Settlement Class. Defendant do not oppose, and will not encourage or assist any third party in opposing, Settlement Class Counsel's request for attorneys' fees, costs and expenses up to and not exceeding \$1,900,000.00, nor will Defendant contest the reasonableness of the amounts requested under this Agreement.

C. Also as part of the resolution of the Action, the Parties have agreed that Settlement Class Counsel will seek Settlement Class Representative Service Payments (not to exceed \$3,000) from the Court for each Class Representative, to be paid separate and apart from any relief provided to the Settlement Class. Settlement Class Counsel will apply to the Court for an award to each Class Representative for their effort, service, time, and expenses in connection with pursuing the case. Defendant does not oppose, and will not encourage or assist any third party in opposing, Settlement Class Counsel's request for Settlement Class Representative Service Payments up to and not exceeding \$27,000 in the aggregate, nor will Defendant contest the reasonableness of the amounts requested under this Agreement.

D. As agreed upon herein and supported by the Undertaking executed by Class Counsel, the total amount of Settlement Class Counsel Fees, Expenses and Settlement Class Representative Service Payments awarded by the Court, subject to Settlement Class Counsel's and Defendant's agreed-upon amount, will be paid by wire transfer, within thirty (30) days of the Court's execution of the final order approving the Settlement, Class Counsel request for attorney's fees and the Settlement Class Representative Service Payments.

E. Defendant will not be liable for or obligated to pay any fees, expenses, costs, or disbursements to, or incur any expense on behalf of, any person or entity, either directly or indirectly, in connection with this Action, this Settlement Agreement, or the proposed Settlement, other than the amount or amounts expressly provided for in this Settlement Agreement.

F. Defendant are not responsible for any of Settlement Class Counsel's attorneys' fees and/or internal costs for the settlement, including, but not limited to, any investigative, expert, and/or actuarial costs, or any other claims for fees or expenses, other than the attorneys' fees and expenses awarded by the Court pursuant to this Agreement.

**IX. REPRESENTATIONS, WARRANTIES, AND COVENANTS.**

A. Settlement Class Counsel, who are signatories hereof, represent and warrant that they have the authority, on behalf of Plaintiffs and Settlement Class Counsel, to execute, deliver, and perform this Settlement Agreement and to consummate all of the transactions contemplated hereby. This Settlement Agreement has been duly and validly executed and delivered by Settlement Class Counsel and Plaintiffs and constitutes their legal, valid, and binding obligation.

B. Defendant, through its undersigned attorneys, represent and warrant it has the authority to execute, deliver, and perform this Settlement Agreement and to consummate the transactions contemplated hereby. The execution, delivery, and performance by Defendant of this Settlement Agreement and the consummation by it of the actions contemplated hereby have been duly authorized by all necessary corporate action on the part of Defendant. This Settlement Agreement has been duly and validly executed and delivered by Defendant and constitutes its legal, valid, and binding obligation.

**X. MISCELLANEOUS PROVISIONS.**

A. The Parties expressly acknowledge and agree that this Settlement Agreement and the exhibits and related documents thereto along with all related drafts, motions, pleadings, conversations, negotiations, and correspondence, constitute an offer of compromise and a compromise within the meaning of Federal Rule of Evidence 408 and any equivalent rule of evidence in any state. In no event will this Settlement Agreement, any of its provisions, or any negotiations, statements, or court proceedings relating to its provisions in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Action, any other action, or in any judicial, administrative, regulatory, or other proceedings, except in a proceeding to enforce this Settlement Agreement or the rights of the Parties or their counsel.

B. Without limiting the foregoing, this Settlement Agreement, the exhibits thereto, any related documents, any related negotiations, statements, or court proceedings will not be construed as, offered as, received as, used as, or deemed to be evidence or an admission or concession of any liability, wrongdoing, fault, or omission of any kind whatsoever by Defendant with respect to any alleged wrongdoing, fault, or omission of any kind whatsoever, regardless of whether or not this Settlement Agreement results in entry of a Final Approval Order as contemplated herein. Defendant specifically denies all of the allegations made in connection with the Action. Neither this Settlement Agreement nor any class certification pursuant to it will constitute, in this or in any other proceeding, an admission by the Defendant, or evidence or a finding of any kind, that any requirement for class certification is satisfied with respect to the Action, or any other litigation, except for the limited purpose of settlement pursuant to this Settlement Agreement. This Settlement Agreement also is made with the Parties' understanding and agreement that (1) under applicable laws, it is appropriate that a class be certified for settlement purposes only (*i.e.*, without needing to satisfy fully the standard required for certification of the matter for litigation purposes); (2) Defendant contests and denies that any class, including the proposed Settlement Class, is suitable for certification as a class under the law of any jurisdiction, other than for the purposes of this Settlement Agreement; and (3) notwithstanding any other provisions of this Settlement Agreement, all actions and proceedings pursuant to it will be consistent with the foregoing. This provision will survive the expiration or voiding of the Settlement Agreement.

C. This Settlement Agreement is entered into only for purposes of settlement. If the Final Approval Order is not entered, then this Settlement Agreement, including any releases or dismissals hereunder, is canceled, and no term or condition of this Settlement Agreement, or any draft thereof, or of the discussion, negotiation, documentation or other part or aspect of the Parties'

settlement discussions, will have any effect, nor will any such matter be admissible in evidence for any purpose, or used for any purposes whatsoever in the Action, and all Parties will be restored to their prior rights and positions as if the Settlement Agreement had not been entered into.

D. This Settlement Agreement will terminate by decision of either the Defendant or the Plaintiffs, through Settlement Class Counsel, if: (1) the Court, or any appellate court(s), rejects, modifies, or denies approval of any portion of this Settlement Agreement or the proposed Settlement that the terminating Party reasonably determines(s) is material, including without limitation, the terms of relief, the findings or conclusions of the Court, the provisions relating to notice, the definition of the Class, or the terms of the Release; (2) the Court, or any appellate court, does not enter or completely affirm, or alters or expands, any portion of the Final Approval Order, or any of the Court's findings of fact or conclusions of law, that the terminating Party reasonably determine(s) is material; or (3) more than two percent (2%) of Class Members exclude themselves from (opt out of) the Settlement. The terminating Party must exercise the option to withdraw from and terminate this Settlement Agreement, as provided in this paragraph, no later than twenty (20) days after receiving notice of the event prompting the termination. In such event, the Parties will be returned to the positions that they occupied as of February 28, 2020.

E. Further, Defendant may unilaterally withdraw from and terminate this Settlement Agreement within twenty (20) days after receiving notice of either of the following events:

1. any state attorney general, federal agency, or regulatory or administrative authority institutes a proceeding against the Defendant arising out of or otherwise related to the Release and any of the terms or conditions of this Settlement Agreement; or

2. any federal or state regulator or agency: (a) objects either to any aspect or term of the Settlement Agreement and (b) requires any substantial modification to the Settlement

Agreement, including, without limitation, a constriction or expansion of the scope of the contemplated relief that Defendant, in its sole discretion, deems reasonably material.

F. If this Settlement Agreement is terminated pursuant to this Section X then:

1. This Settlement Agreement will be null and void and will have no force or effect and no Party to this Settlement Agreement will be bound by any of its terms, except for the terms set forth in this Paragraph F;

2. The Parties will petition to have lifted any stay orders entered pursuant to this Agreement;

3. All of the provisions, and all negotiations, statements, and proceedings relating to it, will be without prejudice to the rights of Defendant, Plaintiffs, or any Settlement Class Member, all of whom will be restored to their respective positions occupied as of February 28, 2020, except that the Parties will cooperate in requesting that the Court set a new scheduling order such that no Parties' substantive or procedural rights are prejudiced by the attempted settlement;

4. Defendant expressly and affirmatively reserve all defenses, arguments, and motions as to all claims that have been or might later be asserted in the Action, including, without limitation, the argument that this Action may not be litigated as a class action;

5. Neither this Settlement Agreement, nor the fact of its having been made, nor the negotiations leading to it, nor any discovery or action taken by a Party or Settlement Class Member pursuant to this Settlement Agreement, will be admissible or entered into evidence for any purpose whatsoever;

6. Any Settlement-related order(s) or judgment(s) entered in this Action after the date of execution of this Agreement will be deemed vacated and will be without any force or



effect;

7. Settlement Class Members, Plaintiffs, and Settlement Class Counsel shall not in any way be responsible or liable for any Settlement Administration expenses or taxes, including costs of notice and administration associated with this Settlement or this Agreement, except that each Party shall bear its own attorneys' fees and costs and Defendant's future payment obligations shall cease; and

8. Defendant shall have no further obligations to pay Settlement Class Members, Plaintiffs, or Settlement Class Counsel under the terms of this Settlement set forth in this Agreement and shall be responsible for only the Settlement Administration expenses and taxes actually incurred, for which Plaintiffs and Settlement Class Counsel are not liable.

G. The headings of the sections and paragraphs of this Settlement Agreement are included for convenience only and will not be deemed to constitute part of this Settlement Agreement or to affect its construction.

H. This Settlement Agreement, including all exhibits attached hereto, may not be modified or amended except in writing and signed by all of the Parties and with approval of the Court.

I. This Settlement Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. Signatures may be obtained electronically via DocuSign, AdobeSign or similar service.

J. This Settlement Agreement and any amendments thereto will be governed by and construed in accordance with the substantive laws of the State of New Jersey. The Settlement Agreement will be interpreted and enforced pursuant to New Jersey law. Federal law (including

Fed. R. Civ. P. 23 and federal case law) will govern approval of the settlement, preliminary and final certification of the Settlement Class, and all related issues such as Class Counsel's motion for attorneys' fees and expenses.

K. Any disagreement or action to enforce this Settlement Agreement will be commenced and maintained only in the Court in which this Action is pending.

L. Except as otherwise provided in this Settlement Agreement, each Party to this Settlement Agreement will bear his, her, or its own costs of the Action.

M. The Parties to this Settlement Agreement reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extensions of time that may be necessary to carry out any of the provisions of this Settlement Agreement, as well as to correct any inadvertent, non-substantive mistakes or typographical errors contained in any of the Settlement papers, without additional costs or attorneys' fees.

N. Proper notice will be given to Plaintiffs and Defendant of all applications for Court approval or Court orders required under this Settlement Agreement.

O. The determination of the terms of, and the drafting of, this Settlement Agreement, including its exhibits, has been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel. Since this Settlement Agreement was drafted with the participation of all Parties and their counsel, the presumption that ambiguities will be construed against the drafter does not apply. Each of the Parties was represented by competent and effective counsel throughout the course of settlement negotiations and in the drafting and execution of this Settlement Agreement, and there was no disparity in bargaining power among the Parties to this Settlement Agreement. No parol or other evidence may be offered to explain, modify, construe, contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances under

which this Settlement Agreement was made or executed.

P. All of the exhibits to this Settlement Agreement are material and integral parts hereof, and are fully incorporated herein by reference. This Settlement Agreement and the exhibits hereto constitute the entire, fully integrated agreement among the Parties and cancel and supersede all prior written and unwritten agreements and understandings pertaining to the Settlement of the Actions.

Q. The Parties agree that any disputes regarding the meaning of the terms and conditions of this Settlement Agreement, the Parties' rights and obligations under this Settlement Agreement, or the manner in which any issue or dispute arising under this Settlement Agreement should be resolved, will be submitted to the Court for resolution.

R. The Parties agree and acknowledge that this Settlement Agreement includes a covenant of good faith and fair dealing.

S. The waiver by one Party of any breach of this Settlement Agreement by another Party will not be deemed a waiver of any prior or subsequent breach of this Settlement Agreement.

T. If one Party to this Settlement Agreement considers another Party to be in breach of its obligations under this Settlement Agreement, that Party must provide the breaching Party with written notice of the alleged breach within ten (10) days of discovery of the breach and provide a reasonable opportunity to cure the breach before taking any action to enforce any rights under this Settlement Agreement.

U. All time periods set forth herein will be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Settlement Agreement or by order of the Court, the day of the act, event, or default from which the designated period of time begins to run will not be included. The last day of the period so computed will be

included, unless it is a Saturday, Sunday, or legal holiday, or, when the action to be done is the filing of a paper in court, a day on which conditions or events have made the office of the clerk of the court inaccessible, in which event the period will run until the end of the next day that is not one of the aforementioned days. As used in this section “legal holiday” includes New Year’s Day, Birthday of Martin Luther King, Jr., Presidents’ Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States.

V. All notices to the Parties or counsel required by this Settlement Agreement will be made in writing and communicated by electronic and regular mail to the following addresses (unless one of the Parties subsequently designates one or more other designees):

If to Class Counsel:

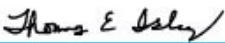



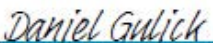



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Joel D. Smith, Esq.  
Bursor & Fisher, P.A.  
1990 North California Boulevard, Suite 940  
Walnut Creek, CA 94696  
[jsmith@bursor.com](mailto:jsmith@bursor.com)

If to Defendant’s Counsel:

Christopher J. Dalton, Esq.  
Daniel Z. Rivlin, Esq.  
Buchanan Ingersoll & Rooney PC  
550 Broad Street, Suite 810  
Newark, New Jersey 07102  
[christopher.dalton@bicp.com](mailto:christopher.dalton@bicp.com)  
[daniel.rivlin@bipc.com](mailto:daniel.rivlin@bipc.com)

IN WITNESS WHEREOF, Plaintiffs and Defendant, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

Date: _____	_____
	BMW of North America, LLC
	Name:
	Title:
Date: _____	
	Thomas Isley (Jun 23, 2021 14:47 EDT)
	Thomas Isley
Date: _____	
	Jeffery Quinn (Jun 23, 2021 14:50 EDT)
	Jeffery Quinn
Date: _____	
	vipul khanna (Jun 23, 2021 11:19 PDT)
	Vipul Khanna
Date: _____	
	Walington Urena (Jun 23, 2021 14:08 EDT)
	Walington Urena
Date: _____	
	Daniel Gulick (Jun 24, 2021 09:35 EDT)
	Daniel Gulick
Date: _____	
	Michael Henchy (Jun 23, 2021 14:29 EDT)
	Michael Henchy
Date: _____	
	Angela Bovenzi (Jun 23, 2021 14:28 EDT)
	Angela Bovenzi
Date: _____	
	Jonathan Yehuda (Jun 23, 2021 14:33 EDT)
	Jonathan Yehuda

Date: Jun 23, 2021

*Paul S. Hoffner*  
Paul S. Hoffner (Jun 23, 2021 14:26 EDT)

Paul Hoffner

**IT IS SO STIPULATED BY COUNSEL:**



Frederick J. Klorczyk, III, Esq.  
Bursor & Fisher, P.A.  
888 Seventh Avenue  
New York, New York 10019

Joel D. Smith, Esq.  
Bursor & Fisher, P.A.  
1990 North California Boulevard, Suite 940  
Walnut Creek, California 94696

Date: 6/23/2021

*Attorneys for Plaintiffs  
and the Settlement Class*

Christopher J. Dalton, Esq.  
Daniel Z. Rivlin, Esq.  
Argia J. DiMarco, Esq.  
Buchanan Ingersoll & Rooney PC  
550 Broad Street, Suite 810  
Newark, New Jersey 07102

Date:

*Attorneys for Defendant  
BMW of North America, LLC*

IN WITNESS WHEREOF, Plaintiffs and Defendant, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

Date: 7/8/21

  
BMW of North America, LLC  
Name: Ann Marie Dias-Lebrun  
Title: ASSISTANT SECRETARY

Date: \_\_\_\_\_

\_\_\_\_\_  
Thomas Isley

Date: \_\_\_\_\_

\_\_\_\_\_  
Jeffery Quinn

Date: \_\_\_\_\_

\_\_\_\_\_  
Vipul Khanna

Date: \_\_\_\_\_

\_\_\_\_\_  
Walington Urena

Date: \_\_\_\_\_

\_\_\_\_\_  
Daniel Gulick

Date: \_\_\_\_\_

\_\_\_\_\_  
Michael Henchy

Date: \_\_\_\_\_

\_\_\_\_\_  
Angela Bovenzi

Date: \_\_\_\_\_

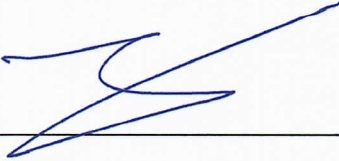
\_\_\_\_\_  
Jonathan Yehuda

Date: Jun 23, 2021

*Paul S. Hoffner*  
Paul S. Hoffner (Jun 22, 2021 14:26 EDT)

Paul Hoffner

**IT IS SO STIPULATED BY COUNSEL:**

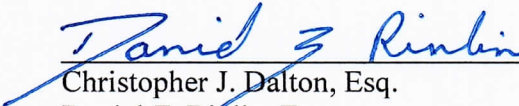


Frederick J. Klorczyk, III, Esq.  
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New York, New York 10019

Joel D. Smith, Esq.  
Bursor & Fisher, P.A.  
1990 North California Boulevard, Suite 940  
Walnut Creek, California 94696

Date: 6/23/2021

*Attorneys for Plaintiffs  
and the Settlement Class*



Christopher J. Dalton, Esq.  
Daniel Z. Rivlin, Esq.  
Argia J. DiMarco, Esq.  
Buchanan Ingersoll & Rooney PC  
550 Broad Street, Suite 810  
Newark, New Jersey 07102

Date: 7/16/2021

*Attorneys for Defendant  
BMW of North America, LLC*



**EXHIBIT A**

**United States District Court for the District of New Jersey**

**If you are a current or former owner or lessee of a model-year 2013 to 2019 BMW vehicle with an “N63TU1” engine, you could get benefits from a class-action settlement.**

*A federal court has authorized this notice. This is not a solicitation from a lawyer.*

- A nationwide settlement has been reached in a class action lawsuit against BMW of North America, LLC involving certain model-year 2013 through 2019 BMW 5 Series, 6 Series, 7 Series, X5 or X6 vehicles that contain the N63TU1 engine.
- The Settlement provides an opportunity to be reimbursed for certain past expenses and to obtain free future benefits, which are explained more fully below.
- Your legal rights are affected whether you act or don’t act, so please read this notice carefully.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>		
<b>SUBMIT A CLAIM FORM AND/OR TAKE YOUR CLASS VEHICLE TO AN AUTHORIZED BMW CENTER</b>	Make a claim to receive the valuable reimbursements for eligible past expenses and benefits potentially available to you under the Settlement and/or take your vehicle to an authorized BMW Center for certain free services after the Settlement is approved and/or utilize the new vehicle discount voucher.	Claims must be submitted by _____, <b>202</b> . See Question 8, below.  You may bring your Class Vehicle to a BMW Center and/or utilize the new vehicle discount voucher after the Settlement is approved. See Question 6, below.
<b>EXCLUDE YOURSELF</b>	Write to the Settlement Administrator to opt out of the Settlement. This is the only option that allows you to be part of any other lawsuit, or your own lawsuit, against the Defendant about the legal claims released in this Settlement.	Requests for Exclusion must be postmarked by _____, <b>202</b> . See Question 12, below.
<b>OBJECT</b>	Write to the judge about why you do not like the Settlement.	Objections must be postmarked by _____, <b>202</b> . See Question 17, below.
<b>GO TO A HEARING</b>	Ask to speak in court to the judge about the Settlement.	The Final Approval Hearing is currently scheduled for _____, <b>202</b> . See Question 19, below.
<b>DO NOTHING</b>	Give up some of the benefits you may be entitled to under the Settlement and your right to be part of any other lawsuit against the Defendant about the legal claims released by the Settlement.	See Question 22, below.

- These rights and options -- **and the deadlines to exercise them** -- are explained in this notice.
- The Court in charge of this case still must decide whether to approve the Settlement before any benefits can be distributed. Please be patient and check the settlement website for updates.

**QUESTIONS? CALL TOLL-FREE \_\_\_\_\_ OR VISIT [www.\[to be inserted\].com](http://www.[to be inserted].com)  
PARA UNA NOTIFICACION EN ESPANOL, LLAMAR O VISITAR NUESTRO WEBSITE**

## WHAT THIS NOTICE CONTAINS

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**QUESTIONS? CALL TOLL-FREE \_\_\_\_\_ OR VISIT [www.\[to be inserted\].com](http://www.[to be inserted].com)**  
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**1. Why have I received this notice?**

A Court has authorized this notice because you have a right to know about the proposed settlement of this class-action lawsuit, and your options, before the Court decides whether to give “final approval” to the Settlement. This notice explains the lawsuit, the proposed Settlement, and your legal rights. You have received this notice because BMW’s records indicate that you are a current or former owner or lessee of a model-year 2013 through 2019 BMW 5 Series, 6 Series, 7 Series, X5 or X6 vehicles that contains the N63TU1 engine purchased or leased in the United States or Puerto Rico.

Magistrate Judge Edward S. Kiel of the United States District Court for the District of New Jersey is overseeing this class-action lawsuit, known as *Isley, et al. v. BMW of North America, LLC*, Civil Action No. 2:19-cv-12680 (the “Action”). Thomas Isley, Jeffery Quinn, Vipul Khanna, Walington Urena, Daniel Gulick, Michael Henchy Jr., Angela Bovenzi, Jonathan Yehuda, and Paul Hoffner, the people who sued, are called the “Plaintiffs,” and the company that was sued, BMW of North America, LLC (“BMW NA”), is called the “Defendant.”

**2. What is the lawsuit about?**

This lawsuit involves model-year 2013 through 2019 BMW 5 Series, 6 Series, 7 Series, X5 or X6 vehicles that contain the N63TU1 engine that were purchased or leased in the United States or Puerto Rico (the “Class Vehicles”). The lawsuit alleges that the Class Vehicles consume excessive amounts of engine oil, requiring additional oil changes and the need for adding engine oil between regular oil changes. BMW NA, which distributes and warrants BMW vehicles in the U.S., denies these allegations and stands behind and supports its products.

**3. Why is this a class action?**

In a class action, one or more people called “Class Representatives” assert claims on behalf of people who have similar claims. All of these people are the “Class” or “Class Members.” One court resolves the issues for all Class Members, except for those who timely exclude themselves from (or “opt out” of) the Class. The Class Representatives in the Action are the Plaintiffs identified above. You have received this notice because you have been identified as potentially being a Class Member.

**4. Why is there a Settlement?**

All parties have agreed to a Settlement to avoid further cost and risk of a trial, and so that the people affected can begin getting benefits in exchange for releasing the Defendant from liability for the claims that were raised or could have been raised in the Action involving the Class Vehicles’ alleged engine oil consumption issues. The Settlement does not mean that the Defendant broke any laws, or otherwise did anything wrong, because Judge Kiel did not decide which side was right. The Class Representatives and the lawyers representing them think the Settlement is fair and reasonable for the Class.

**5. How do I know if I am part of the Settlement? What vehicles are included in the Settlement?**

The Settlement Class includes all persons or entities in the United States and Puerto Rico who currently own or lease, or previously owned or leased, certain U.S. specification model-year 2013 through 2019 BMW 5 Series, 6 Series, 7 Series, X5 or X6 vehicles that contain the N63TU1 engine purchased or leased in the United States or Puerto Rico, which include the following vehicles:

**QUESTIONS? CALL TOLL-FREE \_\_\_\_\_ OR VISIT [www.\[to be inserted\].com](http://www.[to be inserted].com)**  
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Model Description	Model Years
650i/xi (TU1)	2013 - 2019
650i/xi Convertible (TU1)	2013 - 2018
650i/xi Coupe (TU1)	2013 - 2017
750i/xi (TU1)	2013 - 2015
750Li/LXi (TU1)	2013 - 2015
550i/xi (TU1)	2013 - 2017
550i/xi GT (TU1)	2014 - 2016
X5 (TU1)	2014 - 2018
X6 (TU1)	2015 - 2019

*\*Model Years are not fully indicative of actual Class Vehicles, which will depend on production ranges.*

Please note that not all vehicles in the model years identified above contained the N63TU1 engine at issue in the Action. You have received this notice because BMW NA's records indicate that you have or had a BMW vehicle with an N63TU1 engine. If you're not sure whether you are included in the Settlement Class, you may call (toll-free) **[to be inserted]** with questions.

## 6. What are the benefits of the Settlement?

If Judge Kiel grants final approval of the Settlement and the Settlement becomes effective (the "Effective Date"), you may be entitled to some or all of the following benefits.

### A. *Reimbursement for Past Expenses*

Class Members may be eligible for reimbursement of various expenses related to excess engine oil consumption subject to the provision of the required proofs to support each claim.

#### i. *Reimbursement for Past Oil Changes*

Class Members are eligible to receive reimbursement for the cost (not to exceed \$95 each) of up to 4 past Oil Changes on a Class Vehicle if:

- a. The amounts were actually paid by the Class Member at the time of Oil Change as evidenced by a repair invoice; and
- b. The Oil Change occurred prior to 10 years/120,000 miles from the Class Vehicle's in-service date; and
- c. The Oil Change took place less than 12 months after a previous Oil Change as evidenced by the repair invoice of the prior Oil Change and the invoice for the Oil Change for which reimbursement is sought.

#### ii. *Reimbursement for Past Oil Purchases for up to 9 Quarts of Engine Oil Purchased Between Oil Changes*

Class Members are eligible to receive reimbursement of the cost (up to \$10 per quart) of up to nine (9) quarts of engine oil that the Class Member purchased between oil changes prior to the Effective Date if:

- a. The oil was of the same type and grade specified for the Class Vehicle in the owner's manual or on the vehicle, as evidenced by proof of purchase, repair order, or service invoice; and

**QUESTIONS? CALL TOLL-FREE \_\_\_\_\_ OR VISIT [www.\[to be inserted\].com](http://www.[to be inserted].com)**  
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- b. At least one (1) prior oil-consumption complaint about the Class Vehicle was communicated to BMW NA or an authorized BMW Center, as confirmed by a repair order, Customer Relations Report, or other written documentation of an oil-consumption complaint to BMW NA or to one of its authorized BMW Centers; and
- c. The Class Vehicle had fewer than 10 years and 120,000 miles at the time of oil purchase(s) as evidenced by required proofs, for example, service records from before and/or after oil purchase.

iii. Reimbursement for Past Oil-Consumption Testing and Subsequent Repairs

Class Members are eligible to receive reimbursement of up to an aggregate of \$900 for the cost of one (1) failed oil-consumption test and subsequent repairs of a Class Vehicle if:

- a. Your Class Vehicle failed an oil-consumption test at a BMW Center as evidenced by a repair order or service invoice that identifies a Settlement Class Vehicle and VIN;
- b. The repair order or service invoice demonstrates that the Settlement Class Member paid for the amount(s) sought for reimbursement; and
- c. The mileage of the Settlement Class Vehicle at the time of the oil-consumption test failure.

iv. Reimbursement for Past Replacement of an Engine

Class Members are eligible to receive reimbursement for one (1) replacement engine related to Excess Oil Consumption subject to the customer contribution schedule below if:

- a. You have a legible repair order or invoice from an authorized BMW Center that identifies Your Class Vehicle and VIN, the date of replacement, the part number(s) used, and the cost of the replacement, with parts and labor separated;
- b. The mileage of the Class Vehicle at the time of engine replacement and that it had fewer than 10 years and 120,000 miles at the time of engine replacement;
- c. The Class Vehicle failed at least one Oil-Consumption Test at a BMW Center;
- d. The BMW Center confirmed the Excess Oil Consumption caused the failure and the engine was replaced after the last failed oil-consumption test; and
- e. You have proof of payment, in the form of a canceled check, credit-card receipt, credit-card statement, or receipt demonstrating that the Settlement Class Member paid for the amount(s) sought for reimbursement.

Odometer Mileage at time of failed Oil Consumption Test resulting in engine replacement		Customer Contribution (parts & labor)
Below	50,000	0%
50,001	60,000	5%
60,001	70,000	15%
70,001	80,000	27%
80,001	90,000	42%

**QUESTIONS? CALL TOLL-FREE \_\_\_\_\_ OR VISIT [www.\[to be inserted\].com](http://www.[to be inserted].com)**  
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90,001	100,000	55%
100,001	105,000	65%
105,001	110,000	70%
110,001	115,000	75%
115,001	120,000	85%
120,001	Above	100%

\* \* \*

**Limitations:** Defendant does not warrant or guarantee any repairs performed at third-party (non-BMW) repair shops and, should any such repairs fail after a Settlement Class Member has made a claim under the Settlement, the Settlement Class Member will not be entitled to submit an additional claim.

In order to obtain reimbursement for eligible past expenses, you must submit a Claim Form and include all of the documentation described above and identified on the Claim Form.

### **B. Service Campaign**

If you currently own or lease a Class Vehicle, you may be eligible for relief going forward (after the Effective Date).

- i. For each future oil change (pursuant to the CBS) of a Class Vehicle at a BMW Center up to 10 years or 120,000 miles from the in-service date (whichever comes first) but in no event less than one (1) year from the Effective Date, Settlement Class Members will receive two (2) free quarts of oil to top-off their Class Vehicles between required engine oil services (pursuant to the CBS).
- ii. Settlement Class Members may receive up to three (3) free engine oil consumption tests for their Class Vehicles up to 10 years or 120,000 miles from the in-service date (whichever comes first) but in no event less than one (1) year from the Effective Date of the settlement.
  - a. After one failed Oil Consumption Test of a Class Vehicle, and confirmation by an authorized BMW Center that the Class Vehicle has an oil consumption issue, BMW NA will, at its discretion, either authorize the BMW Center to make one engine repair attempt or offer customer an engine replacement per paragraph (c) below.
  - b. If after the BMW NA approved engine repair, the Class Vehicle returns and fails a second Oil-Consumption Test, the Settlement Class Member's Class Vehicle is entitled to an engine replacement per the provisions and exclusions below.
  - c. Engine Replacement due to Excess Oil Consumption Contribution Schedule:
    - i. No Settlement Class Member contribution applies if the Class Vehicle engine is still covered under either the New Vehicle Limited Warranty term or the BMW Certified Pre-Owned warranty term.

**QUESTIONS? CALL TOLL-FREE \_\_\_\_\_ OR VISIT [www.\[to be inserted\].com](http://www.[to be inserted].com)**  
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- ii. If there is no applicable warranty coverage the Settlement Class Member shall contribute to the total replacement cost, including parts and labor, in accordance with the schedule below:

Odometer Mileage at time of failed Oil Consumption Test resulting in engine replacement		Customer Contribution (parts & labor)
Below	50,000	0%
50,001	60,000	5%
60,001	70,000	15%
70,001	80,000	27%
80,001	90,000	42%
90,001	100,000	55%
100,001	105,000	65%
105,001	110,000	70%
110,001	115,000	75%
115,001	120,000	85%
120,001	Above	100%

- iii. Replacement N63TU1 engine will have improved components compared to engines produced before May 2017.
- iv. Subject to the mileage limitations above for all eligible Class Members, engine replacement contribution will only be made until the later of 10 years from the Class Vehicle's in-service date or 1 year from the Effective Date.
- v. In the event a Class Member's engine fails or otherwise needs replacing unrelated to Excess Oil Consumption the schedule above shall not apply and the Class Member will not be entitled to any contribution from BMW.

### **C. *New Vehicle Credit Voucher***

Each Settlement Class Member may file a claim to receive one credit voucher towards either one future purchase/lease credit for (a) \$1,500 for BMW 6 Series, 7 Series, X5, X6, X7; or (b) \$1,000 for all other BMW models. The voucher will be transferable to immediate family members (children, parents and siblings) or other members of the Class Member's household provided proof is provided that the Class member and person to whom the voucher is being transferred reside in the same house. The voucher will not be valid retroactively,

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will be valid for 1 year from the Effective Date and may be combined with other applicable and then available and qualifying BMW purchase/lease incentives. Notwithstanding the foregoing, Class Member(s) cannot combine and use multiple credit vouchers made available as part of this Settlement in one lease or purchase transaction.

\* \* \*

As part of the claims-confirmation process, a claim for reimbursement will be rejected if: (1) the Vehicle's warranty was voided because (a) the VIN has been altered or cannot be read, (b) the Vehicle has been declared a total loss or sold for salvage purposes (for reasons unrelated to excess oil consumption), or (c) the Vehicle has been used in any competitive racing event (this does not include non-driving events where the Vehicle is on display); (2) the VIN number associated with the claim does not match the Settlement Class Member's VIN number; or (3) the claim for reimbursement is (a) for an item or service that is not covered under this Settlement Agreement, or (b) for which a claim under this Settlement Agreement has already been made and paid, or (c) for which the Class Member has received "goodwill" or other cost/price adjustment, coupon, reimbursement, or refund from BMW NA, a BMW Center, insurer or any person or entity associated with Defendant, equal to or in excess of the amount of the claim submitted.

#### 7. What am I giving up in exchange for the Settlement benefits?

If the Settlement becomes final, Class Members will be releasing Defendant and related people and entities from all of the claims described and identified in Section VII.A of the Settlement Agreement. In essence, the claims released by Class Members are all claims (except for personal injury or damage to property other than the Class Vehicle) that could arise based on excess engine oil consumption in the Class Vehicles. The Settlement Agreement is available at [www.\[to be inserted\].com](http://www.[to be inserted].com). The Settlement Agreement describes the released claims with specific descriptions, in necessarily accurate legal terminology, so read it carefully. Judge Keil has appointed specific lawyers to represent you in this lawsuit and Settlement. You can talk to one of the lawyers listed in Answer 15 below, free of charge, if you have questions about the released claims or what they mean. You can also speak with your own lawyer, should you have one, about this Settlement.

#### 8. How do I get the benefits of the Settlement?

If are a Class Member and would like to obtain the other Service Campaign benefits described in Answer 6.B., above, you can do so after the Effective Date of the Settlement by making an appointment for the Service Campaign with an authorized BMW Center in your area. *The Effective Date is thirty (30) days after Judge Kiel gives final approval of the Settlement, unless an appeal is filed, in which case it may be longer.*

If you are a Class Member and would like to obtain the Reimbursement Benefits (described in Answer 6.A., above), you need to complete the Claim Form that accompanies this Notice and mail or email it, with all the required proofs, to the address provided on the Claim Form. Additional Claim Forms are available at [www.\[to be inserted\].com](http://www.[to be inserted].com). The current deadline for submitting Claim Forms is \_\_\_\_\_, **202**.

These benefits are also subject to limitations, which are discussed in the answer to Question 6.

If you have any questions on how to complete the Claim Form or what information is needed, you can call the following toll-free number: **[to be inserted]**.

#### 9. What if my claim is denied?

There is a process in the Settlement Agreement to resolve disagreements between you and Defendant over your claim. During this process, the court-appointed lawyers listed in the answer Question 15 below will represent you in any dispute regarding relief under the terms of the Settlement, and the dispute will be handled in accordance with the procedures set forth in the Settlement Agreement. You may have the right to appeal any

**QUESTIONS? CALL TOLL-FREE \_\_\_\_\_ OR VISIT [www.\[to be inserted\].com](http://www.[to be inserted].com)**  
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denied claim to a Special Master. If you have questions regarding this process, visit [www.\[to be inserted\].com](http://www.[to be inserted].com) to see a copy of the Settlement Agreement, or contact Class Counsel below.

**10. When will I get the Settlement benefits?**

- 1) If you have submitted a claim, your Claim Form will be processed and payments will be issued on a continuing, rolling basis after the Effective Date.  
*Please be patient, and feel free to check the website or call the toll-free phone number listed above for current status.*
- 2) After the Effective Date, you can schedule an appointment with your BMW Center for Oil-Consumption Testing and, if required, engine replacement.
- 3) All other benefits discussed above will be valid after the Effective Date.

**11. Can I exclude myself from this Settlement?**

Yes. If you want to keep the right to sue or if you are already suing Defendant in another action over the legal issues in this case, then you must take steps to opt out of this Settlement. This is called asking to be excluded from – sometimes called “opting out” of – the Settlement.

**12. If I exclude myself, can I get anything from this Settlement?**

No. If you ask to be excluded, you cannot object to the Settlement and you will not receive any of the benefits of the Settlement. But you may sue, continue to sue, or be part of a different lawsuit against Defendant in the future, including for claims that this Settlement resolves. You will not be bound by anything that happens in this lawsuit.

**13. If I don't exclude myself, can I sue later?**

No. Unless you exclude yourself, you give up the right to sue Defendant for the claims that this Settlement resolves.

**14. How do I exclude myself from the Settlement?**

To exclude yourself from the Settlement, you must send a letter by mail saying that you want to be excluded from *Isley v. BMW of North America, LLC*, Case No. 2:19-cv-12680 (ESK)(MAH). Be sure to include: (1) your full name and current address; (2) the model-year and VIN of your Class Vehicle(s) and the date(s) of purchase/lease; (3) specifically and clearly state your desire to be excluded from the Settlement and from the Settlement Class; and (4) your signature. You cannot ask to be excluded over the phone or via the internet. You must mail your request to be excluded, postmarked no later than \_\_\_\_\_, 202, to the Settlement Administrator at the address below:

*Isley Settlement*  
PO Box XXXX  
City, State XXXXX-XXXX

Failure to comply with any of these requirements for excluding yourself may result in you being bound by this Settlement.

**QUESTIONS? CALL TOLL-FREE \_\_\_\_\_ OR VISIT [www.\[to be inserted\].com](http://www.[to be inserted].com)**  
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**15. Do I have a lawyer in the case?**

The Plaintiffs and you have been represented by lawyers and a law firm that has prosecuted this case. Judge Kiel has appointed the following lawyers to represent you and other Class Members as “Class Counsel”:

Frederick J. Klorczyk, III, Esq. Bursor & Fisher, P.A. 888 Seventh Avenue New York, NY 10019 <a href="mailto:fklorczyk@bursor.com">fklorczyk@bursor.com</a>	Joel D. Smith, Esq. Bursor & Fisher, P.A. 1990 North California Boulevard, Suite 940 Walnut Creek, CA 94696 <a href="mailto:jsmith@bursor.com">jsmith@bursor.com</a>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

You will not be charged for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

**16. How will the lawyers be paid?**

As part of the resolution of the Action, Class Counsel and Defendants have agreed that Class Counsel may apply for an award of attorneys’ fees, costs, and expenses not to exceed \$1,900,000.00, inclusive of service awards to the eight Plaintiffs in the amount of \$3,000.00 (\$27,000.00 in total). Defendant has agreed not to oppose this request. The Parties have also agreed that Class Counsel will not seek payment of any amount in excess of \$1,900,000.00 for attorneys’ fees, costs, and expenses inclusive of service awards to the nine Plaintiffs in the amount of \$3,000.00 (\$27,000.00 in total) if awarded by Judge Kiel. The Class Counsel fees and expenses, inclusive of the service awards to the class representatives, will be paid separate and apart from any relief provided to the Class and will not reduce the value of the benefits distributed to Class Members. Defendant will also separately pay the costs to administer the Settlement. Judge Kiel will determine the amount of attorneys’ fees, costs, and expenses and service awards after evaluating Plaintiffs’ submission.

**17. How do I tell the Court if I don’t like the Settlement?**

You can object to the Settlement if you don’t like some part of it. You can give reasons why you think Judge Kiel should not approve it. To object, send a letter saying that you object to the Settlement in *Isley v. BMW of North America, LLC*, Case No. 2:19-cv-12680 (ESK)(MAH). You must include: (1) your full name, current address, current telephone number, and the name of your lawyer and your lawyer’s address if you are represented by a lawyer other than Class Counsel; (2) the model year and VIN of your Class Vehicle(s) and the date(s) of purchase or lease; (3) whether the objection applies only to the objecting Class Member, to a specific subset of the Class, or to the entire Class; (4) the reasons why you object and the factual and legal reasons for your objection (including all relevant documents that pertain to your objection); (5) copies of relevant repair history or other proof that the objector has owned or leased the Class Vehicle (i.e., a true copy of a vehicle title, registration, or license receipt); (6) a statement that you have reviewed the Settlement Class definition and understand that you are a Settlement Class Member, and you have not opted out of the Settlement Class; (7) a detailed list of any other objections to any class action settlements you submitted to any court, whether state, federal, or otherwise, in the United States in the previous five (5) years; (8) a Notice of Intention to Appear at the Final Approval Hearing if you intend to appear in person at the hearing; and (9) your signature.

**The objection must be mailed to the Court, the Claims Administrator, Class Counsel, and Defendant’s Counsel at the below addresses. The mailed copies must be postmarked on or before \_\_\_\_\_, 202:**

**QUESTIONS? CALL TOLL-FREE \_\_\_\_\_ OR VISIT [www.\[to be inserted\].com](http://www.[to be inserted].com)**  
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COURT	Clerk of Court United States District Court for the District of New Jersey Rev. Dr. Martin Luther King, Jr. Federal Building & U.S. Courthouse 50 Walnut Street Newark, New Jersey 07102
CLAIMS ADMINISTRATOR	<i>Claims Administrator</i> <i>Isley Settlement</i> PO Box XXXX City, State XXXXX-XXXX
CLASS COUNSEL	Frederick J. Klorczyk, III, Esq. Joel D. Smith, Esq. Bursor & Fisher, P.A. 888 Seventh Avenue New York, NY 10019
DEEFENDANTS' COUNSEL	Christopher J. Dalton, Esq. Daniel Z. Rivlin, Esq. Buchanan Ingersoll & Rooney PC 550 Broad Street, Suite 810 Newark, New Jersey 07102-4582

**18. What's the difference between objecting and excluding?**

Objecting is simply telling Judge Kiel that you don't like something about the Settlement. You can object only if you stay in the Settlement. Excluding yourself is telling Judge Kiel that you don't want to be part of the Settlement. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

**19. When and where will Judge Kiel decide whether to approve the Settlement?**

Judge Kiel will hold a "Final Approval Hearing" to decide whether to approve the Settlement on \_\_\_\_\_, **202**\_\_\_\_ at \_\_\_\_ a.m., at Courtroom 8 in the United States District Court for the District of New Jersey, Newark Division, Frank R. Lautenberg U.S. Post Office & Courthouse Building, 2 Federal Square, Newark NJ 07102. At this hearing, Judge Kiel will determine whether the Settlement is fair, adequate, and reasonable and whether the objections by Class Members, if any, have merit. If you have filed an objection on time, you may attend and ask to speak, but you don't have to. However, Judge Kiel will only listen to people who have asked to speak at the hearing (*See* Question 21 below). At this hearing, Judge Kiel will also decide the service awards for the Class Representatives, as well as the attorney's fees for the lawyers representing the Class Members. We do not know how long the Court's decision will take, and the hearing date may change due to other court business. You should monitor [www.\[to be inserted\].com](http://www.[to be inserted].com) to find out if any dates have changed and to learn if Judge Kiel has approved the Settlement.

**20. Do I need to go to the hearing?**

No. Class Counsel will answer any questions Judge Kiel may have, but you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mail your valid written objection on time, Judge Kiel will consider it. You may also pay another lawyer to attend, but that is not required.

**QUESTIONS? CALL TOLL-FREE \_\_\_\_\_ OR VISIT [www.\[to be inserted\].com](http://www.[to be inserted].com)**  
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**21. May I speak at the hearing?**

You may ask Judge Kiel for permission to speak at the Final Approval Hearing. To do so, you must file a “Notice of Intent to Appear” in *Isley v. BMW of North America, LLC*, Case No. 2:19-cv-12680 (ESK)(MAH). Be sure to include your name, address, telephone number, signature, and other requirements outlined in Answer 17. Your Notice of Intent to Appear must be postmarked no later than \_\_\_\_\_, **202**, and mailed to the addresses listed in Answer 17. You cannot speak at the hearing if you have excluded yourself from the Settlement.

**22. What if I do nothing?**

If you do nothing, you will give up the right to be part of any other lawsuit against Defendant about the legal claims released by the Settlement. You will still be entitled to take your Class Vehicle to a BMW Center for the Service Campaign benefits described in Answer 6, above. However, you will not receive any of the benefits described in Answer 6 offered by this Settlement unless you timely submit a Claim Form.

**23. Are there more details about the Settlement?**

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get copies of the Settlement Agreement and related documents at [www.\[to be inserted\].com](http://www.[to be inserted].com). You may also write with questions to [insert settlement administrator address]. You can also call the toll-free number,

\_\_\_\_\_.

**QUESTIONS? CALL TOLL-FREE \_\_\_\_\_ OR VISIT [www.\[to be inserted\].com](http://www.[to be inserted].com)**  
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**EXHIBIT B**

**CLAIM FORM TO RECEIVE REIMBURSEMENT FOR ELIGIBLE PAST EXPENSES  
IN**

***ISLEY v. BMW OF NORTH AMERICA, LLC***

***Complete this form only to make a claim for reimbursement  
for eligible past expenses available under the Settlement.***

**PLEASE TYPE OR PRINT LEGIBLY**

This form must  
be submitted or  
postmarked on  
or before  
          , 202

***You must supply all of the following information  
in order to obtain reimbursement for eligible past expenses under this Settlement.***

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Email address: \_\_\_\_\_

BMW Model Year: 20 \_\_\_\_ Model: \_\_\_\_\_ (ex: 550 or X6)

Vehicle Identification Number: \_\_\_\_\_  
(The VIN is 17 characters and can be found on the metal plate at the bottom of the  
driver's side front windshield or on your sale or title documents.)

Date of Purchase/Lease: \_\_\_\_\_

**YOU MAY BE ELIGIBLE FOR ONE OR MORE OF THE FOLLOWING  
REIMBURSEMENTS FOR PAST EXPENSES UNDER THE SETTLEMENT\*:**

- A. Reimbursement for Past Oil Changes***
- B. Reimbursement for up to 9 Quarts of Engine Oil Previously Purchased Between Oil Changes***
- C. Reimbursement for Past Oil-Consumption Testing and Related Repairs***
- D. Reimbursement for Past Engine Replacement***
- E. Credit Voucher for Future Purchase or Lease***

**PLEASE COMPLETE THIS CLAIM FORM ONLY IF YOU ARE  
SEEKING ANY OF THE BENEFITS/REIMBURSEMENTS LISTED ABOVE.**

\* Reimbursements are subject to the limitations and proof requirements set forth in the Settlement and below.

**QUESTIONS? CALL TOLL-FREE \_\_\_\_\_ OR VISIT [WWW.](http://www.)**

You ***MUST*** submit a Claim Form if you are seeking reimbursement for any of the items listed in A-D on the previous page. You do ***not*** need to submit this Claim Form if you are ***only*** seeking the relief detailed in items E or F (below) and are ***not*** seeking ***any*** reimbursement in items A-E:

- F. You are a current owner or lessee of a Class Vehicle seeking Oil-Consumption Testing or engine replacement following failed oil-consumption test(s), please check the Settlement website (insert website) after \_\_\_\_\_, 2021 to see if the Settlement has been approved and become effective. After the Settlement has become effective, you can make an appointment with a BMW Center.
- G. You are a current owner or lessee of a Class Vehicle seeking to obtain the New Vehicle Discount; a voucher for that benefit is included with this Notice Package. The New Vehicle Discount will be available after the Settlement has become effective.

**In order to expedite your claim submission and processing, please place a check mark (✓) or (X) next to each benefit you are seeking (you may be eligible for more than one benefit):**

	Reimbursement for Past Oil Changes (go to “A” below)
	Reimbursement for up to 9 Quarts of Engine Oil Previously Purchased Between Oil Changes (go to “B” below)
	Reimbursement for Past Oil-Consumption Testing (go to “C” below)
	Reimbursement for Past Engine Replacement (go to “D” below)
	Credit Voucher for Future Purchase or Lease (go to “E” below)

**PLEASE SEE QUESTIONS 7 AND 9 ON THE NOTICE FORM FOR MORE INFORMATION AND LIMITATIONS.**

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## CLAIMS FOR REIMBURSEMENT FOR PAST EXPENSES AND VOUCHER

If you are seeking reimbursement for past expenses, please follow these instructions. You can seek reimbursement for more than one category. Please print the applicable reimbursement category or categories (A, B, C, and/or D) on the top right-hand corner of any documents that you submit to support a reimbursement claim.

**A. Reimbursement for Past Oil Changes**

To obtain reimbursement for up to four (4) past oil changes (not to exceed \$95 each), you must submit for each oil change claimed documents showing:

- a. a legible receipt or invoice that identifies a Settlement Class Vehicle and VIN, the service provided and amount paid for the oil change;
- b. proof of payment, in the form of a canceled check, credit-card receipt, credit-card statement, or receipt from the service provided demonstrating that the Settlement Class Member paid for the amount(s) sought for reimbursement;
- c. the mileage of the Settlement Class Vehicle at the time of oil change; and

**QUESTIONS? CALL TOLL-FREE \_\_\_\_\_ OR VISIT [WWW.](http://www.bmwusa.com)**



- d. that the oil change took place less than 12 months after a previous oil change as evidenced by the repair invoice of the prior oil change and the invoice for the oil change for which you are seeking reimbursement.

For each set of supporting documents submitted (up to 4), please indicate that they are being submitted for **Reimbursement Category A** by writing “A” in the top right-hand corner of each document.

**B. Reimbursement for Past Oil Purchases for up to 9 Quarts of Engine Oil Previously Purchased Between Oil Changes**

To obtain reimbursement for the cost (up to \$10 per quart) of up to nine (9) quarts of engine oil that you purchased between oil changes, you must submit documents showing that:

- a. The oil was of the same type and grade specified for your Class Vehicle in the owner’s manual or on the vehicle, as evidenced by a proof of purchase or a repair order/service invoice; and
- b. There was at least one (1) prior oil-consumption complaint about your Class Vehicle to BMW NA or an authorized BMW Center, as confirmed by a repair order, a BMW NA Customer Relations Report, or other written documentation of an oil-consumption complaint to BMW NA or to one of its authorized centers; and
- c. Your Class Vehicle had fewer than 10 years and 120,000 miles at the time of oil purchase(s).

For each set of supporting documents submitted (for up to nine (9) quarts of engine oil), please indicate that they are being submitted for **Reimbursement Category B** by writing “B” in the top right hand corner of each document.

**C. Reimbursement for Past Oil-Consumption Testing and Subsequent Repairs**

To obtain reimbursement of up to an aggregate of \$900 for the cost of one (1) failed oil consumption test and subsequent repairs of a Class Vehicle, you must submit documents showing that:

- a. Your Class Vehicle failed an oil consumption test at a BMW Center as evidenced by a repair order or service invoice that identifies a Settlement Class Vehicle and VIN;
- b. The repair order or service invoice demonstrates that the Settlement Class Member paid for the amount(s) sought for reimbursement; and
- c. the mileage of the Settlement Class Vehicle at the time of the oil consumption test failure.

Please indicate that the supporting documents are being submitted for **Reimbursement Category C** by writing “C” in the top right-hand corner of each document.

**D. Reimbursement for Past Replacement of an Engine**

If you are seeking reimbursement for one (1) replacement engine related to Excess Oil Consumption in accordance with the contribution schedule in paragraph III A.1(c) of the

**QUESTIONS? CALL TOLL-FREE \_\_\_\_\_ OR VISIT [WWW.](http://www.bmwusa.com)**

Settlement, you must submit documents that show:

- a. a legible repair order or invoice from an authorized BMW Center that identifies Your Class Vehicle and VIN, the date of replacement, the part number(s) used, and the cost of the replacement, with parts and labor separated;
- b. the mileage of the Class Vehicle at the time of engine replacement and that it had fewer than 10 years and 120,000 miles at the time of engine replacement;
- c. the Class Vehicle failed at least one Oil Consumption Test at a BMW Center;
- d. the BMW Center confirmed the Excess Oil Consumption caused the failure and the engine was replaced after the last failed oil consumption test; and
- e. proof of payment, in the form of a canceled check, credit-card receipt, credit-card statement, or receipt demonstrating that the Settlement Class Member paid for the amount(s) sought for reimbursement.

Please indicate that the supporting documents are being submitted for **Reimbursement Category D** by writing “**D**” in the top right-hand corner of each document.

Did you receive any “goodwill” or other cost/price adjustment, coupon, reimbursement, or refund from BMW NA, a BMW Center, insurer or any person or entity associated with Defendants, equal to or in excess of the amount of the claim submitted in connection with *any* of the above services, repairs, or replacement?

If so, please provide proof of same and explain below.

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**E. Credit Voucher for Future Purchase or Lease**

If you would like a credit voucher towards either one future purchase/lease credit Please place a check mark (✓) or (X) next to the voucher you wish to receive:

	<b>\$1,500 for BMW 6 Series, 7 Series, X5, X6, X7</b>
	<b>\$1,000 for all other BMW models</b>

The voucher will be transferable to immediate family members (children, parents and siblings) or other members of the Class Member’s household provided proof is provided that the Class member and person to whom the voucher is being transferred reside in the same house. The voucher will not be valid retroactively, will be valid for 1 year from the Effective Date and may be combined with other applicable and then available and qualifying BMW purchase/lease incentives. Notwithstanding the foregoing, Class Member(s) cannot combine and use multiple credit vouchers made available as part of this Settlement in one lease or purchase transaction.

**QUESTIONS? CALL TOLL-FREE \_\_\_\_\_ OR VISIT [WWW.](http://www.bmw.com)**

**COMPLETED CLAIMS FORMS CAN BE SUBMITTED BY MAIL OR ONLINE.**

IF SUBMITTING BY MAIL, COMPLETE THIS CLAIM FORM AND MAIL IT,  
POSTMARKED ON OR BEFORE \_\_\_\_\_, **202** TO:

Claims Administrator  
[Name]  
PO Box \_\_\_\_\_]  
[City, State, ZIP Code]

IF SUBMITTING ONLINE, COMPLETE AND SUBMIT THE CLAIM FORM AVAILABLE  
AT [WWW.\[INSERT WEBSITE\].COM](http://WWW.[INSERT WEBSITE].COM) N OR BEFORE \_\_\_\_\_, **202** .

QUESTIONS? CALL TOLL-FREE \_\_\_\_\_ OR VISIT [WWW.](http://WWW.)

**CLAIMANT DECLARATION**

I declare under penalty of perjury that the information above and the documents I have supplied are true and correct to the best of my knowledge.

Signed On: \_\_\_\_\_

(DD/MM/YYYY)

in \_\_\_\_\_, \_\_\_\_\_.  
(City) (State)

\_\_\_\_\_  
(Sign your name here)

\_\_\_\_\_  
(Type or print your name here)

\_\_\_\_\_  
(Capacity of person signing - if applicable)

**EXHIBIT C**

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

No. 2:19-cv-12680 (ESK)(MAH)

THOMAS ISLEY, JEFFERY QUINN, VIPUL KHANNA, WALINGTON URENA, DANIEL GULICK, MICHAEL HENCHY JR., ANGELA BOVENZI, JONATHAN YEHUDA, and PAUL HOFFNER on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

BMW OF NORTH AMERICA, LLC

Defendant.

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

WHEREAS, pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, the parties seek entry of an order preliminarily approving the settlement of this action pursuant to the settlement agreement fully executed on July 8, 2021 (the “Settlement Agreement” or “Settlement”), which, together with its attached exhibits, sets forth the terms and conditions for a proposed settlement of the Action and dismissal of the Action with prejudice; and

WHEREAS, the Court has read and considered the Settlement and its exhibits, and Plaintiffs’ Unopposed Motion for Preliminary Approval;

**NOW, THEREFORE, IT IS ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021, ORDERED THAT:**

1. This Order incorporates by reference the definitions in the Settlement, and all terms used in this Order shall have the same meanings as set forth in the Settlement.

2. The Court preliminarily approves the Settlement as being within the realm of reasonableness to the Settlement Class, subject to further consideration at the Final Approval Hearing described below.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court certifies, solely for purposes of effectuating the Settlement, the Settlement Class as follows:

All persons or entities in the United States, the District of Columbia, and Puerto Rico who currently own or lease, or previously owned or leased, model-year 2013 through 2019 BMW 5 Series, 6 Series, 7 Series, X5 or X6 vehicles that contain the N63TU1 engine. Excluded from the Class are Defendant, as well as Defendant's parents, affiliates, employees, officers, and directors, attorneys, agents, insurers, third-party providers of extended warranty/service contracts, franchised dealers and their owners and immediate family members, independent repair/service facilities and their owners and immediate family members, fleet owners and operators, rental companies and vehicles, the attorneys representing Defendant in this case, the Judges and Mediator to whom this case is assigned and their immediate family members, all persons who request exclusion from (opt-out of) the Settlement, owners and lessees of vehicles purchased from salvage yards/junkyards/recyclers, vehicles that had a salvage title or deemed a total loss before a repair of any oil consumption related issue, anyone claiming personal injury or property damage other than to a Class Vehicle due to excessive oil consumption or through subrogation, all persons who previously released any claims encompassed in this Settlement, and owners and lessees of vehicles registered or transported outside the United States.

4. The Court appoints Joel D. Smith, Esq. and Frederick J. Klorczyk, III, Esq. of Bursor & Fisher, P.A. as Settlement Class Counsel for the Settlement Class. Any Settlement Class Member may enter an appearance in the action, at their own expense, either individually or through counsel. However, if they do not enter an appearance, they will be represented by Settlement Class Counsel.

5. The Court appoints Plaintiffs Thomas Isley, Jeffery Quinn, Vipul Khanna, Walington Urena, Daniel Gulick, Michael Henchy Jr., Angela Bovenzi, Jonathan Yehuda, and Paul Hoffner as Settlement Class Representatives.

6. The Court preliminarily finds, solely for purposes of the Settlement, that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members in the Action is impracticable; (b) there are questions of law and fact common to the Settlement Class that predominate over any individual questions; (c) the claims of the Settlement Class Representatives are typical of the claims of the Settlement Class; (d) the Settlement Class Representatives and Settlement Class Counsel have and will continue to fairly and adequately represent and protect the interests of the Settlement Class; and (e) a class action is superior to all other available methods for the fair and efficient adjudication of the controversy. The Court preliminarily finds that certification of the Settlement Class is appropriate when balanced against the risks relating to further litigation. It further appears that extensive and costly investigation, research, and discovery have been conducted such that counsel for the parties are reasonably able to evaluate the benefits of settlement, which will avoid substantial additional costs to the parties and reduce delay and risks associated with this action. It further appears that the Settlement has been reached as a result of intensive, arm's-length negotiations using an experienced third-party neutral.

7. The Court approves the form and content of the Settlement Class Notice (Exhibit A to the Settlement Agreement) and Claim Form (Exhibit B to the Settlement Agreement). The Court finds that the mailing of the Settlement Class Notice in the manner set forth in the Settlement, as well as the establishment of a settlement website and toll-free number, satisfies due process. The foregoing is the best notice practicable under the circumstances and shall



constitute due and sufficient notice to all Settlement Class Members entitled to Settlement Class Notice. The Court authorizes the Parties to make non-material modifications to the Settlement Class Notice and Claim Form prior to publication if they jointly agree that any such changes are appropriate. Accordingly, the Court directs the following notice procedures to be effectuated on or before \_\_\_\_\_, 2021 (ninety (90) days after the date of this Order):

a. Individual direct mail (first class) notice regarding the Settlement will be sent to all current and former owners and lessees of Class Vehicles using BMW NA's database and information from state motor vehicle agencies obtained by Experian Information Solutions, Inc. or similar provider; and

b. Publication on a website to be established and maintained by the Settlement Administrator.

8. The Court appoints Atticus, or such other similar company as selected by Defendant, as the Settlement Administrator. The Settlement Administrator is directed to perform all settlement administration duties set out in the Settlement Agreement, including establishing, maintaining, and administering a website dedicated to the Settlement which (a) will provide information about the Settlement including all relevant documents and (b) will provide a means by which Settlement Class Members may submit their claims by U.S. Mail or email. At least fifteen (15) days before the Final Approval Hearing, the Settlement Administrator will provide an affidavit to the Court attesting that Settlement Class Notice was disseminated in a manner consistent with the terms of the Settlement.

9. If Settlement Class Members do not wish to participate in the Settlement Class, they may exclude themselves. All requests to be excluded from the Settlement Class must be in writing, sent to the Settlement Administrator, and postmarked on or before the Opt-Out

Deadline, which is \_\_\_\_\_, 2021 (one hundred and twenty (120) days after the date of this Order).

a. Any request for exclusion must (1) state the Settlement Class Member's full name and current address; (2) identify the model year and Vehicle Identification Number ("VIN") of his/her vehicle(s) and the date(s) of purchase or lease; (3) specifically and clearly state his/her desire to be excluded from the Settlement and from the Settlement Class; and (4) include the Settlement Class Member's signature. No Request for Exclusion will be valid unless all of the information described above is included. All Settlement Class Members who exclude themselves from the Settlement Class will not be eligible to receive any monetary benefits under the settlement, will not be bound by any further orders or judgments entered for or against the Settlement Class, and will preserve their ability to independently pursue any claims they may have against BMW and other Released Persons.

10. Any Settlement Class Member who has not previously submitted a Request for Exclusion may object to the Settlement and appear at the Final Approval Hearing to support or oppose the approval of the Settlement Agreement. All objections and requests to appear at the Final Approval Hearing must be in writing and postmarked on or before \_\_\_\_\_, 2021 (one hundred and twenty (120) days after the date of this Order).

a. The following information must be provided in the Settlement Class Member's written objection: (1) his/her full name, current address, and current telephone number; (2) the model year of his/her Settlement Class Vehicle(s), as well as the VIN of his/her Settlement Class Vehicle(s) and the date(s) of purchase or lease; (3) whether the objection applies only to the objecting Class Member, to a specific subset of the Class, or to the entire Class; (4) a statement of the position(s) the objector wishes to assert, including the factual and

legal grounds for the position; (5) provide copies of relevant repair history or other proof that the objector has owned or leased the Settlement Class Vehicle (i.e., a true copy of a vehicle title, registration, or license receipt); and (6) any other documents that the objector wishes to submit in support of his/her position and of any other documents that the objector wishes to submit in support of his/her position. To be valid, an objection also must include a detailed statement of each objection asserted, including the grounds for objection. In addition, any Settlement Class Member objecting to the Settlement must provide a detailed statement of any objections to any other class action settlements submitted in any court, whether state, federal, or otherwise, in the United States in the previous five (5) years. If the Settlement Class Member has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she must affirmatively so state in the written materials provided in connection with the objection to this Settlement. Upon the filing of an objection, of their own choosing, Settlement Class Counsel may take the deposition of the objecting Settlement Class Member pursuant to the Federal Rules of Civil Procedure at an agreed-upon time and location, and to obtain any evidence relevant to the objection. Failure by an objector to make himself or herself available for deposition or comply with expedited discovery may result in the Court striking the objection. The Court may tax the costs of any such discovery to the objector or the objector's counsel if the Court determines that the objection is frivolous or is made for an improper purpose.

b. All objections and requests to appear at the Final Approval Hearing must be sent to the Court as well as to: Joel D. Smith, Esq., Bursor & Fisher, P.A., 1990 North California Boulevard, Suite 940, Walnut Creek, California 94696 and Frederick J. Klorczyk, III, Esq., Bursor & Fisher, P.A., 888 Seventh Avenue, New York, New York; and Christopher J.

Dalton and Daniel Z. Rivlin, Buchanan Ingersoll & Rooney PC, 550 Broad Street, Suite 810, Newark, New Jersey 07102.

11. Any Settlement Class Member who does not object in the manner provided in this Order shall be deemed to have waived such objections and shall forever be foreclosed from objecting to the fairness, reasonableness, or adequacy of the proposed settlement and any judgment approving the settlement.

12. The Court hereby schedules the Final Approval Hearing for \_\_\_\_\_, 202\_\_ at \_\_\_\_\_ a.m./p.m. (not less than one hundred and fifty (150) days after the date of this Order). The Final Approval Hearing will take place in Courtroom 8 of the United States District Court for the District of New Jersey, Newark Division, Frank R. Lautenberg U.S. Post Office & Courthouse Building, 2 Federal Square, Newark NJ 07102, to determine whether the proposed Settlement should be approved as fair, reasonable, and adequate, whether a judgment should be entered approving the Settlement, and whether Settlement Class Counsel's application for attorneys' fees and for incentive awards to the Settlement Class Representatives should be approved. The Court may adjourn the Final Approval Hearing without further notice to Settlement Class Members.

13. Settlement Class Members shall have until thirty (30) days after the date of the Final Approval Hearing to submit Claim Forms. Claim Forms must be postmarked by that date to be considered timely.

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Honorable Edward S. Kiel  
United States Magistrate Judge





[www.bursor.com](http://www.bursor.com)

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1990 NORTH CALIFORNIA BLVD.  
WALNUT CREEK, CA 94596

## **FIRM RESUME**

With offices in Florida, New York, and California, BURSOR & FISHER lawyers have represented both plaintiffs and defendants in state and federal courts throughout the country.

The lawyers at our firm have an active civil trial practice, having won multi-million dollar verdicts or recoveries in six of six class action jury trials since 2008. Our most recent class action trial victory came in May 2019 in *Perez v. Rash Curtis & Associates*, in which Mr. Bursor served as lead trial counsel and won a \$267 million jury verdict against a debt collector found to have violated the Telephone Consumer Protection Act.

In August 2013 in *Ayyad v. Sprint Spectrum L.P.*, in which Mr. Bursor served as lead trial counsel, we won a jury verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

In *Thomas v. Global Vision Products, Inc. (II)*, we obtained a \$50 million jury verdict in favor of a certified class of 150,000 purchasers of the Avacor Hair Regrowth System. The legal trade publication VerdictSearch reported that this was the second largest jury verdict in California in 2009, and the largest in any class action.

The lawyers at our firm have an active class action practice and have won numerous appointments as class counsel to represent millions of class members, including customers of Honda, Verizon Wireless, AT&T Wireless, Sprint, Haier America, and Michaels Stores as well as purchasers of Avacor™, Hydroxycut, and Sensa™ products. Bursor & Fisher lawyers have been court-appointed Class Counsel or Interim Class Counsel in:

1. *O'Brien v. LG Electronics USA, Inc.* (D.N.J. Dec. 16, 2010) to represent a certified nationwide class of purchasers of LG French-door refrigerators,
2. *Ramundo v. Michaels Stores, Inc.* (N.D. Ill. June 8, 2011) to represent a certified nationwide class of consumers who made in-store purchases at Michaels Stores using a debit or credit card and had their private financial information stolen as a result,
3. *In re Haier Freezer Consumer Litig.* (N.D. Cal. Aug. 17, 2011) to represent a certified class of purchasers of mislabeled freezers from Haier America Trading, LLC,
4. *Rodriguez v. CitiMortgage, Inc.* (S.D.N.Y. Nov. 14, 2011) to represent a certified nationwide class of military personnel against CitiMortgage for illegal foreclosures,
5. *Rossi v. The Procter & Gamble Co.* (D.N.J. Jan. 31, 2012) to represent a certified nationwide class of purchasers of Crest Sensitivity Treatment & Protection toothpaste,

6. *Dzielak v. Whirlpool Corp. et al.* (D.N.J. Feb. 21, 2012) to represent a proposed nationwide class of purchasers of mislabeled Maytag Centennial washing machines from Whirlpool Corp., Sears, and other retailers,
7. *In re Sensa Weight Loss Litig.* (N.D. Cal. Mar. 2, 2012) to represent a certified nationwide class of purchasers of Sensa weight loss products,
8. *In re Sinus Buster Products Consumer Litig.* (E.D.N.Y. Dec. 17, 2012) to represent a certified nationwide class of purchasers,
9. *Ebin v. Kangadis Food Inc.* (S.D.N.Y. Feb. 25, 2014) to represent a certified nationwide class of purchasers of Capatriti 100% Pure Olive Oil,
10. *Forcellati v. Hyland's, Inc.* (C.D. Cal. Apr. 9, 2014) to represent a certified nationwide class of purchasers of children's homeopathic cold and flu remedies,
11. *Ebin v. Kangadis Family Management LLC, et al.* (S.D.N.Y. Sept. 18, 2014) to represent a certified nationwide class of purchasers of Capatriti 100% Pure Olive Oil,
12. *In re Scotts EZ Seed Litig.* (S.D.N.Y. Jan. 26, 2015) to represent a certified class of purchasers of Scotts Turf Builder EZ Seed,
13. *Dei Rossi v. Whirlpool Corp., et al.* (E.D. Cal. Apr. 28, 2015) to represent a certified class of purchasers of mislabeled KitchenAid refrigerators from Whirlpool Corp., Best Buy, and other retailers,
14. *Hendricks v. StarKist Co.* (N.D. Cal. July 23, 2015) to represent a certified nationwide class of purchasers of StarKist tuna products,
15. *In re NVIDIA GTX 970 Graphics Card Litig.* (N.D. Cal. May 8, 2015) to represent a proposed nationwide class of purchasers of NVIDIA GTX 970 graphics cards,
16. *Melgar v. Zicam LLC, et al.* (E.D. Cal. March 30, 2016) to represent a certified ten-jurisdiction class of purchasers of Zicam Pre-Cold products,
17. *In re Trader Joe's Tuna Litigation* (C.D. Cal. December 21, 2016) to represent purchaser of allegedly underfilled Trader Joe's canned tuna.
18. *In re Welspun Litigation* (S.D.N.Y. January 26, 2017) to represent a proposed nationwide class of purchasers of Welspun Egyptian cotton bedding products,
19. *Retta v. Millennium Products, Inc.* (C.D. Cal. January 31, 2017) to represent a certified nationwide class of Millennium kombucha beverages,
20. *Moeller v. American Media, Inc.*, (E.D. Mich. June 8, 2017) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
21. *Hart v. BHH, LLC* (S.D.N.Y. July 7, 2017) to represent a nationwide class of purchasers of Bell & Howell ultrasonic pest repellers,
22. *McMillion v. Rash Curtis & Associates* (N.D. Cal. September 6, 2017) to represent a certified nationwide class of individuals who received calls from Rash Curtis & Associates,
23. *Lucero v. Solarcity Corp.* (N.D. Cal. September 15, 2017) to represent a certified nationwide class of individuals who received telemarketing calls from Solarcity Corp.,

24. *Taylor v. Trusted Media Brands, Inc.* (S.D.N.Y. Oct. 17, 2017) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
25. *Gasser v. Kiss My Face, LLC* (N.D. Cal. Oct. 23, 2017) to represent a proposed nationwide class of purchasers of cosmetic products,
26. *Gastelum v. Frontier California Inc.* (S.F. Superior Court February 21, 2018) to represent a certified California class of Frontier landline telephone customers who were charged late fees,
27. *Williams v. Facebook, Inc.* (N.D. Cal. June 26, 2018) to represent a proposed nationwide class of Facebook users for alleged privacy violations,
28. *Ruppel v. Consumers Union of United States, Inc.* (S.D.N.Y. July 27, 2018) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
29. *Bayol v. Health-Ade* (N.D. Cal. August 23, 2018) to represent a proposed nationwide class of Health-Ade kombucha beverage purchasers,
30. *West v. California Service Bureau* (N.D. Cal. September 12, 2018) to represent a certified nationwide class of individuals who received calls from California Service Bureau,
31. *Gregorio v. Premier Nutrition Corporation* (S.D.N.Y. Sept. 14, 2018) to represent a nationwide class of purchasers of protein shake products,
32. *Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast* (S.D.N.Y. Oct. 24, 2018) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
33. *Bakov v. Consolidated World Travel Inc. d/b/a Holiday Cruise Line* (N.D. Ill. Mar. 21, 2019) to represent a certified class of individuals who received calls from Holiday Cruise Line,
34. *Martinelli v. Johnson & Johnson* (E.D. Cal. March 29, 2019) to represent a certified class of purchasers of Benecol spreads labeled with the representation “No Trans Fat,”
35. *Edwards v. Hearst Communications, Inc.* (S.D.N.Y. April 24, 2019) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
36. *Galvan v. Smashburger* (C.D. Cal. June 25, 2019) to represent a proposed class of purchasers of Smashburger’s “Triple Double” burger,
37. *Kokoszki v. Playboy Enterprises, Inc.* (E.D. Mich. Feb. 7, 2020) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
38. *Russett v. The Northwestern Mutual Life Insurance Co.* (S.D.N.Y. May 28, 2020) to represent a class of insurance policyholders that were allegedly charged unlawful paper billing fees,
39. *In re: Metformin Marketing and Sales Practices Litigation* (D.N.J. June 3, 2020) to represent a proposed nationwide class of purchasers of generic diabetes medications that were contaminated with a cancer-causing carcinogen,
40. *Hill v. Spirit Airlines, Inc.* (S.D. Fla. July 21, 2020) to represent a proposed nationwide class of passengers whose flights were cancelled by Spirit Airlines



due to the novel coronavirus, COVID-19, and whose tickets were not refunded,

41. *Kramer v. Alterra Mountain Co.* (D. Colo. July 31, 2020) to represent a proposed nationwide class of purchasers to recoup the unused value of their Ikon ski passes after Alterra suspended operations at its ski resorts due to the novel coronavirus, COVID-19,
42. *Qureshi v. American University* (D.D.C. July 31, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by American University due to the novel coronavirus, COVID-19,
43. *Hufford v. Maxim Inc.* (S.D.N.Y. Aug. 13, 2020) to represent a class of magazine subscribers under the Michigan Preservation of Personal Privacy Act,
44. *Desai v. Carnegie Mellon University* (W.D. Pa. Aug. 26, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by Carnegie Mellon University due to the novel coronavirus, COVID-19,
45. *Heigl v. Waste Management of New York, LLC* (E.D.N.Y. Aug. 27, 2020) to represent a class of insurance policyholders that were allegedly charged unlawful paper billing fees,
46. *Stellato v. Hofstra University* (E.D.N.Y. Sept. 18, 2020) to represent a proposed nationwide class of students for tuition and fee refunds after their classes were moved online by Hofstra University due to the novel coronavirus, COVID-19.
47. *Kaupelis v. Harbor Freight Tools USA, Inc.* (C.D. Cal. Sept. 23, 2020), to represent consumers who purchased defective chainsaws.
48. *Soo v. Lorex Corporation* (N.D. Cal. Sept. 23, 2020), to represent consumers whose security cameras were intentionally rendered non-functional by manufacturer.
49. *Miranda v. Golden Entertainment (NV), Inc.* (D. Nev. Dec. 17, 2020), to represent consumers and employees whose personal information was exposed in a data breach.
50. *Benbow v. SmileDirectClub, Inc.* (Cir. Ct. Cook Cnty. Feb. 4, 2021), to represent a certified nationwide class of individuals who received text messages from SmileDirectClub, in alleged violation of the Telephone Consumer Protection Act.
51. *Suren v. DSV Solutions, LLC* (Cir. Ct. DuPage Cnty. Apr. 8, 2021), to represent a certified class of employees who used a fingerprint clock-in system, in alleged violation of the Illinois Biometric Information Privacy Act.
52. *De Lacour v. Colgate-Palmolive Co.* (S.D.N.Y. Apr. 23, 2021), to represent a certified class of consumers who purchased allegedly “natural” Tom’s of Maine products.
53. *Wright v. Southern New Hampshire University* (D.N.H. Apr. 26, 2021), to represent a certified nationwide class of students for tuition and fee refunds after their classes were moved online by Southern New Hampshire University due to the novel coronavirus, COVID-19.

**SCOTT A. BURSOR**

Mr. Bursor has an active civil trial practice, having won multi-million verdicts or recoveries in six of six civil jury trials since 2008. Mr. Bursor's most recent victory came in May 2019 in *Perez v. Rash Curtis & Associates*, in which Mr. Bursor served as lead trial counsel and won a \$267 million jury verdict against a debt collector for violations of the Telephone Consumer Protection Act (TCPA).

In *Ayyad v. Sprint Spectrum L.P.* (2013), where Mr. Bursor served as lead trial counsel, the jury returned a verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

In *Thomas v. Global Vision Products, Inc.* (2009), the jury returned a \$50 million verdict in favor of the plaintiff and class represented by Mr. Bursor. The legal trade publication VerdictSearch reported that this was the second largest jury verdict in California in 2009.

Class actions are rarely tried to verdict. Other than Mr. Bursor and his partner Mr. Fisher, we know of no lawyer that has tried more than one class action to a jury. Mr. Bursor's perfect record of six wins in six class action jury trials, with recoveries ranging from \$21 million to \$299 million, is unmatched by any other lawyer. Each of these victories was hard-fought against top trial lawyers from the biggest law firms in the United States.

Mr. Bursor graduated from the University of Texas Law School in 1996. He served as Articles Editor of the Texas Law Review, and was a member of the Board of Advocates and Order of the Coif. Prior to starting his own practice, Mr. Bursor was a litigation associate at a large New York based law firm where he represented telecommunications, pharmaceutical, and technology companies in commercial litigation.

Mr. Bursor is a member of the state bars of New York, Florida, and California, as well as the bars of the United States Court of Appeals for the Second, Third, Fourth, Sixth, Ninth and Eleventh Circuits, and the bars of the United States District Courts for the Southern and Eastern Districts of New York, the Northern, Central, Southern and Eastern Districts of California, the Southern and Middle Districts of Florida, and the Eastern District of Michigan.

**Representative Cases**

Mr. Bursor was appointed lead or co-lead class counsel to the largest, 2nd largest, and 3rd largest classes ever certified. Mr. Bursor has represented classes including more than 160 million class members, roughly 1 of every 2 Americans. Listed below are recent cases that are representative of Mr. Bursor's practice:

Mr. Bursor negotiated and obtained court-approval for two landmark settlements in *Nguyen v. Verizon Wireless* and *Zill v. Sprint Spectrum* (the largest and 2nd largest classes ever certified). These settlements required Verizon and Sprint to open their wireless networks to third-party devices and applications. These settlements are believed to be the most significant legal development affecting the telecommunications industry since 1968, when the FCC's Carterfone decision similarly opened up AT&T's wireline telephone network.

Mr. Bursor was the lead trial lawyer in *Ayyad v. Sprint Spectrum, L.P.* representing a class of approximately 2 million California consumers who were charged an early termination fee under a Sprint cellphone contract, asserting claims that such fees were unlawful liquidated damages under the California Civil Code, as well as other statutory and common law claims. After a five-week combined bench-and-jury trial, the jury returned a verdict in June 2008 and the Court issued a Statement of Decision in December 2008 awarding the plaintiffs \$299 million in cash and debt cancellation. Mr. Bursor served as lead trial counsel for this class again in 2013 during a month-long jury trial in which Sprint asserted a \$1.06 billion counterclaim against the class. Mr. Bursor secured a verdict awarding Sprint only \$18.4 million, the exact amount calculated by the class's damages expert. This award was less than 2% of the damages Sprint sought, less than 6% of the amount of the illegal termination fees Sprint charged to class members. In December 2016, after more than 13 years of litigation, the case was settled for \$304 million, including \$79 million in cash payments plus \$225 million in debt cancellation.

Mr. Bursor was the lead trial lawyer in *White v. Cellco Partnership d/b/a Verizon Wireless* representing a class of approximately 1.4 million California consumers who were charged an early termination fee under a Verizon cellphone contract, asserting claims that such fees were unlawful liquidated damages under the California Civil Code, as well as other statutory and common law claims. In July 2008, after Mr. Bursor presented plaintiffs' case-in-chief, rested, then cross-examined Verizon's principal trial witness, Verizon agreed to settle the case for a \$21 million cash payment and an injunction restricting Verizon's ability to impose early termination fees in future subscriber agreements.

Mr. Bursor was the lead trial lawyer in *Thomas v. Global Visions Products Inc.* Mr. Bursor represented a class of approximately 150,000 California consumers who had purchased the Avacor® hair regrowth system. In January 2008, after a four-week combined bench-and-jury trial, Mr. Bursor obtained a \$37 million verdict for the class, which the Court later increased to \$40 million.

Mr. Bursor was appointed class counsel and was elected chair of the Official Creditors' Committee in *In re Nutraquest Inc.*, a Chapter 11 bankruptcy case before Chief Judge Garrett E. Brown, Jr. (D.N.J.) involving 390 ephedra-related personal injury and/or wrongful death claims, two consumer class actions, four enforcement actions by governmental agencies, and multiple adversary proceedings related to the Chapter 11 case. Working closely with counsel for all parties and with two mediators, Judge Nicholas Politan (Ret.) and Judge Marina Corodemus (Ret.), the committee chaired by Mr. Bursor was able to settle or otherwise resolve every claim and reach a fully consensual Chapter 11 plan of reorganization, which Chief Judge Brown approved in late 2006. This settlement included a \$12.8 million recovery to a nationwide class of consumers who alleged they were defrauded in connection with the purchase of Xenadrine® dietary supplement products.

Mr. Bursor was the lead trial lawyer in *In re: Pacific Bell Late Fee Litigation*. After filing the first class action challenging Pac Bell's late fees in April 2010, winning a contested motion to certify a statewide California class in January 2012, and defeating Pac Bell's motion for summary judgment in February 2013, Mr. Bursor obtained final approval of the \$38 million class settlement. The settlement, which Mr. Bursor negotiated the night before opening statements were scheduled to commence, included a \$20 million cash payment to provide

refunds to California customers who paid late fees on their Pac Bell wireline telephone accounts, and an injunction that reduced other late fee charges by \$18.6 million.

### **L. TIMOTHY FISHER**

L. Timothy Fisher has an active practice in consumer class actions and complex business litigation and has also successfully handled a large number of civil appeals.

Mr. Fisher has been actively involved in numerous cases that resulted in multi-million dollar recoveries for consumers and investors. Mr. Fisher has handled cases involving a wide range of issues including nutritional labeling, health care, telecommunications, corporate governance, unfair business practices and consumer fraud. With his partner Scott A. Bursor, Mr. Fisher has tried five class action jury trials, all of which produced successful results. In *Thomas v. Global Vision Products*, Mr. Fisher obtained a jury award of \$50,024,611 — the largest class action award in California in 2009 and the second-largest jury award of any kind.

Mr. Fisher was admitted to the State Bar of California in 1997. He is also a member of the bars of the United States Court of Appeals for the Ninth Circuit and the United States District Courts for the Northern, Central, Southern and Eastern Districts of California. Mr. Fisher taught appellate advocacy at John F. Kennedy University School of Law in 2003 and 2004. In 2010, he contributed jury instructions, a verdict form and comments to the consumer protection chapter of Justice Elizabeth A. Baron's California Civil Jury Instruction Companion Handbook (West 2010). In January 2014, Chief Judge Claudia Wilken of the United States District Court for the Northern District of California appointed Mr. Fisher to a four-year term as a member of the Court's Standing Committee on Professional Conduct.

Mr. Fisher received his Juris Doctor from Boalt Hall at the University of California at Berkeley in 1997. While in law school, he was an active member of the Moot Court Board and participated in moot court competitions throughout the United States. In 1994, Mr. Fisher received an award for Best Oral Argument in the first-year moot court competition.

In 1992, Mr. Fisher graduated with highest honors from the University of California at Berkeley and received a degree in political science. Prior to graduation, he authored an honors thesis for Professor Bruce Cain entitled "The Role of Minorities on the Los Angeles City Council." He is also a member of Phi Beta Kappa.

### **Representative Cases**

*Thomas v. Global Vision Products, Inc.* (Alameda County Superior Court). Mr. Fisher litigated claims against Global Vision Products, Inc. and other individuals in connection with the sale and marketing of a purported hair loss remedy known as Avacor. The case lasted more than seven years and involved two trials. The first trial resulted in a verdict for plaintiff and the class in the amount of \$40,000,000. The second trial resulted in a jury verdict of \$50,024,611, which led to a \$30 million settlement for the class.

*In re Cellphone Termination Fee Cases - Handset Locking Actions* (Alameda County Superior Court). Mr. Fisher actively worked on five coordinated cases challenging the secret locking of

cell phone handsets by major wireless carriers to prevent consumers from activating them on competitive carriers' systems. Settlements have been approved in all five cases on terms that require the cell phone carriers to disclose their handset locks to consumers and to provide unlocking codes nationwide on reasonable terms and conditions. The settlements fundamentally changed the landscape for cell phone consumers regarding the locking and unlocking of cell phone handsets.

*In re Cellphone Termination Fee Cases* - Early Termination Fee Cases (Alameda County Superior Court and Federal Communications Commission). In separate cases that are a part of the same coordinated litigation as the Handset Locking Actions, Mr. Fisher actively worked on claims challenging the validity under California law of early termination fees imposed by national cell phone carriers. In one of those cases, against Verizon Wireless, a nationwide settlement was reached after three weeks of trial in the amount of \$21 million. In a second case, which was tried to verdict, the Court held after trial that the \$73 million of flat early termination fees that Sprint had collected from California consumers over an eight-year period were void and unenforceable.

#### **Selected Published Decisions**

*Melgar v. Zicam LLC*, 2016 WL 1267870 (E.D. Cal. Mar. 30, 2016) (certifying 10-jurisdiction class of purchasers of cold remedies, denying motion for summary judgment, and denying motions to exclude plaintiff's expert witnesses).

*Salazar v. Honest Tea, Inc.*, 2015 WL 7017050 (E.D. Cal. Nov. 12, 2015) (denying motion for summary judgment).

*Dei Rossi v. Whirlpool Corp.*, 2015 WL 1932484 (E.D. Cal. Apr. 27, 2015) (certifying California class of purchasers of refrigerators that were mislabeled as Energy Star qualified).

*Bayol v. Zipcar, Inc.*, 78 F.Supp.3d 1252 (N.D. Cal. 2015) (denying motion to dismiss claims alleging unlawful late fees under California Civil Code § 1671).

*Forcellati v. Hyland's, Inc.*, 2015 WL 9685557 (C.D. Cal. Jan. 12, 2015) (denying motion for summary judgment in case alleging false advertising of homeopathic cold and flu remedies for children).

*Bayol v. Zipcar, Inc.*, 2014 WL 4793935 (N.D. Cal. Sept. 25, 2014) (denying motion to transfer venue pursuant to a forum selection clause).

*Forcellati v. Hyland's Inc.*, 2014 WL 1410264 (C.D. Cal. Apr. 9, 2014) (certifying nationwide class of purchasers of homeopathic cold and flu remedies for children).

*Hendricks v. StarKist Co.*, 30 F.Supp.3d 917 (N.D. Cal. 2014) (denying motion to dismiss in case alleging underfilling of 5-ounce cans of tuna).

*Dei Rossi v. Whirlpool Corp.*, 2013 WL 5781673 (E.D. Cal. October 25, 2013) (denying motion to dismiss in case alleging that certain KitchenAid refrigerators were misrepresented as Energy Star qualified).

*Forcellati v. Hyland's Inc.*, 876 F.Supp.2d 1155 (C.D. Cal. 2012) (denying motion to dismiss complaint alleging false advertising regarding homeopathic cold and flu remedies for children).

*Clerkin v. MyLife.com*, 2011 WL 3809912 (N.D. Cal. August 29, 2011) (denying defendants'



motion to dismiss in case alleging false and misleading advertising by a social networking company).

*In re Cellphone Termination Fee Cases*, 186 Cal.App.4th 1380 (2010) (affirming order approving \$21 million class action settlement).

*Gatton v. T-Mobile USA, Inc.*, 152 Cal.App.4th 571 (2007) (affirming order denying motion to compel arbitration).

### **Selected Class Settlements**

*Melgar v. Zicam* (Eastern District of California) - \$16 million class settlement of claims alleging cold medicine was ineffective.

*Gastelum v. Frontier California Inc.* (San Francisco Superior Court) - \$10.9 million class action settlement of claims alleging that a residential landline service provider charged unlawful late fees.

*West v. California Service Bureau, Inc.* (Northern District of California) - \$4.1 million class settlement of claims under the Telephone Consumer Protection Act.

*Gregorio v. Premier Nutrition Corp.* (Southern District of New York) - \$9 million class settlement of false advertising claims against protein shake manufacturer.

*Morris v. SolarCity Corp.* (Northern District of California) - \$15 million class settlement of claims under the Telephone Consumer Protection Act.

*Retta v. Millennium Products, Inc.* (Central District of California) - \$8.25 million settlement to resolve claims of bottled tea purchasers for alleged false advertising.

*Forcellati v. Hyland's* (Central District of California) – nationwide class action settlement providing full refunds to purchasers of homeopathic cold and flu remedies for children.

*Dei Rossi v. Whirlpool* (Eastern District of California) – class action settlement providing \$55 cash payments to purchasers of certain KitchenAid refrigerators that allegedly mislabeled as Energy Star qualified.

*In Re NVIDIA GTX 970 Graphics Chip Litigation* (Northern District of California) - \$4.5 million class action settlement of claims alleging that a computer graphics card was sold with false and misleading representations concerning its specifications and performance.

*Hendricks v. StarKist Co.* (Northern District of California) – \$12 million class action settlement of claims alleging that 5-ounce cans of tuna were underfilled.

*In re Zakskorn v. American Honda Motor Co. Honda* (Eastern District of California) – nationwide settlement providing for brake pad replacement and reimbursement of out-of-pocket expenses in case alleging defective brake pads on Honda Civic vehicles manufactured between 2006 and 2011.

*Correa v. Sensa Products, LLC* (Los Angeles Superior Court) - \$9 million settlement on behalf of purchasers of the Sensa weight loss product.

*In re Pacific Bell Late Fee Litigation* (Contra Costa County Superior Court) - \$38.6 million settlement on behalf of Pac Bell customers who paid an allegedly unlawful late payment charge.

*In re Haier Freezer Consumer Litigation* (Northern District of California) - \$4 million settlement, which provided for cash payments of between \$50 and \$325.80 to class members who purchased the Haier HNCM070E chest freezer.

*Thomas v. Global Vision Products, Inc.* (Alameda County Superior Court) - \$30 million settlement on behalf of a class of purchasers of a hair loss remedy.

*Guyette v. Viacom, Inc.* (Alameda County Superior Court) - \$13 million settlement for a class of cable television subscribers who alleged that the defendant had improperly failed to share certain tax refunds with its subscribers.

### **JOSEPH I. MARCHESE**

Joseph I. Marchese is a Partner with Bursor & Fisher, P.A. Joe focuses his practice on consumer class actions, employment law disputes, and commercial litigation. He has represented corporate and individual clients in a wide array of civil litigation, and has substantial trial and appellate experience.

Joe has diverse experience in litigating and resolving consumer class actions involving claims of mislabeling, false or misleading advertising, privacy violations, data breach claims, and violations of the Servicemembers Civil Relief Act.

Joe also has significant experience in multidistrict litigation proceedings. Recently, he served on the Plaintiffs' Executive Committee in *In Re: Blue Buffalo Company, Ltd. Marketing And Sales Practices Litigation*, MDL No. 2562, which resulted in a \$32 million consumer class settlement. Currently, he serves on the Plaintiffs' Steering Committee for Economic Reimbursement in *In Re: Valsartan Products Liability Litigation*, MDL No. 2875.

Joe is admitted to the State Bar of New York and is a member of the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, and the Eastern District of Michigan, as well as the United States Court of Appeals for the Second Circuit.

Joe graduated from Boston University School of Law in 2002 where he was a member of The Public Interest Law Journal. In 1998, Joe graduated with honors from Bucknell University.

### **Selected Published Decisions:**

*Boelter v. Hearst Communications, Inc.*, 269 F. Supp. 3d 172 (S.D.N.Y. Sept. 7, 2017), granting plaintiff's motion for partial summary judgment on state privacy law violations in putative class action.

*Boelter v. Hearst Communications, Inc.*, 192 F. Supp. 3d 427 (S.D.N.Y. June 17, 2016), denying publisher's motion to dismiss its subscriber's allegations of state privacy law violations in putative class action.

*In re Scotts EZ Seed Litigation*, 304 F.R.D. 397 (S.D.N.Y. 2015), granting class certification of false advertising and other claims brought by New York and California purchasers of grass seed product.

*Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported “100% Pure Olive Oil” product.

*In re Michaels Stores Pin Pad Litigation*, 830 F. Supp. 2d 518 (N.D. Ill. 2011), denying retailer’s motion to dismiss its customers’ state law consumer protection and privacy claims in data breach putative class action.

**Selected Class Settlements:**

*Edwards v. Hearst Communications, Inc.*, Case No. 15-cv-09279-AT (S.D.N.Y. 2019) – final approval granted for \$50 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

*Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast*, Case No. 15-cv-05671-NRB (S.D.N.Y. 2019) – final approval granted for \$13.75 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

*In re Scotts EZ Seed Litigation*, Case No. 12-cv-4727-VB (S.D.N.Y. 2018) – final approval granted for \$47 million class settlement to resolve false advertising claims of purchasers of combination grass seed product.

*In Re: Blue Buffalo Marketing And Sales Practices Litigation*, Case No. 14-MD-2562-RWS (E.D. Mo. 2016) – final approval granted for \$32 million class settlement to resolve claims of pet owners for alleged false advertising of pet foods.

*Rodriguez v. Citimortgage, Inc.*, Case No. 11-cv-4718-PGG (S.D.N.Y. 2015) – final approval granted for \$38 million class settlement to resolve claims of military servicemembers for alleged foreclosure violations of the Servicemembers Civil Relief Act, where each class member was entitled to \$116,785 plus lost equity in the foreclosed property and interest thereon.

*O’Brien v. LG Electronics USA, Inc., et al.*, Case No. 10-cv-3733-DMC (D.N.J. 2011) – final approval granted for \$23 million class settlement to resolve claims of Energy Star refrigerator purchasers for alleged false advertising of the appliances’ Energy Star qualification.

**JOSHUA D. ARISOHN**

Joshua D. Arisohn is a Partner with Bursor & Fisher, P.A. Josh has litigated precedent-setting cases in the areas of consumer class actions and terrorism. He participated in the first ever trial to take place under the Anti-Terrorism Act, a statute that affords U.S. citizens the right to assert federal claims for injuries arising out of acts of international terrorism. Josh’s practice continues to focus on terrorism-related matters as well as class actions.



Josh is admitted to the State Bar of New York and is a member of the bars of the United States District Courts for the Southern District of New York and the Eastern District of New York.

Josh previously practiced at Dewey & LeBoeuf LLP and DLA Piper LLP. He graduated from Columbia University School of Law in 2006, where he was a Harlan Fiske Stone Scholar, and received his B.A. from Cornell University in 2002. Josh has been honored as a 2015 and 2016 Super Lawyer Rising Star.

**Selected Published Decisions:**

*Morris v. SolarCity Corp.*, 2016 WL 1359378 (N.D. Cal. Apr. 4, 2016), denying defendant's motion to dismiss claims that solar company illegally called consumers using an artificial or prerecorded voice and an automatic telephone dialing system.

*Boelter v. Hearst Commc'ns, Inc.*, 192 F. Supp. 3d 427 (S.D.N.Y. 2016), denying defendant's motion to dismiss and finding that the Michigan Video Rental Privacy Act does not violate the First Amendment.

*Edwards v. Oportun, Inc.*, 193 F. Supp. 3d 1096 (N.D. Cal. 2016), denying defendant's motion to dismiss and rejecting its argument that providing a class representative with a cashier's check for his individual damages mooted his individual and class claims.

**Selected Class Settlements:**

*Morris v. SolarCity Corp.*, Case No. 3:15-cv-05107-RS (N.D. Cal.) - final approval granted for \$15 million class settlement to resolve claims under the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.*

**JOEL D. SMITH**

Joel D. Smith is a Partner with Bursor & Fisher, P.A. Joel's practice focuses on consumer class actions and complex litigation. He has substantial experience in trial and appellate courts across the nation.

Prior to joining Bursor & Fisher, Joel was a litigator at Crowell & Moring, where he represented Fortune 500 companies, privately-held businesses, and public entities in commercial litigation and nationwide class actions. While at Crowell & Moring, Joel litigated some of the firm's most high-profile matters, including several class actions alleging deceptive sales practices with respect to Apple iPhones and iPads, and a class action seeking to hold U.S. energy companies accountable for global warming. In California state court, Joel represented four major U.S. retailers in a case arising from a devastating arson fire and ensuing state of emergency in Roseville, California. That case included crossclaims by the defendant alleging a vast cover-up by the City of Roseville's fire and police departments; the involvement of the federal Bureau of Alcohol, Tobacco, Firearms and Explosives; and settlement on the eve of a trial that was expected to last several months and involve numerous witnesses. Joel also was part

of the trial team in a widely publicized trial over the death of a contestant who died after participating in a Sacramento radio station's water drinking contest.

More recently, Joel has represented University of California students in a class action seeking the return of late fees unlawfully collected from students. He also served as interim class counsel in *In re Welspun Litigation* (S.D.N.Y. January 26, 2017), a class action against three of the largest retailers in the United States and one of the largest textile manufacturers in the world, arising from events that one reporter described as the "biggest counterfeit story in retail history."

Joel received both his undergraduate and law degrees from the University of California at Berkeley. While at Berkeley School of Law, he was a member of the California Law Review, received several academic honors, externed for the California Attorney General's office and published an article on climate change policy and litigation.

Joel is admitted to the State Bar of California, as well as the United States Courts of Appeals for the Second, Third and Ninth Circuits; the Northern, Central, Southern and Eastern Districts of California; and is a member of the General Bar of the Northern District of Illinois.

**Selected Published Decisions:**

*Revitch v. DIRECTV, LLC*, --- F.3d --- (9th Cir. 2020), affirming denial of motion to compel arbitration in putative class action alleging unlawful calls under the Telephone Consumer Protection Act.

*Kaupelis v. Harbor Freight Tools USA, Inc.*, 2020 WL 5901116 (C.D. Cal. Sept. 23, 2020), granting class certification of consumer protection claims brought by purchasers of defective chainsaws.

**Selected Class Settlements:**

*Morris v. SolarCity Corp.*, Case No. 3:15-cv-05107-RS (N.D. Cal.) - final approval granted for \$15 million class settlement to resolve claims under the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.*

**NEAL J. DECKANT**

Neal J. Deckant is a Partner with Bursor & Fisher, P.A. Neal focuses his practice on complex business litigation, consumer class actions, and employment law disputes. Prior to joining Bursor & Fisher, Neal counseled low-income homeowners facing foreclosure in East Boston.

In 2015, Neal was defense trial counsel for a law firm and several of its partners in a sexual harassment case brought by a former associate of that firm. The plaintiff's complaint sought \$22 million in compensatory and punitive damages. After a 3-week trial in federal court in New York, the jury returned a verdict of not liable for the federal and state law claims. During the trial, the judge also granted defendants' motion for judgment as a matter of law on the

plaintiff's claims for retaliation and defamation. The jury found liability solely under New York City's human rights law, awarding only \$140,000 in damages.

Neal is admitted to the State Bars of California and New York, and is a member of the bars of the United States District Court for the Northern District of California, the United States District Court for the Eastern District of California, the United States District Court for the Central District of California, the United States District Court for the Southern District of California, the United States District Court for the Southern District of New York, the United States District Court for the Eastern District of New York, and the bars of the United States Courts of Appeals for the Second and Ninth Circuits.

Neal received his Juris Doctor from Boston University School of Law in 2011, graduating cum laude with two Dean's Awards. During law school, Neal served as a Senior Articles Editor for the Review of Banking and Financial Law, where he authored two published articles about securitization reforms, both of which were cited by the New York Court of Appeals, the highest court in the state. Neal was also awarded Best Oral Argument in his moot court section, and he served as a Research Assistant for his Securities Regulation professor. Neal has also been honored as a 2014, 2015, 2016, and 2017 Super Lawyers Rising Star. In 2007, Neal graduated with Honors from Brown University with a dual major in East Asian Studies and Philosophy.

**Selected Published Decisions:**

*Martinelli v. Johnson & Johnson*, 2019 WL 1429653 (N.D. Cal. Mar. 29, 2019), granting class certification of false advertising and other claims brought by purchasers of Benecol spreads labeled with the representation "No Trans Fats."

*Dzielak v. Whirlpool Corp.*, 2017 WL 6513347 (D.N.J. Dec. 20, 2017), granting class certification of consumer protection claims brought by purchasers of Maytag Centennial washing machines marked with the "Energy Star" logo.

*Duran v. Obesity Research Institute, LLC*, 204 Cal. Rptr. 3d 896 (Cal. Ct. App. 2016), reversing and remanding final approval of a class action settlement on appeal, regarding allegedly mislabeled dietary supplements, in connection with a meritorious objection.

*Marchuk v. Faruqi & Faruqi, LLP, et al.*, 100 F. Supp. 3d 302 (S.D.N.Y. 2015), granting individual and law firm defendants' motion for judgment as a matter of law on plaintiff's claims for retaliation and defamation, as well as for all claims against law firm partners, Nadeem and Lubna Faruqi.

*Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported "100% Pure Olive Oil" product.

*Ebin v. Kangadis Food Inc.*, 2014 WL 737878 (S.D.N.Y. Feb. 25, 2014), denying distributor's motion for summary judgment against nationwide class of purchasers of purported "100% Pure Olive Oil" product.

**Selected Class Settlements:**

*In Re NVIDIA GTX 970 Graphics Chip Litigation*, Case No. 15-cv-00760-PJH (N.D. Cal. Dec. 7, 2016) – final approval granted for \$4.5 million class action settlement to resolve claims that a computer graphics card was allegedly sold with false and misleading representations concerning its specifications and performance.

*Hendricks v. StarKist Co.*, 2016 WL 5462423 (N.D. Cal. Sept. 29, 2016) – final approval granted for \$12 million class action settlement to resolve claims that 5-ounce cans of tuna were allegedly underfilled.

*In re: Kangadis Food Inc.*, Case No. 8-14-72649 (Bankr. E.D.N.Y. Dec. 17, 2014) – class action claims resolved for \$2 million as part of a Chapter 11 plan of reorganization, after a corporate defendant filed for bankruptcy, following claims that its olive oil was allegedly sold with false and misleading representations.

**Selected Publications:**

Neal Deckant, *X. Reforms of Collateralized Debt Obligations: Enforcement, Accounting and Regulatory Proposals*, 29 Rev. Banking & Fin. L. 79 (2009) (cited in *Quadrant Structured Products Co., Ltd. v. Vertin*, 16 N.E.3d 1165, 1169 n.8 (N.Y. 2014)).

Neal Deckant, *Criticisms of Collateralized Debt Obligations in the Wake of the Goldman Sachs Scandal*, 30 Rev. Banking & Fin. L. 407 (2010) (cited in *Quadrant Structured Products Co., Ltd. v. Vertin*, 16 N.E.3d 1165, 1169 n.8 (N.Y. 2014)); *Lyon Village Venetia, LLC v. CSE Mortgage LLC*, 2016 WL 476694, at \*1 n.1 (Md. Ct. Spec. App. Feb. 4, 2016); Ivan Ascher, *Portfolio Society: On the Capitalist Mode of Prediction*, at 141, 153, 175 (Zone Books / The MIT Press 2016); Devon J. Steinmeyer, *Does State National Bank of Big Spring v. Geithner Stand a Fighting Chance?*, 89 Chi.-Kent. L. Rev. 471, 473 n.13 (2014)).

**YITZCHAK KOPEL**

Yitzchak Kopel is a Partner with Bursor & Fisher, P.A. Yitz focuses his practice on consumer class actions and complex business litigation. He has represented corporate and individual clients before federal and state courts, as well as in arbitration proceedings.

Yitz has substantial experience in successfully litigating and resolving consumer class actions involving claims of consumer fraud, data breaches, and violations of the telephone consumer protection act. Since 2014, Yitz has obtained class certification on behalf of his clients five times, three of which were certified as nationwide class actions. Bursor & Fisher was appointed as class counsel to represent the certified classes in each of the cases.

Yitz is admitted to the State Bars of New York and New Jersey, the bar of the United States Court of Appeals for the Second, Eleventh, and Ninth Circuits, and the bars of the United States District Courts for the Southern District of New York, Eastern District of New York, Eastern District of Missouri, Eastern District of Wisconsin, Northern District of Illinois, and District of New Jersey.

Yitz received his Juris Doctorate from Brooklyn Law School in 2012, graduating *cum laude* with two Dean's Awards. During law school, Yitz served as an Articles Editor for the Brooklyn Law Review and worked as a Law Clerk at Shearman & Sterling. In 2009, Yitz graduated *cum laude* from Queens College with a B.A. in Accounting.

**Selected Published Decisions:**

*Bassaw v. United Industries Corp.*, --- F. Supp. 3d ---, 2020 WL 5117916 (S.D.N.Y. Aug. 31, 2020), denying motion to dismiss claims in putative class action concerning insect foggers.

*Poppiti v. United Industries Corp.*, 2020 WL 1433642 (E.D. Mo. Mar. 24, 2020), denying motion to dismiss claims in putative class action concerning citronella candles.

*Bakov v. Consolidated World Travel, Inc.*, 2019 WL 6699188 (N.D. Ill. Dec. 9, 2019), granting summary judgment on behalf of certified class in robocall class action.

*Krumm v. Kittrich Corp.*, 2019 WL 6876059 (E.D. Mo. Dec. 17, 2019), denying motion to dismiss claims in putative class action concerning mosquito repellent.

*Crespo v. S.C. Johnson & Son, Inc.*, 394 F. Supp. 3d 260 (S.D.N.Y. 2019), denying defendant's motion to dismiss fraud and consumer protection claims in putative class action regarding Raid insect fogger.

*Bakov v. Consolidated World Travel, Inc.*, 2019 WL 1294659 (N.D. Ill. Mar. 21, 2019), certifying a class of persons who received robocalls in the state of Illinois.

*Bourbia v. S.C. Johnson & Son, Inc.*, 375 F. Supp. 3d 454 (S.D.N.Y. 2019), denying defendant's motion to dismiss fraud and consumer protection claims in putative class action regarding mosquito repellent.

*Hart v. BHH, LLC*, 323 F. Supp. 3d 560 (S.D.N.Y. 2018), denying defendants' motion for summary judgment in certified class action involving the sale of ultrasonic pest repellents.

*Hart v. BHH, LLC*, 2018 WL 3471813 (S.D.N.Y. July 19, 2018), denying defendants' motion to exclude plaintiffs' expert in certified class action involving the sale of ultrasonic pest repellents.

*Penrose v. Buffalo Trace Distillery, Inc.*, 2018 WL 2334983 (E.D. Mo. Feb. 5, 2018), denying bourbon producers' motion to dismiss fraud and consumer protection claims in putative class action.

*West v. California Service Bureau, Inc.*, 323 F.R.D. 295 (N.D. Cal. 2017), certifying a nationwide class of "wrong-number" robocall recipients.

*Hart v. BHH, LLC*, 2017 WL 2912519 (S.D.N.Y. July 7, 2017), certifying nationwide class of purchasers of ultrasonic pest repellents.

*Browning v. Unilever United States, Inc.*, 2017 WL 7660643 (C.D. Cal. Apr. 26, 2017), denying motion to dismiss fraud and warranty claims in putative class action concerning facial scrub product.

*Brenner v. Procter & Gamble Co.*, 2016 WL 8192946 (C.D. Cal. Oct. 20, 2016), denying motion to dismiss warranty and consumer protection claims in putative class action concerning baby wipes.

*Hewlett v. Consolidated World Travel, Inc.*, 2016 WL 4466536 (E.D. Cal. Aug. 23, 2016), denying telemarketer's motion to dismiss TCPA claims in putative class action.

*Bailey v. KIND, LLC*, 2016 WL 3456981 (C.D. Cal. June 16, 2016), denying motion to dismiss fraud and warranty claims in putative class action concerning snack bars.

*Hart v. BHH, LLC*, 2016 WL 2642228 (S.D.N.Y. May 5, 2016) denying motion to dismiss warranty and consumer protection claims in putative class action concerning ultrasonic pest repellents.

*Marchuk v. Faruqi & Faruqi, LLP, et al.*, 100 F. Supp. 3d 302 (S.D.N.Y. 2015), granting clients' motion for judgment as a matter of law on claims for retaliation and defamation in employment action.

*In re Scotts EZ Seed Litigation*, 304 F.R.D. 397 (S.D.N.Y. 2015), granting class certification of false advertising and other claims brought by New York and California purchasers of grass seed product.

*Brady v. Basic Research, L.L.C.*, 101 F. Supp. 3d 217 (E.D.N.Y. 2015), denying diet pill manufacturers' motion to dismiss its purchasers' allegations for breach of express warranty in putative class action.

*Ward v. TheLadders.com, Inc.*, 3 F. Supp. 3d 151 (S.D.N.Y. 2014), denying online job board's motion to dismiss its subscribers' allegations of consumer protection law violations in putative class action.

*Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported "100% Pure Olive Oil" product.

*Ebin v. Kangadis Food Inc.*, 2014 WL 737878 (S.D.N.Y. Feb. 25, 2014), denying distributor's motion for summary judgment against nationwide class of purchasers of purported "100% Pure Olive Oil" product.

**Selected Class Settlements:**

*Hart v. BHH, LLC*, Case No. 1:15-cv-04804 (S.D.N.Y. Sept. 22, 2020), resolving class action claims regarding ultrasonic pest repellents.



*In re: Kangadis Food Inc.*, Case No. 8-14-72649 (Bankr. E.D.N.Y. Dec. 17, 2014), resolving class action claims for \$2 million as part of a Chapter 11 plan of reorganization, after a corporate defendant filed for bankruptcy following the certification of nationwide claims alleging that its olive oil was sold with false and misleading representations.

*West v. California Service Bureau*, Case No. 4:16-cv-03124-YGR (N.D. Cal. Jan. 23, 2019), resolving class action claims against debt-collector for wrong-number robocalls for \$4.1 million.

### **FREDERICK J. KLORCZYK III**

Frederick J. Klorczyk III is a Partner with Bursor & Fisher, P.A. Fred focuses his practice on complex business litigation and consumer class actions.

Fred has substantial experience in successfully litigating and resolving consumer class actions involving claims of mislabeling, false or misleading advertising, and privacy violations. In 2019, Fred certified both a California and a 10-state express warranty class on behalf of purchasers of a butter substitute. In 2014, Fred served on the litigation team in *Ebin v. Kangadis Food Inc.* At class certification, Judge Rakoff adopted Fred's choice of law fraud analysis and research directly into his published decision certifying a nationwide fraud class.

Fred is admitted to the State Bars of California, New York, and New Jersey, and is a member of the bars of the United States District Courts for the Northern, Central, Eastern, and Southern Districts of California, the Southern, Eastern, and Northern Districts of New York, the District of New Jersey, the Northern District of Illinois, the Eastern District of Missouri, the Eastern District of Wisconsin, and the Eastern District of Michigan, as well as the bars of the United States Court of Appeals for the Second and Ninth Circuits.

Fred received his Juris Doctor from Brooklyn Law School in 2013, graduating *magna cum laude* with two CALI Awards for the highest grade in his classes on conflict of laws and criminal law. During law school, Fred served as an Associate Managing Editor for the Brooklyn Journal of Corporate, Financial and Commercial Law and as an intern to the Honorable Alison J. Nathan of the United States District Court for the Southern District of New York and the Honorable Janet Bond Arterton of the United States District Court for the District of Connecticut. In 2010, Fred graduated from the University of Connecticut with a B.S. in Finance.

### **Selected Published Decisions:**

*Revitch v. New Moosejaw, LLC*, 2019 WL 5485330 (N.D. Cal. Oct. 23, 2019), denying defendants' motions to dismiss consumer's allegations of state privacy law violations in putative class action.

*In re Welspun Litigation*, 2019 WL 2174089 (S.D.N.Y. May 20, 2019), denying retailers' and textile manufacturer's motion to dismiss consumers' allegations of false advertising relating to purported "100% Egyptian Cotton" linen products.

*Martinelli v. Johnson & Johnson*, 2019 WL 1429653 (E.D. Cal. Mar. 29, 2019), granting class certification of California false advertising claims and multi-state express warranty claims brought by purchasers of a butter substitute.

*Porter v. NBTY, Inc.*, 2016 WL 6948379 (N.D. Ill. Nov. 28, 2016), denying supplement manufacturer's motion to dismiss consumers' allegations of false advertising relating to whey protein content.

*Weisblum v. Prophase Labs, Inc.*, 88 F. Supp. 3d 282 (S.D.N.Y. 2015), denying supplement manufacturer's motion to dismiss consumers' allegations of false advertising relating to a homeopathic cold product.

*In re Scotts EZ Seed Litigation*, 304 F.R.D. 397 (S.D.N.Y. 2015), granting class certification of false advertising and other claims brought by New York and California purchasers of grass seed product.

*Marchuk v. Faruqi & Faruqi, LLP, et al.*, 100 F. Supp. 3d 302 (S.D.N.Y. 2015), granting individual and law firm defendants' motion for judgment as a matter of law on plaintiff's claims for retaliation and defamation, as well as for all claims against law firm partners, Nadeem and Lubna Faruqi.

*Ebin v. Kangadis Food Inc.*, Case No. 13-4775 (2d Cir. Apr. 15, 2015), denying olive oil manufacturer's Rule 23(f) appeal following grant of nationwide class certification.

*Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561 (S.D.N.Y. 2014), granting nationwide class certification of false advertising and other claims brought by purchasers of purported "100% Pure Olive Oil" product.

*Ebin v. Kangadis Food Inc.*, 2014 WL 737878 (S.D.N.Y. Feb. 25, 2014), denying distributor's motion for summary judgment against nationwide class of purchasers of purported "100% Pure Olive Oil" product.

#### **Selected Class Settlements:**

*Gregorio v. Premier Nutrition Corp.*, Case No. 17-cv-05987-AT (S.D.N.Y. 2019) – final approval granted for \$9 million class settlement to resolve claims of protein shake purchasers for alleged false advertising.

*Ruppel v. Consumers Union of United States, Inc.*, Case No. 16-cv-02444-KMK (S.D.N.Y. 2018) – final approval granted for \$16.375 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

*In Re: Blue Buffalo Marketing And Sales Practices Litigation*, Case No. 14-MD-2562-RWS (E.D. Mo. 2016) – final approval granted for \$32 million class settlement to resolve claims of pet owners for alleged false advertising of pet foods.



*In re: Kangadis Food Inc.*, Case No. 8-14-72649 (Bankr. E.D.N.Y. Dec. 17, 2014) – resolved class action claims for \$2 million as part of a Chapter 11 plan of reorganization, after a corporate defendant filed for bankruptcy following the certification of nationwide claims alleging that its olive oil was sold with false and misleading representations.

### **YEREMEY O. KRIVOSHEY**

Yeremey O. Krivoshey is a Partner with Bursor & Fisher, P.A. Mr. Krivoshey focuses his practice on class actions involving false advertising, fraud, illegal fees in consumer contracts, invasion of privacy, and unlawful debt collection practices. He has represented clients in a wide array of civil litigation, including appeals before the Ninth Circuit.

Mr. Krivoshey served as trial counsel with Mr. Bursor in *Perez v. Rash Curtis & Associates*, where, in May 2019, the jury returned a verdict for a minimum of \$267 million in statutory damages under the Telephone Consumer Protection Act.

Mr. Krivoshey is admitted to the State Bar of California. He is also a member of the bars of the United States Court of Appeals for the Ninth Circuit and the United States District Courts for the Northern, Central, Southern, and Eastern Districts of California, as well as the District of Colorado.

Mr. Krivoshey graduated from New York University School of Law in 2013, where he was a Samuel A. Herzog Scholar. Prior to Bursor & Fisher, P.A., Mr. Krivoshey worked as a Law Clerk at Vladeck, Waldman, Elias & Engelhard, P.C, focusing on employment discrimination and wage and hour disputes. In law school, he has also interned at the American Civil Liberties Union and the United States Department of Justice. In 2010, Mr. Krivoshey graduated *cum laude* from Vanderbilt University.

### **Representative Cases:**

*Perez v. Rash Curtis & Associates*, Case No. 16-cv-03396-YGR (N.D. Cal. May 13, 2019). Mr. Krivoshey litigated claims against a national health-care debt collection agency on behalf of people that received autodialed calls on their cellular telephones without their prior express consent. Mr. Krivoshey successfully obtained nationwide class certification, defeated the defendant’s motion for summary judgment, won summary judgment as to the issue of prior express consent and the use of automatic telephone dialing systems, and navigated the case towards trial. With his partner, Scott Bursor, Mr. Krivoshey obtained a jury verdict finding that the defendant violated the Telephone Consumer Protection Act (“TCPA”) 534,712 times. Under the TCPA, class members are entitled to a minimum of \$500 per each call made in violation of the TCPA – in this case, a minimum of \$267 million for 534,712 unlawful calls.

### **Selected Published Decisions:**

*Bayol v. Zipcar, Inc.*, 2014 WL 4793935 (N.D. Cal. Sept. 25, 2014), denying enforcement of forum selection clause based on public policy grounds.

*Bayol v. Zipcar, Inc.*, 78 F. Supp. 3d 1252 (N.D. Cal. Jan. 29, 2015), denying car-rental company's motion to dismiss its subscriber's allegations of unlawful late fees.

*Brown v. Comcast Corp.*, 2016 WL 9109112 (C.D. Cal. Aug. 12, 2016), denying internet service provider's motion to compel arbitration of claims alleged under the Telephone Consumer Protection Act.

*Choi v. Kimberly-Clark Worldwide, Inc.*, 2019 WL 4894120 (C.D. Cal. Aug. 28, 2019), denying tampon manufacturer's motion to dismiss its customer's design defect claims.

*Horanzy v. Vemma Nutrition Co.*, Case No. 15-cv-298-PHX-JJT (D. Ariz. Apr. 16, 2016), denying multi-level marketer's and its chief scientific officer's motion to dismiss their customer's fraud claims.

*McMillion, et al. v. Rash Curtis & Associates*, 2017 WL 3895764 (N.D. Cal. Sept. 6, 2017), granting nationwide class certification of Telephone Consumer Protection Act claims by persons receiving autodialed and prerecorded calls without consent.

*McMillion, et al. v. Rash Curtis & Associates*, 2018 WL 692105 (N.D. Cal. Feb. 2, 2018), granting plaintiffs' motion for partial summary judgment on Telephone Consumer Protection Act violations in certified class action.

*Perez v. Indian Harbor Ins. Co.*, 2020 WL 2322996 (N.D. Cal. May 11, 2020), denying insurance company's motion to dismiss or stay assigned claims of bad faith and fair dealing arising out of \$267 million trial judgment.

*Perez v. Rash Curtis & Associates*, 2020 WL 1904533 (N.D. Cal. Apr. 17, 2020), upholding constitutionality of \$267 million class trial judgment award.

*Salazar v. Honest Tea, Inc.*, 2015 WL 7017050 (E.D. Cal. Nov. 12, 2015), denying manufacturer's motion for summary judgment as to customer's false advertising claims.

**Selected Class Settlements:**

*Juarez-Segura, et al. v. Western Dental Services, Inc.* (Cal. Sup. Ct.) \$35 million settlement to resolve claims of dental customers for alleged unlawful late fees.

*Moore v. Kimberly-Clark Worldwide, Inc.* (Ill. Cir. Ct.) \$10.5 million settlement to resolve claims of tampon purchasers for alleged defective products.

*Retta v. Millennium Prods., Inc.*, 2017 WL 5479637 (C.D. Cal. Aug. 22, 2017) granting final approval of \$8.25 million settlement to resolve claims of kombucha purchasers for alleged false advertising.

*Cortes v. National Credit Adjusters, L.L.C.* (E.D. Cal.) \$6.8 million settlement to resolve claims of persons who received alleged autodialed calls without prior consent in violation of the TCPA.

*Bayol et al. v. Health-Ade LLC, et al.* (N.D. Cal.) – granting final approval of \$3,997,500 settlement to resolve claims of kombucha purchasers for alleged false advertising.

### **PHILIP L. FRAIETTA**

Philip L. Fraietta is a Partner with Bursor & Fisher, P.A. Phil focuses his practice on data privacy, complex business litigation, consumer class actions, and employment law disputes. Phil has been named a “Rising Star” in the New York Metro Area by Super Lawyers<sup>®</sup> every year since 2019.

Phil has significant experience in litigating consumer class actions, particularly those involving data privacy claims under statutes such as the Michigan Preservation of Personal Privacy Act and the Illinois Biometric Information Privacy Act. Since 2016, Phil has recovered over \$100 million for class members in data privacy class action settlements. In addition to data privacy claims, Phil has significant experience in litigating and settling class action claims involving false or misleading advertising.

Phil is admitted to the State Bars of New York and New Jersey, the bars of the United States District Courts for the Southern District of New York, the Eastern District of New York, the Western District of New York, the Northern District of New York, the District of New Jersey, the Eastern District of Michigan, the Western District of Michigan, the Central District of Illinois, and the United States Court of Appeals for the Second Circuit. Phil was a Summer Associate with Bursor & Fisher prior to joining the firm.

Phil received his Juris Doctor from Fordham University School of Law in 2014, graduating cum laude. During law school, Phil served as an Articles & Notes Editor for the Fordham Law Review, and published two articles. In 2011, Phil graduated cum laude from Fordham University with a B.A. in Economics.

### **Selected Published Decisions:**

*Kolebuck-Utz v. Whitepages Inc.*, 2021 WL 157219 (W.D. Wash. Apr. 22, 2021), denying defendant’s motion to dismiss for alleged violations of Ohio’s Right to Publicity Law.

*Bergeron v. Rochester Institute of Technology*, 2020 WL 7486682 (W.D.N.Y. Dec. 18, 2020), denying university’s motion to dismiss for failure to refund tuition and fees for the Spring 2020 semester in light of the COVID-19 pandemic.

*Porter v. NBTY, Inc.*, 2019 WL 5694312 (N.D. Ill. Nov. 4, 2019), denying supplement manufacturer’s motion for summary judgment on consumers’ allegations of false advertising relating to whey protein content.

*Boelter v. Hearst Communications, Inc.*, 269 F. Supp. 3d 172 (S.D.N.Y. 2017), granting plaintiff’s motion for partial summary judgment on state privacy law violations in putative class action.

*Boelter v. Advance Magazine Publishers Inc.*, 210 F. Supp. 3d 579 (S.D.N.Y. 2016), denying publisher's motion to dismiss its subscriber's allegations of state privacy law violations in putative class action.

**Selected Class Settlements:**

*Edwards v. Hearst Communications, Inc.*, Case No. 15-cv-09279-AT (S.D.N.Y. 2019) – final approval granted for \$50 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

*Moeller v. Advance Magazine Publishers, Inc. d/b/a Condé Nast*, Case No. 15-cv-05671-NRB (S.D.N.Y. 2019) – final approval granted for \$13.75 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

*Gregorio v. Premier Nutrition Corp.*, Case No. 17-cv-05987-AT (S.D.N.Y. 2019) – final approval granted for \$9 million class settlement to resolve claims of protein shake purchasers for alleged false advertising.

*Ruppel v. Consumers Union of United States, Inc.*, Case No. 16-cv-02444-KMK (S.D.N.Y. 2018) – final approval granted for \$16.375 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

*Taylor v. Trusted Media Brands, Inc.*, Case No. 16-cv-01812-KMK (S.D.N.Y. 2018) – final approval granted for \$8.225 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

*Moeller v. American Media, Inc.*, Case No. 16-cv-11367-JEL (E.D. Mich. 2017) – final approval granted for \$7.6 million class settlement to resolve claims of magazine subscribers for alleged statutory privacy violations.

**SARAH N. WESTCOT**

Sarah N. Westcot is a Partner with Bursor & Fisher, P.A. Ms. Westcot focuses her practice on complex business litigation, consumer class actions, and employment law disputes. She has represented clients in a wide array of civil litigation, and has substantial trial and appellate experience.

Ms. Westcot served as trial counsel in *Ayyad v. Sprint Spectrum L.P.*, where Bursor & Fisher won a jury verdict defeating Sprint's \$1.06 billion counterclaim and securing the class's recovery of more than \$275 million in cash and debt relief.

Ms. Westcot also has significant experience in high-profile, multi-district litigations. She currently serves on the Plaintiffs' Steering Committee in *In re Zantac (Ranitidine) Products Liability Litigation*, MDL No. 2924 (S.D. Florida).

Ms. Westcot is admitted to the State Bars of California and Florida, and is a member of the bars of the United States District Courts for the Northern, Central, Southern, and Eastern Districts of California and the Southern and Middle Districts of Florida.

Ms. Westcot received her Juris Doctor from the University of Notre Dame Law School in 2009. During law school, Ms. Westcot was a law clerk with the Cook County State's Attorney's Office in Chicago and the Santa Clara County District Attorney's Office in San Jose, CA. She graduated with honors from the University of Florida in 2005.

**ALEC M. LESLIE**

Alec Leslie is an Associate with Bursor & Fisher, P.A. He focuses his practice on consumer class actions, employment law disputes, and complex business litigation.

Alec is admitted to the State Bar of New York and is a member of the bar of the United States District Courts for the Southern and Eastern Districts of New York. Alec was a Summer Associate with Bursor & Fisher prior to joining the firm.

Alec received his Juris Doctor from Brooklyn Law School in 2016, graduating *cum laude*. During law school, Alec served as an Articles Editor for Brooklyn Law Review. In addition, Alec served as an intern to the Honorable James C. Francis for the Southern District of New York and the Honorable Vincent Del Giudice, Supreme Court, Kings County. Alec graduated from the University of Colorado with a B.A. in Philosophy in 2012.

**BLAIR E. REED**

Blair Reed is an Associate with Bursor & Fisher, P.A. She focuses her practice on complex business litigation and consumer class actions.

Blair served on the trial team for *Perez v. Rash Curtis & Associates*, where Bursor & Fisher won a jury verdict of over \$265 million for violations of the Telephone Consumer Protection Act.

Blair is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Central, Southern, and Eastern Districts of California.

Blair received her Juris Doctor from the University of San Francisco School of Law in 2017, where she was a Dean's Scholar and served as a staff member for USF Law Review. During law school, Blair worked as a Law Clerk at a Bay Area law firm with a focus on wage and hour class actions. In addition, she worked as a Law Clerk at the Santa Cruz County District Attorney's Office. In 2013, Blair graduated from the University of San Francisco where she played on the Women's Tennis Team and studied Communications.

**ANDREW OBERGFELL**

Andrew Obergfell is an Associate with Bursor & Fisher, P.A. Andrew focuses his practice on complex civil litigation and class actions.

Andrew graduated from Drew University with *summa cum laude* distinction. While at Drew University, Andrew was captain of the varsity baseball team. Andrew was inducted into the Phi Beta Kappa honor society and was President of the college's chapter of the Pi Sigma Alpha political science honor society.

Andrew attended Seton Hall University School of Law, where he obtained his law degree with *magna cum laude* distinction, and was inducted into the prestigious Order of the Coif honor society. While in law school, Andrew was an editor and published author for the Seton Hall Law Review, participated in the Impact Litigation Clinic, and was a member of the Interscholastic Moot Court Board. As part of the Interscholastic Moot Court Board, Andrew received the national best-brief award in the 2015 ABA National Appellate Advocacy Competition, as well as the 2015 best student-written brief of the year award as recognized by Scribes, the American Society of Legal Writers.

Prior to joining the firm, Andrew practiced at an AmLaw 100 law firm. He also clerked for The Honorable Douglas M. Fasciale in the New Jersey Superior Court, Appellate Division, in Newark, New Jersey.

#### **STEPHEN BECK**

Stephen is an Associate with Bursor & Fisher, P.A. Stephen focuses his practice on complex civil litigation and class actions.

Stephen is admitted to the State Bar of Florida and is a member of the bars of the United States District Courts for the Southern and Middle Districts of Florida.

Stephen received his Juris Doctor from the University of Miami School of Law in 2018. During law school, Stephen received an Honors distinction in the Litigation Skills Program and was awarded the Honorable Theodore Klein Memorial Scholarship for excellence in written and oral advocacy. Stephen also received the CALI Award in Legislation for earning the highest grade on the final examination. Stephen graduated from the University of North Florida with a B.A. in Philosophy in 2015.

#### **BRITTANY SCOTT**

Brittany Scott is an Associate with Bursor & Fisher, P.A. Brittany focuses her practice on complex civil litigation and class actions. Brittany was an intern with Bursor & Fisher prior to joining the firm.

She is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern, Central, Southern, and Eastern Districts of California, the Eastern District of Wisconsin, and the Northern District of Illinois.

Brittany received her Juris Doctor from the University of California, Hastings College of the Law in 2019, graduating *cum laude*. During law school, Brittany was a member of the Constitutional Law Quarterly, for which she was the Executive Notes Editor. Brittany published a note in the Constitutional Law Quarterly entitled "Waiving Goodbye to First Amendment



Protections: First Amendment Waiver by Contract.” Brittany also served as a judicial extern to the Honorable Andrew Y.S. Cheng for the San Francisco Superior Court. In 2016, Brittany graduated from the University of California Berkeley with a B.A. in Political Science.

**MAX ROBERTS**

Max Roberts is an Associate with Bursor & Fisher, P.A. Max focuses his practice on complex civil litigation and class actions. Max was a Summer Associate with Bursor & Fisher prior to joining the firm.

Max is admitted to the State Bar of New York and is a member of the bars of the United States District Courts for the Northern, Southern, and Eastern Districts of New York.

Max received his Juris Doctor from Fordham University School of Law in 2019, graduating *cum laude*. During law school, Max was a member of Fordham’s Moot Court Board, the Brennan Moore Trial Advocates, and the Fordham Urban Law Journal, for which he published a note entitled *Weaning Drug Manufacturers Off Their Painkiller: Creating an Exception to the Learned Intermediary Doctrine in Light of the Opioid Crisis*. In addition, Max served as an intern to the Honorable Vincent L. Briccetti of the Southern District of New York and the Fordham Criminal Defense Clinic. Max graduated from Johns Hopkins University in 2015 with a B.A. in Political Science.

Outside of the law, Max is an avid triathlete.

**CHRISTOPHER R. REILLY**

Chris Reilly is an Associate with Bursor & Fisher, P.A. Chris focuses his practice on consumer class actions and complex business litigation.

Chris is admitted to the State Bar of Florida and is a member of the bar of the United States District Courts for the Southern and Middle Districts of Florida.

Chris received his Juris Doctor from Georgetown University Law Center in 2020. During law school, Chris clerked for the Senate Judiciary Committee, where he worked on antitrust and food and drug law matters under Senator Richard Blumenthal. He has also clerked for the Mecklenburg County District Attorney’s Office, the ACLU Prison Project, and the Pennsylvania General Counsel’s Office. Chris served as Senior Editor of Georgetown’s Journal of Law and Public Policy. In 2017, Chris graduated from the University of Florida with a B.A. in Political Science.

**RACHEL MILLER**

Rachel Miller is an Associate with Bursor & Fisher, P.A. Rachel focuses her practice on complex civil litigation and class actions.

Rachel is admitted to the State Bar of Florida and is a member of the bar of the United States District Court for the Southern District of Florida.

Rachel received her Juris Doctor from the University of Chicago Law School in 2015. During law school, Rachel participated in the Criminal & Juvenile Justice Clinic and received the 2014 Public Interest Law Society Award for Public Service. Rachel graduated *cum laude* from the University of Florida in 2012 with a B.A. in Political Science.

### **JULIA VENDITTI**

Julia Venditti is an Associate with Bursor & Fisher, P.A. Julia focuses her practice on complex civil litigation and class actions. Julia was a Summer Associate with Bursor & Fisher prior to joining the firm.

Julia is admitted to the State Bar of California and is a member of the bars of the United States District Courts for the Northern and Southern Districts of California.

Julia received her Juris Doctor in 2020 from the University of California, Hastings College of the Law, where she graduated *cum laude* with two CALI Awards for the highest grade in her Evidence and California Community Property classes. During law school, Julia was a member of the UC Hastings Moot Court team and competed at the Evans Constitutional Law Moot Court Competition, where she finished as a national quarterfinalist and received a best brief award. Julia was also inducted into the UC Hastings Honors Society and was awarded Best Brief and an Honorable Mention for Best Oral Argument in her First-Year Moot Court section. In addition, Julia served as a Research Assistant for her Constitutional Law professor, as a Teaching Assistant for Legal Writing & Research, and as a Law Clerk at the San Francisco Public Defender's Office. In 2017, Julia graduated *magna cum laude* from Baruch College/CUNY, Weissman School of Arts and Sciences, with a B.A. in Political Science.

### **SEAN L. LITTERAL**

Sean L. Litteral is an Associate with Bursor & Fisher, P.A. Sean focuses his practice on complex business litigation, consumer class actions, and employment law disputes. He holds degrees from Berea College, the London School of Economics and Political Science, and Berkeley Law.

Sean has represented clients in a variety of matters, including survivors against the Boy Scouts of America for covering up decades of sexual abuse; warehouse workers against Walmart for failing to comply with COVID-19 health and safety guidelines; and drivers against Corinthian International Parking Services for systematically violating California's wage and hour laws.

Sean clerked for the Alaska Supreme Court and served as a fellow for the U.S. House Committee on Education and Labor and the Atlanta City Council. He previously externed for the Special Litigation Section, Civil Rights Division of the U.S. Department of Justice; the Berkeley Environmental Law Clinic; and the Corporate Sustainability Program at the Pontificia Universidad Católica de Chile.



He has published in the UC Davis Environmental Law & Policy Journal, the Harvard Latinx Law Review, and the Stanford Law and Policy Review on a broad scope of matters, including corporate sustainability, international trade, and national security.

**JULIAN DIAMOND**

Julian Diamond is a Law Clerk with Bursor & Fisher, P.A. Julian focuses his practice on privacy law and class actions. Julian was a Summer Associate with Bursor & Fisher prior to joining the firm.

Julian received his Juris Doctor from Columbia Law School in 2020, where he was a Harlan Fiske Stone Scholar. During law school, Julian was Articles Editor for the Columbia Journal of Environmental Law. Prior to law school, Julian worked in education. Julian graduated from California State University, Fullerton with a B.A. in History and a single subject social science teaching credential.

**MATT GIRARDI**

Matt Girardi is an Associate with Bursor & Fisher, P.A. Matt focuses his practice on complex civil litigation and class actions. Matt was a Summer Associate with Bursor & Fisher prior to joining the firm.

Matt received his Juris Doctor from Columbia Law School in 2020, where he was a Harlan Fiske Stone Scholar. During law school, Matt was the Commentary Editor for the Columbia Journal of Tax Law, and worked for fledgling businesses with Columbia's Entrepreneurship and Community Development Clinic. In addition, Matt worked as an Honors Intern in the Division of Enforcement at the U.S. Securities and Exchange Commission. Prior to law school, Matt graduated from Brown University in 2016 with a B.A. in Economics, and worked as a Paralegal Specialist at the U.S. Department of Justice in the Antitrust Division.

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

No. 2:19-cv-12680 (ESK)(MAH)

THOMAS ISLEY, JEFFERY QUINN, VIPUL KHANNA, WALINGTON URENA, DANIEL GULICK, MICHAEL HENCHY JR., ANGELA BOVENZI, JONATHAN YEHUDA, and PAUL HOFFNER on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

BMW OF NORTH AMERICA, LLC

Defendant.

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

WHEREAS, pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure, the parties seek entry of an order preliminarily approving the settlement of this action pursuant to the settlement agreement fully executed on July 8, 2021 (the “Settlement Agreement” or “Settlement”), which, together with its attached exhibits, sets forth the terms and conditions for a proposed settlement of the Action and dismissal of the Action with prejudice; and

WHEREAS, the Court has read and considered the Settlement and its exhibits, and Plaintiffs’ Unopposed Motion for Preliminary Approval;

**NOW, THEREFORE, IT IS ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2021, ORDERED THAT:**

1. This Order incorporates by reference the definitions in the Settlement, and all terms used in this Order shall have the same meanings as set forth in the Settlement.

2. The Court preliminarily approves the Settlement as being within the realm of reasonableness to the Settlement Class, subject to further consideration at the Final Approval Hearing described below.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court certifies, solely for purposes of effectuating the Settlement, the Settlement Class as follows:

All persons or entities in the United States, the District of Columbia, and Puerto Rico who currently own or lease, or previously owned or leased, model-year 2013 through 2019 BMW 5 Series, 6 Series, 7 Series, X5 or X6 vehicles that contain the N63TU1 engine. Excluded from the Class are Defendant, as well as Defendant's parents, affiliates, employees, officers, and directors, attorneys, agents, insurers, third-party providers of extended warranty/service contracts, franchised dealers and their owners and immediate family members, independent repair/service facilities and their owners and immediate family members, fleet owners and operators, rental companies and vehicles, the attorneys representing Defendant in this case, the Judges and Mediator to whom this case is assigned and their immediate family members, all persons who request exclusion from (opt-out of) the Settlement, owners and lessees of vehicles purchased from salvage yards/junkyards/recyclers, vehicles that had a salvage title or deemed a total loss before a repair of any oil consumption related issue, anyone claiming personal injury or property damage other than to a Class Vehicle due to excessive oil consumption or through subrogation, all persons who previously released any claims encompassed in this Settlement, and owners and lessees of vehicles registered or transported outside the United States.

4. The Court appoints Joel D. Smith, Esq. and Frederick J. Klorczyk, III, Esq. of Bursor & Fisher, P.A. as Settlement Class Counsel for the Settlement Class. Any Settlement Class Member may enter an appearance in the action, at their own expense, either individually or through counsel. However, if they do not enter an appearance, they will be represented by Settlement Class Counsel.

5. The Court appoints Plaintiffs Thomas Isley, Jeffery Quinn, Vipul Khanna, Walington Urena, Daniel Gulick, Michael Henchy Jr., Angela Bovenzi, Jonathan Yehuda, and Paul Hoffner as Settlement Class Representatives.

6. The Court preliminarily finds, solely for purposes of the Settlement, that: (a) the Settlement Class is so numerous that joinder of all Settlement Class Members in the Action is impracticable; (b) there are questions of law and fact common to the Settlement Class that predominate over any individual questions; (c) the claims of the Settlement Class Representatives are typical of the claims of the Settlement Class; (d) the Settlement Class Representatives and Settlement Class Counsel have and will continue to fairly and adequately represent and protect the interests of the Settlement Class; and (e) a class action is superior to all other available methods for the fair and efficient adjudication of the controversy. The Court preliminarily finds that certification of the Settlement Class is appropriate when balanced against the risks relating to further litigation. It further appears that extensive and costly investigation, research, and discovery have been conducted such that counsel for the parties are reasonably able to evaluate the benefits of settlement, which will avoid substantial additional costs to the parties and reduce delay and risks associated with this action. It further appears that the Settlement has been reached as a result of intensive, arm's-length negotiations using an experienced third-party neutral.

7. The Court approves the form and content of the Settlement Class Notice (Exhibit A to the Settlement Agreement) and Claim Form (Exhibit B to the Settlement Agreement). The Court finds that the mailing of the Settlement Class Notice in the manner set forth in the Settlement, as well as the establishment of a settlement website and toll-free number, satisfies due process. The foregoing is the best notice practicable under the circumstances and shall

constitute due and sufficient notice to all Settlement Class Members entitled to Settlement Class Notice. The Court authorizes the Parties to make non-material modifications to the Settlement Class Notice and Claim Form prior to publication if they jointly agree that any such changes are appropriate. Accordingly, the Court directs the following notice procedures to be effectuated on or before \_\_\_\_\_, 2021 (ninety (90) days after the date of this Order):

a. Individual direct mail (first class) notice regarding the Settlement will be sent to all current and former owners and lessees of Class Vehicles using BMW NA's database and information from state motor vehicle agencies obtained by Experian Information Solutions, Inc. or similar provider; and

b. Publication on a website to be established and maintained by the Settlement Administrator.

8. The Court appoints Atticus, or such other similar company as selected by Defendant, as the Settlement Administrator. The Settlement Administrator is directed to perform all settlement administration duties set out in the Settlement Agreement, including establishing, maintaining, and administering a website dedicated to the Settlement which (a) will provide information about the Settlement including all relevant documents and (b) will provide a means by which Settlement Class Members may submit their claims by U.S. Mail or email. At least fifteen (15) days before the Final Approval Hearing, the Settlement Administrator will provide an affidavit to the Court attesting that Settlement Class Notice was disseminated in a manner consistent with the terms of the Settlement.

9. If Settlement Class Members do not wish to participate in the Settlement Class, they may exclude themselves. All requests to be excluded from the Settlement Class must be in writing, sent to the Settlement Administrator, and postmarked on or before the Opt-Out

Deadline, which is \_\_\_\_\_, 2021 (one hundred and twenty (120) days after the date of this Order).

a. Any request for exclusion must (1) state the Settlement Class Member's full name and current address; (2) identify the model year and Vehicle Identification Number ("VIN") of his/her vehicle(s) and the date(s) of purchase or lease; (3) specifically and clearly state his/her desire to be excluded from the Settlement and from the Settlement Class; and (4) include the Settlement Class Member's signature. No Request for Exclusion will be valid unless all of the information described above is included. All Settlement Class Members who exclude themselves from the Settlement Class will not be eligible to receive any monetary benefits under the settlement, will not be bound by any further orders or judgments entered for or against the Settlement Class, and will preserve their ability to independently pursue any claims they may have against BMW and other Released Persons.

10. Any Settlement Class Member who has not previously submitted a Request for Exclusion may object to the Settlement and appear at the Final Approval Hearing to support or oppose the approval of the Settlement Agreement. All objections and requests to appear at the Final Approval Hearing must be in writing and postmarked on or before \_\_\_\_\_, 2021 (one hundred and twenty (120) days after the date of this Order).

a. The following information must be provided in the Settlement Class Member's written objection: (1) his/her full name, current address, and current telephone number; (2) the model year of his/her Settlement Class Vehicle(s), as well as the VIN of his/her Settlement Class Vehicle(s) and the date(s) of purchase or lease; (3) whether the objection applies only to the objecting Class Member, to a specific subset of the Class, or to the entire Class; (4) a statement of the position(s) the objector wishes to assert, including the factual and

legal grounds for the position; (5) provide copies of relevant repair history or other proof that the objector has owned or leased the Settlement Class Vehicle (i.e., a true copy of a vehicle title, registration, or license receipt); and (6) any other documents that the objector wishes to submit in support of his/her position and of any other documents that the objector wishes to submit in support of his/her position. To be valid, an objection also must include a detailed statement of each objection asserted, including the grounds for objection. In addition, any Settlement Class Member objecting to the Settlement must provide a detailed statement of any objections to any other class action settlements submitted in any court, whether state, federal, or otherwise, in the United States in the previous five (5) years. If the Settlement Class Member has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she must affirmatively so state in the written materials provided in connection with the objection to this Settlement. Upon the filing of an objection, of their own choosing, Settlement Class Counsel may take the deposition of the objecting Settlement Class Member pursuant to the Federal Rules of Civil Procedure at an agreed-upon time and location, and to obtain any evidence relevant to the objection. Failure by an objector to make himself or herself available for deposition or comply with expedited discovery may result in the Court striking the objection. The Court may tax the costs of any such discovery to the objector or the objector's counsel if the Court determines that the objection is frivolous or is made for an improper purpose.

b. All objections and requests to appear at the Final Approval Hearing must be sent to the Court as well as to: Joel D. Smith, Esq., Bursor & Fisher, P.A., 1990 North California Boulevard, Suite 940, Walnut Creek, California 94696 and Frederick J. Klorczyk, III, Esq., Bursor & Fisher, P.A., 888 Seventh Avenue, New York, New York; and Christopher J.

Dalton and Daniel Z. Rivlin, Buchanan Ingersoll & Rooney PC, 550 Broad Street, Suite 810, Newark, New Jersey 07102.

11. Any Settlement Class Member who does not object in the manner provided in this Order shall be deemed to have waived such objections and shall forever be foreclosed from objecting to the fairness, reasonableness, or adequacy of the proposed settlement and any judgment approving the settlement.

12. The Court hereby schedules the Final Approval Hearing for \_\_\_\_\_, 202\_\_ at \_\_\_\_\_ a.m./p.m. (not less than one hundred and fifty (150) days after the date of this Order). The Final Approval Hearing will take place in Courtroom 8 of the United States District Court for the District of New Jersey, Newark Division, Frank R. Lautenberg U.S. Post Office & Courthouse Building, 2 Federal Square, Newark NJ 07102, to determine whether the proposed Settlement should be approved as fair, reasonable, and adequate, whether a judgment should be entered approving the Settlement, and whether Settlement Class Counsel's application for attorneys' fees and for incentive awards to the Settlement Class Representatives should be approved. The Court may adjourn the Final Approval Hearing without further notice to Settlement Class Members.

13. Settlement Class Members shall have until thirty (30) days after the date of the Final Approval Hearing to submit Claim Forms. Claim Forms must be postmarked by that date to be considered timely.

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Honorable Edward S. Kiel  
United States Magistrate Judge