

## **AMENDED CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

This Class Action Settlement Agreement and Release (“Agreement” or “Settlement Agreement”) is entered into between Plaintiffs Charles Rogers, Brian Beckner, Chad Maccanelli, Werner Rogmans, Garner Rickman, Darshan Patel, Alexander VanDamme, Irving Cohen, Angela Hughes, Charles Chapman, Miguel Fragoso, Tom Hoffman, Salomon Campos, Dean Werner, Alfredo Arias, Kyle Kern, Erica Olson, and Eric Stenglein (collectively, the “Settlement Class Representatives”) on behalf of themselves and as representatives of the Class, and Defendants BMW of North America, LLC and Bayerische Motoren Werke Aktiengesellschaft (the “BMW Defendants” and collectively with the Settlement Class Representatives, the “Parties”) in order to effect a full and final settlement and dismissal with prejudice of all claims against the BMW Defendants alleged in the Action (as identified herein), on the terms set forth below and to the full extent reflected herein. Defined terms shall have the meaning ascribed to them above and below.

### **I. RECITALS AND BACKGROUND**

A. On March 27, 2018, certain of the Settlement Class Representatives filed a complaint against the BMW Defendants and Robert Bosch LLC and Robert Bosch GmbH (together, the “Bosch Defendants”) in the United States District Court for the District of New Jersey. Compl. (Dkt. 1), *Rickman, et al. v. BMW of North America, LLC et al.*, Case No. 2:18-cv-04363 (D.N.J.) (the “*Rickman* action”). The complaint asserted claims for violations of the federal Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1962(C), (D), along with various state law fraudulent concealment claims and claims for violations of various state-law consumer protection laws, and generally alleged that the BMW Defendants defrauded consumers by developing, advertising and selling model year 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d vehicles that were equipped with so-called “defeat devices” that turned off or down emissions controls when the vehicles were in normal operation and not in a regulatory

testing environment. The complaint was amended on April 19, 2018 to add certain plaintiffs and additional state-law claims. (Dkt. 6).

B. On May 8, 2018, a separate complaint was filed against the BMW Defendants and the Bosch Defendants by a group of plaintiffs (including certain of the Settlement Class Representatives) also in the United States District Court for the District of New Jersey. Compl. (Dkt. 1), *Evans, et al. v. BMW of North America, LLC, et al.*, Case No. 2:18-cv-08935 (D.N.J.) (the “*Evans* action”).

C. On August 3, 2018, Plaintiffs’ counsel consolidated the claims asserted in the *Rickman* action and the *Evans* action through the filing of a Consolidated Class Action Complaint (the “CCAC”) in the *Rickman* action (Dkt. 26), and voluntarily dismissed the *Evans* action.

D. On August 17, 2018, BMW NA filed a motion to dismiss the CCAC. (Dkt. 29).<sup>1</sup>

E. On June 27, 2019, the Court entered an Order granting BMW NA’s motion to dismiss the CCAC, dismissing Plaintiffs’ claims without prejudice (Dkt. 60).

F. On September 20, 2019, Plaintiffs filed the First Amended Consolidated Class Action Complaint (the “FAC”), on behalf of forty-three (43) Plaintiffs asserting RICO claims for violations of 18 U.S.C. § 1962(C), (D), along with violations of various state-law consumer protection laws. (Dkt. 65).<sup>2</sup>

G. On November 6, 2019, BMW NA filed a motion to dismiss the FAC. (Dkt. 68).<sup>3</sup>

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<sup>1</sup> At the time the motion was filed, BMW AG had not been served with the CCAC, and thus did not join in BMW NA’s motion to dismiss.

<sup>2</sup> The FAC’s case caption is *Hu, et al. v. BMW of North America LLC, et al.*, No 18-cv-4363-EP-JBC (D.N.J.). The case caption for the Action was never changed to *Hu*, however, and has remained *Rickman, et al. v. BMW of North America, LLC, et al.*, No 18-cv-4363-EP-JBC (D.N.J.) on the case docket.

<sup>3</sup> At the time the motion was filed, BMW AG had not been served with the FAC, and thus did not join in BMW NA’s motion to dismiss.

H. On June 25, 2020, the Court entered an Order granting in part and denying in part BMW NA's motion to dismiss the FAC, in which it dismissed with prejudice Plaintiffs' RICO claims (Dkt. 80). Plaintiffs filed a motion for reconsideration of dismissal of the RICO claims, and on February 2, 2021, the Court denied that motion. (Dkt. 102). Plaintiffs subsequently filed a motion seeking certification of an order for interlocutory appeal under 28 U.S.C. § 1292(b) or, in the alternative, entry of partial final judgment under Federal Rule of Civil Procedure 54(b). (Dkt. 106). On March 24, 2021, the Court denied Plaintiffs' motion. (Dkt. 114).

I. On October 14, 2020, BMW AG was served with the FAC. (*See* Dkt. 93). On December 16, 2020, BMW AG filed a motion to dismiss the FAC for lack of personal jurisdiction, (Dkt. 99), and on May 11, 2021, the Court denied that motion. (Dkt. 129).

J. Following the Court's rulings on BMW NA's motion to dismiss and BMW AG's motion to dismiss for lack of personal jurisdiction, the BMW Defendants filed answers to the FAC. The Parties subsequently engaged in extensive fact discovery for two years, including production by the BMW Defendants of more than 1.3 million pages of documents; production by Plaintiffs of approximately 28,000 pages of documents; responses to several sets of document requests, interrogatories and requests to admit; third party document subpoenas and government record requests; depositions of BMW Defendant fact witnesses and corporate representatives under Rule 30(b)(6); depositions of Plaintiffs; and inspections of Plaintiffs' vehicles.

K. Beginning on June 22, 2023, the Parties began exploring a potential resolution to this Action. The parties continued to engage in active settlement discussions and agreed to pause further discovery to further these discussions. On August 21, 2023, the Parties agreed to engage in formal mediation.

L. On September 15, 2023, the Parties participated in an in-person mediation before the Honorable Wayne Andersen (Ret.), who assisted the Parties in arms-length negotiations concerning a proposed classwide settlement. The Parties reached agreement on a settlement in principal at the mediation and later signed a term sheet on September 29, 2023.

M. The Settlement was reached as a result of extensive, arms-length negotiations between the Parties and their counsel, with the assistance of Judge Andersen. Before and during the mediation, the Parties had an arms-length exchange of sufficient information and data, most notably through the extensive discovery outlined above, to permit Plaintiffs and their counsel to evaluate the claims and potential defenses and to meaningfully conduct informed settlement discussions, and for the BMW Defendants to do the same.

N. Class Counsel (as defined below) have analyzed and evaluated the factual and legal issues presented in the Action, the merits of the claims made against the BMW Defendants and the impact of this Agreement on the Settlement Class Representatives and the Settlement Class. Based upon their analysis and evaluation of several factors, including Class Counsel's significant experience in successfully litigating and resolving analogous actions across the country, Settlement Class Representatives and Class Counsel recognize the substantial risks of continued litigation, including the possibility that the Action, if not settled now, might not result in any recovery whatsoever, or might result in a recovery that is less favorable and that would not occur for several years.

O. Class Counsel and the Settlement Class Representatives, after taking into account the foregoing, along with the risks and costs of further litigation, are satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate, and that a settlement of the Action

and the prompt provision of effective relief to the Settlement Class are in the best interests of the Settlement Class Members.

P. The BMW Defendants have denied, and continue to deny, each and every allegation of liability, wrongdoing, and damages. The BMW Defendants further deny that the Action may be properly maintained as a class action except for settlement purposes. Nonetheless, without admitting or conceding any liability or damages whatsoever, without admitting any wrongdoing, and without conceding the appropriateness of class treatment for claims asserted in any current or future complaint (except for settlement purposes in the Action), the BMW Defendants have agreed to settle the Action on the terms and conditions set forth in this Agreement to avoid the substantial expense, inconvenience, burden and disruption of continued litigation.

Q. The Parties agree and understand that neither this Agreement nor the Settlement it represents shall be construed as an admission by the BMW Defendants of any wrongdoing whatsoever, including, without limitation, any admission of any violation of any statute, regulation or law or any admission of liability based on any of the claims or allegations asserted or that could have been asserted in the Action.

R. The Parties agree and understand that neither this Agreement nor the Settlement it represents shall be construed or admissible as an admission or acknowledgment by the BMW Defendants in the Action or any other proceedings that the Settlement Class Representatives' claims or any other similar claims are or would be suitable for class treatment if the Action proceeded through both litigation and trial.

S. The Parties desire to compromise and settle all issues and claims that have been brought or could have been brought against the Released BMW Parties in the Action.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein, and subject to the final approval of the Court, the Action and the Released Claims shall be fully and finally compromised, settled, and released, and the Action shall be dismissed with prejudice, upon and subject to the terms and conditions set forth in this Agreement.

## **II. DEFINITIONS**

The defined terms set forth in this Agreement have the meanings ascribed to them when capitalized and as set forth below.

A. **Action** means *Rickman, et al. v. BMW of North America, LLC et al.*, No 18-cv-4363-EP-JBC (D.N.J.).

B. **Agreement** or **Settlement Agreement** means this Class Action Settlement Agreement and Release, including all exhibits hereto.

C. **Attorneys' Fees and Costs** means the total award of attorneys' fees, costs, and expenses sought by Class Counsel and allowed by the Court.

D. **CAFA Notices** means the notice of this Settlement to be served by the Settlement Administrator upon state and federal regulatory authorities as required by the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

E. **Cash Award** means the payment(s) to Settlement Class Members pursuant to Section V(C).

F. **Claim** means the claim of any Settlement Class Member or his, her, or its representative submitted on a Claim Form as provided in this Settlement Agreement.

G. **Claimant** means a Settlement Class Member who has completed and submitted a Claim Form and all required documentation, as set forth in more detail in Exhibit B.

H. **Claim Form** means the paper or online form used to submit a Claim under this Settlement Agreement, attached as Exhibit C.

I. **Claim Submission Deadline** means ninety days (90) days after the Fairness Hearing as scheduled in the Preliminary Approval Order, which date shall be specified in the Class Notice.

J. **Claims Period** means the time period during which Settlement Class Members may submit a Claim. The Claims Period begins on the Notice Date and shall end on the Claim Submission Deadline.

K. **Claims Program** means the program through which Settlement Class Members may file Claims and, if eligible, obtain benefits under this Settlement Agreement, as described in Section IV.

L. **Class Counsel** means collectively the firms of Hagens Berman Sobol Shapiro, LLP; Carella Byrne Cecchi Brody Agnello, P.C.; and Seeger Weiss LLP.

M. **Class Notice** means the Court-approved form of notice in substantially the same form as Exhibits B and D, which will notify the Settlement Class of preliminary approval of the Settlement and the scheduling of the Final Approval Hearing, among other things.

N. **Class Notice Program** means the program for distributing information about the Settlement to the Settlement Class following the terms set forth in Section VIII and as described further in Exhibit E.

O. **Class Vehicle** means a model year 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d vehicle.

P. **Court** means the United States District Court, District of New Jersey.

Q. **Cy Pres Contribution Amount** means the amounts remaining in the Net Settlement Fund following payment of all amounts due to be distributed under this Agreement.

Without limiting the foregoing, the *Cy Pres* Contribution Amount shall include all uncashed Cash Awards made by check.

R. **Day** or **Days** has the meaning ascribed to it in Fed. R. Civ. P. 6, and all time periods specified in this Settlement Agreement shall be computed in a manner consistent with Fed. R. Civ. P. 6.

S. **Deposit Amount** means the sum of ninety-five thousand dollars (\$95,000), which amount the BMW Defendants shall pay or cause to be paid into the Escrow Account within seven (7) days after the Preliminary Approval Date to pre-pay certain of the Settlement Administrator's fees and costs. Payment of the Deposit Amount shall constitute a credit in like amount against the Settlement Amount.

T. **Effective Date** means the date defined in Section XVII.

U. **Escrow Account** means the separate, interest-bearing escrow account to be established by the Settlement Administrator under the terms agreed upon with Class Counsel and the BMW Defendants' Counsel. The costs of administering and maintaining the Escrow Account shall be paid from the Settlement Amount, and any and all interest generated by the Escrow Account shall be added to the Settlement Amount.

V. **Fairness Hearing** means the hearing conducted by the Court to determine whether to approve this Settlement and to determine the fairness, adequacy and reasonableness of this Settlement.

W. **Final** when referring to a judgment or order, means: (a) the judgment is a final, appealable judgment; and (b) either (i) no appeal has been taken from the judgment as of the date on which all times to appeal therefrom have expired or (ii) an appeal or other review proceeding of the judgment having been commenced, such appeal or other review is finally concluded and no



longer is subject to review by any court, whether by appeal, petitions for rehearing or re-argument, petitions for rehearing *en banc*, petitions for writ of *certiorari*, or otherwise, and such appeal or other review has been finally resolved in a manner that affirms the Final Order and Judgment in all material respects.

X. **Final Order and Judgment** means the Order entered by the Court granting the Motion for Final Approval of the Settlement and entering final judgment.

Y. **Long Form Notice** means the Long Form Notice substantially in the form attached hereto as Exhibit D.

Z. **Net Settlement Fund** or **Net Settlement Amount** means the Settlement Amount minus any Court-approved Attorneys' Fees and Costs, Service Awards, Notice and Administrative Costs, Taxes and Tax Expenses.

AA. **Notice and Administrative Costs** means the reasonable and authorized costs and expenses of providing notice in accordance with this Agreement and the Preliminary Approval Order and any other orders of the Court, including the costs of identifying members of the Settlement Class, obtaining and updating mailing and/or email addresses for members of the Settlement Class and providing the Class Notice and CAFA Notices; and all reasonable and authorized costs and expenses incurred by the Settlement Administrator in administering the Settlement, including but not limited to costs and expenses associated with assisting Settlement Class Members, processing claims, escrowing funds, issuing and mailing awards, paying Taxes and Tax Expenses and other reasonable and authorized fees and expenses of the Settlement Administrator.

BB. **Notice Date** means the first day on which the Settlement Administrator disseminates the Short Form Notice.

CC. **Opt-Out** means a member of the Settlement Class who properly and timely submits a request for exclusion from the Settlement as set forth in Section IX.

DD. **Opt-Out List** means the list compiled by the Settlement Administrator pursuant to Section IX(E), identifying those members of the Settlement Class who have submitted complete and proper requests to opt-out.

EE. **Opt-Out and Objection Date** means the date by which a request for exclusion must be sent to the Settlement Administrator in order for a Settlement Class Member to be excluded from the Settlement Class, and the date by which Settlement Class Members must file objections with the Court, if any, to the Settlement. The Opt-Out and Objection Date shall be one hundred sixty (160) days after the Preliminary Approval Date.

FF. **Parties** means the Settlement Class Representatives and the BMW Defendants. The Settlement Class Representatives shall be referred to as one (1) “Party” with the BMW Defendants being the other “Party.”

GG. **Person** means an individual, corporation, partnership, limited partnership, limited liability company, association, member, joint stock company, estate, legal representative, trust, unincorporated association, any business or legal entity, and such individual’s or entity’s spouse, heirs, predecessors, successors, representatives, and assignees.

HH. **Preliminary Approval Date** means the date the Preliminary Approval Order has been executed and entered by the Court.

II. **Preliminary Approval Order** means the order to be entered by the Court preliminarily approving the Settlement Agreement as defined in Section XIII(A) of this Agreement and attached hereto without material alteration as Exhibit A.

JJ. **Release** means the release and discharge, as of the Effective Date, by the Releasing Parties of the Released BMW Parties of and from all Released Claims.

KK. **Released Claims** means any and all suits, claims, controversies, rights, agreements, promises, debts, liabilities, accounts, reckonings, demands, damages, judgments, obligations, covenants, contracts, costs (including, without limitation, attorneys' fees and costs except as provided for in the Settlement Agreement), losses, expenses, actions or causes of action of every nature, character, and description, in law or in equity, whether known or unknown, suspected or unsuspected, contingent or non-contingent, that any Releasing Party ever had, or has, or may have in the future, upon or by reason of any matter, cause, or thing whatever, arising out of, concerning, or relating in any way to the subject matter of the Action, including without limitation (1) any claims or allegations that are, were, or could have been asserted in the Action; (2) any claims for fines, penalties, economic damages, punitive damages, exemplary damages, statutory damages, liens, injunctive relief, attorneys' fees (except as provided in the Settlement Agreement), expert, consultant, or other litigation fees or costs; or (3) any other liabilities that were or could have been asserted in any civil, administrative, or other proceeding, including arbitration ("Released Claims"). The Released Claims include without limitation any and all such claims, demands, actions, or causes of action regardless of the legal or equitable theory or nature under which they are based or advanced including without limitation legal and/or equitable theories under any federal, state, provincial, local, tribal, administrative, or international law, or statute, ordinance, code, rule, regulation, contract, common law, equity, or any other source, and whether based in strict liability, negligence, gross negligence, punitive damages, nuisance, trespass, breach of warranty, misrepresentation, breach of contract, fraud, or any other legal or equitable theory, whether existing under the laws of the United States, a state, territory, or possession of the United

States, or of any other foreign or domestic state, territory, county, city, or municipality, or any other legal or governmental body, whether existing now or arising in the future, that arise from, in whole or in part, or in any way relate to the Action. This release does not cover, include, or release claims relating to enforcement of this Settlement.

LL. **Released BMW Parties** include, without limitation, (1) the BMW Defendants, BMW Manufacturing Co., LLC and any former, present, and future owners, shareholders (direct or indirect), members (direct or indirect), directors, officers, members of management or supervisory boards, employees, attorneys, affiliates, parent companies (direct or indirect), subsidiaries (direct or indirect), predecessors, and successors of any of the foregoing (the “Entities”); (2) any and all contractors, subcontractors, joint venture partners, consultants, auditors, dealers, and suppliers of the Entities; (3) any and all persons and entities indemnified by any Entity with respect to the Action; (4) any and all other persons and entities involved in the design, research, development, manufacture, assembly, testing, sale, leasing, repair, warranting, marketing, advertising, public relations, promotion, or distribution of any Class Vehicle, even if such persons are not specifically named in this Section; (5) Settlement Administrator; (6) lenders, creditors, financial institutions, or any other parties that financed any purchase or lease of a Class Vehicles; (7) for each of the foregoing, their respective former, present, and future affiliates, parent companies, subsidiaries, predecessors, shareholders, indemnitors, subrogees, spouses, joint venturers, general or limited partners, attorneys, assigns, principals, officers, directors, members of management or supervisory boards, employees, members, agents, representatives, trustees, insurers, reinsurers, heirs, beneficiaries, wards, estates, executors, administrators, receivers, conservators, personal representatives, divisions, dealers, and suppliers; and (8) any other person or entity that is or could be alleged to be responsible or liable in any way whatsoever, whether

directly or indirectly, for the Action. Notwithstanding the foregoing, the Released Parties do not include Robert Bosch LLC, Robert Bosch GmbH, and their affiliates.

MM. **Releasing Party or Parties** means Settlement Class Representatives, Class Counsel, and all Settlement Class Members, on behalf of themselves and their agents, heirs, executors and administrators, successors, assigns, insurers, attorneys (including any attorney engaged by Settlement Class Members who is not Class Counsel), representatives, shareholders, owners associations, and any other legal or natural persons who may claim by, through, or under them.

NN. **Service Awards** means compensation for the Settlement Class Representatives in the Action for their time and effort undertaken in this Action as defined in Section XI(B), which shall be subject to Court approval.

OO. **Settlement** means the settlement set forth in this Agreement.

PP. **Settlement Administrator** means the third-party agent or administrator agreed to by the Parties and appointed by the Court to implement the notice and other settlement requirements of this Agreement. The Parties agree that Epiq shall serve as Settlement Administrator, subject to approval by the Court.

QQ. **Settlement Amount** means the sum of six million U.S. dollars (\$6,000,000.00), which shall be used to pay Cash Awards, Notice and Administration Costs (including the Deposit Amount), Attorneys' Fees and Costs, Service Awards, Taxes and Tax Expenses.

RR. **Settlement Class or Class** means all Persons who purchased or leased a model year 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d vehicle on or before the Preliminary Approval Date, subject to the exclusions set forth in Section III(A).

SS. **Settlement Class Member** means a Person who falls within the definition of the Settlement Class as set forth in Section II(RR) and who has not timely Opted Out of the Settlement Class.

TT. **Settlement Class Representatives** means a Plaintiff who meets the Class definition set forth in Section III(A) of this Settlement Agreement, and who has agreed to represent the Settlement Class for purposes of obtaining approval of, and effectuating, this Settlement Agreement, as listed in the moving papers submitted for the motion for preliminary approval.

UU. **Settlement Website** means the website dedicated to the Settlement to be created and maintained by the Settlement Administrator, as set forth in Section VIII(C).

VV. **Short Form Notice** means the Short Form Notice(s) substantially in the form as attached hereto as Exhibit B.

WW. **Taxes** shall mean all taxes (including any estimated taxes, interest or penalties) arising from the income earned by the Escrow Account.

XX. **Tax Expenses** shall mean expenses and costs incurred in connection with the operation and implementation of the Escrow Account (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) any necessary tax returns).

YY. **The BMW Defendants' Counsel or Counsel for the BMW Defendants** means Sean M. Berkowitz, Arthur F. Foerster, Johanna Spellman, and Kevin M. McDonough of Latham & Watkins LLP, and Thomas P. Branigan and Matthew G. Berard of Bowman and Brooke LLP.

ZZ. **Valid Claim** means a Claim Form submitted by a Settlement Class Member that is (a) submitted timely and in accordance with the directions on the Claim Form and the provisions of this Agreement; (b) is fully completed and executed by the Settlement Class Member under

penalty of perjury and provides all required information; and (c) is approved for payment by the Settlement Administrator.

AAA. **VIN List** means a list of VIN numbers for the Class Vehicles.

BBB. Other capitalized terms used in this Agreement but not defined in this Section shall have the meanings ascribed to them elsewhere in this Agreement.

CCC. The plural of any defined term includes the singular, and the singular of any defined term includes the plural, as the case may be.

### **III. PRELIMINARY CERTIFICATION OF SETTLEMENT CLASS**

A. The Parties stipulate to certification, for settlement purposes only, of a Settlement Class defined as follows:

All Persons who purchased or leased a model year 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d vehicle on or before the Preliminary Approval Date.

Specifically excluded from the Settlement Class are the following persons:

(i) the BMW Defendants and their officers, directors, and employees; and the BMW Defendants' corporate affiliates and corporate affiliates' officers, directors, and employees;

(ii) Class Counsel;

(iii) the judges who have presided over the Action;

(iv) Persons who have settled with, released, or otherwise had claims dismissed with prejudice or had claims adjudicated on the merits against the BMW Defendants arising from the same allegations or circumstances as the Action;<sup>4</sup> and

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<sup>4</sup> Plaintiffs whose claims were dismissed from the Action with prejudice to refiling their claims against the BMW Defendants as an individual or on behalf of a putative class but without prejudice to their claims as an absent putative class member are not excluded from the Settlement Class.

(iv) all other Persons who timely elect to become opt-outs from the Settlement Class in accordance with the Court's Orders and as approved by the Court.

B. Solely for the purpose of implementing this Agreement and effectuating the Settlement, the BMW Defendants stipulate to the Court entering an order preliminarily certifying the Settlement Class, appointing the Settlement Class Representatives as representatives of the Settlement Class, and appointing the following as Class Counsel for the Settlement Class:

James E. Cecchi  
Carella, Byrne, Cecchi, Brody & Agnello, P.C.  
5 Becker Farm Road,  
Roseland, N.J. 07068

Christopher Seeger  
Seeger Weiss LLP  
55 Challenger Road, Sixth Floor  
Ridgefield Park, NJ 07660

Steve Berman  
Hagens Berman Sobol Shapiro LLP  
1301 Second Avenue  
Suite 2000  
Seattle, WA 98101

C. Solely for the purpose of this Settlement, the BMW Defendants stipulate that the Settlement Class Representatives and Class Counsel are adequate representatives of the Settlement Class.

#### **IV. CLAIMS PROGRAM**

A. The process for submitting a Claim is to be as simple and convenient to Class Members as possible, who will only be required to file a single Claim Form per Class Vehicle, consistent with the integrity of the Claims Program.

B. The Claims Program described in this Settlement Agreement shall be the sole and exclusive process for submitting a Claim for any Cash Award, and any Settlement Class Member



seeking a Cash Award is required to comply fully with the deadlines and other requirements for the Claims Program.

C. To make a Claim under the terms of this Agreement, Settlement Class Members must submit, during the Claims Period, a Claim Form substantially similar to the Claim Form attached hereto as Exhibit C along with required documentation. The Settlement Administrator will review each Settlement Class Member's Claim Form, document package and information for completeness and eligibility.

## V. SETTLEMENT RELIEF

Pursuant to the terms and conditions set forth below, the BMW Defendants agree to provide the following to the Settlement Class:

A. **Settlement Payment.** Pursuant to the terms and conditions set forth herein and in consideration of the promises, agreements and undertakings of the Settlement Class Representatives and Settlement Class set forth herein, the BMW Defendants agree to pay or cause to be paid the Settlement Amount into the Escrow Account. Payment of the Settlement Amount shall be "ALL-IN" and in *full* satisfaction of *all* Settlement costs, including, without limitation, Cash Awards, the Deposit Amount, Notice and Administrative Costs, Attorneys' Fees and Costs, Service Awards, Taxes and Tax Expenses. In no event shall the BMW Defendants be obligated to contribute any amount over the Settlement Amount to satisfy their Settlement payment obligations under this Agreement.

B. **Escrow Account.** Within seven (7) days after the Preliminary Approval Date, the BMW Defendants will pay the Deposit Amount into the Escrow Account. Within ten (10) days after the Effective Date, the BMW Defendants will deposit into the Escrow Account the outstanding balance of the Settlement Amount, *i.e.*, the Settlement Amount less the Deposit

Amount and any other amounts previously advanced by the BMW Defendants to the Settlement Administrator for Notice and Administrative Costs.

C. **Cash Awards to Settlement Class Members.** The Settlement Administrator will distribute the Net Settlement Amount from the Escrow Account on a *pro rata* basis among all Settlement Class Members who submit a Valid Claim and in accordance with the terms of this Agreement. Settlement Class Members who submit a Valid Claim will be entitled to a Cash Award in an amount proportional to their length of ownership and/or lease of the Class Vehicle. The Parties shall agree on resolution process to resolve disputed claims, to be administered by the Settlement Administrator.

D. **Timing of Cash Awards.** The Settlement Administrator shall use its best efforts to begin distributing shares of the Settlement proceeds to Settlement Class Members who submitted Valid Claims within sixty (60) days after the Effective Date. The Settlement Administrator shall use its best efforts to have completed the distribution to Settlement Class Members not later than ninety (90) days after the Effective Date.

E. **Methods of Payments.** The Settlement Class Members who submit Valid Claims will presumptively be paid by a check issued by the Settlement Administrator, and the check will be mailed by first class U.S. Mail by the Settlement Administrator to the Settlement Class Member. The Settlement Administrator will also provide a form on the Settlement Website that Settlement Class Members may visit to (a) complete and submit an online Claim Form; (b) download a Claim Form to complete and submit in hard copy; (c) provide an updated mailing address for sending a check; or (d) elect to receive the Cash Award by Venmo, PayPal, ACH, or Zelle instead of a paper check. Any Settlement Class Members who wish to receive the Cash Award at an updated address

or by Venmo, PayPal, ACH, or Zelle must provide an updated address or elect to receive the Cash Award by Venmo, PayPal, ACH, or Zelle no later than thirty (30) days after the Effective Date

F. **Check Cashing Deadlines & Second Distribution.** All Cash Awards issued to Settlement Class Members via check will state on the face of the check that it will expire and become null and void unless cashed within ninety (90) days after the date of issuance. To the extent that any funds remain unclaimed in the Escrow Account two hundred ten (210) days after the Effective Date, there shall be a second round of distributions to Settlement Class Members who cashed their checks or successfully received an electronic payment via the first distribution of Cash Awards. Any Cash Awards issued via check in the Second Distribution will state on the face of the check that it will expire and become null and void unless cashed within ninety (90) days after the date of issuance. To the extent funds remain unclaimed after the Second Distribution, additional distributions will be made to Settlement Class Members who cashed their initial checks in the same manner. The costs of carrying out each round of distributions shall be paid to the Settlement Administrator from the Net Settlement Fund. However, no further rounds of distributions will be made if Class Counsel, the BMW Defendants and the Settlement Administrator determine that a re-distribution is not cost effective. Upon such a determination, the remainder of the funds will be distributed as *cy pres*.

G. ***Cy Pres* Contribution.** Within thirty (30) days after the date by which the Settlement Administrator completes the process for stopping payment on any Cash Award checks from the Second Round of Distributions, or on any Cash Award checks for any additional distributions made pursuant to Section V(F), the *Cy Pres* Contribution Amount, if any, shall be provided to such recipients that are agreed upon by the Parties and reported to the Court.

**VI. TAX TREATMENT OF SETTLEMENT ACCOUNT; CONSEQUENCES OF TERMINATION**

A. The Parties will treat the Escrow Account as a “qualified settlement fund” within the meaning of Treasury Regulations 1.468B-1 through 1.468B-5, 26 C.F.R. 1.468B-1 through 1.468B-5 (1992). They will treat the Escrow Account as a qualified settlement fund for all reporting purposes under the federal tax laws. In addition, the Settlement Administrator will timely make the “relation-back election” (as defined in Treasury Regulation 1.468B-1) back to the earliest permitted date. Such election will be made in compliance with the procedures and requirements contained in such regulations. It will be the responsibility of the Settlement Administrator to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

B. The Settlement Administrator shall act as the Escrow Agent within the meaning of section 468B of the Internal Revenue Code of 1986 and Treasury Regulation 1.468B for the Escrow Account. The Settlement Administrator will timely and properly file all informational and other tax returns necessary or advisable with respect to the Escrow Account (including without limitation the returns described in Treasury Regulation 1.468B-2(k)). Such returns (as well as the election described in Section VI(A)) will be consistent with this Section and Section VI(A) and in any event will reflect that all taxes (including any estimated taxes, interest or penalties) on the income earned by the Escrow Account will be paid out of the Escrow Account.

C. All Taxes and Tax Expenses will be paid out of the Escrow Account; in no event will the BMW Defendants have any liability or responsibility for the Taxes, the Tax Expenses, or the filing of any tax returns or other documents with the Internal Revenue Service or any other state or local taxing authority. The Settlement Administrator will timely pay taxes and Tax Expenses out of the Escrow Account without prior Court order. The Settlement Administrator

will be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Settlement Class Members any funds necessary to pay such amounts (as well as any amounts that may be required to be withheld under Treasury Regulation 1.468B-2(1)-(2)). The BMW Defendants are not responsible for and shall have no liability therefor, or for any reporting requirements that may relate thereto. The Parties agree to cooperate with the Settlement Administrator, each other and their respective tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Section and the Agreement.

## **VII. DUTIES OF THE SETTLEMENT ADMINISTRATOR**

A. The Settlement Administrator shall be responsible for, without limitation: (i) using the VIN List to identify members of the Settlement Class and to obtain mailing and/or email addresses for members of the Settlement Class; (ii) printing and disseminating, via mail and e-mail to the Settlement Class, the Short Form Notice; (iii) sending CAFA Notices; (iv) arranging for the publication of notice as set forth in the Class Notice Program; (v) establishing the Settlement Website and toll-free voice response unit with message capabilities to which Settlement Class Members may refer for information about the Action and the Settlement; (vi) establishing a mailing address for the receipt of any correspondence; (vii) promptly furnishing to Class Counsel and Counsel for the BMW Defendants copies of any requests for exclusion or objections; (viii) providing weekly reports to Class Counsel and the BMW Defendants' Counsel regarding any requests for exclusion and objections received; (ix) receiving, evaluating and either approving or disapproving Claim Forms under the requirements of the Settlement; (x) calculating and distributing the Cash Awards to Settlement Class Members; (xi) maintaining adequate records of its activities, including the dates of the mailing of Class Notice, returned mail and any and all other actual or attempted written or electronic communications with the Settlement Class; and (xii)

otherwise implementing and/or assisting with the dissemination of the notice of the Settlement pursuant to the Class Notice Program and administration of the Claims Program.

B. **Settlement Administrator Accounting.** The Settlement Administrator shall maintain a complete and accurate accounting of all receipts, expenses (including Notice and Administrative Costs), and payments made pursuant to this Settlement Agreement. The accounting shall be made available on reasonable notice to Class Counsel and the BMW Defendants' Counsel.

C. **Confidentiality of VIN List.** The Settlement Administrator shall keep the VIN List and all personally identifiable information and personal information obtained therefrom, including the identity and mailing addresses of members of the Settlement Class, confidential except as is necessary and appropriate in effectuating the terms of this Agreement or the duties or obligations arising thereunder. The Parties agree that the VIN List may not be used for any purpose other than effectuating the terms of this Agreement or the duties or obligations arising hereunder.

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

A. **VIN List.** No later than seven (7) days of the entry of the Preliminary Approval Order (unless otherwise directed by the Court upon application of the BMW Defendants), the BMW Defendants will provide the Settlement Administrator with the VIN List. The VIN List will be provided to the Settlement Administrator for the sole purpose of the Settlement Administrator performing its obligations pursuant to the Settlement and shall not be used for any other purpose at any time. The Settlement Administrator agrees to keep the VIN List confidential.

B. **Notice.** Following the entry of the Preliminary Approval Order, the Settlement Administrator shall send the Short Form Notice substantially in the form attached hereto as Exhibit B via email and U.S. mail, first-class postage prepaid, to persons for whom the Settlement Administrator has or is able to obtain a physical address and/or email address using the VIN List.

Unless adjusted by Court order, the sending and mailing of the Class Notice shall begin within one hundred days of the entry of the Preliminary Approval Order.

C. **Settlement Website.** No later than one hundred (100) days after the entry of the Preliminary Approval Order, and before the issuance of the Class Notice, the Settlement Administrator shall establish the Settlement Website. The Settlement Website will allow Settlement Class Members to fill out and submit their claim form and supporting documentation online and to provide an updated mailing address to receive a paper check or to elect to receive their Cash Award via Venmo, PayPal, ACH or Zelle. The Settlement Website shall include, in downloadable format, the following: (i) the Settlement Agreement (including all of its exhibits); (ii) the Class Notice; (iii) the Preliminary Approval Order; (iv) the toll-free phone number applicable to the Settlement; (v) the dates and locations of relevant Court proceedings, including the Fairness Hearing; and (vi) other relevant Court filings pertaining to the Settlement, including Class Counsel's Motion for Approval of Attorneys' Fees and Costs, and Service Awards.

D. **Publication Notice.** The Settlement Administrator shall design and implement a plan for notification of the settlement to members of the Settlement Class through digital/internet publication designed to target likely Settlement Class Members to satisfy the due process rights of the Settlement Class.

E. **Toll-Free Number.** No later than on hundred (100) days after the Preliminary Approval Date, the Settlement Administrator shall establish a toll-free telephone number that will provide Settlement-related information to members of the Settlement Class.

F. **Proof of Compliance with Class Notice Program.** The Settlement Administrator shall provide Class Counsel and Counsel for the BMW Defendants with a declaration detailing all of its efforts regarding the Class Notice Program, its timely completion of the Class Notice

Program, and its reach to the members of the Settlement Class, to be filed along with Plaintiffs' Motion for Final Approval of Class Action Settlement. Said declaration shall be submitted to the Court at least twenty-one (21) days before the Fairness Hearing.

G. **CAFA Notice.** Within ten (10) days of the Settlement Class Representatives and Class Counsel filing the Preliminary Approval Motion, the Settlement Administrator shall serve CAFA Notices upon the proper parties and comply with the notice provisions of the Class Action Fairness Act, 28 U.S.C. § 1715. Within fifteen (15) days after the Notice Date, the Settlement Administrator shall provide declarations to the Court, with a copy to Class Counsel and the BMW Defendants' Counsel, attesting to the measures undertaken to provide notice as directed by CAFA.

#### **IX. REQUESTS FOR EXCLUSION (OPT-OUT)**

A. A Person who wishes to opt-out of the Settlement Class must do so on or before the Opt-Out and Objection Date. To opt out, a Person must inform the Settlement Administrator in writing that he or she wishes to be excluded from the Settlement Class and must send that request to the Settlement Administrator via U.S. mail, post-marked no later than the Opt-Out and Objection Date. The written request for exclusion must be personally signed by the Person requesting exclusion, even if represented by counsel, and include (i) the Person's name, address, and telephone number, (ii) the VIN of the Class Vehicle forming the basis of the Person's inclusion in the Settlement Class definition and a statement as to whether the Person owns/owned or leases/leased the Class Vehicle and the beginning and end dates (if applicable) of the Settlement Class Member's ownership or lease of the Class Vehicle, and (iii) a statement indicating his or her intention to be excluded from the Settlement Class.

B. A Person may opt out on an individual and personal basis only; so-called "mass" or "class" opt-outs shall not be allowed.



C. Except for those Persons who timely and properly file a request for exclusion, all other Persons who fit the Settlement Class definition in Section III(A) will be deemed to be Settlement Class Members for all purposes under the Agreement, and upon the Effective Date, will be bound by its terms, regardless of whether they submit a Claim or receive any monetary relief.

D. Any Person who properly opts out of the Settlement Class shall not: (a) be bound by any orders or judgments entered in the Action or relating to the Settlement; (b) be entitled to relief under, or be affected by, the Agreement; (c) gain any rights by virtue of the Agreement; or (d) be entitled to object to any aspect of the Settlement. Any statement or submission purporting or appearing to be both an objection and an opt-out shall be treated as a request for exclusion.

E. The Settlement Administrator shall email Class Counsel and the BMW Defendants' Counsel with copies of all requests for exclusion and objections on a weekly basis and will provide the Opt-Out List no later than seven (7) days after the Opt-Out and Objection Date. The Settlement Administrator shall retain the stamped originals of all requests for exclusion and originals of all envelopes accompanying requests for exclusion in its files until the Settlement Administrator is relieved of its duties and responsibilities in connection with this Agreement.

## **X. OBJECTIONS TO THE SETTLEMENT**

A. Any Settlement Class Member who wishes to object to the proposed Settlement must do so in writing on or before the Opt-Out and Objection Date. In order to object, the Settlement Class Member must file the objection with the Court on or before the Opt-Out and Objection Date and must concurrently serve the objection on the Settlement Administrator, Class Counsel, and Counsel for the BMW Defendants.

B. In order to object, the Settlement Class Member must include in the objection filed with the Court and served on Class Counsel and Counsel for the BMW Defendants the following information:

1. The printed name, address, and telephone number of the Settlement Class Member objecting;

2. The VIN of the Class Vehicle forming the basis of the Settlement Class Member's inclusion in the Settlement Class and the beginning and end dates (if applicable) of the Settlement Class Member's ownership or lease of the Class Vehicle;

3. Whether counsel represents the Settlement Class Member and, if so, the name and contact information of their counsel;

4. A detailed written statement of each objection asserted, including the grounds for objection, any legal authority in support of such objection and reasons for appearing and being heard;

5. Copies of any papers, briefs, declarations, affidavits, documents or other evidence upon which the objection is based;

6. A statement indicating whether the objector intends to appear at the Fairness Hearing (either personally or through counsel who files an appearance with the Court in accordance with the Local Rules), and a list of all persons, if any, who will be called to testify in support of the objection;

7. A list of all cases (including caption, court and docket number) in which the Settlement Class Member or Settlement Class Member's counsel filed an objection or in any way participated — financially or otherwise — in objecting to a class settlement during the preceding five years; and

8. The Settlement Class Member's signature, in addition to the signature of the objector's attorney (if any). An attorney's signature alone shall not be deemed sufficient to satisfy this requirement.

C. Any Settlement Class Member who fails to submit timely a complete written objection and notice of his or her intent to appear at the Fairness Hearing pursuant to the above Section shall not be permitted to object to the approval of the Settlement at the Fairness Hearing, or appear at or be heard at the Fairness Hearing (in person or telephonically), and shall be foreclosed from seeking any review of the Settlement or the terms of the Agreement by appeal or other means.

#### **XI. ATTORNEYS' FEES, COSTS, AND REPRESENTATIVE SETTLEMENT CLASS REPRESENTATIVES' SERVICE AWARDS**

A. **Attorney's Fees and Costs.** Within the time period established by the Court, and no later than thirty (30) days after the Preliminary Approval Date, Class Counsel will file a Motion for Approval of Attorneys' Fees and Costs, and Service Awards to be paid from the Settlement Amount, which shall be included on the Settlement Website. The Class Notice shall inform the Settlement Class Members that Class Counsel may apply for attorneys' fees not to exceed 33.33% of the Settlement Amount and costs not to exceed \$1,000,000. Any award of Class Counsel's Attorneys' Fees and Costs from the Settlement Amount shall be subject to Court approval and will be paid from the Settlement Amount. Under no circumstances will the BMW Defendants be liable to Class Counsel, or any other attorney or law firm, for, because of, relating to, concerning, or as a result of any payment or allocation of attorneys' fees made in accordance with this Settlement Agreement; and Class Counsel, and each of them, release the BMW Defendants from any and all disputes or claims because of, relating to, concerning, or as a result of any payment or allocation of attorneys' fees and costs made pursuant to this Settlement Agreement, including but not limited

to any attorneys' liens. Attorneys' Fees and Costs approved by the Court shall be paid within thirty (30) days after the Effective Date (provided that Class Counsel has first provided to the Settlement Administrator completed W-9 forms and completed wire transfer forms).

B. Class Counsel will move for Service Awards of \$5,000 for each of the Settlement Class Representatives in the Action, as may be approved by the Court. If approved by the Court, such Service Awards will be paid from the Settlement Amount no later than thirty (30) days after the Effective Date.

C. The procedure for and the allowance or disallowance by the Court of any application for Attorneys' Fees and Costs or Service Awards are not material terms of the Settlement or Agreement, and it is not a condition of this Agreement that any particular application for Attorneys' Fees and Costs or Service Awards be approved. The Settlement Class Representatives and Class Counsel may not cancel or terminate the Settlement based on the Court's or any appellate court's ruling with respect to any Service Award or award of Attorneys' Fees and Costs. Any order or proceeding relating to any Service Award or award of Attorneys' Fees and Costs, or any appeal from any such order, shall not operate to terminate or cancel this Agreement, or affect or delay the finality of Judgment approving the Agreement and the Settlement. The BMW Defendants have stipulated that they will not object to Attorneys' Fees and Costs or Service Awards in this Settlement Agreement as described above.

## **XII. NOTICES**

A. All notices (other than the Class Notice and CAFA Notices) required by the Agreement shall be made in writing and mailed to the following addresses:

All notices to Class Counsel shall be sent to Class Counsel, c/o:

James E. Cecchi  
Carella, Byrne, Cecchi, Brody &  
Agnello, P.C.

5 Becker Farm Road,  
Roseland, N.J. 07068

Christopher Seeger  
Seeger Weiss LLP  
55 Challenge Road, Sixth Floor  
Ridgefield Park, NJ 07660

Steve Berman  
Hagens Berman Sobol Shapiro LLP  
1301 Second Avenue  
Suite 2000  
Seattle, WA 98101

All notices to Counsel for the BMW Defendants provided herein shall be sent to Counsel  
for the BMW Defendants, c/o:

Sean M. Berkowitz  
Arthur F. Foerster  
Johanna Spellman  
Latham & Watkins LLP  
330 North Wabash Avenue,  
Suite 2800  
Chicago, IL 60611

Thomas P. Branigan  
Matthew G. Berard  
Bowman and Brooke LLP  
Columbia Center  
101 W. Big Beaver Rd.,  
Suite 1100  
Troy, MI 48084

B. The notice recipients and addresses designated above may be changed by written  
notice.

C. Upon the request of any of the Parties, the Parties agree to promptly provide each  
other with copies of comments, objections, requests for exclusion, or other documents or filings  
received as a result of the Class Notice Program.

### **XIII. SETTLEMENT APPROVAL PROCESS**

A. Within twenty-one (21) days after the execution of this Agreement, the Settlement Class Representatives and Class Counsel shall move the Court to enter the Preliminary Approval Order that is without material alteration from Exhibit A hereto which:

1. Preliminarily approves this Settlement;
2. Directs that notice is provided in a reasonable manner, as set forth herein, to all Settlement Class Members who would be bound by the Settlement;
3. Preliminarily certifies the Settlement Class;
4. Schedules a Fairness Hearing on final approval of this Settlement and Agreement to consider the fairness, reasonableness, and adequacy of the proposed Settlement and whether it should be finally approved by the Court, such Fairness Hearing to be no earlier than one hundred ninety-five (195) days after the Preliminary Approval Date, subject to Court approval;
5. Finds that the proposed Settlement is sufficiently fair, reasonable and adequate to warrant providing notice to the Settlement Class;
6. Appoints the Settlement Administrator in accordance with the provisions of Section VII;
7. Approves the Short Form and Long Form Notice, the content of which is without material alteration from Exhibits B and D hereto, and directs the Settlement Administrator to disseminate notice in accordance with the Class Notice Program provided for in this Agreement;
8. Approves the Claim Form, the content of which is without material alteration from Exhibit C hereto, and sets a Claim Submission Deadline.
9. Approves the creation of the Settlement Website as defined in Section II(UU) above;

10. Finds that the Class Notice Program implemented pursuant to this Agreement: (i) is the best practicable notice; (ii) is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action and of their right to object to or to exclude themselves from the proposed settlement; (iii) is reasonable and constitutes due, adequate and sufficient notice to all persons entitled to receive notice; and (iv) meets all applicable requirements of applicable law;

11. Requires the Settlement Administrator to file proof of maintenance of the Settlement Website at or before the Fairness Hearing;

12. Requires each Settlement Class Member who wishes to be excluded from the Settlement Class to submit an appropriate, timely request for exclusion, postmarked no later than one hundred sixty (160) days after the Preliminary Approval Date, or as the Court may otherwise direct, to the Settlement Administrator at the address on the Class Notice;

13. Preliminarily enjoins all Settlement Class Members unless and until they have timely excluded themselves from the Settlement Class from: (i) filing, commencing, prosecuting, intervening in or participating as plaintiff, claimant or class member in any other lawsuit or administrative, regulatory, arbitration or other proceeding in any jurisdiction based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Action and/or the Released Claims; (ii) filing, commencing or prosecuting a lawsuit or administrative, regulatory, arbitration or other proceeding as a class action on behalf of any Settlement Class Members, regardless of whether or not they have been excluded from the Settlement Class, based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Action and/or the Released Claims; and (iii) attempting to effect Opt-Outs of a class of individuals in any lawsuit or administrative, regulatory, arbitration or

other proceeding based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Action and/or the Released Claims. This Agreement is not intended to prevent Settlement Class Members from participating in any action or investigation initiated by a state or federal agency.

14. Orders that any Settlement Class Member who does not submit a timely, complete, written request for exclusion from the Settlement Class (*i.e.*, becomes an Opt-Out) will be bound by all proceedings, orders and judgments in the Action, even if such Settlement Class Member has previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the Release;

15. Requires each Settlement Class Member who is not an Opt-Out and who wishes to object to the fairness, reasonableness or adequacy of this Agreement or the proposed Settlement or to the Attorneys' Fees and Costs to file with the Court and serve on Class Counsel no later than one hundred sixty (160) days after the Preliminary Approval Date or as the Court may otherwise direct, a statement of the objection signed by the Settlement Class Member containing the information outlined in Section X(B) above.

16. Provides that any response to an objection shall be filed with the Court no later than seven (7) days before the Fairness Hearing.

17. Specifies that any Settlement Class Member who does not file a timely, complete, written objection to the Settlement or who fails to otherwise comply with the requirements of Section X shall be foreclosed from seeking any adjudication or review of this settlement by appeal or otherwise.



18. Requires that fees and expenses owed to any attorney hired by a Settlement Class Member will be at the Settlement Class Member's expense for the purpose of objecting to this Agreement, the proposed Settlement, or the Attorneys' Fees and Costs;

19. Requires that any attorney hired by a Settlement Class Member for the purpose of objecting to the proposed Settlement or to the Attorneys' Fees and Costs and who intends to make an appearance at the Fairness Hearing to provide to the Settlement Administrator (who shall forward it to Class Counsel and Counsel for the BMW Defendants) and to file with the Clerk of the Court a notice of intention to appear no later than the Opt-Out and Objection Date or as the Court may otherwise direct;

20. Requires any Settlement Class Member who files and serves a written objection and who intends to make an appearance at the Fairness Hearing to provide to the Settlement Administrator (who shall forward it to Class Counsel and Counsel for the BMW Defendants) and to file with the Clerk of the Court a notice of intention to appear no later than the Opt-Out and Objection Date or as the Court otherwise may direct;

21. Directs the Settlement Administrator to establish a post office box in the name of the Settlement Administrator to be used for receiving requests for exclusion, objections, notices of intention to appear and any other communications, and providing that only the Settlement Administrator, Class Counsel, the BMW Defendants' Counsel, the BMW Defendants, the Court, the Clerk of the Court and their designated agents shall have access to this post office box, except as otherwise provided in this Agreement;

22. Directs the Settlement Administrator to promptly furnish Class Counsel and Counsel for the BMW Defendants with copies of any and all written requests for exclusion, notices

of intention to appear or other communications that come into its possession, except as expressly provided in this Agreement;

23. Directs that Class Counsel shall file their applications for the Attorneys' Fees and Costs and Settlement Class Representatives' Service Awards in accordance with the terms set forth in Section XI;

24. Orders the Settlement Administrator to provide the Opt-Out List to Class Counsel and Counsel for the BMW Defendants no later than seven (7) days after the Opt-Out and Objection Date, and then Class Counsel will file with the Court the Opt-Out List with an affidavit from the Settlement Administrator attesting to the completeness and accuracy thereof no later than three (3) business days thereafter or on such other date as the Parties may direct; and

25. Contains any additional provisions agreeable to the Parties that might be necessary or advisable to implement the terms of this Agreement and the proposed settlement.

#### **XIV. FINAL ORDER AND JUDGMENT AND RELEASES**

A. Pursuant to the schedule set by the Court in its Preliminary Approval Order and no later than one hundred seventy-four (174) days after the Preliminary Approval Date, Class Counsel shall file a motion and supporting papers requesting that the Court grant final approval of this Settlement Agreement and for entry of a Final Order and Judgment.

B. If this Agreement (including any amendment or modification made with the consent of the Parties as provided herein) is approved by the Court following the Fairness Hearing scheduled by the Court in its Preliminary Approval Order, the Parties shall request that the Court enter a mutually-agreeable Final Order and Judgment pursuant to the Federal Rules of Civil Procedure and all applicable laws, that, among other things:

1. Finds that the Court has personal jurisdiction over the Parties and all members of the Settlement Class and that the Court has subject matter jurisdiction to approve this Settlement and Agreement and all Exhibits thereto;

2. Certifies a Settlement Class solely for purposes of this Settlement;

3. Grants final approval to this Agreement as being fair, reasonable, and adequate as to all Parties and consistent and in compliance with all requirements of due process and applicable law, as to and in the best interests of all Parties and directs the Parties and their counsel to implement and consummate this Agreement in accordance with its terms and provisions;

4. Declares this Agreement and the Final Order and Judgment to be binding on and have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings encompassed by the Release (as set forth in Section II(JJ)) maintained by or on behalf of the Settlement Class Representatives and all other Settlement Class Members, as well as their respective agents, heirs, executors or administrators, successors and assigns;

5. Finds that the Class Notice Program implemented pursuant to this Agreement: (i) constituted the best practicable notice; (ii) constituted notice that was reasonably calculated under the circumstances to apprise Settlement Class Members of the pendency of the Action, of their right to object to or exclude themselves from the proposed Settlement, of their right to appear at the Fairness Hearing and of their right to seek monetary and other relief; (iii) constituted reasonable, due, adequate and sufficient notice to all persons entitled to receive notice; and (iv) met all applicable requirements of due process and any other applicable law;

6. Approves the Claim Form that was distributed to Settlement Class Members, the content of which was without material alteration from Exhibit C hereto;

7. Finds that Class Counsel and the Settlement Class Representatives adequately represented the Settlement Class for purposes of entering into and implementing the Settlement and Agreement;

8. Dismisses the Action now pending before the Court on the merits and with prejudice and without fees or costs except as provided herein, in accordance with the terms of the Final Order and Judgment as set forth herein;

9. Adjudges that the Settlement Class Representatives and the Settlement Class have conclusively compromised, settled, dismissed and released any and all Released Claims against the BMW Defendants and the Released BMW Parties;

10. Approves payment of the Attorneys' Fees and Costs to Class Counsel and the Settlement Class Representatives' Service Awards in a manner consistent with Section XI above;

11. Without affecting the finality of the Final Order and Judgment for purposes of appeal, reserves jurisdiction over the Settlement Administrator, the BMW Defendants, the Settlement Class Representatives, the Settlement Class and Class Counsel as to all matters relating to the administration, consummation, enforcement and interpretation of the terms of the Settlement and Final Order and Judgment and for any other necessary purposes;

12. Provides that upon the Effective Date, the Settlement Class Representatives and all Settlement Class Members who have not been excluded from the Settlement Class shall be barred from asserting any Released Claims against the BMW Defendants and/or any Released BMW Parties, and any such Settlement Class Members shall have released any and all Released Claims as against the BMW Defendants and all Released BMW Parties;

13. Provides that upon the Effective Date, the BMW Defendants and the Released BMW Parties have conclusively released any and all claims relating to the institution or prosecution of the Action;

14. Determines that the Agreement and the Settlement provided for herein and any proceedings taken pursuant thereto are not and should not in any event be offered or received as evidence of a presumption, concession or an admission of liability or of any misrepresentation or omission in any statement or written document approved or made by the BMW Defendants or any Released BMW Parties or of the suitability of these or similar claims to class treatment in active litigation and trial; provided, however, that reference may be made to this Agreement and the Settlement provided for herein in such proceedings as may be necessary to effectuate the Agreement;

15. Bars and permanently enjoins all Settlement Class Members who have not been properly excluded from the Settlement Class from (i) filing, commencing, prosecuting, intervening in or participating (as class members or otherwise) in any other lawsuit or administrative, regulatory, arbitration or other proceeding in any jurisdiction based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Action or the Released Claims arising on or before the Preliminary Approval Date and (ii) organizing Settlement Class Members, regardless of whether or not they have been excluded from the Settlement Class, into a separate class for purposes of pursuing as a purported class action any lawsuit or arbitration or other proceeding (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action) based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Action and/or the Released Claims arising on or before the Preliminary Approval Date, except that

Settlement Class Members are not precluded from participating in any investigation or suit initiated by a state or federal agency;

16. Approves the Opt-Out List and determines that the Opt-Out List is a complete list of all Settlement Class Members who have timely and properly requested exclusion from the Settlement Class and, accordingly, shall neither share in nor be bound by the Final Order and Judgment; and

17. Authorizes the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of this Agreement and all Exhibits hereto as (i) shall be consistent in all material respects with the Final Order and Judgment and (ii) do not limit the rights of the Parties or Settlement Class Members.

C. As of the Effective Date, the Releasing Parties are deemed to have fully released and forever discharged the Released BMW Parties of and from all Released Claims by operation of entry of the Final Order and Judgment.

D. As of the Effective Date, the BMW Defendants and the Released BMW Parties absolutely and unconditionally release and forever discharge the Settlement Class Representatives, Settlement Class Members, and Class Counsel from all claims relating to the institution or prosecution of the Action.

E. Subject to Court approval, all Settlement Class Members who have not excluded themselves from the Settlement Class shall be bound by this Agreement and the Release, and all of their respective claims shall be dismissed with prejudice and released, irrespective of whether they received actual notice of the Action or this Settlement.

F. Without in any way limiting the scope of the Release, this Release covers any and all claims for attorneys' fees, costs or disbursements incurred by Class Counsel or any other

counsel representing the Settlement Class Representatives or Settlement Class Members, or any Class Representatives or Settlement Class Members, in connection with or related in any manner to the Action, the Settlement, the administration of such Settlement and/or the Released Claims, as well as any and all claims for Service Awards to Settlement Class Representatives.

G. The Releasing Parties and the Released BMW Parties expressly acknowledge that they are familiar with principles of law such as Section 1542 of the Civil Code of the State of California, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

Notwithstanding California or other law, the Releasing Parties and the Released BMW Parties hereby expressly agree that the provisions, rights and benefits of Section 1542 and all similar federal or state laws, rights, rules or legal principles of any other jurisdiction that may be applicable herein and are hereby knowingly and voluntarily waived, released and relinquished to the fullest extent permitted by law solely in connection with unknown claims that are the same as, substantially similar to, or overlap the Released Claims, and the Releasing Parties and the Released BMW Parties hereby agree and acknowledge that this is an essential term of the Release. In connection with the Release, the Releasing Parties and the Released BMW Parties acknowledge that they are aware that they may hereafter discover claims currently unknown and unsuspected or facts in addition to or different from those which they now know or believe to be true with respect to matters released herein, and that such claims, to the extent that they are the same as, substantially similar to, or overlap the Released Claims, are hereby released, relinquished and discharged.

H. In exchange for the consideration made available to the Settlement Class Members pursuant to this Agreement, Settlement Class Members release their potential claims under the Trade Regulation Rule Concerning the Preservation of Consumers' Claims and Defenses, 16 C.F.R. § 433.2 (the "Holder Rule"), relating to the Action.

I. The Release shall be effective with respect to all Releasing Parties, including all Settlement Class Members who do not opt-out, regardless of whether those Settlement Class Members ultimately submit a Claim Form or receive payment under this Settlement Agreement.

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

**XV. NO ADMISSION OF LIABILITY AND PRESERVATION OF ALL DEFENSES**

A. The Parties understand and agree that by entering this Agreement, the BMW Defendants in no way admit any violation of law or any liability whatsoever to Settlement Class Representatives and/or the Settlement Class Members, individually or collectively, all such liability being expressly denied.

B. The Parties understand and agree that the BMW Defendants enter into this Agreement to avoid further protracted litigation and to fully and finally resolve and settle all disputes with the Settlement Class Representatives and Settlement Class Members. Settlement of the Action, negotiation and execution of this Agreement, and all acts performed and documents executed pursuant to or in furtherance of this Agreement or the Settlement: (i) are not, shall not be deemed to be, and may not be used as an admission or evidence of any wrongdoing or liability on the part of the BMW Defendants or of the truth of any of the factual allegations in any and all complaints or other papers filed by the Settlement Class Representatives in the Action; and (ii) are not, shall not be deemed to be, and may not be used as an admission or evidence of fault or



omission on the part of the BMW Defendants in any civil, criminal, administrative or arbitral proceeding.

C. The Parties understand and agree that this Agreement is a settlement document and shall be inadmissible in evidence in any proceeding, except an action or proceeding to approve, interpret or enforce the terms of the Agreement.

D. Nothing contained herein is, or shall be construed or admissible as, an admission by the BMW Defendants that the Settlement Class Representatives' claims or any similar claims are either valid or suitable for class treatment.

E. By their agreement hereto, the BMW Defendants do not waive any defenses or affirmative defenses that they may be entitled to assert in any future litigation.

#### **XVI. WITHDRAWAL FROM OR TERMINATION OF SETTLEMENT**

A. Within fifteen (15) days after the occurrence of any of the following events and upon written notice to counsel for all Parties, a Party shall have the right to withdraw from the Settlement and terminate this Agreement:

1. If the Court fails to approve the material terms of the Agreement as written or if the Court's approval is reversed or modified on any appeal;

2. If the Court materially alters any of the terms of the Agreement other than Attorneys' Fees and Costs or Service Awards; or

3. If the Preliminary Approval Order, as described in Section XIII, or the Final Order and Judgment, as described in Section XIV, is not entered by the Court or is reversed or modified on appeal, or otherwise fails for any material reason. In the event of a withdrawal pursuant to this Section, any certification of a Settlement Class will be vacated, without prejudice to any Party's position on the issue of class certification and the amenability of the claims asserted

in the Action to class treatment, and the Parties shall be restored to their litigation position existing immediately before the execution of this Agreement.

B. If Settlement Class Members properly and timely submit requests for exclusion from the Settlement Class as set forth in Section IX, thereby becoming Opt-Outs and are in a number more than the confidential number submitted to the Court by the Parties under seal at the time of filing the Motion For Preliminary Approval, then the BMW Defendants may withdraw from the Settlement and terminate this Agreement. In that event, all of the BMW Defendants' obligations under this Agreement shall cease to be of any force and effect; the certification of the Settlement Class shall be vacated without prejudice to the BMW Defendants' position on the issue of class certification; and the Parties shall be restored to their litigation position existing immediately before the execution of this Agreement.

1. In order to elect to withdraw from the Settlement and terminate this Agreement on the basis set forth in Section XVI(B) above, the BMW Defendants must notify Class Counsel in writing of its election to do so within fifteen (15) days of the Settlement Administrator serving the Opt-Out List on the Parties.

2. In the event that the BMW Defendants exercise such right, Class Counsel shall have thirty (30) days or such longer period as agreed to by the Parties to address the concerns of the Opt-Outs. If through such efforts the total number of members of the Opt-Out List subsequently becomes and remains fewer than the number of Opt-Outs as submitted to the Court under seal at the time of filing the Motion for Preliminary Approval, the BMW Defendants shall withdraw their election to withdraw from the Settlement and terminate the Agreement. In no event, however, shall the BMW Defendants have any further obligation under this Agreement to any Opt-Out unless such Settlement Class Member withdraws his/her request for exclusion.

3. For purposes of this Section XVI(B), Opt-Outs shall not include: (i) persons who are specifically excluded from the Settlement Class under Section III (A) above; (ii) Opt-Outs who elect to withdraw their request for exclusion and therefore become Settlement Class Members; and/or (iii) Opt-Outs who agree to sign an undertaking that they will not pursue an individual claim, class claim or any other claim that would otherwise be a Released Claim as defined in this Agreement.

C. In the event of withdrawal by the BMW Defendants in accordance with the terms set forth in Section XVI(B):

1. This Agreement shall be null and void, shall have no further force and effect with respect to any Party in the Action, and shall not be offered in evidence or used in any litigation for any purpose, including, without limitation, the existence, certification, or maintenance of any proposed or existing class, or the amenability of these or similar claims to class treatment;

2. This Agreement and all negotiations, proceedings, documents prepared and statements made in connection herewith shall be without prejudice to the BMW Defendants, the Settlement Class Representatives and the Settlement Class Members and shall not be deemed or construed to be an admission or confession in any way by any Party of any fact, matter or proposition of law and shall not be used in any manner for any purpose, and the Parties to the Action shall stand in the same position as if this Agreement had not been negotiated, made or filed with the Court;

3. The Parties shall request the Court to vacate any order certifying the Settlement Class; and

4. Any monies in the Escrow Account, together with any accrued interest, less any administrative expenses paid or incurred in accordance with the terms of the Settlement, shall be promptly refunded to the BMW Defendants by the Settlement Administrator.

D. In the event the Settlement Class Representatives exercise their option to withdraw from the Settlement pursuant to Section XVI(A), within thirty (30) days of the Settlement Class Representatives' providing notice of such withdrawal, Class Counsel shall deposit into the Escrow Account an amount equal to the total of payments made to date from the Escrow Account for any Notice or Administrative Expenses, and the Settlement Administrator shall promptly refund that amount to the BMW Defendants.

E. Other than as set forth in this Section XVI, no Party may terminate or withdraw from the Settlement based on changes in law within the U.S. Court of Appeals for the Third Circuit or elsewhere, or findings of fact or law reached in separate actions or proceedings, including but not limited to any litigation or regulatory action or proceeding concerning or relating in any way to emissions regulations, compliance, or preemption.

F. The exercise of any option to withdraw from the Settlement shall be, and the Parties shall continue to endeavor to resolve the claims asserted in this litigation, in good faith.

## **XVII. EFFECTIVE DATE**

A. The Effective Date of this Agreement shall be the first business day after each and all of the following conditions have occurred:

1. This Agreement has been fully executed by all Parties and their counsel;
2. Orders have been entered by the Court certifying the Settlement Class, granting preliminary approval of this Agreement and approving the form of notice, all as provided above;

3. The Settlement Administrator causes the Class Notice to be disseminated in accordance with the Preliminary Approval Order;

4. The Court has entered a Final Order and Judgment finally approving this Agreement, as provided above; and

5. The Final Order and Judgment has become Final.

B. If, for any reason, this Agreement fails to become Final pursuant to this Section XVII, the orders, judgment, and dismissal to be entered pursuant to this Agreement shall be vacated, and the Parties will be returned to the status *quo ante* with respect to the Action as if the Parties had never entered into this Agreement.

#### **XVIII. ADDITIONAL PROVISIONS**

A. **Settlement Purposes Only.** This Agreement is for settlement purposes only. Neither the fact of nor any provision contained in this Agreement nor any action taken hereunder shall constitute or be construed as an admission of the validity of any claim or any fact alleged in the Action or of any wrongdoing, fault, violation of law or liability of any kind on the part of the BMW Defendants or any admission by the BMW Defendants of any claim or allegation made in any action or proceeding against the BMW Defendants or any concession as to the validity of any of the claims asserted by the Settlement Class Representatives in the Action. This Agreement shall not be offered or be admissible in evidence against the Parties or cited or referred to in any action or proceeding, except in an action or proceeding brought to enforce its terms. Nothing contained herein is, or shall be construed or admissible as, an admission by the BMW Defendants that the Settlement Class Representatives' claims or any similar claims are either valid or suitable for class treatment.

B. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with regard to the Settlement of the Action. This Agreement supersedes all prior

negotiations and agreements and may not be modified or amended except by a writing signed by the Parties and their respective counsel. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation or understanding concerning any part of the subject matter of this Agreement has been made or relied on except as expressly set forth in this Agreement. The Recitals and Exhibits to this Agreement are an integral part of the Settlement and are expressly incorporated and made a part of this Agreement.

C. **Modification or Amendment.** This Settlement Agreement, including all Exhibits attached hereto, may not be modified or amended except in writing signed by all of the Parties or their counsel.

D. **Waivers.** There shall be no waiver of any term or condition absent an express writing to that effect by the non-waiving Party. No waiver of any term or condition in this Agreement shall be construed as a waiver of a subsequent breach or failure of the same term or condition, or waiver of any other term or condition of this Agreement.

E. **Cooperation Between the Parties; Further Acts.** The Parties agree to cooperate with each other in good faith to accomplish the terms of this Settlement Agreement, including the execution and delivery of such documents and such other actions as are reasonably necessary to implement the terms of this Agreement and obtain the Court's final approval of the Settlement Agreement, including the entry of an order dismissing the Action with prejudice.

F. **Best Efforts.** If there are any developments in the effectuation and administration of this Agreement that are not dealt with by the terms of this Agreement, then the Parties shall confer in good faith regarding such matters; and such matters shall be dealt with as agreed upon by the Parties, and if the Parties cannot reach an agreement, as shall be ordered by the Court. The

Parties shall execute all documents and use their best efforts to perform all acts necessary and proper to promptly effectuate the terms of this Agreement and to take all necessary or appropriate actions to obtain judicial approval of this Agreement in order to give this Agreement full force and effect. The execution of all such documents must take place prior to the Preliminary Approval Hearing.

G. **No Prior Assignment, Transfer or Conveyance of Released Claims.** The Settlement Class Representatives represent and warrant that no portion of any claim, right, demand, action, or cause of action against the Released BMW Parties that the Settlement Class Representatives, or any of them, have or may have arising out of any allegations made in any of the actions comprising the Action or pertaining to any of the Released Claims, and no portion of any recovery or settlement to which the Settlement Class Representatives, or any of them, may be entitled, has been assigned, transferred, or conveyed by or for the Settlement Class Representatives, or any of them, in any manner; and no person other than the Settlement Class Representatives has any legal or equitable interest in the claims, demands, actions, or causes of action referred to in this Agreement as those of the Settlement Class Representatives.

H. **Binding Effect.** This Agreement shall be binding upon the Parties and, with respect to the Settlement Class Representatives and all Settlement Class Members, their spouses, children, representatives, heirs, administrators, executors, beneficiaries, conservators, attorneys, successors and assigns.

I. **Drafting; Materiality of Terms.** This Agreement shall not be construed more strictly against one Party than another merely because this Agreement may have been drafted or otherwise prepared in full or substantial part by counsel for one of the Parties, it being recognized that because of the arms-length negotiations resulting in the Agreement, all Parties hereto have

contributed substantially and materially to the preparation of the Agreement. All terms, conditions and Exhibits are material and necessary to this Agreement and have been relied upon by the Parties in entering into this Agreement.

J. **Governing Law.** This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of New Jersey, without regard to choice of law principles.

K. **Continuing Jurisdiction.** The Court shall retain continuing and exclusive jurisdiction over the Parties to this Agreement for the purpose of the administration and enforcement of this Agreement.

L. **Confidentiality.** All agreements made during the course of the Action relating to the confidentiality of information shall survive this Agreement. The Parties and their counsel agree to keep the contents of this Agreement confidential until the date on which the Motion for Preliminary Approval is filed; provided, however, that this Section shall not prevent (1) the BMW Defendants from disclosing such information, prior to the date on which the Motion for Preliminary Approval is filed, to state and federal agencies, independent accountants, actuaries, advisors, financial analysts, insurers or attorneys; (2) the BMW Defendants from disclosing such information based on the substance of this Agreement; and/or (3) the Parties and their counsel from disclosing such information to persons or entities (such as experts, courts, co-counsel, and/or administrators) to whom the Parties agree disclosure must be made in order to effectuate the terms and conditions of this Agreement.

M. **Each Party to Bear Own Costs.** Except as otherwise provided in this Settlement Agreement, each party to this Settlement Agreement shall bear his or its own costs of the Action.



N. **Return of Documents.** Within forty-five (45) days after the Effective Date, the Parties will comply with Paragraph 24 in the Stipulated Discovery Confidentiality Order entered in the Action. (Dkt. 150).

O. **Representation by Counsel.** The Parties are represented by competent counsel, and they have had an opportunity to consult and have consulted with counsel prior to executing this Settlement Agreement. Each Party represents that it understands the terms and consequences of executing this Settlement Agreement and executes it and agrees to be bound by the terms set forth herein knowingly, intelligently, and voluntarily.

P. **No Tax Advice.** Neither the Parties nor their counsel intend anything contained herein to constitute legal advice regarding the taxability of any amount paid hereunder. No Person shall rely on anything in this Settlement Agreement to provide tax advice, and any Person, including, without limitation, Settlement Class Representatives and Settlement Class Members, shall obtain his, her, or its own independent tax advice with respect to any payment under this Settlement Agreement.

Q. **Taxes.** The Settlement Class Representatives, Class Counsel and Settlement Class Members shall be responsible for paying all federal, state, and local taxes due on any payments made to them pursuant to the Settlement Agreement.

R. **Extensions.** The Parties reserve the right, subject to the Court's approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement.

S. **Administration of Agreement.** No person shall have any claim against the Settlement Class Representatives, Class Counsel, the BMW Defendants, the BMW Defendants' Counsel, the Settlement Administrator or the Released Parties or their agents based on

administration of the Settlement substantially in accordance with the terms of the Agreement or any order of the Court or any appellate court.

T. **Severability.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision if the BMW Defendants, and Class Counsel, on behalf of the Settlement Class Representatives and Settlement Class Members, mutually agree in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement. Any such agreement shall be reviewed and approved by the Court before it becomes effective.

U. **Communications.** Aside from communications the Parties may have with their counsel, Class Counsel and Counsel for the BMW Defendants agree not to engage in any communications with the media or the press, on the internet, or in any public forum, orally or in writing, that relate to this Settlement or the Action other than statements that are fully consistent with the Class Notice or otherwise approved by the Parties.

V. **When Agreement Becomes Effective; Counterparts.** This Agreement shall become effective upon its full execution. The Parties may execute this Agreement in one or more counterparts, and execution in counterparts shall have the same force and effect as if all Parties had signed the same instrument.

W. **Subheadings.** The headings used in this Agreement are for the convenience of the reader only and shall not affect the meaning or interpretation of this Agreement. In construing this Agreement, the use of the singular includes the plural (and vice-versa) and the use of the masculine includes the feminine (and vice-versa).

X. **Stay of Proceedings.** The Parties stipulate to stay all proceedings in the Action until the approval of this Agreement has been finally determined, except the stay of proceedings shall not prevent the filing of any motions, affidavits, and other matters necessary to obtain and preserve final judicial approval of this Agreement.

Y. **Authority.** Each person executing this Settlement Agreement on behalf of any Party warrants that such person has the authority to do so. This Settlement Agreement shall be binding upon, and inure to the benefit of, each of the Parties' respective agents, heirs, executors, administrators, successors, and assigns.

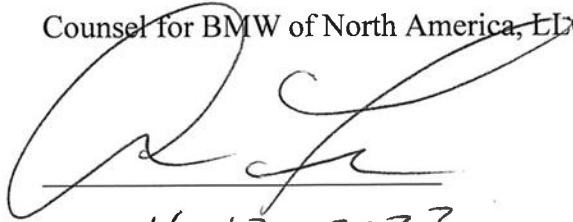
Z. **Offer of Compromise.** The Parties expressly acknowledge and agree that this Settlement Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, related notes, and correspondence, constitute an offer of compromise and a compromise within the meaning of Federal Rule of Evidence 408 and any equivalent rule of evidence in any state or territory.

AA. **Future Use of Settlement Agreement.** Any of the Released Parties may file this Settlement Agreement and/or the Final Approval Order in any action that may be brought against it in order to support any defense or counterclaim, including, without limitation, those based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

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IN WITNESS WHEREOF, the parties hereto through their fully authorized representatives have agreed to this Settlement Agreement.

Counsel for BMW of North America, LLC and Bayerische Motoren Werke Aktiengesellschaft:



Date: 11-17-2023

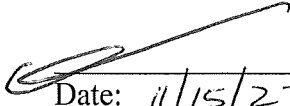
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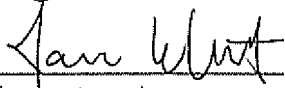
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