

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

JOSEPH SANGENITO, ZHARGAL  
DAMPILON, RICHARD GRAD, and  
KEVIN FINLEY, individually and on behalf  
of all others similarly situated,

Plaintiffs,

vs.

BMW OF NORTH AMERICA, LLC, and  
BAYERISCHE MOTOREN WERKE AG,

Defendants.

Case No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

## **I. INTRODUCTION**

1. Plaintiffs Joseph Sangenito, Zhargal Dampilon, Richard Grad, and Kevin Finley (“Plaintiffs”) bring this action individually for themselves and on behalf of all persons who purchased and/or leased certain vehicles equipped with transfer cases that have substantially the same design and are uniformly defective, and were designed, manufactured, distributed, warranted, marketed, and sold by BMW of North America, LLC (“BMW NA”) and Bayerische Motoren Werke AG (“BMW AG”) (collectively, “BMW”).

2. The vehicles at issue include the BMW 2019-2025 G01 (X3 Sports Activity Vehicle), G02 (X4 Sports Activity Coupe), G05 (X5 Sports Activity Vehicle), G06 (X6 Sports Activity Coupe), G07 (X7 Sports Activity Vehicle), G12 (7 Series Sedan), G14 (8 Series Convertible), G15 (8 Series Coupe), G16 (8 Series Gran Coupe), G20 (3 Series Sedan), G22 (4 Series Coupe), G23 (4 Series Convertible), G26 (4 Series Gran Coupe), G30 (5 Series Sedan), G32 (640i xDrive Gran Turismo), G42 (2 Series Coupe), G45 (X3 Sports Activity Vehicle), G60 (5 Series Sedan) and G70 (7 Series Sedan) models equipped with an XDrive transfer case, excluding any M-series variants of such models (together, the “Class Vehicles”).

3. On information and belief, the transfer cases are substantially the same, from a mechanical engineering standpoint, in all Class Vehicles, in that the transfer cases in all Class Vehicles have a substantially similar design, including a substantially similar multi-plate clutch system and actuator, and are manufactured in a substantially similar manner.

4. The Class Vehicles’ transfer cases have a uniform defect that causes the clutch system to improperly transmit torque between the front and rear wheels (the “Transfer Case Defect”). The Transfer Case Defect causes users to experience a jerking or shuddering sensation when driving the vehicle, especially when shifting gears, making turns, or driving at low speeds,

which adversely affects the drivability of the Class Vehicles and causes the transfer cases to fail and require replacement prematurely.

5. Before replacing the defective transfer cases, BMW frequently requires customers to replace the transfer case fluid at a cost of \$250 to \$1,300 when the fluid replacement is not covered under warranty. However, outside of certain high-performance vehicles like BMW's M line, transfer case fluid is filled in the factory with the expectation that it will last for the life of the vehicle. Indeed, transfer case fluid replacement is not listed on the maintenance schedule that BMW provides with every vehicle.

6. Despite the costly repair, many customers who replaced the transfer case fluid continued to experience the Transfer Case Defect and were told subsequently they must replace the transfer case itself.

7. Transfer cases are designed, built, and installed with the expectation that they will last for the life of the vehicle.

8. No warning lights or messages appear when the transfer case is damaged, meaning that it is very difficult to diagnose the issue until it progresses far enough to manifest as a jerking or shuddering sensation when driving the vehicle.

9. BMW is aware, and has been aware, or was reckless in not being aware, since at least 2018 of the risk of premature transfer case failure in the Class Vehicles, based on the standard pre-sale design and testing information collected by reasonably prudent vehicle manufacturers.

10. BMW has been aware of the Transfer Case Defect since at least May of 2020 based on its own Service Industry Bulletins ("SIB"s). BMW's SIB 27-02-20 is titled "Jerking or Shuddering From The Driveline (XDrive Transfer Case ATX13-X)." BMW further issued a

revised SIB as recently as March of 2025 regarding the same issue and indicated additional affected models.

11. In the past, when customers who experienced the defect contacted BMW, it disavowed all knowledge of the problem and refused to fully reimburse owners for the repairs and transfer case replacement, which typically costs anywhere from \$7,000 to \$13,000.

12. As a result of BMW's alleged misconduct, Plaintiffs and Class Members were harmed and suffered a diminution of value at the point of sale in that Plaintiffs and Class Members paid for vehicles that were merchantable and fit for their ordinary purpose and free of material defects, but received another, less valuable vehicle with a Transfer Case Defect. Plaintiffs and Class Members have also suffered actual injury in that they have paid (and will continue to be required to pay) out-of-pocket to replace fluid that should not have to be replaced and to replace the defective transfer cases during the expected useful life of the vehicles, and/or were or will be forced to stop or limit using their vehicles prematurely or sell them at steep discounts.

13. Despite having knowledge of the Transfer Case Defect since at least 2018, BMW has not admitted to or resolved the Transfer Case Defect. BMW appears to cover the fluid change replacement and transfer case replacement for owners and lessees that are still within the original New Vehicle Limited Warranty, but does not cover either of these services for owners and lessees whose warranty has expired. Furthermore, BMW's SIB 27-02-20 explicitly states that transfer case fluid replacement is not covered under the Certified Pre-Owned warranty or Extended Service Contract even though the transfer case itself is not excluded from coverage by the terms of the Certified Pre-Owned warranty.

14. Plaintiffs Dampilon and Finley were required to pay out of pocket to replace the transfer case fluid in their certified preowned vehicles; Plaintiff Sangenito was required to pay out of pocket to replace the transfer case fluid as the original owner of his vehicle because his New Vehicle Limited Warranty had expired, and was further quoted at full price for the transfer case replacement; and Plaintiff Grad was originally quoted at full price for the transfer case replacement as the original owner of his vehicle, although he was ultimately able to negotiate a discount as the holder of an extended warranty he had purchased.

15. BMW has issued no recall or extended warranty regarding the Transfer Case Defect, nor sent notice to Class Vehicle owners and lessees regarding the possibility of premature transfer case failure. Instead, BMW has concealed and continues to actively conceal the Transfer Case Defect.

16. On October 6, 2025, Plaintiffs through their counsel sent a letter requesting relief including reimbursement for out-of-pocket expenses already paid and repair of the defects exhibited in Class Vehicles for Plaintiffs and others similarly situated.

17. BMW has provide no actual relief in response to Plaintiffs' October 6, 2025 letter.

18. In response, on November 17, 2025, BMW, through counsel, notified Plaintiffs' counsel that it is now considering extending the warranty for the Class Vehicles' transfer cases, but gave no indication that it intends to send notice of any extension to all owners and lessees of Class Vehicles. It also gave no indication it intends to compensate Plaintiffs or Class Members for the diminution in value of their vehicles, nor compensate them for their out-of-pocket costs already paid for replacement transfer case fluid and/or transfer cases, loss of resale value of the Class Vehicle, services performed by independent mechanics, and miscellaneous expenses incurred by Class Members as a result of the Transfer Case Defect (i.e., rental car fees, etc.).

19. Even if BMW ultimately extends the warranty—which apparently remains to be decided—BMW’s response does not address Plaintiffs’ and Class Members’ claims as set forth in their notice letter.

20. On behalf of themselves and all others similarly situated, Plaintiffs seek: a) actual damages, b) statutory damages, c) exemplary and/or punitive damages, d) declaratory relief, e) injunctive relief, f) pre- and post-judgment interest, and g) attorneys’ fees and costs.

## **II. PARTIES**

### **A. Plaintiffs**

#### **1. Plaintiff Joseph Sangenito**

21. Plaintiff Joseph Sangenito resides in Pompton Plains, New Jersey.

22. Mr. Sangenito owned a 2020 BMW X5, which he purchased new in June of 2020 from BMW of Morristown, a BMW dealership in Morristown, New Jersey.

23. Mr. Sangenito’s Class Vehicle was manufactured, sold, distributed, advertised, marketed, and warranted by BMW, and bears the VIN 5UXCR6C09L9B49834.

24. Mr. Sangenito purchased the Class Vehicle for his personal, family, and household use.

25. Mr. Sangenito expected his Class Vehicle to be of good and merchantable quality and not defective. He had no reason to know, or expect, that the transfer case of his Class Vehicle would prematurely fail, nor was he aware from any source prior to purchase of the Class Vehicle of the significant expense he would incur should he choose to replace the defective transfer case. Had he known these facts, he would not have bought his Class Vehicle or would have paid less for it.

26. Since purchasing the Class Vehicle, Mr. Sangenito has brought his vehicle in to be serviced and inspected at least as often as recommended by BMW at a BMW dealership.

27. Mr. Sangenito first became aware of the Transfer Case Defect in July of 2025 when his vehicle began vibrating when making slow turns. He brought the Class Vehicle into BMW of Morristown on July 31, 2025. The mechanic replaced the Class Vehicle's transfer case fluid and charged him a total of \$1,061.44. The mechanic further informed Mr. Sangenito that he would need to replace the transfer case itself if the problem did not improve after driving the vehicle for up to 500 miles and quoted Mr. Sangenito \$9,515.22 for a transfer case replacement. At the time the mechanic diagnosed the transfer case issue, the Class Vehicle had only 57,000 miles.

28. Mr. Sangenito reports that the shuddering sensation grew significantly worse immediately after the transfer fluid change and began occurring when he reversed the vehicle as well.

29. Mr. Sangenito ultimately decided to replace the Class Vehicle rather than pay to have it repaired. Although BMW of Morristown verbally offered him \$28,000 to trade in his vehicle in June 2025, one month before the vibration issue began, Mr. Sangenito received \$22,000 in trade-in value from Paul Miller BMW in August of 2025.

30. As a result of the Transfer Case Defect, Mr. Sangenito incurred costs of \$1,061.44 for the transfer case fluid replacement, as well as diminished trade-in value.

31. Mr. Sangenito regularly saw advertisements for BMW vehicles on television, in magazines, on billboards, in brochures at the dealership, and on the internet during the years before he purchased his BMW X5 in 2020. Although he does not recall the specifics of the many BMW advertisements he saw before he purchased his Class Vehicle, he does recall that reliability was a frequent theme. Those advertisements about reliability influenced his decision to purchase his vehicle. Had those advertisements or any other BMW materials disclosed to Mr.

Sangenito that the Class Vehicles had defective transfer cases that would render his vehicle unreliable and that he would be required to pay \$1,061.44 in repair costs, he would not have purchased his Class Vehicle, or would have paid less for it.

32. On October 6, 2025, Mr. Sangenito, through counsel, sent BMW a letter requesting relief and repair of the defects exhibited in Class Vehicles for Mr. Sangenito and others similarly situated. Ex. A. In response to this letter, BMW did not offer to provide the requested relief.

**2. Plaintiff Zhargal Dampilon**

33. Plaintiff Zhargal Dampilon resides in Irvine, California.

34. Mr. Dampilon owns a 2019 BMW X5, which he purchased certified preowned in 2022 from Crevier BMW, a BMW dealership located in Santa Ana, California.

35. Mr. Dampilon's Class Vehicle was manufactured, sold, distributed, advertised, marketed, and warranted by BMW, and bears the VIN 5UXCR6C55KLL62483.

36. Mr. Dampilon purchased the Class Vehicle for his personal, family, and household use.

37. Mr. Dampilon expected his Class Vehicle to be of good and merchantable quality and not defective. He had no reason to know, or expect, that the transfer case fluid of his Class Vehicle would require premature replacement, nor was he aware from any source prior to the purchase of the Class Vehicle of the significant expense he would incur in replacing the transfer case fluid. Had he known these facts, he would not have bought his Class Vehicle or would have paid less for it.

38. Since purchasing the Class Vehicle, Mr. Dampilon has brought his vehicle in to be serviced and inspected at least as often as recommended by BMW at either a BMW dealership or a BMW-certified mechanic.



39. Mr. Dampilon first became aware of the Transfer Case Defect in the summer of 2025 after his Class Vehicle had been shuddering at low speeds and during turns for several months. He submitted an online message to Crevier BMW in August of 2025 explaining the problem. In response, Crevier BMW left him a voicemail quoting him between \$1,200 and \$1,500 to replace the transfer case fluid because it was a “condition-based service” that “doesn’t always have to be done” and thus would not be covered even under the base warranty. At that time, the Class Vehicle had less than 50,000 miles.

40. Mr. Dampilon ultimately chose to pay over \$175 to have the transfer case fluid in the Class Vehicle replaced by an independent mechanic; however, the shuddering sensation has not been completely resolved.

41. Mr. Dampilon regularly saw advertisements for BMW vehicles on television, in magazines, on billboards, in brochures at the dealership, and on the internet during the years before he purchased his BMW X5 in 2022. Although he does not recall the specifics of the many BMW advertisements he saw before he purchased his Class Vehicle, he does recall that reliability was a frequent theme. Those advertisements about reliability influenced his decision to purchase his vehicle. Had those advertisements or any other BMW materials disclosed to Mr. Dampilon that the Class Vehicles had defective transfer cases that would render his vehicle unreliable and that he would be required to pay over \$175 in repair costs, he would not have purchased his Class Vehicle, or would have paid less for it.

42. On October 6, 2025, Mr. Dampilon, through counsel, sent BMW a letter requesting relief and repair of the defects exhibited in Class Vehicles for Mr. Dampilon and others similarly situated. Ex. A. In response to this letter, BMW did not offer to provide the requested relief.

**3. Plaintiff Richard Grad**

43. Plaintiff Richard Grad resides in Vernon Hills, Illinois.

44. Mr. Grad owns a 2022 BMW X5, which he purchased new in 2021 from Voss Auto Network, an authorized BMW dealership, in Ohio.

45. Mr. Grad's Class Vehicle was manufactured, sold, distributed, advertised, marketed, and warranted by BMW, and bears the VIN 5UXCR6C09N9K49576.

46. Mr. Grad purchased the Class Vehicle for his personal, family, and household use.

47. Mr. Grad expected his Class Vehicle to be of good and merchantable quality and not defective. He had no reason to know, or expect, that the transfer case of his Class Vehicle would prematurely fail, nor was he aware from any source prior to purchase of the Class Vehicle of the significant expense he would incur in replacing the defective transfer case. Had he known these facts, he would not have bought his Class Vehicle or would have paid less for it.

48. Since purchasing the Class Vehicle, Mr. Grad has brought his vehicle in to be serviced and inspected at least as often as recommended by BMW at a BMW dealership.

49. Mr. Grad first became aware of the Transfer Case Defect when he noticed a strange noise and vibration coming from the Class Vehicle after his daughter had borrowed it. Mr. Grad brought the Class Vehicle to a BMW dealership for repair in April of 2025. The dealership initially quoted Mr. Grad \$8,000 to replace the transfer case because the Class Vehicle was out of warranty. However, because he had purchased an extended warranty for his vehicle, the BMW dealership ultimately charged him a total of approximately \$2,800. Mr. Grad still experiences the vibration issue. At the time the mechanic diagnosed the transfer case issue, the vehicle had approximately 60,000 miles.

50. Mr. Grad regularly saw advertisements for BMW vehicles on television, in magazines, on billboards, in brochures at the dealership, and on the internet during the years

before he purchased his BMW X5 in 2021. Although he does not recall the specifics of the many BMW advertisements he saw before he purchased his Class Vehicle, he does recall that reliability was a frequent theme. Those advertisements about reliability influenced his decision to purchase his vehicle. Had those advertisements or any other BMW materials disclosed to Mr. Grad that the Class Vehicles had defective transfer cases that would render his vehicle unreliable and that he would be required to pay \$2,800 in repair costs, he would not have purchased his Class Vehicle, or would have paid less for it.

51. On October 6, 2025, Mr. Grad, through counsel, sent BMW a letter requesting relief and repair of the defects exhibited in Class Vehicles for Mr. Grad and others similarly situated. Ex. A. In response to this letter, BMW did not offer to provide the requested relief.

**4. Plaintiff Kevin Finley**

52. Plaintiff Kevin Finley resides in Algonquin, Illinois.

53. Mr. Finley owns a 2020 BMW X5, which he purchased certified preowned in 2024 from Patrick BMW, a BMW dealership located in Schaumburg, Illinois.

54. Mr. Finley's Class Vehicle was manufactured, sold, distributed, advertised, marketed, and warranted by BMW, and bears the VIN 5UXCR6C00LLL66396.

55. Mr. Finley purchased the Class Vehicle for his personal, family, and household use.

56. Mr. Finley expected his Class Vehicle to be of good and merchantable quality and not defective. He had no reason to know, or expect, that the transfer case fluid of his Class Vehicle would require premature replacement, nor was he aware from any source prior to the purchase of the Class Vehicle of the significant expense he would incur in replacing the transfer case fluid. Had he known these facts, he would not have bought his Class Vehicle or would have paid less for it.

57. Since purchasing the Class Vehicle, Mr. Finley has brought his vehicle in to be serviced and inspected at least as often as recommended by BMW at either a BMW dealership or a BMW-certified mechanic.

58. Mr. Finley first became aware of the Transfer Case Defect in December of 2024 when he brought his Class Vehicle to Patrick BMW because his Class Vehicle was shuddering while turning and reversing at low speeds in any direction. The dealership determined that the transfer case fluid should be replaced per BMW's SIB 27-02-20 and quoted him \$819.85. At the time the mechanic diagnosed the transfer case issue, the Class Vehicle had less than 52,000 miles.

59. Mr. Finley ultimately chose to pay over \$494 to have the transfer case fluid replaced by an independent mechanic.

60. Mr. Finley regularly saw advertisements for BMW vehicles on television, in magazines, on billboards, in brochures at the dealership, and on the internet during the years before he purchased his BMW X5 in 2024. Although he does not recall the specifics of the many BMW advertisements he saw before he purchased his Class Vehicle, he does recall that reliability was a frequent theme. Those advertisements about reliability influenced his decision to purchase his vehicle. Had those advertisements or any other BMW materials disclosed to Mr. Finley that the Class Vehicles had defective transfer cases that would render his vehicle unreliable and that he would be required to pay over \$494 in repair costs, he would not have purchased his Class Vehicle, or would have paid less for it.

**B. Defendants**

**1. Defendant Bayerische Motoren Werke AG**

61. Defendant Bayerische Motoren Werke AG ("BMW AG") is a German corporation with its principal place of business in Munich, Germany.

62. At all times relevant herein, BMW AG (itself and through its related entities) engaged in the business of designing and manufacturing the Class Vehicles.

63. Upon information and belief, BMW AG was chiefly responsible for designing the Class Vehicles, including their defective transfer cases.

64. Upon information and belief, BMW AG has, and at all relevant times had, the contractual right to exercise, and in practice has exercised, control over BMW NA's work, including but not limited to the design of Class Vehicles, the manner of Class Vehicles' marketing, the scope of written warranties, the scope of repairs in practice to be covered under warranty, and representations made and facts withheld from consumers and the public about the Transfer Case Defect. BMW AG has been directly involved in assisting, directing, and controlling BMW NA, and BMW NA's authorized dealers' handling of Class Member complaints and warranty claims regarding the Transfer Case Defect.

65. BMW AG has held BMW NA out as its agent for all purposes in the United States, but especially for sales and marketing of Class Vehicles and for ongoing management of relationships with purchasers of Class Vehicles. It established BMW NA as its wholly-owned subsidiary company. It named BMW NA with its official "BMW" title. It provided BMW NA with marketing and technical materials avoiding any distinction between BMW AG and BMW NA, and instead representing BMW NA as nothing less than BMW AG's presence in the United States for purposes of selling and leasing "BMW" brand vehicles and providing related services.

66. Based on the foregoing actions, Plaintiffs and Class Members justifiably relied on BMW AG's representations and omissions regarding the Class Vehicles that were the responsibility of BMW AG in, for example, BMW AG's design of Class Vehicles, and were injured because of their purchase of defective Class Vehicles.

**2. Defendant BMW of North America, LLC**

67. Defendant BMW of North America, LLC (“BMW NA”) is a Delaware corporation with its principal place of business in Woodcliff Lake, New Jersey.

68. BMW NA is a wholly-owned subsidiary of BMW AG.

69. At all times relevant herein, BMW NA has been and has acted as an agent of BMW AG and subject to BMW AG’s control.

70. At all times relevant herein, BMW NA (itself and through its related entities) engaged in the business of marketing, warranting, distributing, selling, leasing, and servicing automobiles, including the Class Vehicles, throughout the United States.

**III. JURISDICTION**

**A. Subject Matter Jurisdiction**

71. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d) and the Class Action Fairness Act because: the amount in controversy exceeds \$5,000,000, and Defendant BMW AG is a citizen of a foreign country, and is thus diverse from all Plaintiffs and Class Members. In addition, Defendant BMW NA is a citizen of New Jersey, and is therefore diverse from at least one Plaintiff. 28 U.S.C. § 1332(d)(2)(A).

**B. Personal Jurisdiction: BMW AG**

72. This Court has personal jurisdiction over BMW AG because BMW AG has sufficient contacts in this District that relate to the causes of action pleaded against BMW NA.

73. By headquartering its wholly-owned subsidiary BMW NA in this District, and using BMW NA as its channel for marketing, distributing, warranting, selling and leasing the BMW AG-designed Class Vehicles in the District and the United States, BMW AG itself has continuously and deliberately taken affirmative steps to make BMW AG-designed vehicles and replacement parts available to consumers in the District and the rest of New Jersey, including

Plaintiffs and Class Members; created continuing obligations between BMW AG and residents of the District; and purposefully availed itself of the benefits and protections of conducting business in the District.

74. On information and belief, BMW AG employees and representatives regularly visit BMW NA, thereby continuously conducting business in this District.

75. Further, BMW AG's wholly-owned subsidiary BMW NA is at home in this District, and BMW NA's contacts in this District can be attributed to BMW AG.

76. Plaintiffs' claims here arise out of BMW AG's contacts with this District, particularly in that Plaintiffs could not even have purchased their Class Vehicles if not for BMW AG's intentional acts of designing the Class Vehicles (including their defective transfer cases) and exporting them for sale to customers in this District and the United States as a whole, including Plaintiffs and Class Members.

77. These constitute a strong relationship between BMW AG, this District, and the allegations herein, and create a sufficient basis to render the exercise of jurisdiction over BMW AG by this Court permissible under traditional notions of fair play and substantial justice.

**C. Personal Jurisdiction: BMW NA**

78. This Court has personal jurisdiction over BMW NA because BMW NA is authorized to do business in this District, conducts substantial business in the District, has its principal place of business in the District, is at home in the District, and some of the actions giving rise to the complaint took place in the District.

79. Each of these facts independently is, and all of these facts together are, sufficient to render the exercise of jurisdiction by this Court over BMW NA permissible under traditional notions of fair play and substantial justice.

**IV. VENUE**

80. Venue is proper in this District under 28 U.S.C. § 1391 because Defendants, as corporations, are deemed to reside in any judicial district in which they are subject to personal jurisdiction.

81. Additionally, Defendants transact business within the District, BMW NA has its principal place of business in this District, and many of the events establishing the claims occurred in this District.

**V. APPLICABLE LAW**

82. Plaintiffs seek damages and equitable relief on behalf of themselves and the Class Members as a nationwide class under New Jersey law. New Jersey law should govern the claims of the nationwide class because New Jersey has a significant relationship to both the misconduct at issue here and the parties to this litigation, as BMW's acts, practices, and omissions regarding the Transfer Case Defect were directed and emanated from BMW NA's headquarters in New Jersey.

83. As a result, New Jersey has a significant interest in regulating the conduct of a corporation whose principal place of business within the United States is in New Jersey.

84. New Jersey also has a significant aggregation of contacts to the claims of each Class Member such that application of New Jersey law to the claims of all Class Members is neither arbitrary nor fundamentally unfair to Defendants or Class Members.

85. In the alternative, Plaintiffs seek damages and equitable relief under each the respective state laws of themselves and all Class Members, which are substantially similar with respect to these facts and legal claims, and/or can be subdivided into a small number of groups to reflect any material differences in the law with respect to these claims.



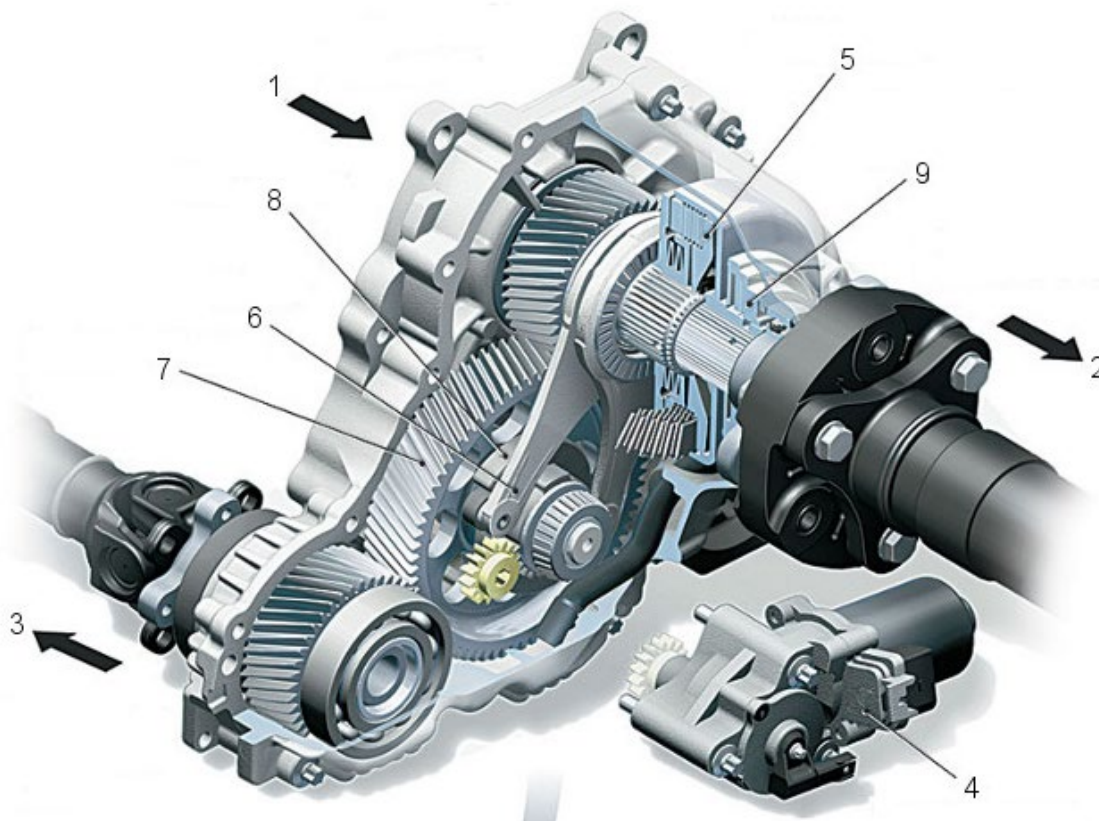
## VI. FACTUAL ALLEGATIONS

### A. Technical Details

#### 1. Mechanical Purpose of a Transfer Case

86. All-wheel-drive and four-wheel-drive vehicles, including the Class Vehicles, contain a transmission component called the transfer case as part of the drivetrain, which transfers power from the transmission of the motor vehicle to the driven axles.

87. The diagram below illustrates a BMW transfer case using a gear drive, as used in many of the Class Vehicles:



88. The transfer case receives power from the transmission of the vehicle (shown as 1 in the above diagram) and splits it between the rear (shown as 2 in the above diagram) and front (shown as 3 in the above diagram) wheels.

89. BMW vehicles equipped with the xDrive system, including the Class Vehicles, uniformly utilize an identical multi-plate clutch system (shown as 5 in the above diagram) that can electronically vary the amount of torque directed to the front and rear wheels. This system allows the vehicle to conserve fuel when four-wheel-drive is not needed and can affect the vehicle traction capability and dynamics. For example, if the rear wheels begin to slip, the vehicle can electronically remove torque from the wheels that have lost traction and put more torque into the wheels which have traction.

90. The transfer cases are filled with manual transmission fluid. Clutches rely on friction to transmit torque. The fluid controls the friction conditions between the clutch components: steel discs and composite discs. The steel discs separate the composite discs and provide a highly finished friction surface for them to run on.

91. Because the clutch discs are continually slipping against one another depending on how much torque must be sent to the front and/or rear wheels, the fluid must cool the discs to ensure that they do not overheat and control the amount of friction between the discs, which determines how much torque moves through the clutch system.

## **2. Mechanical Consequences of Clutch Issues**

92. When an owner or lessee reports a jerking or shuddering sensation to a BMW dealership, BMW's SIB 27-02-20 first instructs the dealer to inspect the vehicle for unevenly worn or improperly fitted tires, which can cause problems with the clutch. If there is no issue with the tires, the dealer is instructed to electronically disconnect the clutch and test drive the vehicle. If the juddering sensation is not present during the test drive, the dealer diagnoses a clutch issue.

93. Once a clutch issue is diagnosed, the dealer first replaces the transfer case fluid and instructs the owner or lessee to drive the vehicle for at least 125 miles. If the problem is not

resolved at that point, the clutches have been damaged and the owner or lessee must replace the transfer case.

94. When the clutches do not function properly, vehicle users experience a juddering sensation due to an improper split of torque between the front and rear wheels, typically during low-speed maneuvers, and especially when turning the vehicle.

95. A transfer case is designed, built, and installed with the expectation that it will never need to be replaced.

96. The cost of a transfer case replacement, including parts and labor, is between \$7,000 and \$13,000.

97. Transfer case fluid is filled with the expectation that it will last for the life of the vehicle. In fact, BMW's maintenance guide describes transfer case fluid as a "long-term rated fluid" and states that "replacement is only necessary when repairs are being performed" except for the high performance M5 and M8 models not included in the Class Vehicles here.

98. If not covered by warranty, the cost of transfer case fluid replacement, including parts and labor, is between \$250 and \$1,500.

**B. BMW's Knowledge of the Transfer Case Defect**

99. As early as 2018, and likely earlier, BMW was aware of the Transfer Case Defect, or was reckless in not being aware of the Transfer Case Defect, based on, among others, the following sources:

- a. Pre-release design, manufacturing, engineering, and testing data;
- b. Detailed data gathered by BMW about a large number of Transfer Case Defect repairs by authorized BMW dealers;
- c. Numerous and consistent consumer complaints collected by NHTSA about the Transfer Case Defect;

d. Service bulletins sent by BMW to its dealerships evincing knowledge of the Transfer Case Defect in the Class Vehicles;

e. Knowledge BMW had of the large number of replacement transfer cases ordered from BMW;

f. Numerous and consistent consumer complaints made directly to BMW about the Transfer Case Defect;

g. Numerous and consistent consumer complaints made on online vehicle owner forums;

h. BMW service center employees' familiarity with and knowledge of the Transfer Case Defect.

**1. BMW's Knowledge of the Transfer Case Defect Gained from Pre-Release Design, Manufacture, Engineering, and Testing Data**

100. During the pre-release process of designing, manufacturing, engineering, and testing the Class Vehicles, BMW necessarily would have gained comprehensive and exclusive knowledge about the Class Vehicle's transfer cases, particularly the basic engineering principles behind the transfer cases' construction and materials, as well as the expected conditions and uses the transfer cases would encounter in ordinary customer use.

101. An adequate pre-release analysis of the design, engineering, and manufacture of the transfer cases in the Class Vehicles would have revealed to BMW that the transfer cases were defective and would experience premature failure when exposed to normal road conditions.

102. Due to the importance of the transfer case to the drivetrain in all-wheel drive vehicles, manufacturers conduct a wide variety of pre-sale tests to ensure that both the component parts and the vehicle as a whole are adequately designed and manufactured. These tests include:

a. A “worst case parts” test in which, as part of normal automotive engineering practice, the manufacturer tests the maximum and minimum tolerance for components such as clutches by running the transfer case with components on the outlying conditions of the product specification and validating that the control system can overcome these tolerance variations.

b. Testing of the transfer case as a separate element in a rig or dyno where torque is inputted and the clutches are actuated; testing of the full driveline in a dyno to observe interactions between the transfer case and other driveline components such as the rear prop shafts and transmission while gear changes occur; and finally testing of the full vehicle with environmental conditions, including test tracks with different friction coefficients applied.

103. A reasonably prudent vehicle manufacturer should have conducted the above tests, or a substantially similar battery of tests, to ensure that its vehicles’ transfer cases were adequate. Plaintiffs expect discovery to reveal whether BMW performed these tests and knew about the Transfer Case Defect, but chose to sell the Class Vehicles in a defective state, or whether it was reckless in failing to perform these tests.

**2. BMW Was Made Directly Aware of the Defect Via Class Member Complaints Collected by NHTSA’s Office of Defect Investigations**

104. In addition to complaints made directly to BMW, many Class Vehicle owners lodged complaints about the Transfer Case Defect with NHTSA beginning in 2024.

105. Federal law requires automakers like BMW to be in close contact with NHTSA regarding potential auto defects, and imposes a legal requirement, backed by criminal penalties for violation, of confidential disclosure of defects by automakers to NHTSA, including field reports, customer complaints, and warranty data. See TREAD Act, Pub. L. No. 106-414, 114 Stat. 1800 (2000).

106. Thus, automakers should and do monitor NHTSA databases for consumer complaints regarding automobiles as part of the automakers' on going obligation to identify potential defects in their vehicles, including the premature failure of components like the transfer case. Indeed, many of the NHTSA complaints also expressly state that BMW was directly informed of the issue.

107. From its monitoring of the NHTSA database, BMW knew or should have known of the many complaints about the transfer case failure logged by NHTSA, and the content, consistency, and large number of those complaints alerted, or should have alerted, BMW to the Transfer Case Defect.

108. NHTSA's complaint database is currently publicly available. To the extent that it was not publicly available in previous years, BMW, as a vehicle manufacturer, had contemporaneous and on-going access to the NHSTA consumer complaint data. A sampling of the publicly available complaints lodged with NHTSA to which Plaintiffs have been able to gain access includes the following<sup>1</sup>:

a. "BMW jerking and shuttering sensation and rough grinding noise when driving at low speed 2-5 mph and while turning at 2-5 mph. Safety was put at risk with while turning with oncoming traffic and when vehicles directly behind me. The problem has been reproduced and confirmed by the BMW dealership service department. The service department change the left tire and replaced the transfer oil on 05/10/23. This did not solve the problem. The vehicle was returned to the dealership for same reason on 7/19/24 and the dealership replaced the right tire. The problem still exists. The vehicle has not been inspected by the manufacturer,

---

<sup>1</sup> For these and other customer complaints quoted in this Complaint, quotes are left as written, except complaints that were originally in all caps have been changed to standard case. Due to the number of typographical and grammatical errors, [sic] notation has not been used.

police, insurance representative. No warning lamps or messages appear to diagnose the problem.” NHTSA database, NHTSA ID No. 11618255, date of incident May 10, 2023.

b. “How does a known manufacturing defect ( or the factor-filled transfer case oil does not meet BMW specifications.) Not become a safety concern. The wheels have intermittent power from the transfer case. My car showed the concern at 55k miles and the warranty company made me go through another 12 months of the shuddering issue before replacing. When moving from winter to all season tire it became more noticeable. When setting off from a slope my power loss was even greater causing the front wheels to slip from the shuddering power train. This possess a greater risk on loose paving.” NHTSA database, NHTSA ID No. 11590613, date of incident May 24, 2024.

c. “Transfer case causes vehicle to shake when driving straight or turning from a complete stop or low speeds.” NHTSA database, NHTSA ID No. 11679631, date of incident March 1, 2025.

d. “vehicle has been vibrating at low speeds when turning or when backing up. Took vehicle to BMW dealership (BMW of Nashville in Franklin, TN) multiple times during the past 18 months without resolution. On my visit for the same issue this month, dealership finally recognized the issue and said there was a BMW bulletin out about the issue SIB 27 02 20. It is very frustrating that 1. The dealership kept stalling and despite test driving the car with me and feeling the vibration, they kept blaming tires or saying it was normal while the bulletin about the issues was generated in 05.20.2020 2. It cost me over \$627 for them to change the transfer case oil to diagnose and repair the issue. I am still in the testing phase after the transfer case oil change as the vehicle needs to be driven 300+ miles. The dealership and BMW should issue a recall since it is a know issue that the wrong oil was used in the manufacturing process and

reimburse the cost charged for diagnostic and transfer case oil replacement. The vehicle is furthermore still under warranty so I should not be paying anything for diagnostics or repairs.” NHTSA database, NHTSA ID No. 11655405, date of incident March 20, 2025.

e. “Without warning the vehicle came to an abrupt stop while going about 25 mph. I got out and checked and noticed a liquid dripping from underneath the front area of the vehicle. Later determined it was the front transfer case. I really would hate to think what could have happened at higher speeds. Again, no warning at all.” NHTSA database, NHTSA ID No. 11653163, date of incident March 20, 2025.

f. “The vehicle experiences a recurring drivetrain shuddering or slipping sensation at low speeds, especially when accelerating from a stop or while cornering. The issue originates from the transfer case, which has been identified as the malfunctioning component. The transfer case was previously serviced according to the manufacturer's official technical bulletin, but the problem returned after the prescribed post-repair evaluation period. The condition compromises vehicle stability and creates a potential safety risk, particularly when merging into traffic, turning at intersections, or navigating tight spaces — where unexpected hesitation or loss of traction can lead to a collision. The issue has been confirmed by authorized dealership technicians, and acknowledged by service personnel as a commonly recurring defect in this vehicle model. The manufacturer has not issued a recall but has documented the issue in an official service bulletin. The component is still installed in the vehicle and available for inspection upon request. There were no dashboard warning lights or fault codes present prior to or during the symptoms. The only observable indication is the physical sensation of shuddering/slipping, which persists intermittently and without system alerts.” NHTSA database, NHTSA ID No. 11683156, date of incident August 1, 2025.



g. “Transfer case and front and rear differentials have failed – bmw claims lifetime fluid which is clearly not accurate.” NHTSA database, NHTSA ID No. 11699292, date of incident October 8, 2025.

h. “Like numerous other BMW owners, my transfer case is failing in my vehicle. It’s actively causing jerking/shuddering/locking up at low speeds and while making turns. This poses a significant danger to the driver and passengers in the vehicle, and other drivers as well while turning or trying to merge with traffic. I’ve brought the car into the dealer had the transfer case fluid changed according to the service bulletin that exists for this problem but it persists. I’ve brought the vehicle back into the dealer and told that now BMW suggests paying for another fluid change. This is obviously a known problem (thus the service bulletin), it’s persisted with models like mine for over 5 years, had cost numerous owners significant amounts of monies out of pocket, and poses a safety risk given the transfer case is a foundational component of these vehicles’ drive trains. Finally it’s a problem BMW openly admits they caused with improper fluid in the component. I believe the above meets all criteria for a formal recall that BMW should cover (or reimburse) the costs for given their negligence and the risks it poses. Can you confirm why this hasn’t risen to a formal recall? And confirm the steps you’re actively taking to elevate this to that status with BMW?” NHTSA database, NHTSA ID No. 11697310, date of incident November 3, 2025.

### **3. BMW Knew of the Transfer Case Defect as Evidenced by its Own Service Industry Bulletins**

109. On May 5, 2020, BMW sent out a service bulletin to its dealers within the United States, advising service technicians about an issue with the transfer case as follows:

“There is a jerking or shuddering during either or both of the following:

- Cornering or accelerating from low speeds

- Driving with low to medium loads[.]

There are no warning lights or Check Control messages.”

110. The bulletin recommends replacing the “transfer case oil” and that after a “run-in period” of up to 125 miles, “the shuddering should diminish...before completely smoothing out.”

111. Over the next several years, BMW issued several revised SIBs. The most recent edition, Revision 4, was published on March 26, 2025. It contains the same operative language but includes several additional models.

112. Furthermore, it specifically excludes certified preowned vehicles from warranty coverage: “When applicable to the vehicle being repaired, standalone transfer box/case oil change procedures are not covered or claimable under an active BMW Certified Pre-Owned Program or Extended Service Contract.”

**4. BMW Knew of the Transfer Case Defect Based on its Receipt of a Large Number of Orders for Replacement Transfer Cases**

113. Upon information and belief, BMW also knew or should have known about the Transfer Case Defect because of the higher than expected number of replacement transfer cases and replacement transfer case fluid ordered from BMW, which should have alerted BMW that this was a defect affecting a large number and wide range of its vehicles.

114. Upon information and belief, BMW service centers use BMW replacement parts that they order directly from BMW. Therefore, BMW would have detailed and accurate data regarding the number and frequency of replacement part orders, including replacement transfer cases and transfer case fluid. The ongoing high sales of transfer cases and transfer case fluid was (or should have been) known to BMW, and alerted BMW that transfer cases were defective.

115. Upon information and belief, replacement transfer case fluid and/or replacement transfer cases for some or all of the Class Vehicles are currently backordered or have been

backordered, given the high volume of demand for replacement parts due to the Transfer Case Defect. For instance, one absent Class Member was told by a BMW dealership in November of 2025 that the replacement of the transfer case fluid in his BMW X4 would be delayed because the transfer case fluid was on backorder. This parts shortage further substantiates that BMW knows or should know about the existence of the defect.

**5. BMW Was Made Directly Aware of the Transfer Case Defect Based on a Large Number of Class Member Complaints to BMW**

116. BMW also knew or should have known about the Transfer Case Defect because numerous consumers complained directly to BMW about the defect. The large number of complaints, and the consistency of their descriptions of the Transfer Case Defect should have alerted BMW to this serious defect, which impacts a wide range of vehicles.

117. The full universe of complaints made directly to BMW about the Transfer Case Defect is information presently in the exclusive custody and control of BMW and is not yet available to Plaintiffs prior to discovery. However, on information and belief, many Class Vehicle owners complained directly to BMW and BMW dealerships about the transfer case failures their vehicles experienced. For example, some instances of these direct-to-BMW complaints are described in Class Vehicle owners' complaints logged with NHTSA or posted on online vehicle owner forums:

a. "Failed components 1. oil pump \$8769.41 2. Cylinder Head Assembly- Valve Cover \$4280.83 3. center console control panel \$3051.93 4. transfer case replacement TBD 2019 BMW X5 xDrive40i has multiple major component failures at 70,000 miles. Oil pump failed causing loss of oil-level monitoring. The cylinder head assembly was diagnosed with oil consumption, the transfer case exhibited driveline shuddering, and the center console control panel developed internal electrical faults that affect vital vehicle components. All have

been diagnosed by BMW of North Haven, CT. The oil pump and transfer case failures have created potential loss of engine lubrication and vehicle control putting my safety at risk. The oil-level test aborts at 16% making it impossible to verify oil quantity or pressure while driving. The shuddering occurs during low-speed turns and acceleration. BMW North America reviewed my case and approved goodwill coverage for transfer-case fluid change ALL other safety-related repairs have been denied. Supporting BMW Service Bulletins: •SIB 27 02 20: Jerking or Shuddering from Driveline xDrive Transfer Case ATX13-X (faulty factory oil specification). •SIB 11 03 17: N20/N26 Engine Timing Chain and Oil-Pump Drive Chain Warranty Extension (pattern of oil-pump failures in prior engines). •SIB B01 13 23: Front Center Console Cupholder Liquid Ingress (electrical faults from liquid intrusion in 2019–2022 G05 X5). •SIB 65 12 22: Roof-Mounted Antenna Housing Seal Not Adhering (water ingress from shark-fin antenna affecting interior electronics). Note: I paid out of pocket to replace and reprogram the Telematics Communication Box (TCB) due to faulty seal around shark fin. A class action lawsuit is currently in happening for this exact issue in California. These issues are not normal wear and tear. They represent premature mechanical and electrical failures on a well-maintained vehicle as well as posing a safety risk to me and other drivers.” NHTSA database, NHTSA ID No. 11696693, date of incident August 20, 2025.

b. “Cost me ~\$850 on our 2019 to change the fluid. Car has 40k miles on it and the transfer case was shuddering pretty bad when doing slow speed turns. Dealer recommended fluid change and if that didn’t fix it would need a new transfer case. Contacted BMW NA about a goodwill case since it only has 40k. They said nope since it was out of warranty. Claimed they were surprised but haven’t heard of early tc case failures on the X5 ☺. So if it fails that’s going to cost me 6k+ out of pocket. This is on top of the other issues we’ve had

with the car and it's easily the worst BMW I've ever owned (I've owned double digits of them, with 3 new in the past 5 years). I was shopping for a new X5M when this happened as well, but BMW NA's response with this issue and other issues with this car left a sour taste in my mouth. Probably the last BMW I will ever buy. I sued to work for them as a tech as well.. they're not what / who they used to be as a company. Far, far from it." Posted on bimmerpost.com on April 28, 2024.

**6. BMW Knew of the Transfer Case Defect Based on Class Member Complaints on Public Online Forums**

118. In addition to complaint made directly to BMW and collected by the NHSTA, many Class Vehicle owners posted complaints about the Transfer Case Defect on public online forums. The following is a small sampling of such complaints:

a. "We are seeing a huge amount of transfer case failures. I did my own [fluid change] at 30/60/ and will at 90. I would 1000% suggest doing the fluid if you're planning on keeping the car. I don't recall the price of the fluid, but 1-1.5 hours of labor and 1 liter of oil I would expect (high side) to be \$600. Ish." Posted on reddit.com in r/BmwTech on June 5, 2024

b. "I brought in my X5 and it was confirmed the transfer case is bad. They changed the fluid and put in the miles, still bad. Oddly the symptoms seem even worse after fluid change. So they said transfer case will need to be replaced. Unfortunately the part needs to be ordered from Germany and is on backorder so they told me to take the car back until the part arrives. Anyone have an idea how long it takes to get a part like this from Germany? Dealer had no idea. Also, beyond further destroying the already damaged transfer case, are there any other risks to continuing to drive the X5 with a bad transfer case?" Posted on bimmerpost.com on October 29, 2024.

c. “Just spent \$700 doing a fluid change on our 2022 X5 with 52k miles only to have the issue actually get worse the following day. Quoted \$10k to replace the transfer case. First, the Technical Service Bulletin (TSB) recommends the fluid service as a first step in troubleshooting. How would new fluid, oil basically, solve a mechanical issue that occurs only at slow speeds, while turning, in forward or reverse. Basically paid \$700 on a different mouthwash because the tooth was cracked. Secondly, why spend \$10k to put in the exact same part that failed initially when this is a know issue across BMW (they would not have a TSB is this was not recurring)? There is either a design issue or a controls issue in the drive train programming. BMW needs to issue a recall!” Posted on bimmerpost.com on June 19, 2025.

d. “Hey All... long time Bimmer guy back to 2006 and DONE with the brand after my 7th and final Bimmer, my 2020 X5 because of transfer case handling by dealer in Warwick, RI and bmwusa. Although discovered while still under warranty and needed replacement they charged me \$700 for fluid change which lasted just long enough to put me out of warranty for the real repair. Then after much unnecessary hassle they agreed to charge me 50% of \$9400 to replace TC, which is likely what covers their cost! Sad that my love of the brand ended this way. Bmwusa, playing games with your customers isn't smart. BTW, loving my new Tesla! So, thanks.” Posted on bimmerpost.com on September 25, 2025.

### **C. BMW's Marketing and Concealment**

119. BMW manufactured and sold the Class Vehicles with the Transfer Case Defect, while willfully concealing the serious reliability impacts of the defect, as well as the inferior quality and limited longevity of the Class Vehicles' transfer cases.

120. BMW directly markets the Class Vehicles to consumers via extensive nationwide, multimedia advertising campaigns on television, the internet, billboards, print publications, and through other mass media.

121. BMW regularly releases advertisements and marketing materials touting the reliability of its vehicles, including its all-wheel drive (“xDrive”) technology. The following are a few examples of such widely circulated advertisements and marketing materials:

122. On its website page “What is xDrive?” the section titled “Intelligent All-Wheel Drive” provides: “BMW’s xDrive helps you navigate the road on your own terms from hot summer drives to navigating a polar vortex. The xDrive system uses your driving data to automatically relay power to individual wheels for optimal traction and control. Meaning you can still conquer every corner in any season.” Under “Dynamic Stability Control,” BMW further states: “When you hit a slick stretch of road, your natural instinct is to steer against the slip – and that can make a skid even worse. xDrive’s Dynamic Stability Control takes over when traction loss is detected by applying each individual brake as needed in milliseconds. That means more stability for your BMW, and more driving confidence for you.” Furthermore, in the section titled “Dynamic Traction Control,” it states: “The winter’s harshest days can sometimes lead to a situation where you’re stuck in snow. Dynamic Traction Control, a part of the Dynamic Stability Control system, provides the necessary wheel spin and brake adjustments to keep you moving forward without losing power. This action keeps you in complete control of your BMW, especially in exceptional situations.”

123. In a press release published on June 6, 2018, BMW described the xDrive technology: “The task of maximizing traction, agility and directional stability in the new BMW X5 falls to the latest generation of the BMW xDrive intelligent all-wheel-drive system, which is now able to split drive torque between the front and rear wheels with even greater precision and speed, as the situation demands. For added efficiency, full power can be directed to the rear wheels only in situations where all-wheel drive is surplus to requirements.”

124. None of BMW's advertisements warned customers that their vehicles were likely to experience premature failure of the transfer case that would impact their ability to drive the Class Vehicles.

125. Plaintiffs and Class Members were exposed to BMW's long-term, national multimedia marketing campaign, which focused on the reliability of BMW vehicles. Plaintiffs and Class Members justifiably chose to purchase their Class Vehicles based on BMW's misleading marketing, which concealed the true, defective nature of the Class Vehicles' transfer cases.

126. Further, BMW knowingly misled Class Members about the defective nature of the Class Vehicles. As detailed above, upon information and belief, BMW has been aware of the Transfer Case Defect since at least 2018 and likely earlier.

127. Despite BMW's knowledge of the Transfer Case Defect, it told Class Members who complained to customer service about the Transfer Case Defect that it was not aware of any defect, was not responsible for the defect, and that it was not responsible for full reimbursement for the repair.

**D. Fraudulent Concealment Allegations**

128. Absent discovery, Plaintiffs are unaware of, and unable through reasonable investigation to obtain, the true names and identities of those individuals at BMW responsible for disseminating false and misleading marketing materials regarding the Class Vehicles. BMW necessarily is in possession of all of this information.

129. Plaintiffs' claims arise out of BMW's failure to disclose and/or fraudulent concealment of the Transfer Case Defect and the issues it causes, and its representations about the world-class quality of the Class Vehicles.



130. BMW was under a duty to disclose the Transfer Case Defect because it had superior (indeed, exclusive) knowledge of the defect, knew the Transfer Case Defect was a material fact that would affect Plaintiffs' and/or Class Members' decisions to buy or lease Class Vehicles; intentionally concealed the foregoing from Plaintiffs and Class Members; and made partial representations to Plaintiffs and Class Members both prior to and at time of sale and when Plaintiffs and Class Members brought their Class Vehicles in for repair without disclosing its knowledge of the defect to them and while purposefully withholding material facts from Plaintiffs and Class Members that contradicted these representations.

131. To the extent that Plaintiffs' claims arise from BMW's failure to disclose and/or fraudulent concealment, there is no one document or communication, and no one interaction, upon which Plaintiffs base their claims. Plaintiffs allege that at all relevant times, including specifically prior to and at the time they purchased their Class Vehicles, BMW knew, or was reckless in not knowing, of the Transfer Case Defect; BMW was under a duty to disclose the Defect; and BMW never disclosed the Defect to Plaintiffs or the public at any time or place or in any manner.

132. Plaintiffs make the following specific fraud allegations with as much specificity as possible absent access to the information necessarily available only to BMW:

a. **Who:** BMW failed to disclose and/or actively concealed the Transfer Case Defect from Plaintiffs and Class Members while simultaneously touting the world-class quality of the Class Vehicles, as alleged in § VI.C. Plaintiffs are unaware of, and therefore unable to identify, the true names and identities of those specific individuals at BMW responsible for such decisions. However, both representatives of BMW customer service and various BMW-

authorized dealerships have denied the existence and prevalence of the Transfer Case Defect when specifically questioned by Class Vehicle owners.

b. **What:** BMW knew, or was reckless in not knowing, that the Class Vehicles contain the Transfer Case Defect starting no later than 2018, as alleged above in § VI.B. BMW did not disclose and/or actively concealed the defect and made representations about the world-class quality and other attributes of the Class Vehicles, as specified above in § VI.C.

c. **When:** BMW did not disclose and/or actively concealed material information regarding the Transfer Case Defect at all times and made representations about the world-class quality of the Class Vehicles, starting no later than 2018, or at the subsequent introduction of certain models of Class Vehicles to the market, continuing through the time of sale, and on an ongoing basis, and continuing to this day, as alleged above in § VI.C. BMW has never taken any action to inform owners and lessees about the true nature of the defect in Class Vehicles. And when consumers brought their Vehicles to BMW with defective transfer cases, BMW denied any knowledge of or responsibility for the Transfer Case Defect.

d. **Where:** BMW did not disclose and/or actively concealed material information regarding the true nature of the Transfer Case Defect in every communication it had with Plaintiffs and Class Members and made representations about the world-class quality of the Class Vehicles. Plaintiffs are aware of no document, communication, or other place or thing, in which BMW disclosed the truth about the Transfer Case Defect in the Class Vehicles to Plaintiffs, Class Members, or the general public. Such information is not adequately disclosed in any sales documents, displays, advertisements, warranties, owner's manuals, or on BMW's website.

e. **How:** BMW concealed the Transfer Case Defect from Plaintiffs and Class Members and made representations about the world-class quality of the Class Vehicles. BMW did not disclose and/or actively concealed the truth about the existence and nature of the Transfer Case Defect from Plaintiffs and Class Members at all times, even though it knew about the Transfer Case Defect and knew that information about the Transfer Case Defect would be important to a reasonable consumer, and BMW promised in its marketing materials that Class Vehicles have qualities that they do not have.

f. **Why:** BMW did not disclose and/or actively concealed material information about the Transfer Case Defect in the Class Vehicles for the purpose of inducing Plaintiffs and Class Members to purchase Class Vehicles, rather than purchasing or leasing competitors' vehicles and made representations about the world-class quality, sophistication, and comfort of the Class Vehicles. Had BMW disclosed the truth, for example in its advertisements or other materials or communications, Plaintiffs and Class Members (all reasonable consumers) would have been aware of it, and would not have bought the Class Vehicles or would have paid less for them.

## **VII. TOLLING OF THE STATUTE OF LIMITATIONS**

### **A. Fraudulent Concealment Tolling**

133. BMW has known of the Transfer Case Defect in the Class Vehicles since at least 2018, and certainly well before Plaintiffs and Class Members purchased their Class Vehicles, and yet actively concealed from and/or failed to disclose to Plaintiffs, Class Members, and the public the full and complete nature of the Transfer Case Defect, even when directly asked about it by Plaintiffs and Class Members during communications with BMW, BMW dealerships, and BMW service centers. BMW continues to conceal the defect to this day and has undertaken no steps to inform Plaintiffs or Class Members of it.

134. Any applicable statute of limitation has been tolled by BMW's knowledge, active concealment, and denial of the facts alleged herein, which behavior is ongoing.

**B. Estoppel**

135. As detailed in Paragraph 130, BMW was and is under a continuous duty to disclose to Plaintiffs and Class Members the true character, quality, and nature of the Class Vehicles. BMW actively concealed—and continues to conceal—the true character, quality, and nature of the Class Vehicles and knowingly made misrepresentations about the world-class quality of the Class Vehicles. Plaintiffs and Class Members reasonably relied upon BMW's knowing misrepresentations and active concealment of these facts. Based on the foregoing, BMW is estopped from relying on any statutes of limitation in defense of this action.

**C. Discovery Rule**

136. The causes of action alleged herein did not accrue until Plaintiffs and Class Members discovered that their Class Vehicles contained the Transfer Case Defect.

137. However, Plaintiffs and Class Members had no realistic ability to discern that the Class Vehicles were defective until—at the earliest—after a professional inspection revealed the defective transfer case. Plaintiffs and Class Members had no reason to know the jerking and shuddering sensation they experienced while driving the Class Vehicles was caused by a defect in the Class Vehicles because of BMW's active concealment of the Transfer Case Defect. In fact, BMW's SIB 27-02-20 directs BMW dealerships to conduct a tire inspection for causes attributable to the owners and lessees, such as unevenly worn or incorrectly fitted tires, as a prerequisite to diagnosing a transfer case issue. Not only did BMW fail to notify Plaintiffs and Class Members about the Transfer Case Defect, BMW in fact denied any knowledge of or responsibility for the defect when directly asked about it. Thus Plaintiffs and Class Members were not reasonably able to discover the Transfer Case Defect until after they had purchased

their Class Vehicles, despite their exercise of due diligence, and their causes of action did not accrue until they discovered that the Transfer Case Defect caused their transfer cases to fail prematurely.

### **VIII. CLASS ALLEGATIONS**

138. Plaintiffs bring this lawsuit as a class action on behalf of themselves and all other similarly situated individuals as a nationwide class pursuant to Federal Rules of Civil Procedure 23(a) and (b)(2), (b)(3), and/or (c)(4). This action satisfies the numerosity, ascertainability, commonality, typicality, adequacy, predominance, and superiority requirements of those provisions.

139. Plaintiffs bring this class action as a nationwide class on behalf of themselves and all other similarly situated members of the proposed class (the “Class Members”), defined as follows:

All residents of the United States and its territories who are current or former owners and/or lessees of a Class Vehicle. A “Class Vehicle” is a vehicle of any of the following models/model years: BMW 2019-2025 G01 (X3 Sports Activity Vehicle), G02 (X4 Sports Activity Coupe), G05 (X5 Sports Activity Vehicle), G06 (X6 Sports Activity Coupe), G07 (X7 Sports Activity Vehicle), G12 (7 Series Sedan), G14 (8 Series Convertible), G15 (8 Series Coupe), G16 (8 Series Gran Coupe), G20 (3 Series Sedan), G22 (4 Series Coupe), G23 (4 Series Convertible), G26 (4 Series Gran Coupe), G30 (5 Series Sedan), G32 (640i xDrive Gran Turismo), G42 (2 Series Coupe), G45 (X3 Sports Activity Vehicle), G60 (5 Series Sedan) and G70 (7 Series Sedan) models equipped with an XDrive transfer case.

Excluded from the Class are: (1) owners of “M” model BMW vehicles; (2) employees of BMW AG and BMW NA; (3) any judge assigned to this case and their respective families; (4) government entities; and (5) claims for personal injuries.

**B. Numerosity and Ascertainability**

140. Although the exact number of Class Members is uncertain and can only be ascertained through appropriate discovery, the number is great enough such that joinder is impracticable. Indeed, to date counsel have been contacted by over 330 members of the proposed class reporting the Transfer Case Defect.

141. Class Members are readily ascertainable via unique VIN numbers on each vehicle, from information and records in BMW's possession, custody, or control, as well as from records kept by state departments of motor vehicles.

**C. Typicality**

142. The claims of Plaintiffs are typical of the claims of Class Members in that the Plaintiffs, like all Class Members, purchased or leased a Class Vehicle designed, manufactured, and distributed by BMW. Plaintiffs, like all Class Members, were injured by BMW's misconduct and suffered actual damages in that they purchased or leased a vehicle they would not have purchased, or for which they would have paid less, and incurred or will incur out of pocket costs for service relating to and caused by the Transfer Case Defect and/or have experienced diminished ability to use their Class Vehicles for their intended purpose, and/or have experienced diminution in resale value as a result of the Transfer Case Defect. Furthermore, the factual bases of BMW's misconduct are common to the Plaintiffs and all Class Members and represent a common thread of misconduct resulting in injury to the Plaintiffs and all Class Members.

**D. Adequate Representation**

143. Plaintiffs will fairly and adequately represent and protect the interests of the Class Members. Plaintiffs have retained counsel with substantial experience in prosecuting consumer class actions, including actions involving defective automotive vehicles.

144. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the class, and they have the financial resources to do so. Neither Plaintiffs nor their counsel has interests adverse to those of the Class.

**E. Predominance of Common Issues**

145. There are numerous questions of law and fact common to Plaintiffs and Class Members, the answers to which will advance the resolution of the litigation as to all Class Members and which predominate over any individual question. These common legal and factual issues include:

- a. whether the transfer case in the Class Vehicles is defective;
- b. whether and when BMW knew or should have known about the Transfer Case Defect, and, if so, how long BMW knew or should have known of the Defect;
- c. whether the defective nature of the Class Vehicles constitutes a material fact reasonable consumers would have considered in deciding whether to purchase a Class Vehicle;
- d. whether BMW had and/or has a duty to disclose the defective nature of the Class Vehicle to Plaintiffs and Class Members;
- e. whether BMW omitted and failed to disclose material facts about the Class Vehicles;
- f. whether BMW's concealment of the true defective nature of the Class Vehicles induced Plaintiffs and Class Members to act to their detriment by purchasing Class Vehicles;
- g. whether BMW represented, through its words and conduct, that the Class Vehicle had characteristics, uses, or benefits that they did not actually have;

h. whether BMW represented, through its words and conduct, that the Class Vehicles were of a particular standard, quality, or grade when they were of another;

i. whether BMW advertised the Class Vehicles with the intent not to sell them as advertised;

j. whether BMW's affirmative misrepresentations about the true defective nature of the Class Vehicles were likely to create confusion or misunderstanding, and were therefore fraudulent;

k. whether BMW's affirmative misrepresentations about the true defective nature of the Class Vehicles were and are deceptive;

l. whether the Class Vehicles were unfit for the ordinary purposes for which they were used, in violation of the implied warranty of merchantability;

m. whether Plaintiffs and the other Class Members are entitled to a declaratory judgment stating that the transfer cases in Class Vehicles are defective and/or not merchantable;

n. whether Plaintiffs and Class Members are entitled to equitable relief, including, but not limited to, a preliminary and/or permanent injunction;

o. whether BMW should be declared financially responsible for notifying Class Members of the problems with the Class Vehicles and for the costs and expenses of permanently remedying the Transfer Case Defect in Class Vehicles; and

p. whether BMW is obligated to inform Class Members of their right to seek full reimbursement for having paid to diagnose and repair the transfer cases at either a BMW dealership or independent mechanic, or for those Class Members who did not retain their Class Vehicles, for the diminution in value of the Class Vehicles upon resale.



**F. Superiority**

146. Plaintiffs and Class Members have all suffered and will continue to suffer harm and damages as a result of BMW's unlawful and wrongful conduct. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

147. Absent a class action, most Class Members would likely find the cost of litigating their claims prohibitively high and would therefore have no effective remedy at law. Because of the relatively small size of the individual Class Members' claims, it is likely that few if any Class Members could afford to seek legal redress for BMW's misconduct. Absent a class action, Class Members will continue to incur damages, and BMW's misconduct will continue without remedy.

148. Class treatment of common questions of law and fact would also be a superior method to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the court and the litigants, and will promote consistency and efficiency of adjudication.

**IX. CLAIMS FOR RELIEF: NATIONWIDE CLAIMS**

**FIRST CAUSE OF ACTION  
Breach of Express Warranty  
(this cause of action against BMW NA only)**

149. MW NA is and was at all relevant times a "merchant" with respect to motor vehicles, and specifically the Class Vehicles under N.J.S. 12A:2-104(1) and a "seller" of motor vehicles, and specifically the Class Vehicles under N.J.S. 2-103(1)(d).

150. With respect to leases, BMW NA is and was at all relevant times a "lessor" of vehicles under N.J.S. 12A:2A-103(1)(p).

151. The Class Vehicles are and were at all relevant times "goods" within the meaning of N.J.S. 12A:2-105(1) and 2A-103(1)(h).

152. Plaintiffs and Class Members bought Class Vehicles manufactured, marketed to them, and intended to be purchased by consumers such as them, by BMW NA.

153. BMW NA expressly warranted the Class Vehicles against defect, including the Transfer Case Defect.

154. Specifically, Class Vehicles were sold to Plaintiffs and Class Members with a new vehicle 48-month and 50,000-mile express warranty.

155. Pursuant to page 2 of the 2019 New Vehicle Limited Warranty booklet for X model BMW vehicles, BMW NA warranted to the original and each subsequent owner that it “will, without charge for parts and labor (including diagnosis), either repair or replace the defective part(s) using new or authorized remanufactured parts.” Upon information and belief, this language is substantively the same in all warranties covering the Class Vehicles.

156. In addition to any remaining portion of the new vehicle warranty, Class Vehicles that Plaintiffs and Class Members purchased certified pre-owned were covered by the standard BMW Certified Pre-Owned Limited Warranty, which runs for one year and unlimited miles. The Certified Pre-Owned Limited Warranty covers a vehicle’s drivetrain (including the transfer case).

157. BMW NA’s express warranties formed a basis of the bargain that was reached when Class Members purchased their Class Vehicles.

158. As described above, the transfer case in the Class Vehicles is defective.

159. As described above, the Transfer Case Defect was present at the time the Class Vehicles were produced and results in premature failure, the early stages of which begin prior to the expiration of the warranty period.

160. The Transfer Case Defect substantially impairs the use and value of the Class Vehicles to reasonable consumers, including Plaintiffs and Class Members.

161. BMW NA breached its express warranties by supplying the Class Vehicles to Plaintiffs and Class Members with the Transfer Case Defect.

162. BMW NA knew of the Transfer Case Defect when it expressly warranted against the defect, wrongfully and fraudulently concealed material facts regarding the defect, and induced Plaintiffs and Class Members to purchase the Class Vehicles under false and/or fraudulent pretenses.

163. BMW NA is obligated, under the terms of its express warranties, to make repairs and/or replacements to permanently correct the Transfer Case Defect for Plaintiffs and Class Members.

164. BMW NA breached the express warranty to repair the Transfer Case Defect in the Class Vehicles, because it failed to repair the defective transfer cases in the Class Vehicles, such that the vehicles did not exhibit shuddering or jerking, and because it failed to provide to Plaintiff or Class Members, as a warranty replacement, a product that conforms to the qualities and characteristics that it expressly warranted when it sold the Class Vehicles to Plaintiff and Class Members.

165. As more fully detailed above, BMW NA was provided with appropriate notice and has been on notice of Transfer Case Defect and of its breach of express written warranties from various sources.

166. Although many of Plaintiffs' and Class Members' Class Vehicles did not require a transfer case replacement until after the expiration of the warranty period, the Class Vehicles were sold by BMW with the Transfer Case Defect and should have been repaired under the

express warranty. Instead, BMW's SIB 27-02-20 instructed BMW dealerships to check for unevenly worn or improperly fitted tires and/or replace the transfer case fluid. The purported "fixes" suggested by this SIB do not remedy the root cause of the Transfer Case Defect. Even when BMW replaced transfer case fluid and even transfer cases without charge under warranty, such measures were insufficient to solve the Transfer Case Defect, which then recurred outside of the warranty period. Plaintiffs gave BMW NA a reasonable opportunity to cure its failures with respect to its warranties, and BMW NA failed to do so in a manner that properly compensated them for the economic damages they incurred or will incur as a result of the Transfer Case Defect.

167. On October 6, 2025, Plaintiffs, through counsel, sent BMW a letter requesting relief and repair of the defects exhibited in Class Vehicles for Plaintiffs and others similarly situated. Ex. A. In response, BMW did not offer to provide the requested relief. Instead, its counsel alluded to a possible extension of the warranty that is under consideration, but did not address whether BMW intends to send notice of any extension to all owners and lessees of Class Vehicles and whether BMW intends to compensate Plaintiffs or Class Members for the diminution in value of their vehicles, out-of-pocket costs already paid for replacement transfer case fluid and/or transfer cases, loss of resale value of the Class Vehicle, services performed by independent mechanics, and miscellaneous expenses incurred by Class Members as a result of the Transfer Case Defect (i.e., rental car fees, etc.).

168. As to any Class Members who have not yet sought repairs from BMW, affording BMW NA a reasonable opportunity to cure its breach of written warranties is unnecessary and futile here. When Plaintiffs and other Class Members provided such notice and sought relief under the warranty, BMW NA refused to provide it, representing that the vehicles were

displaying normal “wear and tear,” and charged them to replace the defective transfer case fluid and/or transfer cases.

169. To the extent any express warranties do not by their terms cover the defects alleged in this Complaint, and to the extent the contractual remedy is in any other respect insufficient to make Plaintiffs and Class Members whole, the warranties fail of their essential purpose and, accordingly, recovery by Plaintiffs and Class Members are not restricted to the promises in any written warranties, and they seek all remedies that may be allowed.

170. Any attempt by BMW NA to limit or disclaim the express warranties in a manner that would exclude coverage of the Transfer Case Defect is unconscionable as a matter of law because the relevant purchase transactions were tainted by BMW NA’s knowledge of and failure to disclose and/or active concealment of material facts. BMW NA knew when it first issued these warranties and imposed limitations that the Transfer Case Defect existed and that the warranties might expire before a reasonable consumer would notice or observe the defect. Thus, any such effort by BMW NA to disclaim, or otherwise limit, its liability for the Transfer Case Defect is null and void.

171. As a direct and proximate result of BMW NA’s breach of express warranties, Plaintiffs and Class Members received goods that had substantially impaired value at the point of sale, and they have suffered incidental, consequential, and other damages, including unreimbursed out-of-pocket costs of thousands of dollars, the costs of needed present and future repairs, an inability to use the Class Vehicles for their intended purpose, and diminution of resale value, in an amount to be determined at trial.

172. Plaintiffs seek against BMW NA a) actual damages, b) statutory damages, c) declaratory relief, d) injunctive relief, and e) pre- and post-judgment interest.

173. In particular, Plaintiffs seek declarations that all Class Vehicles have a defect which results in premature transfer case failure and that this defect requires disclosure; that BMW must notify owners of the defect; and that any limitations for coverage of this defect in BMW's New Vehicle Limited and Certified Preowned warranties are removed. See *Pella Corp. v. Saltzman*, 606 F.3d 391, 392 (7th Cir. 2010).

**SECOND CAUSE OF ACTION**  
**Breach of Implied Warranty**  
**(this cause of action against BMW NA only)**

174. When it sold the Class Vehicles, BMW NA extended an implied warranty to Class Members that the subject vehicles were merchantable and fit for the ordinary purpose for which such goods were sold and free of material defects.

175. Persons who purchased a Class Vehicle from BMW NA are entitled to the benefit of their bargain: a vehicle with a transfer case that has been properly designed and manufactured and that should never require replacement.

176. BMW NA breached this implied warranty in that its Class Vehicles are (1) not fit for ordinary use; and (2) not of a merchantable quality and free of material defects.

177. Plaintiffs and Class Members are in privity of contract with BMW of NA because they purchased the Class Vehicles under warranty through authorized BMW dealerships that are agents of BMW NA for the purposes of selling and servicing BMW vehicles in the United States.

178. To the extent that Plaintiffs and Class Members lack privity of contract with BMW NA, no privity is required because Plaintiffs and Class Members were intended third-party beneficiaries of the transactions between BMW NA and its network of authorized dealerships. BMW NA's authorized dealers were not intended to be the ultimate consumers of the Class

Vehicles. Rather, the warranty agreements were expressly designed for and intended to benefit the ultimate purchasers of the Class Vehicles.

179. As a direct and proximate result of BMW NA's breach of the implied warranty of merchantability, Plaintiffs and Class Members received goods that had substantially impaired value at the point of sale, and they have suffered incidental, consequential, and other damages including unreimbursed out-of-pocket costs of thousands of dollars, the costs of necessary present and future repairs, and diminution of resale value, in an amount to be determined at trial.

180. Plaintiffs seek against BMW NA a) actual damages, b) statutory damages, c) declaratory relief, d) injunctive relief, and e) pre- and post-judgment interest.

**THIRD CAUSE OF ACTION**  
**Violations of New Jersey's Consumer Fraud Act**  
**N.J. Stat. Ann. §§ 56:8-1, *et seq.***

181. Plaintiffs, Class Members, BMW NA, and BMW AG are each a "person" within the meaning of the New Jersey Consumer Fraud Act ("New Jersey CFA"). See N.J. Stat. Ann. § 56:8-1(d).

182. The Class Vehicles and the defective transfer cases installed in them are "merchandise" within the meaning of the New Jersey CFA. See N.J. Stat. Ann. § 56:8-1(c).

183. The New Jersey CFA prohibits unfair trade practices, encompassing "any commercial practice that is unconscionable or abusive, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise." See N.J. Stat. Ann. § 56:8-2. The New Jersey CFA also prohibits schemes not to sell items as advertised. See N.J. Stat. Ann. § 56:8-2.2.

184. At all relevant times material hereto, BMW conducted trade and commerce in and from New Jersey.

185. The New Jersey CFA is, by its terms, a cumulative remedy, such that remedies under its provisions can be awarded in addition to those provided under separate statutory schemes. See N.J. Stat. Ann. § 56:8-2.13.

186. BMW has engaged in unlawful, deceptive practices in the sale of the defective transfer cases in the Class Vehicles as alleged in more detail elsewhere herein, including: (1) selling the Class Vehicles despite knowing that the transfer cases were prone to premature failure; (2) refusing to fully reimburse Plaintiff and Class Members for the replacement of their transfer cases and related costs; and (3) failing to disclose and/or concealing this known defect.

187. BMW knew of the Transfer Case Defect prior to the sale of the Class Vehicles, and likely as early as 2018, through sources such as those identified in § VI.B.

188. BMW knowingly and intentionally omitted and failed to disclose material facts to Plaintiffs and Class Members with respect to the Transfer Case Defect, including the fact that, with normal use, the transfer case would fail and/or malfunction as described elsewhere herein, and/or denying and/or misleading them as to the true cause of the Transfer Case Defect.

189. BMW intended to deceive Plaintiffs and Class Members and intended that Plaintiffs and Class Members rely on BMW's misrepresentations, omissions, and acts of concealment, so that Plaintiffs and Class Members would purchase the Class Vehicles equipped with defective transfer cases at a substantial out-of-pocket cost to them.

190. BMW's conduct as described herein is unethical, oppressive, or unscrupulous in that BMW often misled, denied, and dissuaded knowledge, responsibility, warranty obligations, and relief when complaints were made to them. BMW frequently blamed Plaintiffs and Class



Members for the Transfer Case Defect, labeling the condition normal “wear and tear.” BMW refused to fully reimburse Class Members and Plaintiffs for the cost of replacing their defective transfer cases and other components damaged due to the Transfer Case Defect.

191. Plaintiffs and Class Members, like all objectively reasonable consumers, did not expect the transfer cases in their vehicles to prematurely fail, even with regular maintenance.

192. BMW had a duty to disclose the Transfer Case Defect to Plaintiffs and Class Members, as well as the associated costs to replace the defective transfer cases, because it:

- a. Knew the Transfer Case Defect was a material fact that would affect Plaintiffs’ or Class Members’ decisions to buy or lease Class Vehicles;
- b. Possessed exclusive knowledge of the risks posed by the foregoing;
- c. Intentionally concealed the foregoing from Plaintiffs; and/or
- d. Made incomplete representations about the quality and reliability of the foregoing generally, while purposefully withholding material facts from Plaintiffs and Class Members that contradicted these representations.

193. Had BMW disclosed all material information regarding the defective transfer cases to Plaintiffs and Class Members, they would not have purchased their Class Vehicles or would have paid less for them.

194. Plaintiffs provided any notice that could possibly have been required. In particular, on October 6, 2025, Plaintiffs, through counsel, sent BMW a letter requesting relief and repair of the defects exhibited in Class Vehicles for Plaintiffs and others similarly situated. Ex. A. In response to this letter, BMW did not offer to provide the requested relief. Instead, its counsel alluded to a possible extension of the warranty that is under consideration, but did not address whether BMW intends to send notice of any extension to all owners and lessees of Class

Vehicles and whether BMW intends to compensate Plaintiffs or Class Members for the diminution in value of their vehicles, out-of-pocket costs already paid for replacement transfer case fluid and/or transfer cases, loss of resale value of the Class Vehicle, services performed by independent mechanics, and miscellaneous expenses incurred by Class Members as a result of the Transfer Case Defect (i.e., rental car fees, etc.).

195. Furthermore, BMW has long been on notice of the Transfer Case Defect and of its violation of the New Jersey CFA from various sources.

196. Plaintiffs and Class Members suffered ascertainable loss as a direct result of BMW's misrepresentations and omissions of material information. Plaintiffs and Class Members received goods that had substantially impaired value at the point of sale, and have suffered incidental, consequential, and other actual damages, including unreimbursed out-of-pocket costs of thousands of dollars, the costs of necessary present and future repairs, an inability to use the Class Vehicles for their intended purpose, and diminution of resale value, in an amount to be determined at trial.

197. Plaintiffs seek an order enjoining BMW's unfair, unlawful, and/or deceptive practices and declaratory relief, as well as actual damages, together with appropriate penalties, including but not limited to treble damages, attorneys' fees, and costs of suit. See N.J. Stat. Ann. § 56:8-19. In addition, Plaintiffs and Class Members seek an award of punitive damages as to BMW NA only.

**FOURTH CAUSE OF ACTION**  
**Fraud by Concealment**

198. BMW concealed and suppressed material facts concerning the quality of the Class Vehicles.

199. BMW is liable for both fraudulent concealment and non-disclosure. See, e.g., Restatement (Second) of Torts §§ 550-51 (1977).

200. BMW concealed and suppressed material facts concerning the quality of the transfer cases in the Class Vehicles, including transfer cases' tendency to prematurely fail during normal use.

201. BMW concealed and suppressed material facts concerning the Transfer Case Defect, which causes the transfer case on the Class Vehicles to experience premature failure. BMW knew that Plaintiffs and Class Members would not be able to inspect or otherwise detect the Transfer Case Defect prior to purchasing or leasing the vehicles. BMW furthered and relied upon this lack of disclosure to encourage Class Members to pay significant sums out of pocket to replace their defective transfer cases, which BMW falsely represented as being damaged as the result of normal "wear and tear," all the while concealing the true nature of the Defect from Plaintiffs and Class Members. When Plaintiffs and Class Members complained of the Defect, BMW further denied the very existence the Transfer Case Defect.

202. BMW committed the foregoing acts and omissions in order to boost confidence in its vehicles and falsely assure purchasers of BMW vehicles that the Class Vehicles were high-quality, long-lasting, warranted, and reliable vehicles, and concealed the information in order to prevent harm to BMW's and its products' reputations in the marketplace and to prevent consumers from learning of the defective nature of the Class Vehicles prior to their purchase. These false representations and omissions were material to consumers, both because they concerned the quality of the Class Vehicles and because the representations and omissions played a significant role in the decision to purchase the Class Vehicles.

203. Plaintiffs and Class members, directly or indirectly, were exposed to BMW's advertisements and promotional materials prior to purchasing or leasing their Class Vehicles. The misleading statements about Class Vehicles' reliability, as well as BMW's omission of the truth about the defective nature of the Class Vehicles' transfer cases, influenced Plaintiffs and Class Members' decisions to purchase or lease Class Vehicles. If BMW had instead chosen to disclose the truth, Plaintiffs and Class Members would have seen those disclosures. Indeed, Plaintiffs and Class Members would have had multiple opportunities to receive information about the defect if BMW chose to disclose it, including at dealerships, on BMW's website, in radio or television advertisements, brochures, press releases or in other promotional materials, as well as in consumer forums and reviews.

204. BMW had a duty to disclose the Transfer Case Defect in the Class Vehicles because the defect was known and/or accessible only to BMW; BMW had superior knowledge and access to the facts; and BMW knew the facts were not known to, or reasonably discoverable, by Plaintiffs and Class Members. BMW also had a duty to disclose because it made many general affirmative representations about the quality, warranty, and lack of defects in the Class Vehicles as set forth above, which were misleading, deceptive, and/or incomplete without the disclosure of the additional facts set forth above regarding their actual quality, longevity, and usability. Even when faced with complaints regarding the Defect, BMW misled and concealed the true cause of the symptoms complained of. As a result, Class Members were misled as to the true condition of the Class Vehicles once at purchase and then again when Class Members complained of the premature failure of their transfer cases to BMW.

205. The omitted and concealed facts were material because they directly impact the longevity, value, appeal, and usability of the Class Vehicles purchased by Plaintiffs and Class

Members. Whether a manufacturer's product is as stated by the manufacturer, backed by the manufacturer, and usable for the purpose it was purchased, are material concerns to a consumer.

206. BMW actively concealed and/or suppressed these material facts, in whole or in part, to protect its reputation, sustain its marketing strategy, and avoid expensive recalls that would hurt the brand's image, and did so at the expense of Plaintiffs and Class Members.

207. On information and belief, BMW has still not made full and adequate disclosure and continues to defraud Plaintiffs and Class Members and conceal material information regarding the Transfer Case Defect in the Class Vehicles. BMW continues to deny the existence of the Transfer Case Defect.

208. Plaintiffs and Class Members were unaware of these omitted material facts and would not have acted as they did had they known of the concealed and/or suppressed facts, i.e., they would not have purchased Class Vehicles, or would have paid less for them. Plaintiffs' and Class Members' actions were justified because they had no way of knowing that the Class Vehicles were susceptible to premature failure of the transfer case and nearby components. Rather, BMW was in exclusive control of the material facts and such facts were not known to the public, Plaintiffs, or Class Members.

209. Because of the concealment and/or suppression of the facts, Plaintiffs and Class Members sustained damage because they negotiated and paid value for the Class Vehicles not considerate of the Transfer Case Defect that BMW failed to disclose and paid out-of-pocket to replace the defective transfer case or experienced significant diminution of their Class Vehicle's value. Had they been aware of the concealed Transfer Case Defect that existed in the Class Vehicles, Plaintiffs would have paid less for their vehicles or would not have purchased them at all.

210. Plaintiffs and Class Members suffered ascertainable loss as a direct result of BMW's misrepresentations and omissions of material information. Plaintiffs and Class Members received goods that had substantially impaired value at the point of sale, and have suffered incidental, consequential, and other actual damages, including unreimbursed out-of-pocket costs of thousands of dollars, the costs of necessary present and future repairs, an inability to use the Class Vehicles for their intended purpose, and diminution of resale value, in an amount to be determined at trial.

211. BMW's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiffs and Class Members' rights and well-being to enrich BMW. BMW's conduct warrants an assessment of punitive damages against BMW NA in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

212. Plaintiffs and Class Members are entitled to recover damages because they received goods that had a substantially impaired value at the point of sale, as well as actual damages, together with appropriate penalties, including but not limited to treble damages, attorneys' fees, and costs of suit. In addition, Plaintiffs and Class Members seek an order enjoining BMW's unfair, unlawful, and/or deceptive practices, as well as declaratory relief

213. Plaintiffs bring this claim on behalf of themselves and the Nationwide Class, as there are no true conflicts among various states' laws of fraudulent concealment with respect to this factual context.

214. In the alternative, Plaintiffs bring this claim on behalf of the State Classes, which can be subdivided into a small number of groups to reflect any material differences in the law with respect to Plaintiffs' claims.

**FIFTH CAUSE OF ACTION**  
**Unjust Enrichment**

215. BMW has been unjustly enriched by the Plaintiffs and Class Members through Plaintiffs' and Class Members' purchasing and/or leasing Class Vehicles from BMW and purchasing replacement parts and services from BMW that Plaintiffs and Class Members would not have purchased but for the Transfer Case Defect and BMW's concealment of the same.

216. Specifically, BMW receives and appreciates a direct financial benefit from the sale of its Class Vehicles to end consumers, including Plaintiffs and Class Members. BMW primarily sells the Class Vehicles to dealerships, which then sell them to end consumers. The sale of BMW's Class Vehicles to end consumers results in revenues which are either paid directly to BMW or used by the intermediaries to pay BMW for its vehicles.

217. Plaintiffs and Class Members unknowingly conferred a benefit on BMW of which BMW had knowledge, since BMW was aware of the defective nature of its Class Vehicles' transfer cases and the resultant premature transfer case failure, but failed to disclose this knowledge and misled Plaintiffs and the Class Members regarding the nature and quality of the subject Class Vehicles while profiting from this deception.

218. The circumstances are such that it would be inequitable, unconscionable, and unjust to permit BMW to retain the benefit of revenue that it unfairly obtained from Plaintiffs and Class Members. This revenue included the premium price Plaintiffs and Class Members paid for the Class Vehicles and the unreimbursed cost of the parts and services bought from BMW used to replace the defective transfer cases and to remedy other damage caused by the Transfer Case Defect.

219. Plaintiffs and the other members of the Class, having been damaged by BMW's conduct, are entitled to recover or recoup damages and/or restitution as a result of the unjust enrichment of BMW to their detriment.

220. Plaintiffs bring this claim on behalf of themselves and the Nationwide Class, as there are no true conflicts among various states' laws of unjust enrichment in this factual context.

221. In the alternative, Plaintiffs bring this claim on behalf of the State Classes, which can be subdivided into a small number of groups to reflect any material differences in the law with respect to Plaintiffs' claims.

**X. CLAIMS FOR RELIEF: PLAINTIFFS' STATES OF RESIDENCE**

**A. California**

**SIXTH CAUSE OF ACTION**

**Violation of the California Consumers Legal Remedies Act**

**Cal. Civ. Code § 1750 *et seq.***

**(on behalf of the California State class)**

222. Plaintiff Zhargal Dampilon brings this claim on behalf of himself and the California State Class against all Defendants.

223. Plaintiff and members of the California State Class were deceived by BMW's failure to disclose that the Class Vehicles were equipped with transfer cases prone to premature failure and were therefore not fit for the ordinary purpose for which vehicles are used.

224. BMW engaged in unfair or deceptive acts or practices when, in the course of its business it, among other acts and practices, knowingly made materially incomplete representations as to the characteristics, uses, and benefits of the Class Vehicles.

225. In the various channels of information through which BMW sold and marketed Class Vehicles, BMW failed to disclose material information concerning the Class Vehicles. BMW had a duty to disclose the Transfer Case Defect because, as detailed above, (a) BMW



knew about the susceptibility of the transfer cases to premature failure; (b) BMW had exclusive knowledge of material facts not known to the general public or the California State Class Members; (c) BMW actively concealed material facts concerning the Transfer Case Defect from the general public and Plaintiff and California State Class Members; and (d) BMW made partial representations about the Class Vehicles that were misleading because they did not disclose the full truth. As detailed above, BMW knew the information concerning the defect at the time of advertising and selling the Class Vehicles, all of which was intended to induce consumers to purchase the Class Vehicles.

226. BMW intended for Plaintiff and California State Class Members to rely on it to provide adequately designed and adequately manufactured automobiles and to honestly and accurately reveal the problems described throughout this Complaint.

227. BMW intentionally failed or refused to disclose the defect to consumers.

228. BMW's conduct and deceptive omissions were intended to induce Plaintiff and California State Class Members to believe that the Class Vehicles were adequately designed and adequately manufactured automobiles.

229. BMW's conduct constitutes unfair acts or practices as defined by the California Consumers Legal Remedies Act (the "CLRA").

230. Plaintiff and other California State Class Members have suffered injury in fact and actual damages resulting from BMW's material omissions.

231. BMW is on notice of the issues raised in this count and this Complaint by way of Plaintiff's notice letter sent to BMW in accordance with Cal. Civ. Code § 1782(a) of the CLRA, notifying BMW of its alleged violations of Cal. Civ. Code § 1770(a) and demanding that BMW correct or agree to correct the actions described therein within thirty (30) days of the notice

letter. BMW's response, sent through counsel on November 17, 2025, that it is now considering extending the warranty for the Class Vehicles' transfer cases is inadequate in that, even if BMW ultimately extends the warranty, it gives no indication that BMW intends to send notice of any extension to all owners and lessees of Class Vehicles or compensate Plaintiffs and Class Members for the diminution in value of their vehicles, out-of-pocket costs already paid for replacement transfer case fluid and/or transfer cases, loss of resale value of the Class Vehicles, services performed by independent mechanics, and miscellaneous expenses incurred by Class Members as a result of the Transfer Case Defect (i.e., rental car fees, etc.).

232. Plaintiff and the California State Class seek actual damages, punitive damages, an order enjoining BMW's unfair or deceptive acts or practices, equitable relief, attorneys' fees and costs, and any other just and proper relief available under Cal. Civ. Code § 1780(a) of the CLRA. Furthermore, on behalf of those California State Class Members who qualify as a "senior citizen" or "disabled person" as defined by subdivisions (f) and (g) of Cal. Civ. Code § 1761 of the CLRA, Plaintiff seeks additional damages pursuant to Cal. Civ. Code § 1780(b) of the CLRA.

**SEVENTH CAUSE OF ACTION**  
**Violations of the California Unfair Competition Law**  
**Cal. Bus. & Prof. Code § 17200 *et seq.***  
**(on behalf of the California State class)**

233. Plaintiff Zhargal Dampilon brings this claim on behalf of himself and the California State Class against all Defendants.

234. California Business and Professions Code § 17200 prohibits any "unlawful, unfair, or fraudulent business act or practices." BMW has engaged in unlawful, fraudulent, and unfair business acts and practices in violation of the Unfair Competition Law ("UCL").

235. BMW's knowing and intentional conduct, as described herein, constitutes unlawful, fraudulent, and unfair business acts and practices in violation of the UCL. BMW violated the UCL in at least the following ways:

- a. by knowingly and intentionally failing to disclose to Plaintiff and California State Class Members material information about the Transfer Case Defect while obtaining money from the California State Class Members;
- b. by misrepresenting the Class Vehicles as possessing functional and defect-free transfer cases; and
- c. by violating the other California laws alleged herein, including the False Advertising Law, California Commercial Code, and Song-Beverly Consumer Warranty Act.

236. BMW's acts and practices deceived Plaintiff and are likely to deceive the public. In failing to disclose the Transfer Case Defect and suppressing other material facts from Plaintiff and Class Members, BMW breached its duty to disclose these facts, violated the UCL, and caused injuries to Plaintiff and Class Members.

237. BMW's misrepresentations and omissions alleged herein caused Plaintiff and the California State Class Members to make their purchases or leases of their Class Vehicles. BMW's concealed facts, omissions, and false or misleading representations to Plaintiff and the Class Members, as alleged herein, are material in that a reasonable consumer would have considered them important in deciding whether to purchase or lease the Class Vehicles or to pay a lesser price.

238. Absent those misrepresentations and omissions, Plaintiff and California State Class Members would not have purchased or leased these Class Vehicles, would not have

purchased or leased these Class Vehicles at the prices they paid, and/or would have purchased or leased less expensive alternative vehicles that did not have the Transfer Case Defect.

239. Accordingly, Plaintiff and California State Class Members have suffered ascertainable loss and actual damages as a direct and proximate result of BMW's misrepresentations and their concealment of and failure to disclose material information.

240. BMW's violations present a continuing risk to Plaintiff and California State Class Members, as well as to the general public. BMW's unlawful acts and practices complained of herein affect the public interest.

241. The injuries suffered by Plaintiff and Class Members are not outweighed by any potential countervailing benefit to consumers or to competition, nor are the injuries that Plaintiff and California State Class Members suffered injuries that could have been reasonably avoided.

242. Plaintiff pleads this claim separately as well as in the alternative to their claims for damages under Fed. R. Civ. P. 8(a)(3). Additionally, Plaintiff has no adequate remedy at law, including for the future unlawful acts, methods, or practices as set forth above absent an injunction, and Plaintiff and the California State Class Members lack an adequate remedy at law to recover or fully recover amounts and benefits subject to restitution pursuant to this cause of action and to obtain or fully obtain the requested injunctive relief pursuant to this cause of action.

243. Moreover, BMW's alleged misconduct is ongoing and therefore damages are not certain or prompt and thus are an inadequate remedy to address the conduct that injunctions are designed to prevent.

244. Plaintiff requests that this Court enter such orders or judgments as may be necessary to enjoin BMW from continuing its unlawful, and/or deceptive practices and to restore to members of the California State Class any money it acquired by unfair competition, including

restitution and/or restitutionary disgorgement, as provided in Cal. Bus. & Prof. Code § 17203 and Cal. Bus. & Prof. Code § 3345; and for such other relief set forth below.

245. Plaintiff, on behalf of themselves and the California State Class, further seeks an award of attorneys' fees and costs under California Code of Civil Procedure § 1021.5.

**EIGHTH CAUSE OF ACTION**  
**Violations of the California False Advertising Law**  
**Cal. Bus. & Prof. Code § 17500 *et seq.***  
**(on behalf of the California State class)**

246. Plaintiff Zhargal Dampilon brings this claim on behalf of himself and the California State Class against all Defendants.

247. California Bus. & Prof. Code § 17500 states: "It is unlawful for any . . . corporation . . . with intent directly or indirectly to dispose of real or personal property . . . to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated . . . from this state before the public in any state, in any newspaper or other publication, or any advertising device . . . or in any other manner or means whatever, including over the Internet, any statement . . . which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading."

248. BMW caused to be made or disseminated through California and the United States, through advertising, marketing and other publications, statements that were untrue or misleading, and which were known, or which by the exercise of reasonable care should have been known to BMW, to be untrue and misleading to consumers, including California State Class Members.

249. BMW has violated Section 17500 because the misrepresentations and omissions regarding the reliability and functionality of Class Vehicles as set forth in this Complaint were material and likely to deceive a reasonable consumer.

250. Plaintiff and the other California State Class Members have suffered an injury in fact, including the loss of money or property, as a result of BMW's unfair, unlawful, and/or deceptive practices. In purchasing or leasing their Class Vehicles, the California State Class relied on the misrepresentations and/or omissions of BMW with respect to the performance and reliability of the Class Vehicles. BMW's representations turned out not to be true because the Class Vehicles are distributed with faulty and defective transfer cases.

251. All of the wrongful conduct alleged herein occurred in the conduct of BMW's business. BMW's wrongful conduct is part of a pattern or generalized course of conduct that was perpetuated, both in the State of California and nationwide.

252. The California State Class requests that this Court enter such orders or judgments as may be necessary to enjoin BMW from continuing their unfair, unlawful, and/or deceptive practices and to restore to the California State Class any money BMW acquired by false advertising, including restitution and/or restitutionary disgorgement, and for other such relief set forth below.

**NINTH CAUSE OF ACTION**

**Violation of Song-Beverly Consumer Warranty Act, Breach of Implied Warranty  
Cal. Civ. Code § 1790, *et seq.*  
(on behalf of the California State Class)**

253. Plaintiff Zhargal Dampilon brings this claim on behalf of himself and the California State Class against all Defendants.

254. Plaintiff and members of the California State Class who purchased Class Vehicles in California are "buyers" within the meaning of Cal. Civ. Code. § 1791(b).

255. The Class Vehicles are “consumer goods” within the meaning of Cal. Civ. Code § 1791(a).

256. BMW is the “manufacturer” of the Class Vehicles within the meaning of Cal. Civ. Code § 1791(j).

257. BMW impliedly warranted to the Plaintiff and the other members of the California State Class that the Class Vehicles were “merchantable” within the meaning of Cal. Civ. Code §§ 1791.1(a) and 1792; however, the Class Vehicles do not have the quality that a buyer would reasonably expect.

258. Cal. Civ. Code § 1791.1(a) states: “Implied warranty of merchantability” or “implied warranty that goods are merchantable” means that the consumer goods meet each of the following:

- a. Pass without objection in the trade under the contract description.
- b. Are fit for the ordinary purposes for which such goods are used.
- c. Are adequately contained, packaged, and labeled.
- d. Conform to the promises or affirmations of fact made on the container or label.

259. The Class Vehicles would not pass without objection in the trade because they share a common defect in design or manufacturing resulting in premature failure of the transfer case.

260. The Class Vehicles are not adequately labeled because the labeling fails to disclose the fact that they are defective.

261. In the various channels of information through which BMW sold and marketed Class Vehicles, BMW failed to disclose material information concerning the Class Vehicles,

which it had a duty to disclose. BMW had a duty to disclose the defect because, as detailed above: (a) BMW knew about the defect; (b) BMW had exclusive knowledge of material facts not known to the general public or the California State Class Members; (c) BMW actively concealed material facts from the general public and California State Class Members concerning the Class Vehicles' true reliability and performance; and (d) BMW made partial representations about the Class Vehicles that were misleading because they did not disclose the full truth. As detailed above, BMW knew the information concerning the Transfer Case Defect at the time of advertising and selling the Class Vehicles, all of which was intended to induce consumers to purchase the Class Vehicles.

262. BMW breached the implied warranty of merchantability by manufacturing and selling Class Vehicles that are defective. Furthermore, this defect has caused members of the California State Class to not receive the benefit of their bargain and has caused the Class Vehicles to depreciate in value.

263. Plaintiff and members of the California State Class have been damaged as a result of the diminished value of BMW's products.

264. Under Cal. Civ. Code §§ 1791.1(d) and 1794, Plaintiff and other members of the California State Class are entitled to damages and other legal and equitable relief including, at their election, the purchase price of their Class Vehicles, or the overpayment or diminution in value of their Class Vehicles.

265. Under Cal. Civ. Code § 1794, Plaintiff and other members of the California State Class are entitled to costs and attorneys' fees.

#### **TENTH CAUSE OF ACTION**

**Violation of the Song-Beverly Consumer Protection Act, Breach of Express Warranty**

**Cal. Civ. Code § 1790, *et seq.***

**(on behalf of the California State Class)**



266. Plaintiff Zhargal Dampilon brings this claim on behalf of himself and the California State Class against all Defendants.

267. Plaintiff and members of the California State Class who purchased Class Vehicles in California are “buyers” within the meaning of Cal. Civ. Code. § 1791(b).

268. The Class Vehicles are “consumer goods” within the meaning of Cal. Civ. Code. § 1791(a).

269. BMW is the “manufacturer” of the Class Vehicles within the meaning of Cal. Civ. Code § 1791(j).

270. BMW made express warranties to members of the California State Class within the meaning of Cal. Civ. Code §§ 1791.2 and 1793.2, as described above.

271. As set forth above in detail the Class Vehicles are inherently defective in that they contain a transfer case prone to premature failure. This defect substantially impairs the use and value of the Class Vehicles to reasonable consumers.

272. As a result of BMW’s breach of its express warranties, members of the California State Class received goods whose defect substantially impairs their value to Plaintiff and the other members of the California State Class. Plaintiff and members of the California State Class have been damaged as a result of, *inter alia*, the lesser value of BMW’s products.

273. Pursuant to Cal. Civ. Code §§ 1793.2 and 1794, Plaintiff and members of the California State Class are entitled to damages and other legal and equitable relief including, at their election, the purchase price of their Class Vehicles, or the overpayment or diminution in value of their Class Vehicles.

274. Pursuant to Cal. Civ. Code § 1794, Plaintiff and the other members of the California State Class are entitled to costs and attorneys’ fees.

**B. Illinois**

**ELEVENTH CAUSE OF ACTION**

**Violations of Illinois Consumer Fraud and Deceptive Business Practices Act  
815 Ill. Comp. Stat. Ann. § 505/1, *et seq.***

275. Plaintiffs Richard Grad and Kevin Finley bring this claim on behalf of themselves and the Illinois State Class against all Defendants.

276. BMW NA and BMW AG are each a “person” as defined by the Illinois Consumer Fraud and Deceptive Business Practices Act (“Illinois CFDBPA”). 815 Ill. Comp. Stat. Ann. § 505/1(1)(c).

277. Plaintiffs and Illinois State Class Members are “consumers” within the meaning of the Illinois CFDBPA. 815 Ill. Comp. Stat. Ann. § 505/1(1)(e).

278. The purchase of Class Vehicles by Plaintiffs and Illinois State Class Members constituted “commerce” as defined by the Illinois CFDBPA. 815 Ill. Comp. Stat. Ann. § 505/1(1)(e).

279. The Illinois CFDBPA declares “[u]nfair methods of competition and unfair or deceptive acts or practices... in the conduct of any trade or commerce” to be unlawful, including but not limited to “the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression, or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact.” 815 Ill. Comp. Stat. Ann. § 505/2.

280. By failing to disclose the defective nature of the Class Vehicles to Plaintiffs and Illinois State Class Members, BMW violated the Illinois CFDBPA, because BMW misrepresented or omitted material facts regarding the Class Vehicles with intent that Plaintiffs and Illinois State Class Members rely upon the omission of such material facts.

281. BMW's unfair and deceptive acts or practices occurred repeatedly in BMW's course of trade or business, were material, were capable of deceiving a substantial portion of the purchasing public, and as a result, caused economic harm to owners and purchasers of the Class Vehicles.

282. BMW knew, by 2018 at the latest, and certainly before the sale of the Class Vehicles, that the Class Vehicles' transfer cases suffered from a material defect that would cause them to prematurely fail and render the Class Vehicles unsuitable for their intended use.

283. By 2018 at the latest, BMW had exclusive knowledge of material facts concerning the existence of the Transfer Case defect in its Class Vehicles. Furthermore, BMW actively concealed this defect from consumers by denying the existence of the defect to Illinois State Class Members who contacted BMW about their defective transfer cases and failed to offer to reimburse Illinois State Class Members for the cost of replacing their defective transfer cases.

284. BMW was under a duty to Plaintiffs and Illinois State Class Members to disclose the Transfer Case Defect, as well as the costs of replacing the defective transfer case and returning the Class Vehicles to a reliable condition because BMW:

- a. Knew the Transfer Case Defect was a material fact that would affect Plaintiffs' or Illinois State Class Members' decision to buy or lease Class Vehicles;
- b. Possessed exclusive knowledge of the risks posed by the foregoing;
- c. Intentionally concealed the foregoing from Plaintiff and Illinois State Class Members; and/or
- d. Made incomplete representations about the quality and reliability of the foregoing generally, while purposefully withholding material facts from Plaintiffs and Illinois State Class Members that contradicted these representations.

285. BMW knew or should have known that its conduct violated the Illinois CFDBPA.

286. In failing to disclose the defective nature of the Class Vehicles, and/or denying and misleading as to the true cause of the transfer case failure present in the Class Vehicles, BMW knowingly and intentionally concealed material facts and breached its duty not to do so.

287. The facts BMW concealed from Plaintiffs and Illinois State Class Members are material in that a reasonable consumer would have considered them to be important in deciding whether to purchase a Class Vehicle. Moreover, a reasonable consumer would consider the Transfer Case Defect to be an undesirable quality, as Plaintiffs and Illinois State Class Members did. Had Plaintiffs and Illinois State Class Members known that the Class Vehicles had the Transfer Case Defect, they would not have purchased a Class Vehicle, or would have paid less for them.

288. Plaintiffs and Illinois State Class members, like all objectively reasonable consumers, did not expect the transfer cases of their vehicles to prematurely fail.

289. As a result of BMW's misconduct, Plaintiffs and Illinois State Class Members have been harmed and suffered actual damages including in that the Class Vehicles have transfer cases that are likely to fail prematurely, making the Class Vehicles unsuitable for their intended purpose.

290. As a direct and proximate result of BMW's unfair or deceptive acts or practices, Plaintiffs and Illinois State Class Members received goods that had substantially impaired value at the point of sale, and they have suffered incidental, consequential, and other damages, including unreimbursed out-of-pocket costs of thousands of dollars, the costs of necessary present and future repairs, and inability to use the Class Vehicles for their intended purpose, and diminution of resale value, in an amount to be determined at trial.

291. BMW's violations present a continuing risk to Plaintiffs and to the general public. BMW's unlawful acts and practices complained of herein affect the public interest.

292. Plaintiffs and Illinois State Class Members are entitled to equitable relief.

293. Thus, Plaintiffs and Illinois State Class Members seek an order enjoining BMW's unfair, unlawful, and/or deceptive practices, declaratory relief, actual and statutory damages, attorneys' fees and expenses, and treble damages as to both BMW NA and BMW AG and punitive damages as to BMA NA only, as permitted under the Illinois CFDBPA.

### **TWELFTH CAUSE OF ACTION**

#### **Violations of Illinois's Uniform Deceptive Trade Practices Act**

**815 Ill. Comp. Stat. Ann. § 505/10, *et seq.*** Plaintiffs Richard Grad and Kevin Finley bring this claim on behalf of themselves and the Illinois State Class against all Defendants.

295. BMW, Plaintiffs, and Illinois State Class Members are each a "person" within the meaning of Illinois's Uniform Deceptive Trade Practices Act ("Illinois UDTPA"). 815 Ill. Comp. Stat. Ann. § 510/1(5).

296. The Illinois UDTPA prohibits "deceptive trade practices" which include representing "that goods or services are of a particular standard, quality, or grade or that goods are of a particular style or model, if they are not," representing "that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have," and advertising "goods or services with the intent not to sell them as advertised." 815 Ill. Comp. Stat. Ann. § 510/2.

297. By failing to disclose the defective nature of the Class Vehicles to Plaintiffs and Illinois State Class Members, BMW engaged in deceptive trade practices in violation of the Illinois UDTPA, because BMW represented that the Class Vehicles had characteristics and benefits that they do not have, and represented that the Class Vehicles were of a particular

standard, quality, or grade when they were of another. *See* 815 Ill. Comp. Stat. Ann. §§ 510/2(5), (7), & (9).

298. BMW advertised the Class Vehicles with the intent not to sell them as advertised, in violation of the Illinois UDTPA. *See* 815 Ill. Comp. Stat. Ann. §§ 510/2(9).

299. BMW's unfair and deceptive acts or practices occurred repeatedly in BMW's course of trade or business, were material, were capable of deceiving a substantial portion of the purchasing public, and as a result, caused economic harm to owners and purchasers of the Class Vehicles.

300. BMW knew, by 2018 at the latest, and certainly before the sale of the Class Vehicles, that the Class Vehicles' transfer cases suffered from a defect causing premature failure and were not suitable for their intended use.

301. By 2018 at the latest, BMW had exclusive knowledge of material facts concerning the existence of the Transfer Case Defect in its Class Vehicles. Furthermore, BMW actively concealed these defects from consumers by denying the existence of the defects to Illinois State Class Members who contacted BMW about premature failure of their transfer cases and failing to offer Illinois State Class Members full reimbursement for the replacement of their defective transfer cases.

302. BMW was under a duty to Plaintiffs and Illinois State Class Members to disclose the Transfer Case Defect, as well as the associated costs that would have to be expended in order to repair the Class Vehicles due to the Transfer Case Defect because BMW:

- a. Knew the Transfer Case Defect was a material fact that would affect Plaintiffs' or Illinois State Class members' decisions to buy or lease Class Vehicles;
- b. Possessed knowledge of the risks posed by the foregoing;

c. Intentionally concealed the foregoing from Plaintiffs and Illinois State Class Members; and/or

d. Made incomplete representations about the quality and reliability of the foregoing generally, while purposefully withholding material facts from Plaintiffs and Illinois State Class Members that contradicted these representations.

303. Despite possessing information to the contrary, BMW failed to disclose and actively concealed the Transfer Case Defect while continuing to market the Class Vehicles as world-class and reliable. The deception made reasonable consumers believe that Class Vehicles were of high-quality, and designed and made by a company that stood behind its vehicles once they were on the road.

304. BMW knew or should have known that its conduct violated the Illinois UDTPA. In failing to disclose the defective nature of the Class Vehicles, and/or denying and misleading as to the true cause of the premature transfer case failure in the Class Vehicles, BMW knowingly and intentionally concealed material facts and breached its duty not to do so.

305. The facts that BMW concealed from Plaintiffs and Illinois State Class Members are material in that a reasonable consumer would have considered them to be important in deciding whether or not to purchase a Class Vehicle. Moreover, a reasonable consumer would consider the Transfer Case Defect to be an undesirable quality, as Plaintiffs and Illinois State Class Members did. Had Plaintiffs and Illinois State Class members known that the Class Vehicles had the Transfer Case Defect, they would not have purchased the Class Vehicles, or would have paid less for them.

306. Plaintiffs, like all objectively reasonable consumers, did not expect the transfer case in his Class Vehicle to experience premature failure and require significant, costly repairs.

307. As a direct and proximate result of BMW's misconduct, Plaintiffs and Illinois State Class Members received goods that had substantially impaired value at the point of sale, and they have suffered incidental, consequential, and other damages, including unreimbursed out-of-pocket costs of thousands of dollars, the costs of necessary present and future repairs, an inability to use the Class Vehicles for their intended purpose, and diminution of resale value, in an amount to be determined at trial.

308. BMW's violations present a continuing risk to Plaintiffs and to the general public. BMW's unlawful acts and practices complained of herein affect the public interest.

309. As a direct and proximate result of BMW's violations of the Illinois UDPTA, Plaintiffs and Illinois State Class Members have suffered and will continue to suffer injury-in-fact and/or actual damages.

310. Plaintiffs seek a) actual damages, b) statutory damages, c) exemplary and/or punitive damages, d) declaratory relief, e) injunctive relief, f) pre- and post-judgment interest, g) attorneys' fees and costs, and f) any other just and proper relief available under the Illinois UDTPA. *See* 815 Ill. Comp. Stat. Ann. § 510/3.

## **XI. RELIEF REQUESTED**

311. Plaintiffs, on behalf of themselves, and all others similarly situated, request the Court to enter judgment against BMW, as follows:

a. an order certifying the proposed Class and/or any appropriate subclasses, designating Plaintiffs as named representatives of the Class, and designating the undersigned as Class Counsel;

b. a declaration that all Class Vehicles have a defect which results in premature transfer case failure and that this defect requires disclosure; that BMW must notify owners of the defect; and that any limitations for coverage of this defect in BMW's New Vehicle



Limited and Certified Preowned warranties are removed. See *Pella Corp. v. Saltzman*, 606 F.3d 391, 392 (7th Cir. 2010);

c. an order enjoining BMW to reassess all prior claims, both in and out of warranty, related to transfer case fluid and transfer case repairs and to reimburse Class Members for money spent out of pocket for transfer case fluid replacement, replacement of their defective transfer cases, and associated costs, regardless of whether those costs fall within the limitations of the Extended Warranty;

d. an order enjoining BMW, upon a Class Member's request, to pay the cost of regular inspections to determine whether the Transfer Case Defect is present, with any coverage disputes adjudicated by a special master;

e. an order enjoining BMW from further deceptive distribution and sales practices with respect to the Class Vehicles, and to permanently repair the Class Vehicles so that they no longer possess the Transfer Case Defect;

f. an award to Plaintiffs and Class Members of compensatory, exemplary, and statutory damages, including interest, in an amount to be proven at trial against both BMW AG and BMW NA, and punitive damages as to BMW NA only;

g. an order requiring BMW to disgorge, for the benefit of Plaintiffs and Class Members, all or part of the ill-gotten revenue it received from the sale of the Class Vehicles, or make full restitution thereof to Plaintiffs and Class Members;

h. an award of attorneys' fees and costs, as allowed by law;

i. an award of pre-judgment and post-judgment interest, as provided by law;

j. leave to amend this Complaint to conform to the evidence obtained in discovery or produced at trial; and

k. such other relief as may be appropriate under the circumstances.

## **XII. DEMAND FOR JURY TRIAL**

312. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of any and all issues in this action so triable of right.

Dated: November 24, 2025 CARELLA, BYRNE, CECCHI, BRODY & AGNELLO, P.C.

By: /s/ James E. Cecchi  
James E. Cecchi

James E. Cecchi ([jcecchi@carellabyrne.com](mailto:jcecchi@carellabyrne.com))  
CARELLA, BYRNE, CECCHI, BRODY & AGNELLO, P.C.  
5 Becker Farm Road  
Roseland, NJ 07068  
Telephone: (973) 994-1700

Zachary A. Jacobs ([zjacobs@carellabyrne.com](mailto:zjacobs@carellabyrne.com)) (*pro hac vice pending*)  
CARELLA, BYRNE, CECCHI, BRODY & AGNELLO, P.C.  
222 S. Riverside Plaza,  
Chicago, IL 60606  
Telephone: (973) 994-1700

Jonathan D. Selbin ([jselbin@lchb.com](mailto:jselbin@lchb.com)) (*pro hac vice pending*)  
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP  
250 Hudson Street, 8th Floor  
New York, NY 10013-1413  
Telephone: (212) 355-9000

Kenneth S. Byrd ([kbyrd@lchb.com](mailto:kbyrd@lchb.com)) (*pro hac vice pending*)  
Ellie E. Olson ([eolson@lchb.com](mailto:eolson@lchb.com)) (*pro hac vice pending*)  
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP  
222 Second Avenue South, Suite 1640  
Nashville, TN 37201  
Telephone: (615) 313-9000

Nathan Heber ([nathan@heberhan.com](mailto:nathan@heberhan.com)) (*pro hac vice pending*)  
You-Jin Han ([you-jin@heberhan.com](mailto:you-jin@heberhan.com)) (*pro hac vice pending*)  
HEBER HAN, P.C.  
3355 Lenox Road NE, Suite 750  
Atlanta, GA 30326  
Telephone: (470) 805-1468

*Attorneys for Named Plaintiffs and Proposed Class*

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [BMW Lawsuit Alleges Automaker Concealed Transfer Case Defect in 2019-2025 Vehicles](#)

---