

**SETTLEMENT AGREEMENT AND RELEASE**

Plaintiffs and Class Representatives George Catalano and Eric Anderson (“Plaintiffs” or “Class Representatives”), by and through their counsel, and Defendants, BMW of North America, LLC (“BMW NA”) and Bayerische Motoren Werke Aktiengesellschaft (“BMW AG”) (collectively “Defendants”), by and through their counsel, hereby enter into this Settlement Agreement providing, subject to the approval of the Court, for the settlement of the claims herein described against Defendants (the “Settlement”).

**WHEREAS**, Plaintiffs Eric Anderson and Monita Sharma filed a putative class action against Defendant BMW NA in the United States District Court for the Northern District of California (*Sharma v. BMW of North America, LLC*, Civil Action No. 3:13-cv-2274) on May 17, 2013 (the “*Sharma* Action”); and

**WHEREAS**, Plaintiff George Catalano filed a putative class action against Defendants in the United States District Court for the Southern District of New York (*Catalano v. BMW of North America, LLC and BMW Aktiengesellschaft*, Civil Action No. 1:15-cv-04889) on June 23, 2015 (the “*Catalano* Action”); and

**WHEREAS**, the parties in the *Sharma* action engaged in extensive motion practice—including motions to dismiss and strike class allegations, letter motions to compel, and motions for reconsideration and summary judgment—exchanged discovery demands and responses, held depositions, and conducted expert discovery; and

**WHEREAS**, the Court in the *Sharma* Action granted, in part, BMW NA’s Motion for Summary Judgment on August 18, 2016, after which the *Sharma* Action proceeded on behalf of Plaintiff Eric Anderson and a putative California class of current and former owners and lessees of 2004-2010 BMW 5-series vehicles; and

**WHEREAS**, the Court in the *Catalano* Action granted, in part, Defendants’ Motion to

Dismiss the First Amended Complaint on March 1, 2016; and

**WHEREAS**, Plaintiff in the *Catalano* Action filed a Second Amended Complaint on March 31, 2016 and Defendants filed a motion to dismiss Plaintiff's Second Amended Complaint on April 29, 2016; and

**WHEREAS**, on April 19, 2016, Plaintiff filed a motion to compel discovery in the *Catalano* Action and supplemental briefing related to the motion to compel April 29, 2016;

**WHEREAS**, the Court entered an order denying Defendants' motion to dismiss Plaintiff's Second Amended Complaint and granting in part Plaintiff's motion to compel on June 16, 2016;

**WHEREAS**, the parties in the *Catalano* action exchanged discovery demands and responses, including interrogatory answers and responses to requests for the reproduction of documents; and

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

**WHEREAS**, the parties conducted a full day of in-person settlement negotiations with mediator Bradley A. Winters, Esq. on November 4, 2016; and

**WHEREAS**, the parties were able to reach an agreement to resolve both the *Sharma* Action and the *Catalano* Action ("the Actions") and the disputes between them; and

**WHEREAS**, Plaintiffs and Defendants have vigorously contested all of the factual and legal issues in the Actions; and

**WHEREAS**, for purposes of this settlement only, Plaintiffs and Defendants (the "Parties") agree to the certification of a settlement class ("Class" or "Settlement Class"), subject to the Court's approval, defined as follows:

All persons or entities in the United States and Puerto Rico who currently own or lease, or previously owned or leased, a model year 2004 to 2010 U.S. specification BMW 5 Series (E60 and E61) vehicle purchased in the United States or Puerto Rico.

**WHEREAS**, the Parties agree that the following persons and entities should be excluded from the Class: Defendants, as well as Defendants' affiliates, employees, officers and directors, attorneys, agents, insurers, and franchised dealers; third-party providers of extended warranty/service contracts; independent repair/service facilities; fleet owners and operators; rental companies and vehicles; the attorneys representing Defendants in this case; the judges and mediator to whom this case is assigned and their immediate family members; all persons and entities who request exclusion from (opt-out of) the Settlement, who previously released any claims encompassed in this Settlement or whose vehicle was permanently transported outside the United States after sale; and all persons or entities claiming personal injury or property damage other than to a Class Vehicle or claiming subrogation of such claims; and

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

**WHEREAS**, Plaintiffs recognize the substantial benefits to Plaintiffs and the Class under the terms of this Settlement Agreement and the costs, risks, and uncertainty of protracted litigation, especially in complex actions such as this, as well as the difficulties and delays inherent in such

litigation, and believe that it is in their interest, and the interest of all Class Members, to resolve the Actions, and any and all claims against Defendants, in order to provide effective relief promptly to Plaintiffs and the Class in this Settlement Agreement; and

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

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

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

**I. DEFINITIONS**

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

A. **BMW AG.** “BMW AG” means Defendant Bayerische Motoren Werke Aktiengesellschaft.

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

C. **Claimant.** “Claimant” means any Settlement Class Member who submits a claim for reimbursement as provided under this Settlement.

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

E. **Claims Administrator.** “Claims Administrator” means Kurtzman Carson Consultants, LLC (“KCC”), to be appointed by the Court in the Preliminary Approval Order.

F. **Claims Confirmation Process.** “Claims Confirmation Process” means the process by which properly submitted claims accepted by the Claims Administrator are reviewed and validated by Defendants to ensure (1) that the Class Vehicle’s warranty has not been invalidated or voided (as described herein), (2) that the VIN number associated with the claim matches the Settlement Class Member’s Vehicle’s VIN number, (3) that the claim has not previously been paid by BMW NA or an authorized BMW Center, (4) that the claim is for an item covered under this Settlement Agreement, and (5) the claim is not fraudulently submitted.

G. **Claims Submission Period.** “Claims Submission Period” means the sixty (60) day time period during which Settlement Class Members may submit claims for reimbursement of expenses as described herein and will conclude thirty (30) days before the Final Approval Hearing.

H. **Class Counsel.** “Class Counsel” means: Kershaw, Cook & Talley PC; Wexler Wallace LLP; The Law Office of Robert L. Starr; and The Law Offices of Stephen M. Harris, P.C.

I. **Class Counsel Fees and Expenses.** “Class Counsel Fees and Expenses” means the reasonable attorneys’ fees and expenses approved by the Court, to be paid by Defendants.

J. **Class Members or Class.** “Class Members” or “Class” means all current and former owners and lessees of a Class Vehicle in the United States and Puerto Rico.

K. **Class Notice.** “Class Notice” means the Court-approved form of notice to current and former owners and lessees of Class Vehicles, in substantially the same form as that attached hereto as Exhibit “B,” sent via one direct mailing to Class Members and publication via the Class Settlement Website, informing them of, *inter alia*, the (i) preliminary approval of the Settlement; (ii) scheduling of the Final Approval Hearing; (iii) opportunity to submit a claim; (iv) opportunity

to submit an objection; and (v) opportunity to request exclusion. The Claims Administrator will re-send returned notices if an address correction or forwarding address appears on the returned envelope.

L. **Class Representatives.** “Class Representatives” means Eric Anderson and George Catalano.

M. **Class Vehicles.** “Class Vehicles” means model year 2004 to 2010 U.S. specification BMW 5 Series (E60 and E61) vehicles, imported and distributed for sale or lease in the United States and Puerto Rico.

N. **Court.** “Court” means the United States District Court for the Southern District of New York, the Honorable Katherine B. Forrest presiding, or her duly-appointed successor.

O. **Defect.** “Defect” means damage to electronic components located in the spare tire well of the trunk in the Class Vehicles, caused either by clogged sunroof drainage tubes or by some other means of water ingress, subject to certain exclusions as set forth herein.

P. **Defendants.** “Defendants” means BMW AG and BMW NA, as well as its and their predecessors, successors, assigns, parents, affiliates, directors, officers, agents, attorneys, representatives, employees, insurers, and franchised dealers.

Q. **Defendants’ Counsel.** “Defendants’ Counsel” means Buchanan Ingersoll & Rooney PC.

R. **Effective Date.** “Effective Date” means the earliest of the following: (1) the date on which the Final Approval Order is entered by the Court and no Class Member submitted valid objections to the Settlement pursuant to the Settlement Agreement; (2) the date on which the time for appeal from the Final Judgment approving the settlement has elapsed without any appeals being filed; or (3) the date on which all appeals from the Final Judgment approving this Settlement

or from any appellate court decisions affirming the Final Judgment have been exhausted, and no further appeal may be taken.

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

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

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

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

W. **Opt-Out List.** “Opt-Out List” means a written list prepared by the Claims Administrator of all Class Members who submit timely Requests for Exclusion.

X. **Parties.** “Parties” means the Plaintiffs and Defendants.

Y. **Plaintiffs.** “Plaintiffs” means the Class Representatives Eric Anderson and George Catalano.

Z. **Preliminary Approval Order.** “Preliminary Approval Order” means the order of the Court preliminarily approving this Settlement Agreement, in substantially the same form as that attached hereto as Exhibit “C.”

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

BB. **Request for Exclusion.** “Request for Exclusion” means any request by any Class Member for exclusion from the Settlement.

CC. **Service Award.** “Service Award” means any sum of money paid to the Class Representatives for their participation in the Actions. Defendants agree to pay each Class Representative a service award of \$3,500 (\$7,000 total). These service awards will be paid separate and apart from, and will not reduce, the benefits to the Class.

DD. **Settlement.** “Settlement” means the agreement by the Parties to resolve the Actions, the terms of which have been memorialized and provided for in this Settlement Agreement.

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

FF. **Settlement Class.** “Settlement Class” means all persons or entities in the United States and Puerto Rico who currently own or lease, or previously owned or leased, a model year 2004 to 2010 U.S. specification BMW 5 Series (E60 and E61) vehicle. Excluded from the Settlement Class are Defendants, as well as Defendants’ affiliates, employees, officers, and directors, attorneys, agents, insurers, and franchised dealers; third-party providers of extended warranty/service contracts; independent repair/service facilities; fleet owners and operators; rental companies and vehicles; the attorneys representing Defendants in this case; the judges and mediator to whom this case is assigned and their immediate family members; all persons and entities who request exclusion from (opt-out of) the Settlement; all persons and entities who previously released any claims encompassed in this Settlement or whose vehicle was permanently



transported outside the United States; and all persons or entities claiming personal injury or property damage other than to a Class Vehicle or claiming subrogation of such claims.

GG. **Settlement Class Members.** “Settlement Class Members” means all Class Members who do not affirmatively exclude themselves (*i.e.*, “opt out”) from the Settlement as approved by the Court.

HH. **SI B61 13 06.** “SI B61 13 06” means the most recent version of Technical Service Bulletin SI B61 13 06, issued November 2012, and attached hereto as Exhibit “D.”

II. **Special Master.** “Special Master” means Ronald J. Hedges, U.S.M.J. (ret.). If the designated Special Master is unable or unwilling to serve in this capacity in the future for any reason, the Parties will jointly agree upon a replacement Special Master. The costs associated with the use of the Special Master in this regard will be borne equally (50/50) by the Plaintiffs and Defendants (unless otherwise ordered by the Special Master).

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

## II. **REQUIRED EVENTS**

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

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

2. The Parties will seek entry of a Preliminary Approval Order in substantially the same form as that attached hereto as Exhibit “C.” The Preliminary Approval Order will, among other things:

a. Certify a nationwide (United States, District of Columbia, and Puerto Rico) settlement-only class; approve Eric Anderson and George Catalano as Class

Representatives; and appoint their counsel as Class Counsel, pursuant to Fed. R. Civ. P. 23;

b. Preliminarily approve the Settlement;

c. Require the dissemination of Class Notice within sixty (60) days of the date of the Preliminary Approval Order and the taking of all necessary and appropriate steps to accomplish this task;

d. Determine that the Class Notice complies with all legal requirements, including, but not limited to, the Due Process Clause of the United States Constitution;

e. Require Defendants to provide notice to the appropriate state and federal officials as required by the Class Action Fairness Act, 28 U.S.C. §1715 (“CAFA Notice”).

f. Schedule a date and time for a Final Approval Hearing, not less than 150 days after the date of the Preliminary Approval Order, to determine whether the Preliminary Approval Order should be finally approved by the Court;

g. Require Class Members who wish to exclude themselves to submit an appropriate and timely written request for exclusion postmarked within thirty (30) days after dissemination of the Class Notice and advise that a failure to do so will bind those Class Members who remain in the Class;

h. Require Class Members who wish to object to the Settlement Agreement to submit an appropriate and timely written statement postmarked within thirty (30) days after dissemination of the Class Notice;

i. Require Class Members who wish to appear to object to the Settlement Agreement to submit an appropriate and timely written statement postmarked within thirty (30) days after dissemination of the Class Notice;

j. Require attorneys representing objecting Class Members, at the Class Members' expense, to file a notice of appearance within thirty (30) days after dissemination of the Class Notice;

k. Appoint the Claims Administrator; and

l. Issue other related orders to effectuate the preliminary approval of the Settlement Agreement.

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

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

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

c. Finally certify the Class for settlement purposes only;

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

e. Dismiss the *Catalano* Action with prejudice and direct the Plaintiffs to dismiss the *Sharma* Action with prejudice;

f. Incorporate the Release set forth in the Settlement Agreement and make the Release effective as of the date of the Effective Date;

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

h. Retain jurisdiction relating to the administration, consummation, enforcement, and interpretation of the Settlement Agreement, the Final Approval Order, and for any other necessary purpose; and

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

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

5. If the Court fails to issue the Preliminary Approval Order, or fails to issue the Final Approval Order, this Settlement Agreement is voidable by either Party. However, the Parties agree to use their best efforts, consistent with this Settlement Agreement, to cure any defect(s) identified by the Court.

6. The Parties acknowledge that prompt approval, consummation, and implementation of the Settlement set forth in this Settlement Agreement are essential. The Parties will cooperate with each other in good faith to carry out the purposes of and to effectuate this Settlement Agreement, will promptly perform their respective obligations hereunder, and will promptly take any and all actions and execute and deliver any and all additional documents and all other materials and/or information reasonably necessary or appropriate to carry out the terms of this Settlement Agreement and the transactions contemplated hereby. As part of this effort, Defendants have provided Plaintiffs with additional information regarding Class Vehicle distribution and SI B61 13 06 authorized service technician repair estimates in support of the Settlement.

7. Upon entry of the Final Approval Order, the *Catalano* Action will be dismissed, on its merits and with prejudice, subject to the continuing jurisdiction of this Court, and

Settlement Class Members will be forever barred and enjoined from pursuing any claims which have been resolved by this Settlement. The *Sharma* Action also will be dismissed, on its merits and with prejudice, and Settlement Class Members will be forever barred and enjoined from pursuing any claims which have been resolved by this Settlement.

### **III. SETTLEMENT TERMS**

#### **A. Service Campaign.**

1. Within one (1) year of the Effective Date, all Class Members will be permitted to make an appointment with an authorized BMW Center for an inspection of eligible Class Vehicle(s), pursuant to SI B61 13 06. This appointment will include relocation of all modules located in the spare tire well of the trunk, specifically the RDC, PDC, MPM, TCU, LOGIC-7, and SDARS modules, in accordance with SI B61 13 06. If an authorized BMW Center determines that any modules have suffered water damage, subject to any exclusions set forth herein, repair and replacement will be performed in accordance with SI B61 13 06. Any replacement parts installed during the appointment are covered by BMW NA's standard 2 year/unlimited mileage replacement parts warranty. This inspection, relocation, and any necessary repair or replacement will be provided to the Class Member free of charge. During the appointment, warning label PN 71 24 6 777 721 will be affixed to the trunk of the Class Vehicle.

2. Exclusions and Limitations. The inspection, relocation, and any necessary repair or replacement is only available to model year 2007 to model year 2010 Class Vehicles that have been in service for less than 120,000 miles. Moreover, the inspection, relocation, and any necessary repair or replacement is only available to Class Vehicles that have not previously undergone an SI B61 13 06 repair at an authorized BMW Center that was covered under the New Vehicle Limited Warranty or as a goodwill repair. Finally, Class Vehicles where

the Defect resulted from operator misuse (*i.e.*, (1) failing to comply with any state's applicable traffic laws, ordinances, or regulations; (2) transporting any hazardous materials including, but not limited to, chemical, biological and medical materials; or (3) using the Class Vehicle in any competitive event that may have caused damage to the Vehicle), or by an improper taillight repair, such as after a motor vehicle accident, are excluded from repair relief.

**B. Reimbursement for Out-of-Pocket Expenses Prior to the end of the Claims Submission Period.**

Any Class Member who has incurred any out-of-pocket expense for repair of the Defect prior to the end of the Claims Submission Period will be entitled to submit a claim (or claims) for reimbursement of those repair expenses with the following conditions:

1. Reimbursement. Each Class Member is entitled to submit one claim for reimbursement of out-of-pocket expenses, up to a maximum reimbursement of \$1,500.00, incurred for relocation, repair, or replacement associated with the Defect and performed in accordance with the procedures set forth under SI B61 13 06.
2. Required Proof. In order to be reimbursed for claims submitted pursuant to §III(B)(1), Class Members must submit a Claim Form to the Claims Administrator that is post-marked during the Claims Submission Period and include: (a) documentation that identifies the Class Vehicle VIN, (b) a repair order/invoice that includes a description of the repair, cause of the failure, parts used, labor time and costs, and mileage at the time of repair, and (c) proof of payment for the repair.
3. Exclusions and Limitations. Defendants do not warrant or guarantee any repairs performed at third-party repair shops and, should any such repairs fail after a Class Member has made a claim under the Settlement, the Class Member will not be entitled to submit an additional claim. Defendants will not reimburse any work performed at third-party repair shops

after entry of the Effective Date. Reimbursement is only available when the repair to the Class Vehicle occurred within ten (10) years of service or when it had less than 120,000 miles, whichever comes first. Finally, Class Vehicles where the Defect resulted from operator misuse (*i.e.*, (1) failing to comply with any state's applicable traffic laws, ordinances or regulations; (2) transporting any hazardous materials including, but not limited to, chemical, biological and medical materials; or (3) using the Class Vehicle in any competitive event that may have caused damage to the Vehicle), or by an improper taillight repair, such as after a motor vehicle accident, are excluded from any reimbursement.

**C. Claim Review, Claim Processing, Claim Confirmation, Appeal from Denial, Reporting.**

1. Claim Review: All claims submitted for reimbursement will be reviewed and accepted within thirty (30) days of receipt by the Claims Administrator, which will be responsible for ensuring that all information required under this Settlement Agreement has been submitted. Any Claimant whose claim is rejected as incomplete, including for failure to provide required documents or information, or whose claim is denied in whole or in part, will receive from the Claims Administrator by first-class mail a written explanation stating the reasons for the rejection or denial, including steps the Claimant can take to cure the deficiencies, if possible. The Claimant receiving such notice will be allowed thirty (30) days from the postmarked date on the notice even if it exceeds the Claims Submission Period to submit materials to cure the deficiencies, if possible. Claims which the Claims Administrator has determined to be complete will then move to the Claims Confirmation Process.

2. Claim Processing and Claims Confirmation Process: Commencing immediately after the Effective Date, the Claims Administrator will calculate the amount due to each Claimant for all claims accepted by the Claims Administrator as complying with the

requirements of this Settlement Agreement. The Claims Administrator will, on a weekly rolling basis, submit those claims to Defendants to determine if there is any reason to believe that an accepted claim is fraudulent or otherwise invalid. Within sixty (60) days of Defendants' receipt from the Claims Administrator of properly submitted claims, Defendants may object to the approval of the claim based on evidence that: (1) the vehicle's warranty was voided because (a) the VIN has been altered or cannot be read or otherwise determined, (b) the odometer has been replaced or altered and the true mileage cannot be determined, (c) the vehicle has been declared a total loss or sold for salvage purposes (for reasons unrelated to the Defect), or (d) the vehicle has been used in any competitive event that may have damaged the vehicle; (2) the VIN number associated with the claim does not match the Settlement Class Member's Vehicle's VIN number; (3) the Settlement Class Member has received "goodwill" or other pricing adjustment, coupon, reimbursement, or refund from BMW NA, an authorized BMW Center, or any person or entity, equal to the amount of the claim submitted; (4) the claim for reimbursement is for an item or service that is not covered under this Settlement Agreement; or (5) the claim is fraudulently submitted.

3. Notification to Claimants: After Defendants complete the Claims Confirmation Process, the Claims Administrator will advise the Claimant, in writing, whether the claim has been approved and, if so, in what amount or, if the claim is denied in whole or in part, will explain why the claim was denied. The Claims Administrator's letter will inform the Claimant of the right to an appeal from a denial, in whole or in part, and will provide Class Counsel's contact information and instruct the Claimant that any appeal must be requested within fifteen (15) days of the date the letter was transmitted to the Claimant. A copy of any and all denials will also be contemporaneously provided to Class Counsel and Defendants' Counsel via



email.

4. Appeal from Denial: If the Claims Administrator rejects a claim in whole or in part, including after the thirty (30) day period to cure claim deficiencies, and the Settlement Class Member is unable to cure the reason for rejection, or if Defendants determine that any such claim should be rejected, and the Settlement Class Member disagrees with the rejection, the Settlement Class Member may appeal the denial by notifying Class Counsel within fifteen (15) days of the date notice of such denial was mailed to the Settlement Class Member. If Class Counsel receives such notice, Class Counsel will notify Defense Counsel within fifteen (15) days of Class Counsel's receipt of that appeal. In such cases, the Parties will meet and confer in an effort to resolve the dispute. If the Parties are unable to resolve any dispute by meeting and conferring, the claim will be submitted to the Special Master, whose determination will be final and binding. Any other dispute regarding relief under the terms of the Settlement, including the validity of any Claim Form submitted, will also be submitted to the Special Master under the terms set forth in this paragraph.

5. Payment on Confirmed Claims: After Defendants complete the Claims Confirmation Process, payment of confirmed claims will commence within thirty (30) days of the Effective Date. The Claims Administrator will send to the Settlement Class Member by first class mail the approved reimbursements. The approved reimbursements will be paid in the form of a check.

6. Reporting: The Claims Administrator will provide to Class Counsel and Defendants' Counsel monthly reports concerning the number of Class Notices disseminated, completion percentages, claims made, claims approved/rejected/denied, requests for exclusion, and objections.

**IV. NOTIFICATION TO CLASS MEMBERS**

A. Unless otherwise specified, Defendants will pay all costs for the following notice program, subject to the Court approving the same, which will be effectuated within sixty (60) days of the entry of the Preliminary Approval Order by:

1. A third-party will be retained to search the applicable registration databases to identify the last known addresses of all Class Members.

2. Notice will be provided to those Class Members by one (1) direct first-class mailing and by publication on a website maintained by the Claims Administrator. The Claims Administrator will re-send returned notices if an address correction or forwarding address appears on the returned envelope.

3. Class Members will be able to submit their claims for reimbursement by U.S. Mail or through a website maintained by the Claims Administrator.

B. Within sixty (60) days after entry of the Preliminary Approval Order, or such reasonable additional time as the Parties may agree due to unforeseen circumstances, the Claims Administrator will disseminate Class Notice to the Class as specified in the Preliminary Approval Order and herein. The Claims Administrator will also provide, or make available for download through the settlement website, a copy of the Notice and/or Claim Form to any Settlement Class Member who requests the Notice and Claim Form. The Claims Administrator will be responsible for, without limitation:

1. transmitting notice of the Settlement and claims forms to Class Members;

2. establishing and maintaining a website dedicated to the Settlement which will provide information about the Settlement including all relevant documents and a means by which Class Members will be able to submit their claims for reimbursement;

3. evaluating, accepting, and processing claims for reimbursement;
4. disbursing qualifying reimbursement payments; and
5. preparing a final report of all claims submitted, claims accepted, and claims

rejected (with the basis for rejection).

C. Defendants will make payments for valid claim reimbursements required under the Settlement. Payments will commence being made within thirty (30) days after the Effective Date.

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

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

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

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

3. Objection to Settlement: The Class Notice will inform Class Members of their right to object to the proposed Settlement and appear at the Final Approval Hearing. The Class Notice will provide the deadlines and procedures for exercising these rights.

4. Attorneys’ Fees, Expenses, and Incentive Awards: The Class Notice will inform Class Members about the amounts being sought by Class Counsel as Attorneys’ Fees and

Expenses and by Plaintiffs as Service Awards, will explain that Defendants will pay the attorneys' fees and expenses awarded to Class Counsel, and Service Awards granted to Plaintiffs, in addition to and without reducing the relief being made available to Class Members.

5. Claim Form: The Class Notice will include the Claim Form for reimbursement, which will inform the Class Member that he/she/it must fully complete and timely return the Claim Form and required documentation to the Claims Administrator within the Claim Period to be eligible to obtain a reimbursement.

F. No less than ten (10) days prior to the Final Approval Hearing, Defendants will provide to the Court, with a contemporaneous copy to Class Counsel, an affidavit from the Claims Administrator attesting that Class Notice was disseminated in a manner consistent with the terms of this Settlement Agreement, or those otherwise required by the Court.

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

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

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

Settlement Agreement. Settlement Class Members who exclude themselves from the Settlement will not release their claims under Section VII.

C. Not less than ten (10) days prior to the Final Approval Hearing, the Claims Administrator will file a declaration with the Court reporting the names of all individuals who have submitted a valid Request for Exclusion.

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

A. Any Class Member who has not filed a timely written Request for Exclusion and who wishes to object to the fairness, reasonableness, or adequacy of this Settlement Agreement or the Settlement, or to the requested award of Attorneys' Fees and Expenses and/or Service Awards, must file a written notice of objection by the Objection Deadline, as well as a notice of intention to appear at the Final Approval Hearing ("Notice of Intention to Appear") if he/she/it wishes to appear and be heard at the Final Approval Hearing. The objection and Notice of Intention to Appear must also be served upon the Claims Administrator, Class Counsel, and Defendants' Counsel at the respective addresses included in Class Notice. To state a valid objection to the Settlement, an objecting Settlement Class Member must provide the following information in the Settlement Class Member's written objection: (1) his/her/its full name, current address, and current telephone number, and, if represented by counsel, any of his/her/its counsel's name and contact information; (2) the model year of his/her/its Vehicle(s), as well as the VIN of his/her/its Vehicle(s) and the date(s) of purchase or lease; (3) a statement of the position(s) the objector wishes to assert, including the factual and legal grounds for the position; (4) state that the objector has reviewed the Settlement Class definition and understands that he/she/it is a Settlement Class Member, and has not opted out of the Settlement Class; and (5) provide copies of any other documents that the objector wishes to submit in support of his/her/its position. To be valid, an

objection must be signed and include a detailed statement of each objection asserted, including the grounds for objection. In addition, any Settlement Class Member objecting to the Settlement must provide a detailed list of any other objections to any class action settlements submitted in any court, whether state, federal, or otherwise, in the United States in the previous five (5) years. If the Settlement Class Member has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she/it must affirmatively so state in the written materials provided in connection with the objection to this Settlement. The objecting Settlement Class Member must also state whether he/she/it intends to appear at the Final Approval Hearing either with or without separate counsel. Subject to approval of the Court, any objecting Settlement Class Member may appear, in person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, or object to any requests for attorneys' fees and reimbursement of reasonable litigation costs and expenses or service awards. The objecting Settlement Class Member must file with the Clerk of the Court and serve upon the Claims Administrator and all counsel designated in the Class Notice the objection and Notice of Intention to Appear by the Objection Deadline or on such other date that may be set forth in the Class Notice. The objection must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member (or his/her/its counsel) will present to the Court in connection with the Final Approval Hearing. Any Settlement Class Member who does not submit a Notice of Intention to Appear in complete accordance with the deadlines and other specifications set forth in the Settlement and the Class Notice, and who has not filed an objection in complete accordance with the deadlines and other specifications set forth in this Settlement and the Class Notice, will be deemed to have waived any objections to the Settlement and will be barred from speaking or otherwise presenting any views at the Final

Approval Hearing.

B. The agreed-upon procedures and requirements for filing objections in connection with the Final Approval Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Class Member's objection to the Settlement, in accordance with such Class Member's due-process rights. The Preliminary Approval Order and Class Notice will require all Class Members who have any objections to file such notice of objection or request to be heard with the Court, and serve by first class mail or hand delivery such notice of objection or request to be heard upon Class Counsel and Defendants' Counsel at the addresses set forth in the Class Notice, by no later than the Objection Deadline. The Preliminary Approval Order will further provide that objectors who fail properly or timely to file their objections with the Court, along with the required information and documentation set forth above, or to serve them as provided above, will not be heard during the Final Approval Hearing, and their objections will be waived and will not be considered by the Court.

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

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

The Parties agree to the following release and waiver, which will take effect upon entry of the Final Approval Order and Judgment:

A. By this Settlement Agreement and the following Release, Plaintiffs and each Settlement Class Member, on behalf of themselves and their current, former, and predecessor agents, heirs, executors and administrators, successors, assigns, insurers, attorneys,

representatives, shareholders, and any and all persons who seek to claim through or in the name or right of any of them (the “Releasing Parties”), release and forever discharge (as by an instrument under seal without further act by any person, and upon good and sufficient consideration), Defendants and each of its and their current or former administrators, insurers, reinsurers, agents, firms, parent companies and corporations, sister companies and corporations, subsidiaries and affiliates, and all other entities, including without limitation manufacturers, suppliers, and distributors, and affiliated dealerships, and all of the foregoing persons’ or entities’ respective predecessors, successors, assigns and present and former officers, directors, shareholders, employees, agents, attorneys, representatives, as well as their insurers (collectively, the “Released Parties”) from each and every claim of liability, on any legal or equitable ground, including relief under federal law or the laws of any state, regarding or related to the Class Vehicles’ Defect, including without limitation all claims, damages, punitive or exemplary damages, attorneys’ fees, costs, expenses, or liability on any legal or equitable ground, and regardless of whether such claims might have been or might be brought directly or indirectly, or through subrogation or assignment or otherwise, on account of or related to Class Vehicle Defect claims that were alleged or could have been alleged in the Actions, but do not include claims for personal injury or property damage other than to a Class Vehicle or claiming subrogation of such claims.

Plaintiffs and Settlement Class Members recognize that, even if they later discover facts in addition to or different from those which they now know or believe to be true, they nevertheless agree that, upon entry of the Final Approval Order and Judgment, Plaintiffs and Settlement Class Members, on behalf of themselves and their heirs, successors, or assigns, fully, finally, and forever settle and release any and all claims and causes of action relating to Class Vehicles’ Defect, including claims for consequential damages resulting from the Defect, which were, could have



been, or ever could be asserted against the Released Parties but do not include claims for personal injury or property damage other than to a Class Vehicle or claiming subrogation of such claims.

B. The releases provided for herein are as a result of membership as a Settlement Class Member or status as a person with a legal right to assert claims of a Settlement Class Member, the Court's approval process herein, and occurrence of the Effective Date, and are not conditional on receipt of payment by any particular Settlement Class Member. Persons who, after the date of the Preliminary Approval Order, acquire legal rights to assert claims within the scope of this Agreement that belong initially to a Settlement Class Member shall take such rights subject to all of the terms, time periods, releases, caps, prohibitions against overlapping or double recoveries, and other provisions contained herein.

C. The Parties acknowledge that the foregoing waiver and release was bargained for and is a material element of the Settlement Agreement. In the event that any Releasing Party seeks to invoke California Civil Code § 1542, which provides that:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR

(or any other like provision or principle of law of any jurisdiction) in connection with the Class Vehicles' Defect, the Releasing Parties and each of them expressly waive the provision of California Civil Code § 1542 (or any other like provision or principle of law of any jurisdiction) to the full extent that these provisions may be applicable to this release. Each of the Releasing Parties hereby does, and shall be deemed to, have considered the possibility that the number or magnitude of all claims may not currently be known; nevertheless, each of the Releasing Parties assumes the risk that claims and facts additional, different, or contrary to the claims and facts that each believes

or understands to exist may now exist or may be discovered after the settlement becomes effective. Each of the Releasing Parties agrees that any such additional, different, or contrary claims and facts shall in no way limit, waive, or reduce the foregoing release, which shall remain in full force and effect. Nothing in this paragraph shall be construed as modifying or limiting the other provisions of the settlement concerning the potential availability of claims.

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

E. Other than this Action and the *Sharma* Action, Plaintiffs and Class Representatives further represent that they are not aware of any Class Members who have current claims or actions for the relief sought in the Actions.

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

G. Plaintiffs and Class Representatives expressly agree that this Release will be and may be raised as a complete defense to and will preclude any action or proceeding encompassed by this Release, or arising out of or relating to the Class Vehicle Defect allegations in the Actions,

except claims for personal injury or property damage other than to a Class Vehicle or claiming subrogation of such claims.

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

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

J. Upon issuance of the Final Approval Order: (1) the Settlement Agreement will be the exclusive remedy for any and all Class Members, except those who have properly requested exclusion (opted out) in accordance with the terms and provisions hereof; (2) the Defendants will not be subject to liability or expense of any kind to any Settlement Class Member(s) for reasons related to the Actions except as set forth herein; and (3) Settlement Class Members will be permanently barred from initiating, asserting, or prosecuting any and all released claims against Defendants in any federal or state court in the United States or any other tribunal pursuant to the terms of this Release.

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

#### **VIII. ATTORNEYS' FEES AND EXPENSES, SERVICE AWARDS**

A. All expenses incurred in administering this Settlement Agreement, including, without limitation, all attorneys' fees and costs, the cost of the Class Notice, and the cost of

distributing and administering the benefits of the Settlement Agreement, will be paid by Defendants, subject to the limitations contained herein. The Class Counsel Fees and Expenses, and Service Awards to Class Representatives, will be paid separate and apart from any relief provided to the Settlement Class.

B. As part of the resolution of the Actions, the Parties have agreed that Class Counsel may apply for an award of attorneys' fees, costs, and expenses not to exceed \$1,787,500.00. The Parties have further agreed that Class Counsel shall not seek payment of any amount in excess of \$1,787,500.00 if awarded by the Court. The Class Counsel Fees and Expenses will be paid separate and apart from any relief provided to the Class. Defendants do not oppose, and will not encourage or assist any third party in opposing, Class Counsel's request for attorneys' fees, costs and expenses nor will Defendants contest the reasonableness of the amounts requested under this Agreement.

C. The Parties agree that Class Counsel will apply for Service Awards of \$3,500 (\$7,000 total) each to the Class Representatives in recognition of their work in furtherance of the Litigation. If Plaintiffs, Settlement Class Members, Class Counsel, or other counsel seek any amount in excess of this amount, Defendants reserve the right to oppose any greater award.

D. The total amount of Class Representative Service Awards and Class Counsel Fees and Expenses awarded by the Court, subject to Class Counsel's and Defendants' agreed-upon range, will be paid by wire transfer, within twenty (20) days of the Effective Date to an account to be designated and agreed upon by the Parties.

E. Defendants will not be liable for or obligated to pay any fees, expenses, costs, incentive awards, or disbursements to, or incur any expense on behalf of, any person or entity, either directly or indirectly, in connection with this Action, this Settlement Agreement, or the

proposed Settlement, other than the amount or amounts expressly provided for in this Settlement Agreement.

F. The Parties agree the amounts in Sections 8(B) and (C) represent Defendants' all-inclusive, full payment for all attorneys' fees, costs, and all other expenses, including but not limited to attorneys' fees, costs, and any other expenses incurred by any counsel in any related class action or any other related cases, whether known or unknown to Defendant, as well as any objectors, intervenors, or later-appearing counsel. The amounts described in Sections 8(B) and (C) shall constitute full satisfaction of Defendants' obligation to pay any person, attorney, or law firm for attorneys' fees, costs, and all other expenses, and shall relieve Defendants and the Released Parties from any other claims or liability to any other person, attorney, or law firm for any attorneys' fees, costs, or other expenses to which any Plaintiff, Settlement Class Member, objector, intervenor, or any other person may claim that are in any way related to the claims released under this Settlement.

G. In furtherance of the agreement in this Section 8, in the event of any objections to the Settlement or appeal from any order of the Court granting final approval, Class Counsel agree that they will be solely responsible for responding to objectors and intervenors, and defending the Court's Final Order and Judgment on appeal at no additional cost or expense to Defendants. Defendants will join in the defense of the Final Order and Judgment at Defendants' expense. Defendants agree not to appeal, or otherwise support any appeal of, an order or judgment entered by the Court that is consistent with this provision and the terms of this Settlement. Any attorneys' fees or costs incurred by Class Counsel in such appeals, including costs incurred to settle any claims by objectors or intervenors, are the sole responsibility of Class Counsel. No one may seek to recover such attorneys' fees or costs from Defendants.

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

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

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

**X. MISCELLANEOUS PROVISIONS**

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

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

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

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

C. If more than five percent (5%) of Class Members have submitted valid and timely Requests for Exclusion, Defendants may withdraw from and terminate this Settlement Agreement upon written notice to Class Counsel. For purposes of determining whether Defendants may withdraw from and terminate this Settlement Agreement, copies of all Requests for Exclusion timely received, together with copies of all written revocations of Requests for Exclusion, must be delivered to the Defendants' Counsel within three (3) days of receipt by the Claims Administrator, but, in all events, not less than ten (10) Court days before the Final Approval Hearing. If Defendants withdraw from this Settlement Agreement in accordance with this Paragraph, this Settlement Agreement will become null and void and of no further force and effect.

In addition, this Settlement Agreement will terminate by decision of either the Defendants or the Plaintiffs, through Class Counsel, if: (1) the Court, or any appellate court(s), rejects, modifies, or denies approval of any portion of this Settlement Agreement or the proposed Settlement that the terminating Party reasonably determines(s) is material, including without limitation, the terms of relief, the findings, or conclusions of the Court, the provisions relating to notice, the definition of the Class, and/or the terms of the Release; or (2) the Court, or any appellate court(s), does not enter or completely affirm, or alters or expands, any portion of the Final Approval Order, or any of the Court's findings of fact or conclusions of law, that the terminating Party reasonably determine(s) is material. The terminating Party must exercise the option to withdraw from and terminate this Settlement Agreement, as provided in this paragraph, no later than twenty (20) days after receiving notice of the event prompting the termination. In such event,



the Parties will be returned to the positions that they occupied as of November 4, 2016.

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

1. any state attorney general, federal agency, or regulatory or administrative authority, institutes a proceeding against the Defendants arising out of or otherwise related to the Release and any of the terms or conditions of this Settlement Agreement; or
2. any federal or state regulator or agency: (a) objects either to any aspect or term of the Settlement Agreement; or (b) requires any modification to the Settlement Agreement, including, without limitation, a constriction or expansion of the scope of the contemplated relief that Defendants in their sole discretion deem reasonably material.

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

1. This Settlement Agreement will be null and void and will have no force or effect and no Party to this Settlement Agreement will be bound by any of its terms, except for the terms set forth in this paragraph D;
2. The Parties will petition to have lifted any stay orders entered pursuant to this Agreement;
3. All of the provisions, and all negotiations, statements, and proceedings relating to it, will be without prejudice to the rights of Defendants, Plaintiffs, or any Class Member, all of whom will be restored to their respective positions occupied as of November 4, 2016, except that the Parties will cooperate in requesting that the Court set a new scheduling order such that no Parties' substantive or procedural rights are prejudiced by the attempted settlement;
4. Defendants expressly and affirmatively reserve all defenses, arguments, and motions as to all claims that have been or might later be asserted in the Actions, including,

without limitation, the argument that this Action may not be litigated as a Class Action;

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

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

7. Except as set forth above, Defendants are not responsible for any of Class Counsel's attorneys' fees and/or internal costs for the settlement, including, but not limited to, any investigative, expert, and/or actuarial costs, or any other claims for fees or expenses.

E. The attorneys' fees, expenses, and costs, including the fees and expenses of experts and consultants, and service awards as awarded by the Court, will be paid in accordance with the terms set forth in Section VIII of the Settlement Agreement within twenty (20) days of the Effective Date. Class Counsel will, at their discretion, allocate the award of attorneys' fees, costs, and expenses among Class Counsel in any manner in which they in good faith believe reflects the contributions of such counsel to the prosecution and settlement of the Actions, but in accordance with the agreement of Class Counsel regarding allocation of said award.

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

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

Court.

H. This Settlement Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

I. This Settlement Agreement and any amendments thereto will be governed by and construed in accordance with the substantive laws of the State of New York. The Settlement Agreement will be interpreted and enforced pursuant to New York law. Federal law (including Fed. R. Pro. 23 and federal case law) will govern approval of the settlement, preliminary and final certification of the Settlement Class, and all related issues such as Class Counsel's attorneys' fee and cost petition.

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

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

L. The Parties to this Settlement Agreement reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement, as well as to correct any inadvertent, non-substantive mistakes or typographical errors contained in any of the Settlement papers.

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

N. The determination of the terms of, and the drafting of, this Settlement Agreement, including its exhibits, has been by mutual agreement after negotiation, with consideration by and

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

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

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

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

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

S. If one Party to this Settlement Agreement considers another Party to be in breach of its obligations under this Settlement Agreement, that Party must provide the breaching Party with

written notice of the alleged breach and provide a reasonable opportunity to cure the breach before taking any action to enforce any rights under this Settlement Agreement.

T. All time periods set forth herein will be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Settlement Agreement or by order of the Court, the day of the act, event, or default from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is a Saturday, Sunday, or legal holiday, or, when the action to be done is the filing of a paper in court, a day on which conditions or events have made the office of the clerk of the court inaccessible, in which event the period will run until the end of the next day that is not one of the aforementioned days. As used in this section “legal holiday” includes New Year’s Day, Birthday of Martin Luther King, Jr., Presidents’ Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States.

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

If to Class Counsel:

William A. Kershaw  
Kershaw, Cook & Talley PC  
401 Watt Avenue  
Sacramento, California 95864  
(916) 779-7000 (t)  
(916) 721-2501 (f)  
[bill@kctlegal.com](mailto:bill@kctlegal.com)

Edward A. Wallace  
Wexler Wallace LLP

55 West Monroe Street, Suite 3300  
Chicago, Illinois 60603  
(312) 346-2222 (t)  
(312) 346-0022 (f)  
[eaw@wexlerwallace.com](mailto:eaw@wexlerwallace.com)

Robert L. Starr  
The Law Offices of Robert L. Starr  
23277 Ventura Boulevard  
Woodland Hills, California 91364  
(818) 225-9040 (t)  
(818) 225-9042 (f)  
[robert@starrlawmail.com](mailto:robert@starrlawmail.com)

Stephen M. Harris  
The Law Offices of Stephen M. Harris, P.C.  
6320 Canoga Avenue, Suite 1500  
Woodland Hills, California 91367  
(818) 924-3103 (t)  
(818) 924-3079 (f)  
[stephen@smh-legal.com](mailto:stephen@smh-legal.com)

If to Defendants' Counsel:

Rosemary J. Bruno, Esq.  
Christopher J. Dalton, Esq.  
Lauren A. Woods, Esq.  
Buchanan Ingersoll & Rooney PC  
550 Broad Street, Suite 810  
Newark, New Jersey 07102  
(973) 273-9800 (t)  
(973) 273-9430 (f)  
[rosemary.bruno@bipc.com](mailto:rosemary.bruno@bipc.com)  
[christopher.dalton@bicp.com](mailto:christopher.dalton@bicp.com)

**IN WITNESS WHEREOF**, Plaintiffs and Defendants, by and through their respective counsel, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

---

William A. Kershaw  
Kershaw, Cook & Talley PC  
401 Watt Avenue  
Sacramento, California 95864  
(916) 779-7000 (t)  
(916) 721-2501 (f)  
[bill@kctlegal.com](mailto:bill@kctlegal.com)

Date:

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Rosemary J. Bruno, Esq.  
Christopher J. Dalton, Esq.  
Lauren A. Woods, Esq.  
Buchanan Ingersoll & Rooney PC  
550 Broad Street, Suite 810  
Newark, New Jersey 07102  
(973) 273-9800 (t)  
(973) 273-9430 (f)  
[rosemary.bruno@bipc.com](mailto:rosemary.bruno@bipc.com)  
[christopher.dalton@bipc.com](mailto:christopher.dalton@bipc.com)  
[lauren.woods@bipc.com](mailto:lauren.woods@bipc.com)

Date:

Attorneys for Defendants,  
BMW of North America, LLC and Bayerische  
Motoren Werke Aktiengesellschaft

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Edward A. Wallace  
Wexler Wallace LLP  
55 West Monroe Street, Suite 3300  
Chicago, Illinois 60603  
(312) 346-2222 (t)  
(312) 346-0022 (f)  
[eaw@wexlerwallace.com](mailto:eaw@wexlerwallace.com)

Date:

---

Robert L. Starr  
The Law Offices of Robert L. Starr  
23277 Ventura Boulevard  
Woodland Hills, California 91364  
(818) 225-9040 (t)  
(818) 225-9042 (f)  
[robert@starrlawmail.com](mailto:robert@starrlawmail.com)

Date:

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Stephen M. Harris  
The Law Offices of Stephen M. Harris, P.C.  
6320 Canoga Avenue, Suite 1500

Woodland Hills, California 91367  
(818) 924-3103 (t)  
(818) 924-3079 (f)  
[stephen@smh-legal.com](mailto:stephen@smh-legal.com)

Date:

Attorneys for Plaintiffs and the Class



IN WITNESS WHEREOF, Plaintiffs and Defendants, by and through their respective counsel, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

  
\_\_\_\_\_  
William A. Kershaw  
Kershaw, Cook & Talley PC  
401 Watt Avenue  
Sacramento, California 95864  
(916) 779-7000 (t)  
(916) 721-2501 (f)  
[bill@kctlegal.com](mailto:bill@kctlegal.com)


Date: 1/31/17


  
\_\_\_\_\_  
Edward A. Wallace  
Wexler Wallace LLP  
55 West Monroe Street, Suite 3300  
Chicago, Illinois 60603  
(312) 346-2222 (t)  
(312) 346-0022 (f)  
[eaw@wexlerwallace.com](mailto:eaw@wexlerwallace.com)

Date: 1/31/17

\_\_\_\_\_  
Robert L. Starr  
The Law Offices of Robert L. Starr  
23277 Ventura Boulevard  
Woodland Hills, California 91364  
(818) 225-9040 (t)  
(818) 225-9042 (f)  
[robert@starrlawmail.com](mailto:robert@starrlawmail.com)

Date: 1-31-17

  
\_\_\_\_\_  
Stephen M. Harris  
The Law Offices of Stephen M. Harris, P.C.  
6320 Canoga Avenue, Suite 1500

  
\_\_\_\_\_  
Rosemary J. Bruno, Esq.  
Christopher J. Dalton, Esq.  
Lauren A. Woods, Esq.  
Buchanan Ingersoll & Rooney PC  
550 Broad Street, Suite 810  
Newark, New Jersey 07102  
(973) 273-9800 (t)  
(973) 273-9430 (f)  
[rosemary.bruno@bipc.com](mailto:rosemary.bruno@bipc.com)  
[christopher.dalton@bipc.com](mailto:christopher.dalton@bipc.com)  
[lauren.woods@bipc.com](mailto:lauren.woods@bipc.com)

Date: 1/31/17

Attorneys for Defendants,  
BMW of North America, LLC and Bayerische  
Motoren Werke Aktiengesellschaft

IN WITNESS WHEREOF, Plaintiffs and Defendants, by and through their respective counsel, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

\_\_\_\_\_  
William A. Kershaw  
Kershaw, Cook & Talley PC  
401 Watt Avenue  
Sacramento, California 95864  
(916) 779-7000 (t)  
(916) 721-2501 (f)  
[bill@kctllegal.com](mailto:bill@kctllegal.com)

Date:

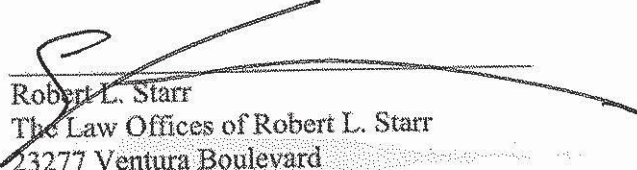
\_\_\_\_\_  
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Lauren A. Woods, Esq.  
Buchanan Ingersoll & Rooney PC  
550 Broad Street, Suite 810  
Newark, New Jersey 07102  
(973) 273-9800 (t)  
(973) 273-9430 (f)  
[rosemary.bruno@bipc.com](mailto:rosemary.bruno@bipc.com)  
[christopher.dalton@bipc.com](mailto:christopher.dalton@bipc.com)  
[lauren.woods@bipc.com](mailto:lauren.woods@bipc.com)

\_\_\_\_\_  
Edward A. Wallace  
Wexler Wallace LLP  
55 West Monroe Street, Suite 3300  
Chicago, Illinois 60603  
(312) 346-2222 (t)  
(312) 346-0022 (f)  
[eaw@wexlerwallace.com](mailto:eaw@wexlerwallace.com)


Date:

Attorneys for Defendants,  
BMW of North America, LLC and Bayerische  
Motoren Werke Aktiengesellschaft

Date: 2/2/17

  
\_\_\_\_\_  
Robert L. Starr  
The Law Offices of Robert L. Starr  
23277 Ventura Boulevard  
Woodland Hills, California 91364  
(818) 225-9040 (t)  
(818) 225-9042 (f)  
[robert@starrlawmail.com](mailto:robert@starrlawmail.com)

Date:

  
\_\_\_\_\_  
Stephen M. Harris  
The Law Offices of Stephen M. Harris, P.C.  
6320 Canoga Avenue, Suite 1500

**EXHIBIT A**

**CLAIM FORM TO RECIEVE BENEFITS OF SETTLEMENT  
IN CATALANO v. BMW OF NORTH AMERICA, LLC**

This form must be submitted or postmarked on or before \_\_\_\_\_, 2017

**Complete this form only if you wish to make a claim for benefits available under the Settlement.**

**PLEASE TYPE OR PRINT LEGIBLY**

***You must supply all of the information requested on this Claim Form in order to obtain benefits under this Settlement.***

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

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

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

BMW Model Year: \_\_\_\_\_ Model: \_\_\_\_\_

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

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

**YOU MAY BE ELIGIBLE FOR ONE OR MORE OF THE FOLLOWING BENEFITS PROVIDED UNDER THE SETTLEMENT:**

- A. FREE INSPECTION, RELOCATION, AND REPAIR OR REPLACEMENT OF AFFECTED ELECTRONIC MODULES; and**
- B. REIMBURSEMENT FOR REPAIR OR REPLACEMENT OF THE RDC, PDC, MPM, TCU, LOGIC-7, AND SDARS MODULES DUE TO WATER INCURSION UP TO \$1,500.00, REGARDLESS OF WHETHER THE REPAIRS WERE PERFORMED BY AN AUTHORIZED BMW CENTER OR A THIRD-PARTY REPAIR FACILITY.**

**PLEASE COMPLETE THIS CLAIM FORM ONLY IF YOU ARE SEEKING REIMBURSEMENT FOR REPAIRS OR REPLACEMENT OF THE RDC, PDC, MPM, TCU, LOGIC-7, AND SDARS MODULES DUE TO WATER INCURSION.**

**IF YOU ARE ONLY SEEKING AN INSPECTION, RELOCATION, REPAIR AND REPLACEMENT OF THE ELECTRONIC COMPONENTS, PLEASE CHECK THE**

**SETTLEMENT WEBSITE (insert website) AFTER (insert final approval hearing date) TO SEE IF THE SETTLEMENT HAS BEEN APPROVED. IF THE SETTLEMENT HAS BEEN APPROVED, YOU CAN MAKE AN APPOINTMENT WITH A BMW CENTER TO HAVE THE INSPECTION PERFORMED FREE OF CHARGE.**

**PLEASE SEE QUESTION 9 ON NOTICE FORM FOR MORE INFORMATION AND LIMITATIONS.**

**I am seeking reimbursement for repairs to or replacement of the RDC, PDC, MPM, TCU, LOGIC-7, and SDARS modules due to water incursion occurred prior to the Effective Date of the Settlement. I have attached copies of the following documents for each repair or replacement:**

- A.**        Documentation that identifies the Class Vehicle VIN. *(Required.)*
  
- B.**        A repair order/invoice that includes a description of the repair, cause of the failure, parts used, labor time and costs, and mileage at the time of repair. *(Required.)*
  
- C.**        Proof of payment for the repair. *(Required.)*

Did you receive any discount, pricing adjustment, “goodwill,” or other refund from BMW NA, a BMW Center, or an independent service center in connection with any repair or replacement?

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

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

IF SUBMITTING BY MAIL, COMPLETE THIS CLAIM FORM AND MAIL IT, POSTMARKED ON OR BEFORE \_\_\_\_\_, 2017, TO:

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

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

**CLAIMANT DECLARATION**

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

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

(DD/MM/YYYY)

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

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

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

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

**EXHIBIT B**

**United States District Court for the Southern District of New York****If you are a current or former owner or lessee of a U.S. specification model-year 2004 to 2010 BMW 5 Series (E60 and E61) vehicle, you may be eligible for benefits of a class-action settlement.**

*A court has authorized this notice. You have received this notice because BMW's records indicate that you are a current or former owner or lessee of a U.S. specification model-year 2004 to 2010 BMW 5 Series (E60 and E61) vehicle. This is not a solicitation from a lawyer.*

- A nationwide settlement ("Settlement") has been reached in a class action lawsuit against BMW of North America, LLC ("BMW NA") and Bayerische Motoren Werke Aktiengesellschaft ("BMW AG") ("Defendants"). The lawsuit concerns model year 2004 to 2010 U.S. specification BMW 5 Series (E60 and E61) vehicles purchased in the United States or Puerto Rico ("Class Vehicles"). The lawsuit alleges that certain electronic components stored in the spare tire well of the trunk in the Class Vehicles are susceptible to water damage, caused either by clogged sunroof drainage tubes or by some other means of water ingress. Defendants have denied these allegations.
- The Settlement provides an opportunity to be reimbursed for certain past expenses and to obtain a free inspection, relocation, and repair of the affected electronic components.
- Your legal rights are affected whether you act or don't act, so please read this notice carefully.

**YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:**

<b>SUBMIT A CLAIM AND/OR TAKE YOUR CLASS VEHICLE TO AN AUTHORIZED BMW CENTER</b>	Make a claim for relief so that you may be able to receive the valuable benefits available to you under the Settlement and/or take your vehicle to an authorized BMW Center after the Settlement is approved.	Claims must be submitted by _____, 2017. See <i>Question __, below.</i>  You must bring your Class Vehicle to a BMW Center within one year after the Settlement is approved. See <i>Question __, below.</i>
<b>EXCLUDE YOURSELF</b>	This is the only option that allows you to be part of any other lawsuit, or your own lawsuit, against the Defendants about the legal claims released in this Settlement.	Must be postmarked by _____, 2017. See <i>Question __, below.</i>
<b>OBJECT</b>	Write to the Court about why you do not like the Settlement.	Must be filed and postmarked by _____, 2017. See <i>Question __, below.</i>



<b>GO TO A HEARING</b>	Ask to speak in Court about the Settlement.	The Final Approval Hearing is scheduled for _____, 2017. <i>See Question __, below.</i>
<b>DO NOTHING</b>	Give up rights to benefits under the Settlement and to be part of this or any other lawsuit against the Defendants about the legal claims released by the Settlement.	<i>See Question __, below.</i>

- These rights and options -- ***and the deadlines to exercise them*** -- are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement, so that the benefits may be provided. Please be patient.

## WHAT THIS NOTICE CONTAINS

**BASIC INFORMATION .....PAGE**

1. Why have I received this notice?
2. What is the lawsuit about?
3. What Vehicles are included in the Settlement?
4. Why is there a class action?
5. Why is there a Settlement?

**WHO IS IN THE SETTLEMENT .....PAGE**

6. How do I know if I am part of the Settlement?

**THE BENEFITS: WHAT YOU GET .....PAGE**

7. What are the benefits of the Settlement?
8. What am I giving up in exchange for the Settlement benefits?

**HOW TO GET BENEFITS ..... PAGE**

9. How do I get the benefits of the Settlement?
10. What if my claim is denied?
11. What if I do nothing?

**EXCLUDING YOURSELF FROM THE SETTLEMENT .....PAGE**

12. Can I exclude myself from this Settlement?
13. If I exclude myself, can I get anything from this Settlement?
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**THE LAWYERS REPRESENTING YOU .....PAGE**

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17. Proposed Service Awards to Class Representatives.
18. How will the lawyers be paid?

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

**OBJECTING TO THE SETTLEMENT .....PAGE**

- 19. How do I tell the Court if I don't like the Settlement?
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**THE COURT'S FINAL APPROVAL HEARING .....PAGE**

- 21. When and where will the Court decide whether to approve the Settlement?
- 22. Do I have to come to the hearing?
- 23. May I speak at the hearing?

**GETTING MORE INFORMATION .....PAGE**

- 24. How do I get more information?

**1. Why have I received this notice?**

A Court has authorized this notice because you have a right to know about the proposed settlement of this class action lawsuit, and your options, before the Court decides whether to give "final approval" to the Settlement. This notice explains the lawsuit, the proposed Settlement, and your legal rights. You have received this notice because BMW's records indicate that you are a current or former owner or lessee of a model-year 2004 to 2010 U.S. specification BMW 5 Series (E60 and E61) vehicle purchased in the United States or Puerto Rico.

Judge Katherine B. Forrest of the United States District Court for the Southern District of New York is overseeing this class action lawsuit. The case is known as *Catalano v. BMW of North America, LLC and BMW Aktiengesellschaft*, Civil Action No. 1:15-cv-04889 ("Catalano Action"). The settlement also resolves a class action lawsuit known as *Sharma v. BMW of North America, LLC*, Civil Action No. 3:13-cv-02274-MMC, pending in the United States District Court for the Northern District of California ("*Sharma Action*"). The *Catalano Action* and *Sharma Action* are collectively referred to as the "Actions." George Catalano and Eric Anderson, two of the people who sued, are called the "Plaintiffs," and the companies that were sued, BMW NA and BMW AG, are called the "Defendants."

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

This lawsuit is about model-year 2004 to 2010 U.S. specification BMW 5 Series (E60 and E61) vehicles ("Class Vehicles"). The lawsuit alleges that certain electronic components located in the spare tire well of the trunk in the Class Vehicles are susceptible to water damage, caused either by clogged sunroof drainage tubes or by some other means of water ingress (the alleged "Defect"). BMW AG, which manufactures BMW vehicles, and BMW NA, which distributes and warrants BMW vehicles in the United States, deny these allegations and stand behind and support their products.

**3. What Vehicles are included in the Settlement?**

The Settlement includes all model-year 2004 to 2010 U.S. specification BMW 5 Series (E60 and E61) vehicles purchased or leased in the United States or Puerto Rico.

**4. Why is there a class action?**

In a class action, one or more people called "Class Representatives" assert claims on behalf of people who have similar claims. All of these people are a "Class" or "Class Members." One court resolves the issues for all Class Members, except for those who timely exclude themselves from the Class. The Class Representatives in

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

these Actions are Plaintiffs George Catalano and Eric Anderson.

#### **5. Why is there a Settlement?**

All parties have agreed to a Settlement to avoid the cost and risk of a trial, and so that the people affected can get benefits, in exchange for releasing the Defendants from liability for the claims that were raised or could have been raised involving the Class Vehicle Defect. The Settlement does not mean that the Defendants broke any laws, or otherwise did anything wrong, because Judge Forrest did not decide which side was right. The Class Representatives and the lawyers representing them think the Settlement is best for all Class Members.

#### **6. How do I know if I am a Class Member?**

The Settlement Class includes all persons or entities in the United States and Puerto Rico who currently own or lease, or previously owned or leased, a model-year 2004 to 2010 U.S. specification BMW 5 Series (E60 and E61) vehicle purchased or leased in the United States or Puerto Rico.

BMW's records indicate that you have or had a Class Vehicle. If you're not sure whether you are included in the Settlement Class, you may call (toll-free) **[to be inserted]** with questions.

#### **7. What are the benefits of the Settlement?**

The benefits include:

##### Free Inspection, Relocation, and Repair or Replacement of Affected Electronic Modules:

After Judge Forrest grants final approval of the Settlement and the Settlement becomes effective (the "Effective Date"), you will be able to make an appointment with an authorized U.S. BMW Center (dealer) for an inspection of your Class Vehicle, which will include relocation of all modules located in the spare tire well of the trunk, specifically the RDC, PDC, MPM, TCU, LOGIC-7, and SDARS modules. In addition, if an authorized BMW Center determines that any of the modules have suffered water damage, subject to certain exclusions, they will be repaired and replaced. This inspection, relocation, and any necessary repair or replacement will be provided to the Class Member free of charge. During the appointment, warning label PN 71 24 6 777 721, which informs owners and lessees of the Class Vehicles against spilling liquids in the trunk compartment of the Vehicles, will be affixed to the trunk of the Class Vehicle. Any replacement parts installed during the appointment are covered by BMW NA's standard 2-year/unlimited mileage replacement-parts warranty. *You do not need to submit a Claim Form to obtain these benefits – they will be available to you for one year after the Effective Date of the Settlement.*

The inspection, relocation, and any necessary repair or replacement is only available to model year 2007 to model year 2010 Class Vehicles that have been in service for less than 120,000 miles. The inspection, relocation, and any necessary repair or replacement is only available to Class Vehicles that have not previously undergone repair under BMW's Technical Service Bulletin SI B61 13 06 at a BMW Center that was covered under the New Vehicle Limited Warranty or as a goodwill repair. Finally, Class Vehicles where the Defect resulted from operator misuse (i.e., (1) failing to comply with any state's applicable traffic laws, ordinances or regulations; (2) transporting any hazardous materials including, but not limited to, chemical, biological and medical materials); or (3) using the Class Vehicle in any competitive event that may have caused damage to the Vehicle), or by an improper taillight repair, such as after a motor vehicle accident, are excluded from any relief.

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

Reimbursement for Past Expenses:

If you previously incurred eligible out-of-pocket expenses at an authorized BMW Center or third-party repair shop for relocation, repair, or replacement of the RDC, PDC, MPM, TCU, LOGIC-7, and SDARS modules due to water incursion, you may be entitled to reimbursement up to \$1,500.

Defendants do not warrant or guarantee any repairs performed at third-party repair shops and, should any such repairs fail, you will not be entitled to submit an additional claim. Defendants will not reimburse any work performed at third-party repair shops after the Effective Date of the Settlement. Reimbursement is only available when the repair to the Class Vehicles occurred within ten (10) years of service or when it had less than 120,000 miles, whichever comes first. Finally, Class Vehicles where the Defect resulted from operator misuse (*i.e.*, (1) failing to comply with any state’s applicable traffic laws, ordinances or regulations; (2) transporting any hazardous materials including, but not limited to, chemical, biological and medical materials; or (3) using the Class Vehicle in any competitive event that may have caused damage to the Vehicle), or by an improper taillight repair, such as after a motor vehicle accident, are excluded from any reimbursement.

In order to obtain reimbursement for eligible past expenses, you must submit a Claim Form and include all of the following: (a) documentation that identifies the Class Vehicle’s Vehicle Identification Number (“VIN”), (b) a dated repair order/invoice that includes a description of the repair, cause of the failure, parts used, labor time and costs, and mileage at the time of repair, and (c) proof of payment for the repair.

*To seek reimbursement for these reimbursement benefits, please complete and submit a Claim Form, as set forth in Answer 9, below.*

\* \* \*

As part of the claims confirmation process, a claim for reimbursement will be rejected if: (1) the vehicle’s warranty was voided because (a) the VIN has been altered and cannot be read or otherwise determined, (b) the odometer has been replaced or altered and the true mileage cannot be determined, (c) the vehicle has been declared a total loss or sold for salvage purposes (for reasons unrelated to the Defect), or (d) the vehicle has been used in any competitive event that may have caused damage to the Vehicle; (2) the VIN number associated with the claim does not match the Settlement Class Member’s Vehicle’s VIN number; (3) the Settlement Class Member has received “goodwill” or other pricing adjustment, coupon, reimbursement, or refund from BMW NA, an authorized BMW Center, or any person or entity, equal to the amount of the claim submitted; (4) the claim for reimbursement is for an item or service that is not covered under this Settlement Agreement; or (5) the claim is fraudulently submitted.

**This is just a summary of the Settlement terms. More details and specific information are available in a document called the Settlement Agreement, which is available at [www.\[to be inserted\].com](http://www.[to be inserted].com).**

**8. What am I giving up in exchange for the Settlement benefits?**

If the Settlement becomes final, Class Members will be releasing Defendants and related people and entities from all of the claims described and identified in Section VII.A of the Settlement Agreement. In essence, the claims released by Class Members are all claims (except for personal injury or damage to property other than the Class Vehicle) that could arise based on water damage to the affected electronic modules in Class Vehicles. The Settlement Agreement is available at [www.\[to be inserted\].com](http://www.[to be inserted].com). The Settlement Agreement describes the released claims with specific descriptions, in necessarily accurate legal terminology, so read it carefully.

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

Judge Forrest has appointed specific attorneys to represent you in this lawsuit and Settlement. You can talk to one of the lawyers listed below free of charge if you have questions about the released claims or what they mean. You can also speak with your own attorney, should you have one, about this Settlement.

**9. How do I get the benefits of the Settlement?**

If you are a Class Member and would like to obtain Settlement benefits in the form of free inspection, relocation, and repair or replacement of affected electronic modules in your Class Vehicle, you can do so after the Effective Date of the Settlement by making an appointment for this service with an authorized BMW Center in your area. Judge Forrest will hold a hearing on \_\_\_\_\_, 2017 to decide whether to give final approval to the Settlement. Check the settlement website, [www.\[to be inserted\].com](http://www.[to be inserted].com), after that date to find out if the Settlement was given final approval and the deadline to take advantage of this benefit.

If you are a Class Member and would like to obtain reimbursement benefits, you need to complete the Claim Form that accompanies this Notice and mail or email it, with all the required proofs, to the address provided on the Claim Form. Additional copies of Claim Forms are available at [www.\[to be inserted\].com](http://www.[to be inserted].com). The current deadline for submitting Claim Forms is \_\_\_\_\_, 2017.

These benefits are also subject to limitations, including based on the model year and mileage of your Vehicle, which are discussed in Question 7.

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

***Inspections cannot be scheduled, and claim forms will not be processed nor will payments be issued, until after the Effective Date, which is thirty (30) days after Judge Forrest gives final approval of the Settlement, unless an appeal is filed, in which case it may be longer. Please be patient, and feel free to check the website or call the phone number listed above for current status.***

**10. What if my claim is denied?**

There is a process in the Settlement to resolve disagreements between you and Defendants over your claim. During this process, the court-appointed attorneys listed below will represent you in any dispute regarding relief under the terms of the Settlement, and the dispute will be handled in accordance with the procedures set forth in the Settlement Agreement. You may have the right to appeal any denied claim to a Special Master. If you have questions regarding this process, visit [www.\[to be inserted\].com](http://www.[to be inserted].com) to see a copy of the Settlement Agreement, or contact Class Counsel below.

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

If you do nothing, you will give up the right to be part of any other lawsuit against Defendants about the legal claims released by the Settlement. You will be entitled to take your Class Vehicle to a BMW Center for an inspection, relocation, and repair or replacement of the electronic modules. However, you will not receive any of the reimbursement benefits offered by this Settlement unless you timely submit a Claim Form.

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

Yes. If you want to keep the right to sue or continue to sue Defendants over the legal issues in this case, then you must take steps to get out of this Settlement. This is called asking to be excluded from – sometimes called

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

“opting out” of – the Class.

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

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

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

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

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

To exclude yourself from the Settlement, you must send a letter by mail saying that you want to be excluded from *Catalano v. BMW of North America, LLC and BMW Aktiengesellschaft*, Civil Action No. 1:15-cv-04889. Be sure to include: (1) your full name and current address; (2) the model year and VIN of your Class Vehicle(s) and the date(s) of purchase/lease; (3) specifically and clearly state your desire to be excluded from the Settlement and from the Settlement Class; and (4) your signature. You cannot ask to be excluded over the phone or via the internet. You must mail your request to be excluded, postmarked no later than \_\_\_\_\_, 2017, to the Settlement Administrator at the address below:

KCC  
*Catalano Settlement*  
PO Box XXXX  
City, State XXXXX-XXXX

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

**16. Do I have a lawyer in the case?**

The Plaintiffs and you have been represented by a number of lawyers and several law firms that have prosecuted this case together. Judge Forrest has appointed the following lawyers to represent you and other Class Members as “Class Counsel”:

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



<p>William A. Kershaw  Ian J. Barlow  Kershaw, Cook &amp; Talley PC  401 Watt Avenue  Sacramento, California 95864  (916) 779-7000</p> <p>Robert L. Starr  The Law Offices of Robert L. Starr  23277 Ventura Boulevard  Woodland Hills, California 91364  (818) 225-9040</p>	<p>Edward A. Wallace  Amy E. Keller  Wexler Wallace LLP  55 West Monroe Street, Suite 3300  Chicago, Illinois 60603  (312) 346-2222</p> <p>Stephen M. Harris  The Law Offices of Stephen M. Harris, P.C.  6320 Canoga Avenue, Suite 1500  Woodland Hills, California 91367  (818) 924-3103</p>
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You will not be charged for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

**17. Proposed Service Awards to Class Representatives.**

Class Counsel has requested a payment to the Class Representatives George Catalano and Eric Anderson, not to exceed \$3,500.00 each. Defendants have agreed not to oppose this request. This payment will not reduce any benefits recoverable by members of the Settlement Class.

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

As part of the resolution of the Actions, Class Counsel and Defendants have agreed Class Counsel may apply for an award of attorneys' fees, costs, and expenses not to exceed \$1,787,500.00. The Parties have further agreed that Class Counsel will not seek payment of any amount in excess of \$1,787,500.00 if awarded by Judge Forrest. The Class Counsel Fees and Expenses will be paid separate and apart from any relief provided to the Class. Judge Forrest will determine the amount of attorneys' fees, costs, and expenses. Defendants have agreed not to oppose this request. These payments will not reduce the value of the benefits distributed to Class Members. Defendants will also separately pay the costs to administer the Settlement.

**19. How do I tell the Court if I don't like the Settlement?**

You can object to the Settlement if you don't like some part of it. You can give reasons why you think Judge Forrest should not approve it. To object, send a letter saying that you object to the Settlement in *Catalano v. BMW of North America, LLC and BMW Aktiengesellschaft*, Civil Action No. 1:15-cv-04889. You must include: (1) your full name and current address and the name of your attorney and your attorney's address if you are represented by an attorney; (2) the model year and VIN of your Vehicle(s) and the date(s) of purchase or lease; (3) the reasons why you object and the factual and legal reasons for your objection (including all relevant documents that pertain to your objection); (4) state that you have reviewed the Settlement Class definition and understand that you are a Settlement Class Member, and you have not opted out of the Settlement Class; (5) a detailed list of any other objections to any class action settlements you submitted to any court, whether State, Federal, or otherwise, in the United States in the previous five (5) years; (6) a Notice of Intention to Appear at the Final Approval Hearing if you intend to appear in person at the hearing; and (7) your signature. The objection must be filed with the Court on or before \_\_\_\_\_, 2017 and mailed to the Claims Administrator, Class Counsel, and Defendants' Counsel. The mailed copies must be postmarked on or before \_\_\_\_\_, 2017:

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

COURT	Clerk of Court United States District Court Southern District of New York Daniel P. Moynihan US Courthouse 500 Pearl Street New York, New York 10007-1312	
CLAIMS ADMINISTRATOR	KCC <i>Catalano Settlement</i> PO Box XXXX City, State XXXXX-XXXX	
CLASS COUNSEL	William A. Kershaw Ian J. Barlow Kershaw, Cook & Talley PC 401 Watt Avenue Sacramento, California 95864	Edward A. Wallace Amy E. Keller Wexler Wallace LLP 55 West Monroe Street, Suite 3300 Chicago, Illinois 60603
DEEFENDANTS' COUNSEL	Christopher J. Dalton Buchanan Ingersoll & Rooney PC 550 Broad Street, Suite 810 Newark, New Jersey 07102-4582	

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

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

**21. When and where will Judge Forrest decide whether to approve the Settlement?**

Judge Forrest will hold a hearing to decide whether to approve the Settlement. If you have filed an objection on time, you may attend and ask to speak, but you don't have to. Judge Forrest will hold a Final Approval Hearing at \_\_: \_\_.m. on \_\_\_\_\_, 2017, at the United States District Court for the Southern District of New York, Daniel P. Moynihan US Courthouse, Courtroom \_\_, 500 Pearl Street, New York, NY 10007. At this hearing, Judge Forrest will consider whether the Settlement is fair, adequate, and reasonable. If there are objections, Judge Forrest will consider them. Judge Forrest will only listen to people who have asked to speak at the hearing (*See* Question 23 below). Judge Forrest will also decide how much to pay the lawyers representing Class Members and the Class Representative. After the hearing, Judge Forrest will decide whether to approve the Settlement. We do not know how long these decisions will take. You should monitor [www.\[to be inserted\].com](http://www.[to be inserted].com) to find out if any dates have changed and to learn if Judge Forrest has approved the Settlement.

**22. Do I have to come to the hearing?**

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

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



**23. May I speak at the hearing?**

You may ask Judge Forrest for permission to speak at the Final Approval Hearing. To do so, you must file a “Notice of Intent to Appear” in *Catalano v. BMW of North America, LLC and BMW Aktiengesellschaft*, Civil Action No. 1:15-cv-04889. Be sure to include your name, address, telephone number, signature, and other requirements outlined in Question 19. You must file your Notice of Intent to Appear no later than \_\_\_\_\_, **2017**, and simultaneously mail it to the addresses listed in Question 19. You cannot speak at the hearing if you exclude or have excluded yourself from the Class.

**24. How do I get more information?**

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

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

**EXHIBIT C**



4. The Court preliminarily appoints the law firms of Kershaw, Cook & Talley PC (William A. Kershaw and Ian J. Barlow), Wexler Wallace LLP (Edward A. Wallace and Amy E. Keller), The Law Offices of Robert L. Starr (Robert L. Starr), and The Law Offices of Stephen M. Harris, PC (Stephen M. Harris) as Class Counsel. Any Class Member may enter an appearance in the action, at their own expense, either individually or through counsel of their own choice. However, if they do not enter an appearance, they will be represented by Class Counsel. The Court also hereby appoints Plaintiffs George Catalano and Eric Anderson as Class Representatives.

5. The Court hereby preliminarily approves the proposed Settlement upon the terms and conditions set forth in the Settlement Agreement and Release attached to the Declaration of [ ] as Exhibit 1 (“Settlement Agreement”). The Court preliminarily finds that the Settlement is within the range of reasonableness necessary for preliminary approval by the Court. The Court preliminarily finds that the requirements of Rules 23(a), 23(b)(3), and 23(e) of the Federal Rules of Civil Procedure are met and that the Settlement terms are fair, adequate, and reasonable as to all potential Class Members when balanced against the probable outcome of further litigation, given the risks relating to liability and damages. It further appears that extensive and costly investigation and research has been conducted such that counsel for the Parties at this time are reasonably able to evaluate their respective positions. It further appears to the Court that settlement at this time will avoid substantial additional costs by all parties, as well as the delay and risks that would be presented by the further prosecution of the above-titled action. It appears that the Settlement has been reached as a result of intensive, arm’s-length negotiations utilizing an experienced third-party neutral.

6. The Court hereby approves, as to form and content, the Claim Form attached as

Exhibit A to the Settlement Agreement, and the Notice of Proposed Settlement of Class Action (“Notice”) attached as Exhibit B to the Settlement Agreement (collectively, “Notice Packet”).

The Court finds that the Notice and procedures for mailing and distributing the Notice Packet set forth in the Settlement Agreement meet the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, are the best notice practicable under the circumstances, and constitute due and sufficient notice to all persons entitled thereto. Accordingly, the Court directs the following notice procedures be effected on or before \_\_\_\_\_, 2017 (sixty (60) days after entry of this Order):

a. Individual direct mail (first class) notice regarding the Settlement will be sent to all current and former owners and lessees of Class Vehicles using BMW NA’s database and RL Polk data; and

b. Publication on a website maintained by the Claims Administrator.

7. The Court approves Kurtzman Carson Consultants, LLC (“KCC”) as the Claims Administrator. KCC is directed to perform all other Settlement Administration responsibilities set forth in the Settlement Agreement.

8. To be eligible for reimbursement under the Settlement, a Class Member must complete a Claim Form, attached as Exhibit A to the Settlement Agreement, and submit all required documentation in accordance with the procedures set forth in the Notice, not later than \_\_\_\_\_, 2017 (one hundred twenty (120) days after entry of this Order).

9. Any Class Member may make a Request for Exclusion by mailing or delivering such request in writing to the Claims Administrator at the address set forth in the Class Notice. Any Request for Exclusion must be postmarked or delivered not later than \_\_\_\_\_, 2017 (ninety (90) days after entry of this Order) (the “Opt-Out Deadline”). Any Request for Exclusion

must (1) state the Class Member's full name and current address; (2) identify the model year and Vehicle Identification Number ("VIN") of his/her/its Vehicle(s) and the date(s) of purchase or lease; and (3) specifically and clearly state his/her/its desire to be excluded from the Settlement and from the Settlement Class and elects to be excluded from any judgment entered pursuant to this Settlement. Class Members who submit valid and timely requests for exclusion will not be entitled to any recovery under the Settlement and will not be bound by the Settlement or have any right to object to, appeal from, or comment on it. Class Members who do not submit valid and timely requests for exclusion are "Settlement Class Members" and shall be bound by all terms of the Settlement Agreement and any Final Judgment.

10. Any Class Member who has not filed a timely written Request for Exclusion and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the Settlement, or to the requested award of Class Counsel Fees and Expenses and/or Service Awards, must file a written notice of objection not later than \_\_\_\_\_, 2017 (ninety (90) days after entry of this Order) (the "Objection Deadline"), as well as a notice of intention to appear at the Final Approval Hearing ("Notice of Intention to Appear") if he/she/it wishes to appear and be heard at the Final Approval Hearing. To state a valid objection to the Settlement, an objecting Settlement Class Member must provide the following information in the Settlement Class Member's written objection: (1) his/her/its full name and the name of his/her/its attorney, if represented by counsel, current address, and current telephone number; (2) the model year of his/her/its Vehicle(s), as well as the VIN of his/her/its Vehicle(s) and the date(s) of purchase or lease; (3) a statement of the position(s) the objector wishes to assert, including the factual and legal grounds for the position; (4) a statement confirming that the objector has reviewed the Settlement Class definition and understands that he/she/it is a Settlement Class Member, and has

not opted out of the Settlement Class; (5) copies of relevant repair history and any other documents that the objector wishes to submit in support of his/her/its position; and (6) the objector's signature. The objecting Settlement Class Member must also state whether he/she/it intends to appear at the Final Approval Hearing either with or without separate counsel. In addition, any Settlement Class Member objecting to the Settlement must provide a detailed list of any other objections to any class action settlements he/she/it has submitted in any court, whether state, federal, or otherwise, in the United States in the previous five (5) years. If the Settlement Class Member has not objected to any other class action settlement in any court in the United States in the previous five (5) years, he/she/it must affirmatively so state in the written materials provided in connection with the objection to this Settlement. Finally, subject to approval of the Court, any objecting Settlement Class Member may appear, in person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, or object to any petitions for attorneys' fees and reimbursement of reasonable litigation costs and expenses. The objecting Settlement Class Member must file with the Clerk of the Court, and serve upon the Claims Administrator and all counsel designated in the Class Notice, copies of the objection and Notice of Intention to Appear by the Objection Deadline. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member (or his/her/its counsel) will present to the Court in connection with the Final Approval Hearing.

11. Any Settlement Class Member who does not provide a Notice of Intention to Appear in complete accordance with the deadlines and other specifications set forth in this Order and the Settlement Agreement and Class Notice, and who has not filed an objection in complete accordance with the deadlines and other specifications set forth in this Order and the Settlement

Agreement and Class Notice, will be deemed to have waived any objections to the Settlement and will be barred from speaking or otherwise presenting any views at the Final Approval Hearing.

12. Upon entry of Judgment by the Court in accordance with the Settlement Agreement, all Settlement Class Members will fully and finally release and discharge Defendants from any and all claims or causes of action that were or could have been asserted against them by the Plaintiffs or any Class Members regarding water intrusion causing damage to the electronic components located in the Class Vehicle's spare tire well (specifically the RDC, PDC, MPM, TCU, LOGIC-7, and SDARS modules), except for claims for personal injury or property damage other than to a Class Vehicle, or subrogation or such claims, resulting from the alleged Defect. Plaintiffs and Class Members recognize that, even if they later discover facts in addition to or different from those which they now know or believe to be true, they nevertheless agree that, upon entry of the Final Approval Order and accompanying Judgment, Plaintiffs and Class Members, on behalf of themselves and their heirs, successors, or assigns, fully, finally, and forever settle and release any and all claims and causes of action (except claims for personal injury or subrogation) relating water intrusion causing damage to the electronic components located in the Class Vehicle's spare tire well (specifically the RDC, PDC, MPM, TCU, LOGIC-7, and SDARS modules), which were, could have been, or ever could be asserted against Defendants and the Released Parties.

13. A Final Approval Hearing will be held on \_\_\_\_\_, 2017 at \_\_\_ a.m., which is not less than one hundred and fifty (150) days after entry of this Order. The purpose of such hearing will be to: (a) determine whether the proposed Settlement should be approved by the Court as fair, adequate, and reasonable; (b) determine the reasonableness of Class Counsels'



request for attorneys' fees and costs; (c) determine the reasonableness of the Service Award requested for Plaintiffs; and (d) Order entry of Judgment in the Action, which will constitute a complete release and bar with respect to the Released Claims.

14. No less than ten (10) days prior to the Final Approval Hearing, Defendants will file with the Court a Declaration from the Claims Administrator reporting the names of all individuals who have submitted a valid Request for Exclusion and attesting that Class Notice was disseminated in a manner consistent with the terms of this Settlement Agreement.

15. All other papers in support of the Final Approval of this Settlement and any application for reimbursement of attorneys' fees and expenses or service award, will be filed as follows:

a. Plaintiffs' Motion for Class Counsel Fees and Expenses:

Moving Papers: \_\_\_\_\_, 2017  
(75 days after entry of this Order)

Responding Papers: \_\_\_\_\_, 2017  
(90 days after entry of this Order)

Reply Papers: \_\_\_\_\_, 2017  
(105 days after entry of this Order)

b. Motion for Final Approval: \_\_\_\_\_, 2017  
(120 days after entry of this Order)

c. Reply to Objectors: Plaintiffs' and/or Defendants' respective Replies, if any, to any Settlement Class Member's comments or objections will be filed \_\_\_\_\_, 2017  
(120 days after entry of this Order)

16. All further proceedings in this Action are stayed except such proceedings necessary to review, approve, and implement this Settlement.

17. The Court, on its own initiative or pursuant to stipulation or motion practice, may extend any of the deadlines set forth in this Order or adjourn or continue the final approval

hearing without further notice to the Class.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

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HON. KATHERINE B. FORREST  
UNITED STATES DISTRICT COURT JUDGE

**EXHIBIT D**



SI B61 13 06  
General Electrical Systems

November 2012  
Technical Service

## Various Electrical Problems Caused by Water Ingress

New information provided by this revision is preceded by this symbol .

This Service Information bulletin supersedes SI B61 13 06 dated August 2009.

### MODEL

 E60	 Produced to September 2005
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### SITUATION

Water ingress into the luggage compartment may cause various electrical problems or faults associated with the MPM (Micro Power Module); PDC (Park Distance Control); M-ASK (Multi-Audio System Controller); CCC (Car Communication Computer); CID (Control Information Display); TCU (Telematics Control Unit); LOGIC-7 (Top Hi-Fi); RDC (Tire Pressure Monitor) or SDARS (Satellite Radio Receiver) control modules. In most cases, the water collects in the spare wheel recess.

### CAUSE

Insufficient sealing may allow water to enter the luggage compartment due to the vacuum generated while driving.

### PROCEDURE

#### 1. Replace damaged components.

- a. Replace all water-damaged components in the spare tire well and perform applicable electrical repairs to wires and/or connectors.

NOTE: If any of the modules to be replaced requires TeileClearing authorization, this Service Information does not negate the need for this authorization.

**The following steps will help identify the cause of the water leak and prevent a recurrence.**

#### 2. Inspect for Water Leaks.

- a. Remove the trunk carpet and trim panels.
- b. Thoroughly water test the vehicle to allow for an adequate inspection for points of water ingress.
  - o Due to the fact that this leak may only be present while driving in the rain, weather conditions allowing, the vehicle should be road tested if it is raining and then inspected

upon returning to the workshop.

- o If the vehicle has been leaking intermittently for an extended period of time, mineral deposits should define the water path.
- c. Check the following locations for potential water leaks. If any of these areas appears to be the cause, replace the defective seal or repair seams with brushable seam sealer Wurth Article # 0890 1021.
- d. Check:
  - o Sunroof drains for being loose on the rear of the sunroof or clogged
  - o Seam sealer on the body, leading to the left or right trunk air extractors (rear bumper needs to be removed for access to this area)
  - o Seam sealer around the bumper mounts and spare tire well
  - o Trunk air extractors for being properly seated in the body openings (this can be seen from inside the trunk)
  - o Trunk air extractors for being seated but not creating a good seal against the body
    - Seal the extractor to the body using silicone sealant
  - o Plastic rivet on the trim piece near the trunk hinge (left or right side) for being loose or missing
  - o Trunk lid seal:
    - Ensure that the trunk is making consistent contact with the trunk seal and no damage to the seal is present.
    - Adjust the trunk and/or striker as necessary.
  - o Missing wire harness grommet leading into the trunk, just behind the rear window
  - o Body plugs on the interior sides of the trunk missing or poorly sealed
  - o License plate light gasket for damage
  - o Remove both tail lamps and ensure that the seal is not damaged on either.
    - Reinstall both tail lamps and ensure the fasteners are properly torqued.
  - o Whether license plate screw grommets are poorly seated
  - o Whether trunk lock cylinder seal is damaged
  - o Whether trunk lid switch seal is damaged
  - o Incorrect welding in the spare wheel recess
- e. If no suspect areas for water ingress are found in the previous visual inspection or water test, continue with the following smoke test.

### 3. Smoke Test

NOTE: The following smoke test should be performed with the interior trunk trim removed, the rear bumper cover removed, and the vehicle on a lift. The VACUTEC® Smoke Machine or equivalent may be used for this procedure.

- a. Fold down one side of the split folding rear seat; insert the smoke machine nozzle into the trunk, and then fold the seatback up.
- b. Turn the smoke machine on and allow the trunk to fill with smoke.
- c. After 5-10 minutes, the trunk will be completely filled; if any water paths exist, they should be visible on the outside of the vehicle.

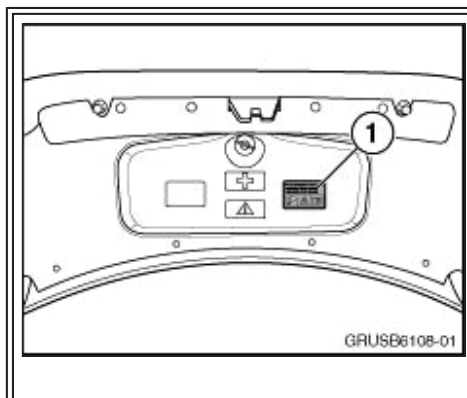
NOTE: Disregard the small amount of smoke which will come out of the air extractors.

- d. Closely inspect the areas around the following:
  - o Trunk lid
  - o Quarter panels
  - o Lower rear tail panel around the bumper supports
  - o Side panels around the air extractors
  - o Floor pan up to the front of the rear sub-frame
- e. Repair the leaking area as necessary.
- f. If no leaks are found after smoke testing the trunk, continue with the following repair.

#### 4. No Leaks Identified

- a. Relocate the RDC module to the left-hand side of the trunk per Repair Instruction RA 36 11...
- b. Relocate both the SDARS and PDC modules, if so equipped, per the attached repair procedure **SI B61 13 06 Procedure.pdf**.
- c. In the bottom of the trunk are 4 stamped openings in the sheet metal which are filled with seam sealer. Drill a 1-2mm one hole through the center of each of the forward 2 stamped openings only.

NOTE: The drilled holes should only penetrate the seam sealer and not the steel floor pan.



- d. Install a warning label (PN 71 24 6 777 721) on the right side of the tool kit cover (1). The customer should be notified of the label and the fact that liquids should not be present on or under the trunk insulation, due to the sensitive nature of the electronic control units located in the spare tire well.

## PARTS INFORMATION

Part Number	Description	Quantity
71 24 6 777 721	Trunk warning label	1 – if necessary
36 20 6 788 234	RDC Bracket (Procedure step 4a)	1 – if necessary
61 12 9 193 968	RDC Repair harness (Procedure step 4a)	1 – if necessary
51 45 1 949 950	Body nut (Procedure step 4a)	1 – if necessary
07 11 9 901 176	Screw (Procedure step 4a)	1 – if necessary
12 34 6 902 588	Harness tape (Procedure step 4b)	1 – if necessary
51 36 7 117 327	Velcro pads (Procedure step 4b)	12 – if necessary
Locally sourced**	Wire ties (Procedure step 4b)	8 – if necessary
51 47 7 058 155	Luggage compartment trim panel (Procedure step 4b)	1 – if necessary

The VACUTECH® Smoke Machine 625-522B-BMW may be used for this procedure (step 2) and is available through the BMW Equipment Program. This device automatically converts air to high purity nitrogen, using Pressure Swing Absorption (PSA) nitrogen technology. Orders for the VACUTECH® Smoke Machine 625-522B-BMW can be placed by calling the BMW Equipment Program at 1 888 222 7997.

This smoke machine utilizes an UltraTraceUV® smoke solution. The smoke solution incorporates an ultraviolet dye which helps pinpoint the leak with an ultraviolet residue surrounding the leak area. Determining the source of the leak is made easy when the included Hi-Density True UV LED light and incandescent white light are used.

## WARRANTY INFORMATION

Not applicable.

## ATTACHMENTS

View PDF attachment [B611306 Procedure](#).

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