

IN THE UNITED STATES DISTRICT COURT  
 FOR THE SOUTHERN DISTRICT OF NEW YORK

**U.S.D.C. SDNY**  
**DOCUMENT**  
**ELECTRONICALLY FILED**  
 Civil Action No. 1:15-cv-04889  
**DOC #:** \_\_\_\_\_  
**DATE FILED: FEB 28 2017**

GEORGE CATALANO, on behalf of himself and all others similarly situated,  <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> BMW OF NORTH AMERICA, LLC, a New Jersey limited liability company; and BAYERISCHE MOTOREN WERKE AKTIENGESELLSCHAFT, a corporation organized under the laws of the Federal Republic of Germany,  <p style="text-align: center;">Defendants.</p>	: : Civil Action No. 1:15-cv-04889 : : : : <b>[PROPOSED] ORDER GRANTING</b> : <b>PRELIMINARY APPROVAL OF</b> : <b>CLASS ACTION SETTLEMENT</b> : : : : : :
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The Court, having considered the arguments and evidence submitted by the parties in connection with Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement, hereby GRANTS the Motion and enters the following orders:

1. This Order hereby incorporates by reference the definitions of the Settlement Agreement as if fully set forth herein, and all terms used herein have the same meaning as set forth in the Settlement Agreement.
2. The Court conditionally certifies and approves, for settlement purposes only, the following Class:  
  
 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.
3. The Court preliminarily appoints George Catalano and Eric Anderson as Class Representatives.

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 [Amy Keller] 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 May 1, 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 June 28, 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 May 29, 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 May 29, 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 July 28, 2017 at 10:00 am 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: May 15, 2017  
(75 days after entry of this Order)  
Responding Papers: May 29, 2017  
(90 days after entry of this Order)  
Reply Papers: June 13, 2017  
(105 days after entry of this Order)
- b. Motion for Final Approval: June 28, 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 June 28, 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: 2/28/17

  
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HON. KATHERINE B. FORREST  
UNITED STATES DISTRICT COURT JUDGE