

James E. Cecchi
Lindsey H. Taylor
CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO, P.C.
5 Becker Farm Road
Roseland, New Jersey 07068
(973) 994-1700

Jonathan Shub
KOHN, SWIFT & GRAF, P.C.
One South Broad Street, Suite 2100
Philadelphia, Pennsylvania 19107
(215) 238-1700

Jeffrey A. Leon
QUANTUM LEGAL LLC
513 Central Ave., Suite 300
Highland Park, Illinois 60035
(847) 433-4500

Attorneys for Plaintiff

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

JOSEPH DIMARTINO, individually and on
behalf of others similarly situated,

Plaintiff,

v.

BMW OF NORTH AMERICA, LLC,

Defendant.

Civil Action No.

**COMPLAINT and
DEMAND FOR JURY TRIAL**

Plaintiff Joseph DiMartino (“Plaintiff”), individually, and on behalf of the other members of the below-defined nationwide class and statewide sub-class he respectively seeks to represent (collectively the “Class,” unless otherwise identified herein), for his Complaint (the “Complaint”) alleges against Defendant BMW of North America LLC (“BMW” or “Defendant”), upon personal knowledge as to themselves and their own acts, and as to all other matters upon information and belief, based upon the investigation made by the undersigned attorneys, as follows:

NATURE OF THE CASE

1. This case involves an unconscionable and unfair and monopolistic business practice on the part of Defendant BMW of North America, LLC which has reengineered the fuel injectors for the factory installed Index 10 fuel injectors used in BMW's N54 engines so that the replacement Index 11 injectors are not compatible with the originally installed Index 10 injectors. Thus, when the owner of a car with an N54 engine suffers the failure of one or two injectors, they are forced to pay for the replacement of all fuel injectors (four, six or eight depending on the cylinders in the engine) or at a minimum the fuel injectors in a "bank" of injectors, even though the other injectors had not failed. The Part Note for the servicer performing the labor now states:

Injectors with index 10 and lower have a different calibration and construction than injectors with index 11 and higher. Due to this difference, the injectors with index 10 and lower and injectors with index 11 and higher cannot be mixed in the same engine bank (i.e. cylinders 1-3 or 4-6).

2. To complicate things, the new injectors are not perfectly compatible with the on board computer system in the BMW that manages the fuel injector system, frequently causing that computer to fail shortly after the replacement injectors are installed. In short, BMW's conduct has caused BMW owners of N54 engines, which comprise nearly the entire fleet of BMWs sold in the U.S. from 2006 to 2010, to replace fully functioning fuel injectors and to pay thousands of dollars for repairs that should cost at most a few hundred dollars.

3. BMW owners have no choice but to purchase replacement fuel injectors for each cylinder, even though the majority of their injectors function just fine. BMW owners have already purchased the car, and the car will not work without replacing both the malfunctioning and fully functioning fuel injectors. Plaintiff Joseph DiMartino in fact had two fuel injectors fail in his car and as a result his car died while stopped at a traffic signal. Plaintiff was forced to pay to replace all six of his Index 10 injectors in his six-cylinder 5 Series vehicle with Index 11

injectors even though only two of his six injectors had failed. Then, less than two weeks later, the Index 11 injectors caused stress on the computer and caused it to fail. Plaintiff thus was forced to pay to replace four fuel injectors that had not failed and to replace the computer system that BMW's reengineer of the fuel injectors caused to fail.

4. This case is not about a breach of warranty or even about the fuel injectors that actually fail to function. Plaintiff and other similarly situated BMW owners knew that if any part including Index 10 injectors failed during the warranty, that BMW covered the cost of replacing the part(s). If BMW deemed it necessary to replace all injectors during the warranty, BMW provided the injectors and labor for free. The problem is that BMW is being enriched by the post-warranty failure of even a single Index 10 injector because it now gets to sell and make a profit off of the sale of injectors to replace Index 10 injectors that had not failed. This is an unfair, unconscionable, fraudulent and monopolistic business practice. If BMW charged the consumer to replace just the failed injector(s) in their car, while comping the additional injectors that had to be replaced because of BMW's failure to engineer compatible replacements, then there would not be a lawsuit. However, that is not BMW's business practice, and when Plaintiff complained to BMW, he was told BMW would do nothing for him.

5. BMW literally has the owners of vehicles equipped with N54 engines over a barrel. Their choice is to pay up for six replacement injectors and the possibility of the new computer system, or to sell the car, where the cost of replacing the injectors would just get deducted from the sale price. The BMW consumer such as Plaintiff is thus in the position of a classic "lock-in" over which BMW has monopoly power, which it is abusing by tying the sale of the replacement injectors to the ownership of the BMW.

6. Plaintiff seeks both compensatory damages and an injunction to stop BMW from continuing this unfair and monopolistic business practice.

JURISDICTION AND VENUE

7. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 1337 because Plaintiff's Sherman Act claim involves a federal question. The Court also has jurisdiction under 28 U.S.C. § 1332(d), because at least one class member is of diverse citizenship from one defendant, there are more than 100 class members nationwide, and the aggregate amount in controversy exceeds \$5 million, exclusive of costs and interest.

8. The Court has personal jurisdiction over BMW because BMW has purposefully availed itself of the privilege of conducting business activities in the State of New Jersey by advertising and selling its manufactured vehicles (including vehicles containing the BMW N54 engines and subject injectors at issue) within the State of New Jersey. Additionally, BMW has maintained systematic and continuous business contacts with the State of New Jersey, and is registered to conduct business as well as headquartered in this State.

9. Venue is proper in this District, pursuant to 28 U.S.C. § 1391, because a substantial part of the acts or omissions giving rise to the claims brought herein occurred or emanated within this District, and BMW has caused harm to one or more class members residing in this District.

PARTIES

10. Joseph DiMartino is a resident of Alachua County, Florida and as such is a citizen of the State of Florida. Mr. DiMartino purchased a BMW vehicle containing an N54 engine outfitted with Index 10 fuel injectors. After the failure of two Index 10 fuel injectors, Mr. DiMartino was forced, at his own expense, to replace not only the failed injectors, but all

additional working Index 10 fuel injectors with Index 11 fuel injectors due entirely to an incompatibility defect of BMW's making. Additionally, the newly installed Index 11 fuel injectors caused Mr. DiMartino's engine system computer to fail due to an additional incompatibility with the system.

11. Defendant BMW of North America, LLC is a Delaware limited liability company with its principal place of business located at 300 Chestnut Ridge Road, Woodcliff Lake, New Jersey and is a citizen of the States of Delaware and New Jersey.

TOLLING OF THE STATUTE OF LIMITATIONS

A. Discovery Rule Tolling

12. Plaintiff could not have discovered through the exercise of reasonable diligence that their BMW vehicles containing N54 engines outfitted with Index 10 fuel injectors suffered from a incompatibility issue with Index 11 fuel injector replacement that would subsequently cause engine failure within the time period of any applicable statutes of limitation.

13. Among other things, Plaintiff did not know and could not have known that the incompatibility issue presents itself in other vehicles and/or that BMW was aware of the widespread and common incompatibility issues and subsequent engine failures.

B. Fraudulent Concealment Tolling

14. Throughout the time period relevant to this action, BMW affirmatively concealed from Plaintiff and the other Class members the defect described herein. Indeed, BMW kept Plaintiffs and the other Class members ignorant of vital information essential to the pursuit of their claims, and as a result, neither Plaintiff nor the other Class members could have discovered, even upon reasonable exercise of diligence, that the incompatibility issues and engine failures were caused by a systemic defect.

15. Specifically, and as discussed in greater detail below, BMW was aware of the incompatibility issue and subsequent engine failures. Despite its knowledge of the defect, BMW continued to manufacture, advertise, sell, lease, and purportedly warrant the BMW Vehicles, going so far as to enact a scheme of requiring full replacement of functioning fuel interjectors without disclosing that the incompatibility issues was caused by a systemic defect.

16. BMW has repeatedly and actively concealed the existence of the incompatibility issues from Plaintiff and the other class members. When Plaintiff and the other class members attempted to have BMW repair or reimburse them for repairs to their replaced fuel injectors and costs associated with the engine failures, BMW concealed from Plaintiff and the other Class members that it was responsible for the damage or that BMW had knowledge of the underlying problem.

17. Thus, the running of all applicable statutes of limitation have been suspended with respect to any claims which Plaintiff and the other Class members have sustained as a result of the incompatibility issues and subsequent engine failures by virtue of the fraudulent concealment doctrine.

C. Estoppel

18. BMW was under a continuous duty to disclose to Plaintiff and the other Class members the true character, quality, and nature of its incompatibility issues and subsequent engine failures.

19. BMW knowingly, affirmatively, and actively concealed the true nature, quality and character of its N54 injectors from consumers.

20. Based on the foregoing, BMW is estopped from relying on any statutes of limitations in defense of this action.

COMMON FACTUAL ALLEGATIONS

21. All subject vehicles containing BMW's N54 engines¹ were factory installed with Index 10 fuel injectors. BMW subsequently discovered that the Index 10 injectors were defective, and it pulled the Index 10 injectors entirely from the market. Thus, BMW dealers and independent service shops were only able to stock the replacement designed by BMW, which was the Index 11 fuel injector.

22. However, BMW did not engineer the Index 11 injectors to be compatible with the Index 10 injectors. Thus, an engine containing a combination of Index 10 and Index 11 will result in engine failure.

23. In order to successfully operate BMW's N54 engines, BMW requires that Plaintiff and class members replace all Index 10 fuel injectors, even fully functioning ones, with Index 11 fuel injectors at their own expense.

24. Additionally, on information and belief, the Index 11 fuel injectors are not compatible with BMW's onboard engine system for its N54 engines and cause the engines to fail.

25. BMW was aware of the incompatibility between the Index 10 and Index 11 fuel injectors after they were manufactured and implemented as well as the Index 11 fuel injector's incompatibility with its N54 onboard engine system. BMW received notice via numerous complaints about the incompatibility and engine failure problems, but to date has failed to recall

¹ Which encompass the 2007–2010 E90 Sedan 335i, 2007–2010 E91 Touring 335i, 2007–2010 E92 Coupé 335i, 2007–2010 E93 Convertible 335i, 2008–2010 E60 Sedan 535i, 2008–2010 E82 Coupé 135i, 2008–2010 E88 Convertible 135i, 2009– BMW X6 xDrive35i, 2009– BMW Z4 sDrive35i, 2009– F01 Sedan 740i, 2011– E92 Coupé 335is, 2011– E93 Convertible 335is, 2011– E82 Coupé 1-series M Coupe, and the 2010– BMW Z4 (E89).

the BMW vehicles that contain the N54 engines outfitted with the Index 10 fuel injector or otherwise address the Index 11 failure defect in any meaningful way.

26. BMW received notice of the incompatibility issue and engine failure problem from Plaintiff and class members. When Plaintiff and class members bring their vehicles to BMW authorized dealers and service shops to replace their Index 10 fuel injectors, BMW replaces all Index 10 fuel injectors with Index 11 injectors. Further, BMW authorized dealers have diagnosed the cause of Plaintiff's engine failure as being due to the Index 11 fuel injector's incompatibility with the N54 onboard engine system. Thus, BMW was not only apprised of the prevalent incompatibility issue in its N54 engines, but furthered a fraudulent program whereby perfectly functional Index 10 fuel injectors were replaced at Plaintiff and class member's expense without addressing the underlying system defect which resulted in the incompatibility and subsequent engine failure.

CLASS ACTION ALLEGATIONS

Plaintiff brings this action pursuant to Rules 23(a), 23(b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of themselves and all others similarly situated. Plaintiff seeks to represent a Class under the laws of the State of New Jersey (the "Nationwide Class" or "Class") initially defined as:

All current and former owners or lessees of a BMW vehicle containing an N54 engine outfitted with a factory installed Index 10 fuel injector², in the United States. Excluded from the Nationwide Class are BMW, its employees, coconspirators, officers, directors, legal representatives, heirs, successors and wholly or partly owned subsidiaries or affiliates of BMW, BMW Dealers; Class Counsel and their employees; and the judicial officers and their immediate family

² Which encompass the 2007–2010 E90 Sedan 335i, 2007–2010 E91 Touring 335i, 2007–2010 E92 Coupé 335i, 2007–2010 E93 Convertible 335i, 2008–2010 E60 Sedan 535i, 2008–2010 E82 Coupé 135i, 2008–2010 E88 Convertible 135i, 2009– BMW X6 xDrive35i, 2009– BMW Z4 sDrive35i, 2009– F01 Sedan 740i, 2011– E92 Coupé 335is, 2011– E93 Convertible 335is, 2011– E82 Coupé 1-series M Coupe, and the 2010– BMW Z4 (E89).

members and associated court staff assigned to this case, and all persons within the third degree of relationship to any such persons.

27. Additionally, Plaintiff seeks to represent the following sub-classes (collectively, the “State Sub-Classes”) initially defined as follows:

All current and former owners or lessees of a BMW vehicle containing an N54 engine outfitted with a factory installed Index 10 fuel injector, residing in the State of Florida and/or who purchased or leased said vehicle in Florida (“the Florida Sub-Class”)

28. Excluded from the Class and each of the State Sub-Classes are Defendant BMW and any of its affiliates, parents, subsidiaries, officers, directors, employees, successors, or assigns; any Judge to whom this case is assigned as well as his or her immediate family and staff; and anyone who purchased a subject BMW vehicle for the purpose of resale.

29. This action has been brought and may properly be maintained on behalf of the Class and the State Sub-Classes proposed herein under the criteria of Federal Rule of Civil Procedure Rule 23.

30. **Numerosity.** Members of the Nationwide Class and State Sub-Classes are so numerous that their individual joinder herein is impracticable. Upon information and belief, BMW has sold or leased millions of BMW vehicles containing the N54 engine that was factory outfitted with Index 10 fuel injectors in the United States. Although the exact number of Class members and their addresses are unknown to Plaintiff, they are readily ascertainable from BMW’s records. Class members may be notified of the pendency of this action by mail and/or electronic mail, supplemented (if deemed necessary or appropriate by the Court) by published notice.

31. **Existence and predominance of common questions.** Common questions of law and fact exist as to Plaintiffs and all other members of the Nationwide Class and State Sub-

Classes and predominate over questions affecting only individual Class members. These common questions include:

- a. Whether BMW provided Plaintiff and the other Class and State Sub-Class members with a vehicle installed with a defective engine system that caused incompatibility between Index 10 and Index 11 fuel injectors;
- b. Whether Plaintiff and Class members' vehicles have a lower market value as a result of the defective system installed on their vehicles;
- c. Whether BMW knew or should have known that the respective fuel injectors were incompatible with each other and that its Index 11 fuel injector was incompatible with its N54 onboard engine system;
- d. Whether the fuel injector incompatibility and related engine failure or the costly necessary replacement of all Index 10 fuel injectors constitute material facts;
- e. Whether BMW has a duty to disclose the defective nature of the engine system and the incompatibility of fuel injectors to Plaintiff and Class and State Sub-Class members;
- f. Whether the engine system defect leads to damage to other component parts;
- g. Whether BMW has engaged in unlawful, unfair, or fraudulent business practices;
- h. Whether Plaintiff and the other Class and State Sub-Class members are entitled to equitable relief, including but not limited to restitution or injunctive relief; and
- i. Whether Plaintiff and the other Class and State Sub-Class members are entitled to damages and other monetary relief and, if so, in what amount.

32. **Typicality.** Plaintiff's claims are typical of the claims of the Nationwide Class and State Sub-Class because, among other things, Plaintiff purchased or leased a BMW vehicle with the same defective engine system and fuel injector incompatibility found in other BMW vehicles.

33. **Adequacy.** Plaintiff is an adequate representative of the Nationwide Class and State Sub-Class because his interests do not conflict with the interests of the members of the Class and State Sub-Class he respectively seeks to represent. Plaintiff has retained counsel competent and experienced in complex class action litigation, and Plaintiff intends to prosecute

this action vigorously. The interests of members of the Class and State Sub-Classes will be fairly and adequately protected by Plaintiff and his counsel.

34. **Superiority.** The class action is superior to other available means for the fair and efficient adjudication of the claims of the Plaintiff. While substantial, the damages suffered by each individual Class and State Sub-Class member do not justify the burden and expense of individual prosecution of the complex and extensive litigation necessitated by Defendant's conduct. Further, it would be virtually impossible for the members of the Nationwide Class and State Sub-Class to individually and effectively redress the wrongs done to them. Even if the members of the Nationwide Class and State Sub-Class themselves could afford such individual litigation, the court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties and the court system presented by the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

35. In the alternative, the Nationwide Class and State Sub-Class may be certified because:

- a. The prosecution of separate actions by the individual members of the Nationwide Class and State Sub-Class would create a risk of inconsistent or varying adjudication with respect to individual Class members which would establish incompatible standards of conduct for BMW;
- b. The prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them which would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and
- c. BMW has acted or refused to act on grounds generally applicable to the Nationwide Class and State Sub-Class, thereby making appropriate final and

injunctive relief with respect to the members of the Nationwide Class and State Sub-Class as a whole.

COUNT I
UNJUST ENRICHMENT
(Brought on behalf of the “Nationwide Class”)

36. Plaintiff repeats the allegations contained in the above paragraphs as though fully set forth herein.

37. This claim for unjust enrichment is brought on behalf of the Nationwide Class under New Jersey law. If New Jersey law does not apply, it is brought in the alternative under the laws of the states where Plaintiffs and Class members reside, which are substantially identical.

38. BMW has received and retained a benefit from the Plaintiffs and inequity has resulted.

39. BMW has benefitted from selling defective cars for more than they were worth, at a profit, and Plaintiffs have overpaid for the cars and been forced to pay other costs.

40. It is inequitable for BMW to retain these benefits.

41. As a result of BMW’s conduct, the amount of its unjust enrichment should be disgorged, in an amount according to proof.

COUNT II
MONOPOLIZATION UNDER SECTION 2 OF
THE SHERMAN ANTITRUST ACT
(Brought on behalf of the “Nationwide Class”)

42. Plaintiff repeats the allegations contained in the above paragraphs as though fully set forth herein.

43. BMW sells automobiles to consumers through interstate commerce throughout the United States.

44. BMW is a highly respected luxury brand of vehicle, and it is an economic market unto itself for persons who have already purchased BMW vehicles. Indeed, BMW has monopolistic power within this market post-purchase because the consumer suffers the cost of a defect or pricing practice whether or not they choose to sell or retain their BMW vehicle – the consumer either pays the price to fix the defect/purchase the product or service, or the cost of having it done after sale ensures that such accost is deducted from the purchase.

45. Accordingly, high switching costs preclude a consumer that has purchased a BMW from turning to other vehicles simply because of predatory and unfair pricing practices in the aftermarket for parts and service.

46. The market for parts for BMW vehicles is also one in which BMW has appreciable market power if not monopoly power. BMW knows that BMW owners have a strong preference for genuine BMW parts, and some replacement parts are only made by BMW. Further, in this instance, the problem that is at the heart of this complaint cannot be solved by resorting to non-OEM parts which BMW owners are loathe in any event to use given the reputation of BMW and the high price they have paid for their performance vehicles.

47. The fuel injectors for the subject vehicles is thus a market in which BMW is able to wield monopoly power and this power is manifested in the form of supracompetitive prices. Specifically, BMW is able to profitably compel a purchaser to pay to replace all fuel injectors when only one or two have failed. In a competitive market BMW would not be able to impose what is in effect a 400% to 500% price increase (forcing a consumer to buy 4 or 5 products that have not failed for every one or two that has failed) on the fuel injector part because competitors whose fuel injectors in their vehicles are able to be replaced one at a time would compete and erode away the effective BMW price increase.

48. However, here the price or quality of another car does not constrain BMW's pricing of replacement parts because an owner of a BMW vehicle cannot profitably choose to forego the repair and then purchase another vehicle. If the \$1500-2000 repair job is not done before the car is sold, the cost of bringing the car to functionality will come off the price of the car, so the owner will pay the BMW "price increase" whether or not they keep the car.

49. This is thus a classic after-market tying arrangement. The locked-in owner of the BMW vehicle must purchase the tied fuel injector products that BMW engineered. BMW is not constrained by any competitive concern in charging full price for each fuel injector even though only one or two injectors actually failed.

50. Plaintiff and the class have been damaged by having to pay supracompetitive prices in the form of the tied additional fuel injectors required to replace the non-malfunctioning fuel injectors.

51. Plaintiffs accordingly seek all remedies available under the Sherman Act including treble damages, attorney's fees and costs, and an injunction barring BMW from charging for fuel injectors that have to be replaced simply because they are not cross-compatible with the Index 11 fuel injectors.

COUNT III
**VIOLATION OF FLORIDA'S UNFAIR &
DECEPTIVE TRADE PRACTICES ACT**
(FLA. STAT. § 501.201, *et seq.*)
(Brought on behalf of the "Florida Class")

52. Plaintiff repeats the allegations contained in the above paragraphs as though fully set forth herein.

53. Plaintiff is a "consumer" within the meaning of Florida Unfair and Deceptive Trade Practices Act ("FUDTPA"), FLA. STAT. § 501.203(7).

54. BMW engaged in “trade or commerce” within the meaning of FLA. STAT. § 501.203(8).

55. FUDTPA prohibits “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce ...” FLA. STAT. § 501.204(1). BMW participated in unfair and deceptive trade practices that violated the FUDTPA as described herein.

56. In the course of its business, BMW concealed the incompatibility of its Index 10 and 11 fuel injectors requiring Plaintiff and class members to replace, entirely at their expense, fully functioning Index 10 fuel injectors. BMW also concealed the incompatibility between its Index 11 fuel injectors and the N54 onboard engine system in BMW vehicles as described herein and otherwise engaged in activities with a tendency or capacity to deceive. BMW engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale of the BMW vehicles as well as implementing a scheme to defraud Plaintiff and class members by requiring full replacement of operational fuel injectors.

57. BMW knew or should have known of the incompatibility inherent of its fuel injectors, both because of the knowledge of personnel retained at BMW, BMW service centers and authorized BMW dealerships, and continuous reports, investigations, and notifications from regulatory authorities.

58. By failing to disclose and by actively concealing the incompatibility issues in BMW vehicles, by promoting a scheme to defraud by requiring full replacement of its fuel injectors, by marketing its vehicles as safe, reliable, and of high quality, and by presenting itself

as a reputable manufacturer that valued quality and stood behind its vehicles after they were sold, BMW engaged in deceptive business practices in violation of the Florida FUDTPA.

59. BMW's unfair or deceptive acts or practices were likely to and did in fact deceive reasonable consumers, including Plaintiff, about the quality of the BMW vehicles and BMW brand, and the true value of the BMW vehicles.

60. BMW intentionally and knowingly misrepresented material facts regarding vehicles containing N54 engines with Index 10 fuel injectors with intent to mislead Plaintiff and the Florida Class.

61. BMW knew or should have known that its conduct violated the Florida FUDTPA.

62. BMW's concealment of the incompatibility problems in BMW vehicles was material to Plaintiff and the Florida Class. A vehicle made by a reputable manufacturer of quality vehicles is worth more than an otherwise comparable vehicle made by a disreputable manufacturer of inferior vehicles that conceals defects rather than promptly remedies them.

63. Plaintiff and the Florida Class suffered ascertainable loss caused by BMW's failure to disclose material information. Had they been aware of the incompatibility issues and subsequent engine failures that existed in BMW vehicles, Plaintiff either would have paid less for his vehicle or would not have purchased it at all. Plaintiff did not receive the benefit of the bargain as a result of BMW's misconduct.

64. BMW's violations present a continuing disservice to Plaintiff as well as to the general public. BMW's unlawful acts and practices complained of herein affect the public interest.

65. BMW has not made any adequate repairs.

66. As a direct and proximate result of BMW's violations of the Florida FUDTPA, Plaintiff and the Florida Class have suffered injury-in-fact and/or actual damage.

67. Plaintiff and the Florida Class seek monetary relief, punitive damages and attorneys' fees against BMW in an amount to be determined at trial.

68. Plaintiff also seeks an order enjoining BMW's unfair, unlawful, and/or deceptive practices and any other just and proper relief available under the Florida FUDTPA.

WHEREFORE, Plaintiffs, individually and on behalf all others similarly situated, respectfully request that this Court enter a judgment against BMW and in favor of Plaintiff and the Classes and grant the following relief:

A. Determine that this action may be maintained as a class action and certify it as such under Rule 23(b)(2) and/or 23(b)(3), or alternatively certify all issues and claims that are appropriately certified; and designate and appoint Plaintiff as Class Representative and Plaintiffs' chosen counsel as Class Counsel;

B. Declare, adjudge, and decree the conduct of BMW as alleged herein to be unlawful, unfair, and/or deceptive and otherwise in violation of law, enjoin any such future conduct, and will establish by Court decree and administration under Court supervision a program funded by BMW under which claims can be made and paid for Plaintiff's and Class members' out-of-pocket expenses and costs;

C. Award Plaintiff and Class members actual, compensatory damages or, in the alternative, statutory damages, as proven at trial;

D. Award Plaintiff and the Class members exemplary damages in such amount as proven;

E. Award damages and other remedies, including but not limited to statutory penalties, as allowed by the consumer laws of the various states;

F. Award Plaintiff and the Class members their reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest;

G. Award Plaintiff and the Class members such other further and different relief as the case may require or as determined to be just, equitable, and proper by this Court.

CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO, P.C.
Attorneys for Plaintiffs

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

Dated: December 4, 2015

Jeffrey A. Leon
QUANTUM LEGAL LLC
513 Central Ave., Suite 300
Highland Park, Illinois 60035
(847) 433-4500

Jonathan Shub
KOHN, SWIFT & GRAF, P.C.
One South Broad Street, Suite 2100
Philadelphia, Pennsylvania 19107
(215) 238-1700

JURY TRIAL DEMAND

Plaintiff requests a trial by jury as to all claims so triable.

CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO, P.C.
Attorneys for Plaintiffs

By: /s/ James E. Cecchi
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