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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

KAREN MORRIS, On Behalf of Herself and All Others Similarly Situated, Plaintiff, v. BMW OF NORTH AMERICA, LLC, Defendant.
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Civil Action No.

CLASS ACTION

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, Karen Morris (“Morris” or “Plaintiff”), by her attorneys, alleges, upon personal knowledge as to her own acts and as to all other matters upon information and belief based upon, *inter alia*, the investigation made by and through her attorneys, as follows:

INTRODUCTION

1. This is a class action brought by Plaintiff against Defendant, BMW of North America, LLC (“BMW” or “Defendant”), on behalf of all current and former owners and lessees of 2012 and 2013 BMW motor vehicles (“Subject Vehicle(s)” or “Vehicle(s)”) equipped with the original manufacturer BMW Navigation System Professional (“BMW Navigation System(s)”) (hereinafter the “Class,” as defined below).

2. This action is brought to remedy violations of federal and state consumer protection and/or warranty statutes in connection with Defendant’s misconduct, including its concealment of material facts concerning the design, manufacture, performance history, and propensity for failure and malfunction of the BMW Navigation System during the distribution, marketing, sale, advertisement, and customer service performed with respect to the Subject Vehicles and BMW Navigation Systems.

3. Plaintiff asserts claims, individually and on behalf of the Class, under the New Jersey Consumer Fraud Act, N.J.S.A. § 56:8-1, *et seq.* (“CFA”) and, in the alternative, asserts state law claims under similar consumer protection statutes of the states of purchase or lease, including the Nevada Deceptive Trade Practices Act (“DTPA”), Nev. Rev. Stat. § 598.0903, *et seq.* Plaintiff also asserts claims, individually and on behalf of the Class, for violations of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.* (“Magnuson-Moss Act”), and for breach of express and implied warranty (or, alternatively, unjust enrichment) under New Jersey law and, in the alternative, under the laws of the states of purchase or lease (*i.e.*, Nevada).

4. Plaintiff seeks injunctive relief, actual damages, restitution and/or disgorgement of profits, statutory damages, attorneys’ fees, costs, and all other relief available to Plaintiff and the Class as defined herein.

THE PARTIES

5. Morris is, and at all times relevant to this action has been, a resident of Las Vegas, Nevada. Morris, thus, is a citizen of Nevada. On or about August 31, 2012, Morris purchased a new 2012 BMW 5 series Vehicle, VIN WBAFR7C50CC814374, from BMW North Scottsdale, an authorized BMW dealership located in Phoenix, Arizona. The Vehicle came equipped with the BMW Navigation System, which Morris purchased at the additional cost of \$1,800.

6. BMW is a Delaware corporation with its principal place of business and North American headquarters located in Woodcliff Lake, New Jersey. Defendant is, thus, a citizen of Delaware and New Jersey. BMW also maintains corporate offices and a training center in Montvale, New Jersey, a parts distribution center in Mount Olive, New Jersey, and a Vehicle Preparation Center in Port Jersey, New Jersey. BMW does business throughout New Jersey, including throughout this judicial district. Upon information and belief, all corporate decisions regarding the Subject Vehicles, including the use and placement of the BMW Navigation Systems in the Subject Vehicles and the representations and acts of concealment which are the subject of this lawsuit, were directed by, or emanated from, BMW representatives working in New Jersey and/or directly reporting to superiors situated in New Jersey. Upon information and belief, *inter alia*, BMW's product quality division, customer and dealer relations division, national technical specialists, sales division, marketing division, and after-sales service division are supervised by BMW personnel located in New Jersey. Furthermore, BMW's warranty program is created and administered in New Jersey.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2), because the matter in controversy, upon information and

belief, exceeds \$5,000,000, exclusive of interests and costs, and this matter is a class action in which certain Class members are citizens of a different state than that of Defendant.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, because Defendant is a resident of this judicial district and does business throughout this district, and a substantial part of the events or omissions giving rise to Plaintiff's claims took place within this district.

FACTUAL ALLEGATIONS

9. This class action is brought on behalf of all current and former owners and lessees of the Subject Vehicles equipped with the BMW Navigation System.

10. The Subject Vehicles and the BMW Navigation Systems are manufactured, marketed and sold by BMW through its established network of licensed dealers and distributors.

11. BMW provided Plaintiff and Class members with a four-year/50,000-mile, bumper-to-bumper factory warranty (the "Warranty"). The Warranty was the same for all of the Vehicles. The Warranty is part of the "BMW Ultimate Service," which BMW touts as "lead[ing] the industry in providing owners with incredible value and peace of mind."

12. BMW Navigation Systems are offered by BMW for placement in the Subject Vehicles prior to the sale of the Subject Vehicles. The BMW Navigation System is an optional feature, selected and paid for by the purchaser or lessee of the Vehicle at the additional cost of \$1,800 or more.

13. Despite its substantial cost, the BMW Navigation System in each of the Subject Vehicles is prone to failure and malfunction, and does substantially fail and malfunction, because of a defect in the BMW Navigation System that causes it to consistently generate incorrect directions, identify wrong current locations, not locate streets and/or addresses, and suddenly reset, among many other problems.

14. Plaintiff and Class members reasonably expected that the BMW Navigation System placed in their Vehicles would properly function during the life of the Vehicle, including during the Warranty period. Further, Plaintiff and the Class members reasonably expected that, in the event of failure and/or malfunction, Defendant would fix and/or replace (and, at the very least, have the ability to fix and/or replace) the BMW Navigation System pursuant to the terms of the Warranty.

15. Prior to and during the course of marketing and selling the Subject Vehicles to Plaintiff and Class members, however, BMW knew that the BMW Navigation System was defective and subject to failure and malfunction based upon, *inter alia*, BMW's own testing, industry testing, and the consumer and dealer complaints it received. BMW further knew that there was no fix to eliminate or substantially reduce the failures and malfunctions of the BMW Navigation System, and that there continues to be no fix to date. Despite this knowledge, BMW marketed, sold, and placed the BMW Navigation System in the Subject Vehicles, while actively concealing and failing to disclose to Plaintiff and Class members the BMW Navigation System's propensity to fail and malfunction, as well as the absence of any fix. The BMW Navigation System's propensity to fail and malfunction, and the absence of any fix, are material facts to a reasonable consumer in deciding whether or not to purchase the BMW Navigation System. BMW should have disclosed these material facts to the public, but failed to do so.

16. BMW's failure to disclose the propensity of the BMW Navigation System to fail and malfunction is especially egregious in light of the safety risks resulting from driving with an unreliable navigation system that directs drivers to unsafe terrain or hazardous road conditions, distracts or confuses drivers, or otherwise suddenly fails to properly work or function at all, thereby placing drivers at greater risk of accidents and harm. These safety risks would be material to a

reasonable consumer in deciding whether or not to purchase the BMW Navigation System and, as such, BMW should have disclosed this fact to the public, but failed to do so.

17. At all relevant times, BMW had exclusive possession of the information regarding the propensity of the BMW Navigation System to fail and malfunction based upon, *inter alia*, BMW's own testing, industry testing, and consumer and dealer complaints it received. BMW also exclusively knew that the BMW Navigation System lacked any fix. These facts were material to Plaintiff and Class members, and BMW had a duty to disclose these facts to Plaintiff and the Class, but failed to do so.

18. Had BMW not failed to disclose the material information regarding the propensity of the BMW Navigation System to fail and malfunction, and the absence of any fix for it, Plaintiff and Class members would not have purchased the BMW Navigation System.

19. BMW's conduct has imposed significant costs upon Plaintiff and Class members, not the least of which are the substantial out-of-pocket expenses incurred by Plaintiff and Class members for a BMW Navigation System that is failure-prone and does not work as reasonably expected, in violation of BMW's Warranty and applicable law.

20. Defendant's knowledge of the BMW Navigation System's propensity to fail and malfunction, and the lack of any fix for these problems, renders the Warranty provided by BMW to Plaintiff and Class members illusory in relation to the BMW Navigation System. Under all of these circumstances, BMW's provision of the Warranty to Plaintiff and Class members constitutes an unlawful, unfair and fraudulent business practice and the Warranty is unconscionable.

Morris's Experience With Her Vehicle

21. On or about August 31, 2012, Morris purchased a new 2012 BMW 5 series Vehicle from an authorized BMW dealership located in Phoenix, Arizona. The Vehicle came equipped with the BMW Navigation System, which Morris purchased at the additional cost of \$1,800. In purchasing her Vehicle, Morris wanted a reliable and quality navigation system and, based on BMW's name and reputation for offering reliable and quality products, she elected to purchase her Vehicle with the BMW Navigation System.

22. The Warranty accompanied Morris's purchase of the Vehicle. Prior to purchasing the Vehicle, she performed research on the Warranty and was impressed by it, particularly its scope and length of coverage.

23. At all times, Morris operated her Vehicle and the BMW Navigation System in a manner consistent with their intended use. Nevertheless, Morris has experienced persistent problems with her BMW Navigation System, including, but not limited to, providing wrong addresses, directing her to the wrong locations, taking lengthy and unnecessary detours and routes, and taking her in the opposite direction. On one occasion, the BMW Navigation System led Morris to drive to a wall, forcing her to make a u-turn.

24. On or about January 7, 2013, and subsequently on March 18, 2013, Morris took her Vehicle into Desert BMW of Las Vegas, an authorized BMW dealer located in Las Vegas, Nevada, to complain about the problems she was experiencing with the BMW Navigation System. According to the dealership, they "[v]erified [her] complaint, compared [her] vehicle with other similar cars with both 2012 and 2013 map updates and got similar results." The dealership further noted that there are "no solutions available at this time, possibly with 2014 map update."

25. In or about March 2013, Morris also called BMW regarding her problems with the BMW Navigation System. She spoke with a BMW representative/supervisor named “Will” and requested a refund. BMW rejected Morris’s refund request and told her that the problems were caused by the BMW Navigation System maps, not the unit itself, and that the issue was therefore “Tom Tom’s problem,” not BMW’s problem.

26. Had Morris been informed of the BMW Navigation System’s propensity to fail and malfunction, and the lack of any fix, as well as BMW’s refusal to remedy the problems, Morris would not have opted to purchase the BMW Navigation System, much less pay the amount she did.

**NEW JERSEY’S SUBSTANTIVE LAW APPLIES TO THE
PROPOSED CLASS**

27. New Jersey’s substantive laws apply to the proposed Class, as defined herein, because Plaintiff properly brings this Complaint in this district.

28. New Jersey’s substantive laws may be constitutionally applied to the claims of Plaintiff and the Class under the Due Process Clause, 14th Amend., § 1, and the Full Faith and Credit Clause, art. IV., § 1, of the U.S. Constitution. New Jersey has significant contact, or significant aggregation of contacts, to the claims asserted by Plaintiff and all Class members, thereby creating state interests that ensure that the choice of New Jersey state law is not arbitrary or unfair.

29. Defendant’s United States headquarters and principal place of business is located in New Jersey. Defendant also owns property and conducts substantial business in New Jersey and, therefore, New Jersey has an interest in regulating Defendant’s conduct under its laws. Defendant’s decision to reside in New Jersey and avail itself of New Jersey’s laws renders the application of New Jersey law to the claims herein constitutionally permissible.

30. A substantial number of members of the Class also reside in New Jersey and bought Vehicles with the BMW Navigation System in New Jersey.

31. New Jersey is also the state from which Defendant's alleged misconduct emanated.

32. This conduct similarly injured and affected Plaintiff and Class members. For instance, Defendant's marketing and engineering efforts relating to the BMW Navigation System, as well as its warranty decisions, were undertaken and orchestrated from its headquarters in New Jersey.

33. The application of New Jersey's laws to the Class is also appropriate under New Jersey's choice of law rules because New Jersey has significant contacts to the claims of Plaintiff and the Class, and New Jersey has a greater interest in applying its laws here than any other interested state.

34. In the alternative, the Court may apply the substantive law of the states where the named Plaintiff resides and/or bought her Vehicle, *i.e.*, Nevada.

CLASS ACTION ALLEGATIONS

35. Plaintiff brings this class action on behalf of herself and all other similarly situated members of the proposed Class, which is defined as follows:

Class:

All current and former owners and lessees of model year 2012 or 2013 BMW vehicles purchased or leased in the United States that came equipped with the BMW Navigation System Professional ("Class").

Excluded from the Class are BMW, any entity in which BMW has a controlling interest, and any of its subsidiaries, affiliates, and officers, directors of BMW, or employees, authorized dealers and any legal representative, heir, successor, or assignee of BMW. Also excluded from the Class are any individuals asserting claims for personal injury and the Court to which this matter is assigned. Plaintiff

reserves the right to amend the definition of the Class and, in the alternative, the Sub-Class, if discovery and/or further investigation reveals that the Class and/or Sub-Class should be expanded or otherwise modified.

36. Plaintiff also brings this action on behalf of the following Sub-Class, as more fully set forth below and to the extent appropriate, in the alternative to the claims asserted on behalf of the Class:

Nevada Sub-Class:

All current and former owners and lessees of model year 2012 or 2013 BMW vehicles purchased or leased in the State of Nevada that came equipped with the BMW Navigation System Professional (“Sub-Class”).

37. This action has been brought and may properly be maintained as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3).

38. Numerosity/Impracticability of Joinder: The members of the Class and Sub-Class (collectively, “Classes”) are so numerous that joinder of all members is impracticable. Plaintiff reasonably estimates that there are thousands of Class members who purchased and/or leased the Subject Vehicles equipped with the BMW Navigation System. The precise number of Class members can be readily ascertained by reviewing documents in Defendant’s possession, custody, and control.

39. Commonality and Predominance: There is a well-defined community of interest and common questions of law and fact, which predominate over any questions affecting only individual members of the Class and each Sub-Class. These common legal and factual questions, which do not vary from one Class or Sub-Class member to another, and which may be determined without reference to the individual circumstances of any Class or Sub-Class member, include, but are not limited to, the following:

- a. Whether the BMW Navigation Systems that come equipped in the Subject Vehicles are defective;
- b. Whether BMW knew that the BMW Navigation System was and is defective;
- c. Whether BMW omitted and/or concealed material facts from Plaintiff and the Classes regarding the defect inherent in the BMW Navigation System;
- d. Whether BMW made false and/or misleading statements about the BMW Navigation System;
- e. Whether BMW's false and/or misleading statements of fact and concealment of material facts concerning the performance and reliability of the BMW Navigation System were likely to deceive the public;
- f. Whether BMW has engaged in unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in connection with the advertising, marketing and sale of the BMW Navigation System;
- g. Whether New Jersey law can be applied to the claims of the Class;
- h. Whether BMW has violated certain state consumer protection statutes;
- i. Whether BMW has breached its uniform written warranty;
- j. Whether BMW has breached the implied warranty of merchantability;
- k. Whether BMW has been unjustly enriched;

- l. Whether Plaintiff and the Class have suffered damages as a result of BMW's wrongful conduct, and if so, the appropriate amount thereof; and
- m. Whether Plaintiff and the Classes are entitled to equitable relief and/or other relief, and if so, the nature of such relief.

40. Typicality: The representative Plaintiff's claims are typical of the claims of the members of the Class and, as applicable, the Sub-Class. Plaintiff and all Class members have suffered the same injuries as a result of Defendant's wrongful conduct. Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of the Class members and, as applicable, members of the Sub-Class, and are based on the same legal theories.

41. Adequacy: Plaintiff is an adequate representative of the Class because her interests do not conflict with the interests of the members of the Classes she seeks to represent; she has retained counsel competent and experienced in complex class action litigation; and Plaintiff intends to prosecute this action vigorously. The interests of Class members will be fairly and adequately protected by Plaintiff and her counsel.

42. Superiority: A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because individual litigation of the claims of all Class members is economically unfeasible and procedurally impracticable. Furthermore, as the damages suffered by individual Class members are relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. Individual members of the Class do not have a significant interest in individually controlling the prosecution of separate actions, and individualized litigation presents the potential for inconsistent or contradictory judgments. There will be no difficulty in the management of this class action. A class action presents

far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

43. Defendant has, or has access to, address information for the Class members, which may be used for the purpose of providing notice of the pendency of this action.

Notice to Attorneys General of Action

44. A copy of this Complaint shall be mailed to the Attorneys General, Administrators, Commissioners, or other officers, as required by the laws of New Jersey, upon and at the time of filing of the Complaint pursuant to N.J.S.A. § 56:8-20.

FIRST COUNT
Asserted On Behalf Of The Class Against BMW
(Violations Of New Jersey Consumer Fraud Act (“CFA”)
(N.J.S.A. § 56:8-1, et seq.)

45. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

46. Plaintiff, other members of the Class, and BMW are “persons” within the meaning of the CFA.

47. Plaintiff and Class members are “consumers” within the meaning of the CFA.

48. At all relevant times material hereto, BMW conducted trade and commerce in New Jersey and elsewhere within the meaning of the CFA.

49. The CFA is, by its terms, a cumulative remedy, such that remedies under its provisions can be awarded in addition to those provided under separate statutory schemes.

50. BMW has engaged in deceptive practices in the sale of the defective BMW Navigation System, including: (1) selling the BMW Navigation System

despite knowing of its propensity to fail and malfunction and the absence of any fix for the problems; and (2) failing to disclose and/or concealing this known defect and the safety risks relating thereto.

51. BMW consciously omitted to disclose material facts to Plaintiff and Class members with respect to the defect at issue, including the fact that, with normal use, the BMW Navigation System is substantially and unreasonably likely to fail and malfunction.

52. BMW's unconscionable conduct described herein included the omission and concealment of material facts concerning the BMW Navigation System.

53. BMW intended that Plaintiff and the other members of the Class rely on the acts of concealment and omissions, so that Plaintiff and Class members would purchase the BMW Navigation System at a substantial, out-of-pocket cost to them.

54. Had BMW disclosed all material information regarding the BMW Navigation System to Plaintiff and Class members, they would not have purchased the BMW Navigation System.

55. The foregoing acts, omissions and practices directly, foreseeably and proximately caused Plaintiff and Class members to suffer an ascertainable loss in the form of, *inter alia*, monies spent to purchase the BMW Navigation System, as well as diminution in the value of the Subject Vehicles as a result of having a defective BMW Navigation System, and they are entitled to recover such damages, together with appropriate penalties, including treble damages, attorneys' fees and costs of suit.

56. Application of the CFA to all Class members, regardless of their state of residence, is appropriate as described herein and because, *inter alia*:

- a. BMW controlled and directed its nationwide sales operations and support operations from New Jersey;
- b. BMW's marketing, operations and decisions, including the decisions as to how to advertise, promote and sell the BMW Navigation System, were made in New Jersey, Defendant's sales and marketing personnel are all based in New Jersey, and decisions relating to the Warranty were made in New Jersey;
- c. BMW's principal place of business is located in New Jersey;
- d. The vast majority of significant employees of BMW are based in New Jersey;
- e. The majority of significant documents of BMW are located in New Jersey; and
- f. The facts and circumstances of this case bestow numerous contacts with the State of New Jersey so as to create a state interest in applying the CFA to BMW, thereby making application of New Jersey law to the entire Class appropriate.

SECOND COUNT
Asserted On Behalf Of The Class Against BMW
(Violations Of Magnuson-Moss Act, 15 U.S.C. §§ 2301-2312
Written Warranty)

57. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

58. The BMW Navigation Systems are "consumer products" as that term is defined by 15 U.S.C. § 2301(1).

59. Plaintiff and Class members are "consumers" as that term is defined by 15 U.S.C. § 2301(3).

60. Defendant is a "warrantor" and "supplier" as those terms are defined by 15 U.S.C. § 2301(4) and (5).

61. Defendant provided Plaintiff and Class members with “written warranties” as that term is defined by 15 U.S.C. § 2301(6).

62. BMW’s written warranties provided to Plaintiff and all Class members were identical in all material respects.

63. BMW warranted the BMW Navigation System against defects in materials or workmanship at a time when it knew that the BMW Navigation System was and is defective and, nevertheless, continued to market and sell the BMW Navigation System with this express written Warranty.

64. BMW is obligated under the terms of its written Warranty to repair and/or replace the defective BMW Navigation System sold to Plaintiff and the Class.

65. BMW has breached its written Warranty, as set forth above, by supplying the BMW Navigation System in a condition which does not meet the Warranty obligations undertaken by BMW, and by failing to repair or replace the defect and/or defective parts inherent in the BMW Navigation System, or the BMW Navigation System itself.

66. As set forth above, BMW’s Warranty fails in its essential purpose and, accordingly, Plaintiff and Class members cannot and should not be limited to the remedies set forth in BMW’s written Warranty and, instead, should be permitted to recover other appropriate relief, including damages and injunctive relief.

67. BMW has received sufficient and timely notice of the breaches of Warranty alleged herein. On June 19, 2013, Plaintiff provided written notice to BMW of BMW’s MMWA violations and subsequently provided additional information to BMW in response to BMW’s request. Despite this notice and BMW’s knowledge of the defect in the BMW Navigation System, BMW has failed

and refuses to honor its Warranty, even though it knows of the inherent defect in the BMW Navigation System.

68. BMW has received, upon information and belief, hundreds of complaints and other notices from its customers nationwide advising it of the defects in the BMW Navigation System.

69. Plaintiff has given BMW a reasonable opportunity to cure its failures with respect to its Warranty, and BMW has failed to do so.

70. BMW has failed to provide to Plaintiff or the Class members, as a warranty replacement, a product that conforms to the qualities and characteristics that BMW expressly warranted when it sold the BMW Navigation System to Plaintiff and members of the Class.

71. Despite repeated demands by Plaintiff and members of the Class to BMW and the authorized dealers and dealerships to which warranty claims are required to be submitted under the terms of the written Warranty, BMW has failed and refused to repair and replace the BMW Navigation System in accordance with the terms of its written Warranty.

72. In its capacity as a warrantor, and by the conduct described herein, any attempt by BMW to limit the express warranties in a manner that would exclude coverage of the defective BMW Navigation System is unconscionable and any such effort to disclaim, or otherwise limit, liability for the defective BMW Navigation System is null and void.

73. The regulations of the Federal Trade Commission (“FTC”) specifically provide as follows with respect to a product that is warranted: “A seller or manufacturer should advertise that a product is warranted or guaranteed only if the seller or manufacturer, as the case may be, *promptly and fully performs its obligations under the warranty or guarantee.*” 16 C.F.R. § 239.5 (emphasis added).

74. Here, by warranting or guaranteeing a product for which it was unable (or unwilling) to promptly and fully perform its obligations under the Warranty or guarantee, as discussed more fully below, BMW engaged in false, deceptive and misleading advertising, marketing and representations, in violation of the FTC's regulations and guidance.

75. By BMW's conduct as described herein, including BMW's knowledge of the defective BMW Navigation System and its actions, and inaction, in the face of that knowledge, BMW has failed to comply with its obligations under its written promises, warranties and representations.

76. As a result of BMW's breach of express written warranties, Plaintiff and Class members are entitled to revoke their acceptance of the BMW Navigation System, obtain damages and equitable relief, and obtain attorneys' fees and costs pursuant to 15 U.S.C. § 2310.

THIRD COUNT
Asserted On Behalf Of The Class Against BMW
(Violations of Magnuson-Moss Act, 15 U.S.C. §§ 2301-2312
Implied Warranty)

77. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

78. The BMW Navigation Systems are "consumer products" as defined by 15 U.S.C. § 2301(1).

79. At all relevant times, Plaintiff and Class members are "consumers" as defined by 15 U.S.C. § 2301(3).

80. At all relevant times, BMW is a "supplier" as defined by 15 U.S.C. § 2301(4).

81. At all relevant times, BMW is a "warrantor" as defined by 15 U.S.C. § 2301(5).

82. BMW provided Plaintiff and Class members with “implied warranties” as defined by 15 U.S.C. § 2301(7).

83. BMW’s implied warranty of merchantability accompanied the sale of the BMW Navigation System to Plaintiff and Class members.

84. BMW is a merchant with respect to the sale of the BMW Navigation Systems that were equipped in the Subject Vehicles.

85. BMW provided Plaintiff and the Class members with an implied warranty that the BMW Navigation Systems were merchantable and fit for the ordinary purposes for which they were sold.

86. The BMW Navigation Systems are not fit for their ordinary purpose because, *inter alia*, the BMW Navigation System is prone to substantial failure and malfunction, and has substantially failed and malfunctioned, and there is currently no fix for the defective BMW Navigation System.

87. The alleged defects are so basic that they render the BMW Navigation Systems unfit for the ordinary purpose for which they are sold and used.

88. BMW knew, or had reason to know, that Plaintiff and Class members purchased the BMW Navigation System to obtain reliable and safe navigation performance while operating their Vehicles.

89. The BMW Navigation System does not conform to the promises and affirmations uniformly issued by BMW in its sales materials and warranties, and are not of fair or average quality.

90. Plaintiff and the Class members have performed each and every duty required under the terms of the warranties, except as may have been excused or prevented by the conduct of BMW or by operation of law in light of BMW’s unconscionable conduct.

91. In its capacity as a supplier and warrantor, and by the conduct described herein, any attempt by BMW to limit its implied warranty in a manner

that would exclude coverage of the defective BMW Navigation System is unconscionable and any such effort to disclaim, or otherwise limit, liability for the defective BMW Navigation System is void.

92. On June 19, 2013, Plaintiff provided written notice to BMW of BMW's MMWA violations and subsequently provided additional information to BMW in response to BMW's request. Plaintiff has provided sufficient and timely notice to BMW regarding the problems she has experienced with the BMW Navigation System, has given BMW a reasonable opportunity to cure its failures with respect to its warranties, and, notwithstanding such notice and reasonable opportunity for cure, BMW has failed to cure the defective BMW Navigation System.

93. Any obligation by Plaintiff to provide BMW with a reasonable opportunity to cure the defect is extinguished by operation of law as a result of, *inter alia*, Defendant's conduct as described herein.

94. Plaintiff and the Class members have been damaged as a direct and proximate result of BMW's breach of the implied warranty of merchantability.

95. As a result of BMW's breach of implied warranty, Plaintiff and Class members are entitled to revoke their acceptance of the BMW Navigation System, obtain damages and equitable relief, and obtain attorneys' fees and costs pursuant to 15 U.S.C. § 2310.

FOURTH COUNT
Asserted On Behalf Of The Class Against BMW Under New Jersey Law, And
Alternatively, On Behalf Of The Sub-Class Against BMW Pursuant To State
Law (Breach Of Express Or Written Warranty)

96. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

97. Plaintiff seeks to recover for BMW's breach of express warranty under the laws of the State of New Jersey.

98. BMW warranted the BMW Navigation System against defects in materials or workmanship at a time when it knew that the BMW Navigation System was defective and, nevertheless, continued to market and sell the BMW Navigation System with this express written warranty.

99. BMW is obligated, under the terms of its express Warranty, to repair and/or replace the defective BMW Navigation System sold to Plaintiff and the Class.

100. BMW has breached its express Warranty, as set forth above, by supplying the BMW Navigation System in a condition which does not meet the warranty obligations undertaken by BMW and by failing to repair or replace the defect in and/or defective parts in the BMW Navigation System, or to replace the BMW Navigation System itself.

101. BMW has received sufficient and timely notice of the breaches of warranty alleged herein. Despite this notice and BMW's knowledge, BMW refuses to honor its Warranty, even though it knows of the inherent defect in the BMW Navigation System.

102. In addition, BMW has received, upon information and belief, hundreds of complaints and other notices from its customers nationwide advising it of the defects in the BMW Navigation System.

103. Plaintiff has given Defendant a reasonable opportunity to cure its failures with respect to its warranties, and Defendant has failed to do so.

104. BMW has failed to provide to Plaintiff or the Class members, as a warranty replacement, a product that conforms to the qualities and characteristics that BMW expressly warranted when it sold the BMW Navigation System to Plaintiff and Class members.

105. As a result of BMW's breach of warranty, Plaintiff and the Class have suffered damages, in an amount to be determined at trial.

106. Alternatively, Plaintiff seeks to recover for BMW's breach of express warranty under the laws of the states of purchase or lease, specifically Nevada.

FIFTH COUNT

Asserted On Behalf Of The Class Against BMW Under New Jersey Law, And Alternatively, On Behalf Of The Sub-Class Against BMW Pursuant To State Law (Breach of Implied Warranty of Merchantability)

107. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

108. BMW's implied warranty of merchantability accompanied the sale of the BMW Navigation Systems to Plaintiff and members of the Class.

109. BMW, by implication, warranted that the BMW Navigation Systems were not inherently defective and that the BMW Navigation Systems were merchantable and fit for the ordinary purposes for which they were sold.

110. The BMW Navigation Systems are not fit for their ordinary purpose because, *inter alia*, the BMW Navigation System is prone to substantial failure and malfunction, and has substantially failed and malfunctioned, and there is currently no fix for the defective BMW Navigation System.

111. The propensity for malfunction and lack of a fix rendered the BMW Navigation System defective and thus unfit for the ordinary purposes for which it was sold and is used.

112. Through the conduct described herein, BMW has breached its implied warranty of merchantability and is liable to Plaintiff and Class members.

113. Plaintiff and the other Class members have sustained damages as a result of BMW's breach, in an amount to be determined at trial.

114. As set forth herein, any effort by BMW to disclaim or otherwise limit its responsibility for the defective BMW Navigation System was and is unconscionable under all of the circumstances.

115. Plaintiff has provided timely notice to BMW regarding the problems she experienced with the BMW Navigation System and, notwithstanding such notice, BMW has failed and refused to offer Plaintiff an effective remedy.

116. Plaintiff has performed each and every duty required of her under the terms of the Warranty, except as may have been excused or prevented by the conduct of BMW, or by operation of law in light of BMW's unconscionable conduct.

117. Alternatively, Plaintiff seeks to recover for BMW's breach of implied warranty under the laws of the states of purchase or lease, specifically Nevada.

SIXTH COUNT

Asserted, In The Alternative, On Behalf Of Morris And The Nevada Sub-Class Against BMW (Violations Of Nevada Deceptive Trade Practices Act (“DTPA”), Nev. Rev. Stat. § 598.0903, *et seq.*)

118. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

119. At all relevant times, the BMW Navigation Systems constituted “goods” as that term is defined in Nev. Rev. Stat. § 598.0934.

120. At all relevant times, the purchase of the BMW Navigation System by Morris and members of the Nevada Sub-Class constituted a “sale” as that term is defined in Nev. Rev. Stat. § 598.0940.

121. BMW made material misrepresentations and/or omissions of material facts regarding the BMW Navigation System, as set forth above. These representations and omissions were false and misleading, in violation of Nevada's DTPA, including §§ 598.0915 and 598.0923, because the BMW Navigation

System is defective in that it is prone to substantially fail and malfunction and there is no fix or remedy for this defect.

122. BMW's failure to disclose to Morris and the Nevada Sub-Class that the BMW Navigation System was subject to failure and malfunction, and that there is no fix for it, was willful and violates the DTPA, including §§ 598.0915(7), 598.0915(15) and 598.0923(2).

123. The conduct of Defendant, as set forth herein, constitutes unfair and deceptive trade practices, in violation of the DTPA.

124. As a result of BMW's conduct in violation of the DTPA, Morris and the Nevada Sub-Class suffered injury in fact and lost money or property in the form of, *inter alia*, monies spent to purchase the BMW Navigation System, as well as diminution in the value of the Subject Vehicles as a result of having a defective BMW Navigation System. As a direct and proximate result of Defendant's acts and practices, pursuant to the DTPA, Morris and the Nevada Sub-Class are therefore entitled to: (a) an Order requiring BMW to cease the acts of unfair and/or deceptive trade practices alleged herein; (b) full restitution of all monies paid to BMW as a result of its deceptive practices, including, but not limited to, disgorgement of all profits derived from the sale of the BMW Navigation System; (c) interest at the highest rate allowable by law; and (d) the payment of Plaintiff's attorneys' fees and costs.

SEVENTH COUNT

Asserted On Behalf Of The Class Against BMW, And Alternatively, On Behalf Of The Sub-Class Against BMW Pursuant To Applicable State Law (Unjust Enrichment)

125. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth herein.

126. In the alternative, BMW has been unjustly enriched by the purchases of the BMW Navigation System by Plaintiff and Class members.

127. Plaintiff seeks to recover for BMW's unjust enrichment under the law of the State of New Jersey or, in the alternative, under the laws of other states of purchase or lease, specifically Nevada.

128. Plaintiff and the Class members unknowingly conferred a benefit on BMW of which BMW had knowledge since BMW was aware of the defective nature of the BMW Navigation System and the problems that plagued it, but failed to disclose this knowledge and misled Plaintiff and Class members regarding the nature and quality of the BMW Navigation System, while profiting from this deception.

129. The circumstances are such that it would be inequitable, unconscionable, and unjust to permit BMW to retain the benefit of these profits that it unfairly has obtained from Plaintiff and Class members.

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

WHEREFORE, Plaintiff and the Class pray for judgment against Defendant as follows:

a. An Order certifying the proposed Classes and appointing Plaintiff as Class and Sub-Class representative and her undersigned counsel of record as Class counsel;

b. Restitution and disgorgement of all amounts obtained by BMW as a result of its misconduct, together with interest thereon from the date of payment, to the victims of such violations;

c. All recoverable compensatory and other damages sustained by Plaintiff and the Class and Sub-Class;

d. Actual and/or statutory damages for injuries suffered by Plaintiff and the Class and Sub-Class in the maximum amount permitted by applicable law;

e. An Order permanently enjoining Defendant from engaging in the unlawful practices, as alleged herein, and requiring BMW to refund to Plaintiff and all members of the Class the funds paid to BMW for the BMW Navigation Systems installed in their Subject Vehicles and all costs related thereto;

f. Statutory pre-judgment and post-judgment interest on any amounts;

g. Payment of reasonable attorneys' fees and costs as may be allowable under applicable law; and

h. Such other and further relief as this Court may deem just and proper, including any extraordinary equitable relief and/or injunctive relief as permitted by law or equity to attach, impound or otherwise restrict BMW's assets to ensure that Plaintiff and the members of the Class have an effective remedy.

Dated: August 19, 2013

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