

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

RICKMAN, *et al.*,

Plaintiffs,

vs.

BMW OF NORTH AMERICA, LLC, *et al.*,

Defendants.

Case No. 2:18-cv-4363 (EP) (JBC)

Final Approval Hearing:
September 24, 2024, 2:00 P.M.

Room 2060
Martin Luther King Building
& U.S. Courthouse
50 Walnut Street
Newark, NJ 07102

**PLAINTIFFS' NOTICE OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiffs Charles Rogers, Brian Beckner, Chad Maccanelli, Werner Rogmans, Garner Rickman, Darshan Patel, Alexander VanDamme, Irving Cohen, Angela Hughes, Charles Chapman, Miguel Fragoso, Tom Hoffman, Salomon Campos, Dean Werner, Alfredo Arias, Kyle Kern, Erica Olson, and Eric Stenglein (collectively, "Plaintiffs") respectfully move the Court for an Order: (i) granting final approval to the Settlement set forth in the Settlement Agreement (the "Settlement Agreement" or "SA"); (ii) certifying a Settlement Class for settlement purposes only; (iii) granting final appointment of the Plaintiffs as Settlement Class Representatives and the law firms of Carella Byrne Cecchi Brody & Agnello, P.C., Seeger Weiss LLP, and Hagens Berman Sobol Shapiro LLP, as Settlement Class

Counsel; (iv) confirming the appointment of Epiq Class Action and Claims Solutions, Inc. as the Settlement Claim Administrator; and (v) entering a final judgment dismissing the Action with prejudice.

In support, Plaintiffs have filed a Memorandum of Law and the Declaration of James E. Cecchi, with exhibits thereto. A proposed Final Order and Judgment will be submitted in advance of the Final Fairness Hearing.

Dated: August 20, 2024

Steve W. Berman
**HAGENS BERMAN SOBOL
SHAPIRO LLP**
1918 8th Avenue, Suite 3300
Seattle, WA 98101
Tel: (206) 623-7292
steve@hbsslaw.com

Respectfully submitted,

/s/James E. Cecchi

James E. Cecchi
Donald A. Ecklund
**CARELLA BYRNE CECCHI
BRODY & AGNELLO, P.C.**
5 Becker Farm Road
Roseland, NJ 07068
Tel: 973-994-1700
jcecchi@carellabyrne.com
decklund@carellabyrne.com

Christopher A. Seeger
SEEGER WEISS LLP
55 Challenger Road
Ridgefield Park, NJ 07660
Tel: (973) 639-9100
cseeger@seegerweiss.com

Settlement Class Counsel

James E. Cecchi
CARELLA BYRNE CECCHI
BRODY & AGNELLO, P.C.
5 Becker Farm Road
Roseland, New Jersey 07029
Tel: (973) 994-1700
jcecchi@carellabyrne.com

Steve W. Berman
HAGENS BERMAN SOBOL
SHAPIRO LLP
1301 Second Avenue, Suite 2000
Seattle, WA 98101
Tel: (206) 623-7292
steve@hbsslaw.com

Christopher A. Seeger
SEEGER WEISS LLP
55 Challenger Road
Ridgefield Park, New Jersey 07660
Tel: (973) 639-9100
cseeger@seegerweiss.com

Settlement Class Counsel

[Additional counsel listed on signature page]

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

GARNER RICKMAN, *et al.*,

Plaintiffs,

vs.

BMW OF NORTH AMERICA, LLC, *et al.*,

Defendants.

Case No. 2:18-cv-4363 (EP) (JBC)

Hon. Evelyn Padin, U.S.D.J.

Hon. James B. Clark, III, U.S.M.J.

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION
FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

TABLE OF CONTENTS

I. INTRODUCTION7

II. FACTUAL BACKGROUND.....9

 A. Investigation of Claims and Discovery9

 B. Settlement Discussions.....10

III. SUMMARY OF THE SETTLEMENT11

 A. The Proposed Settlement Class11

 B. Settlement Amount.....11

 C. Class Notice.....11

 D. Opt-Outs11

 E. Objections.....12

 F. Class Counsel Fees and Expenses and Named Plaintiff Service Awards.12

IV. LEGAL ARGUMENT.....12

 A. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE,
 AND SHOULD BE APPROVED.....12

 B. THE *GIRSH* FACTORS WEIGH IN FAVOR OF APPROVAL.....14

 1. Continued Litigation Would Be Long, Complex, and Expensive14

 2. The Reaction of the Class to the Settlement16

 3. The Stage of the Proceedings.....16

 4. The Risks of Establishing Liability.....17

 5. The Risks of Establishing Damages.....19

 6. The Risks of Maintaining the Class Action through Trial.....19

 7. Defendants’ Ability to Withstand Greater Judgment.....21

 8. Reasonableness of the Settlement in Light of the Best Possible
 Recovery and All Attendant Risks of Litigation.....21

V. THE NOTICE PROGRAM SATISFIES DUE PROCESS22

VI. THE SETTLEMENT CLASS SHOULD BE CERTIFIED25

 A. THE RULE 23(A) FACTORS ARE MET.....26

 1. Numerosity26

 2. Commonality.....27

3. Typicality	27
4. Adequacy.....	28
B.THE RULE 23(B)(3) FACTORS ARE MET.....	29
1. Predominance.....	29
2. Superiority.....	30
VII. CONCLUSION	31

TABLE OF AUTHORITIES

In re Am. Family Enters.,
256 B.R. 377 (D.N.J. 2000)14

Amchem Prods., Inc. v. Windsor,
521 U.S. 591 (1997).....26, 29, 30, 31

Bredbenner v. Liberty Travel, Inc.,
2011 WL 1344745 (D.N.J. Apr. 8, 2011).....15, 17, 21

In re Cendant Corp. Sec. Litig.,
264 F.3d 201 (3d Cir. 2001)15, 19, 24

In re CertainTeed Corp. Roofing Shingle Prods. Liab. Litig.,
269 F.R.D. 468 (E.D. Pa. 2010).....13, 21

In re Chrysler-Dodge Ecodiesel Mktg., Sales Practices, & Prods. Liab. Litig.,
2019 WL 53666130, 31

In re Cmty. Bank of N. Va.,
418 F.3d 277 (3d Cir. 2005)26

Danvers Motor Co. v. Ford Motor Co.,
543 F.3d 141 (3d Cir. 2008)31

Ehrheart v. Verizon Wireless,
609 F.3d 590 (3d Cir. 2010)13

Falco v. Nissan N. Am., Inc.,
2016 WL 1327474 (C.D. Cal. Apr. 5, 2016).....30

In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.,
55 F.3d 768 (3d Cir. 1995)*passim*

Girsh v. Jepson,
521 F.2d 153 (3d Cir. 1975)*passim*

Johnston v. HBO Film Mgmt., Inc.,
265 F.3d 178 (3d Cir. 2001)28, 29

Liberty Lincoln Mercury, Inc. v. Ford Mktg. Corp.,
149 F.R.D. 65 (D.N.J. 1993).....26, 27

McCoy v. Health Net, Inc.,
569 F. Supp. 2d 448 (D.N.J. 2008).....23

In re Mercedes-Benz Antitrust Litig.,
213 F.R.D. 180 (D.N.J. 2003).....30

In re Merck & Co., Vytorin ERISA Litig.,
2010 WL 547613 (D.N.J. Feb. 9, 2010).....16

Mullane v. Cent. Hanover Bank & Tr. Co.,
339 U.S. 306 (1950).....23

Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.,
259 F.3d 154 (3d Cir. 2001)28

In re NFL Players Concussion Injury Litig.,
821 F.3d 410 (3d Cir. 2019)14, 17

O’Brien v. Brain Rsch. Labs, LLC,
2012 WL 3242365 (D.N.J. Aug. 9, 2012)21

Oliver v. BMW of N. Am., LLC,
2021 WL 870662 (D.N.J. Mar. 8, 2021)17

Phillips Petroleum Co. v. Shutts,
472 U.S. 797 (1985).....23

In re Prudential Ins. Co. of Am. Sales Prac. Litig.,
148 F.3d 283 (3d Cir. 1998)16

In re Prudential Ins. Co. of Am. Sales Prac. Litig.,
962 F. Supp. 450 (D.N.J. 1997), *aff’d*, 148 F.3d 283 (3d Cir. 1998).....14, 27

In re Safety Components, Inc. Sec. Litig.,
166 F. Supp. 2d 72 (D.N.J. 2001).....18

Sullivan v. DB Invs.,
667 F.3d 273 (3d Cir. 2011) (*en banc*).....13, 20

Varacallo v. Mass. Mut. Life Ins. Co.,
226 F.R.D. 207 (D.N.J. 2005).....31

In re: Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prod. Liab.
Litig., 2016 WL 4010049 (N.D. Cal. July 26, 2016).....28

In re Warfarin Sodium Antitrust Litig.,
212 F.R.D. 231 (D. Del. 2002), *aff'd*, 391 F.3d 516 (3d Cir. 2004).....19

In re Warfarin Sodium Antitrust Litig.,
391 F.3d 516 (3d Cir. 2004)*passim*

Weiss v. Mercedes-Benz of N. Am.,
899 F. Supp. 1297 (D.N.J. 1995).....18

Statutes

Class Action Fairness Act, 28 U.S.C. § 171524

Other Authorities

Fed. R. Civ. P. 23*passim*

I. INTRODUCTION

Plaintiffs,¹ on behalf of themselves and all others similarly situated, by and through their undersigned counsel, respectfully move the Court for an order: (i) granting final approval to the Settlement with Defendants BMW of North America, LLC (“BMW NA”) and Bayerische Motoren Werke Aktiengesellschaft (“BMW AG,” the “BMW Defendants”) set forth in the Settlement Agreement (the “Settlement Agreement” or “SA”); (ii) certifying a Settlement Class for settlement purposes only; (iii) granting final appointment of the Plaintiffs as Settlement Class Representatives and the law firms of Carella Byrne Cecchi Brody & Agnello, P.C., Seeger Weiss LLP, and Hagens Berman Sobol Shapiro LLP, as Settlement Class Counsel; and (iv) entering a final judgment dismissing the Action with prejudice.

The Settlement provides a \$6,000,000 benefit to the Class. The Settlement came after over five years of spirited litigation. That litigation saw extensive motion practice and entailed fulsome discovery. Over the course of the litigation, the Parties exchanged formal, comprehensive discovery requests and responses, negotiated ESI search terms, retained and consulted with experts, and further exchanged extensive data and information related to the Class Vehicles. Class Counsel had a clear view

¹ All capitalized terms used throughout this brief shall have the meanings ascribed to them in the Amended Class Action Settlement Agreement and Release, Dkt. 294-1. Unless otherwise noted, all internal citations and quotations are omitted and all emphases are added.

of the strengths and weaknesses of the Class's claims. Sufficient discovery had been conducted here. As a result, the Parties are sufficiently well informed as to the factual and legal issues relevant to this action.

On February 28, 2024, this Court entered an Order: (i) preliminarily approving the Settlement, and (ii) conditionally certifying the following settlement class:

All Persons who purchased or leased a model year 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d vehicle (defined as the “Class Vehicles”) on or before the Preliminary Approval Date. *See* Dkt. 294-1., § II.R.R.

Nothing has changed since the Preliminary Approval Order that would warrant a different result for final approval. In fact, Class Members have embraced the Settlement by submitting numerous claims for reimbursement since Notice was issued, both online and through regular mail. As of August 15, 2024, the Settlement Administrator, Epiq, has received 3,545 total claims, with the final claim submission deadline still months away (December 18, 2024). The deadline to opt-out or object to the Settlement was August 6, 2024. Plaintiffs are not aware, and have not received, any objections to the settlement. Only six opt-outs were submitted, an insignificant percentage of the approximately 127,165 identified Settlement Class Members. Plaintiffs now move for final approval of the Settlement so that the substantial monetary and equitable relief can be delivered without delay.²

² Plaintiffs have also separately moved for approval of an award of attorneys' fees, reimbursement of expenses, and payment of service awards. Dkt. No. 300.

II. FACTUAL BACKGROUND

A. INVESTIGATION OF CLAIMS AND DISCOVERY

Before filing the operative complaint, experts hired by counsel for Plaintiffs conducted emissions testing on five of the Class Vehicles that involved thousands of miles of driving the Class Vehicles under various conditions and measuring the emissions output. *See* Declaration of James E. Cecchi (“Cecchi Decl.”), ¶¶ 7. The results of this expert testing were detail in the operative complaint, which the Court relied upon in allowing the case to proceed to discovery.

Before reaching the Settlement, the Parties had engaged in extensive discovery for two years. Plaintiffs sent thorough discovery requests to the BMW Defendants, which resulted in the production of more than 1.3 million pages of documents. *Id.*, ¶ 8. These documents were complex, and detailed the technical features of the emissions control system in the Class Vehicles, the BMW Defendants’ design of the system, and the BMW Defendants’ preparations for governmental emissions testing and on-going meetings with the regulators. *Id.*, ¶ 8 and 9. The documents also focused on the marketing of the Class Vehicles, including the focus on vehicle performance, fuel efficiency, and emissions output. *Id.*, ¶ 8. Class Counsel devoted countless hours in reviewing the documents, identifying key facts, and selecting the core documents for use in depositions, including a multi-day 30(b)(6) deposition of a BMW Defendants’ corporate representative who addressed

engineering issues involving the Class Vehicles and the emissions control system. *Id.* Plaintiffs' offensive discovery efforts also included third-party document subpoenas and government record requests, which further supported Plaintiffs' understanding of the case. *Id.*

In turn, Plaintiffs responded to document requests, interrogatories, and requests for admission. *Id.*, ¶9. Plaintiffs ultimately approximately 28,000 pages of documents. *Id.* Each Class Representative was deposed, and to the extent a Class Representative still possessed the Class Vehicle, it was inspected by the BMW Defendants. *Id.*

B. SETTLEMENT DISCUSSIONS

Beginning on June 22, 2023, the Parties began exploring a potential resolution to this Action. The parties engaged in active settlement discussions and agreed to pause further discovery to further these discussions. On August 21, 2023, the Parties agreed to formal mediation.

On September 15, 2023, the Parties participated in an in-person mediation before the Honorable Wayne Andersen (Ret.), who assisted the Parties in arm's-length negotiations concerning a proposed classwide settlement. The Parties reached agreement on a settlement in principle at the mediation and later signed a term sheet on September 29, 2023. The Agreement was fully executed on November 17, 2023.

III. SUMMARY OF THE SETTLEMENT

A. THE PROPOSED SETTLEMENT CLASS

The Class includes all Persons who purchased or leased a model year 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d vehicle on or before the Preliminary Approval Date. *See* Dkt. 294-1., § II.R.R.

B. SETTLEMENT AMOUNT

The Settlement provides a \$6,000,000 benefit to the Class, from which Class Members who submit a Claim are eligible to receive as Cash Award. The Settlement Amount shall be used to pay Cash Awards, minus Notice and Administration Costs (including the Deposit Amount), Attorneys’ Fees and Costs, Service Awards, Taxes, and Tax Expenses.

C. CLASS NOTICE

Commencing on June 7, 2024, Class Notice was timely sent to Settlement Class Members via email and postcard notice. *See* Declaration of Cameron R. Azari, Esq. (“Azari Decl.”), annexed as Ex. 1 to the Cecchi Decl. As of August 15, 2024, an email and/or postcard notice was delivered to 124,578 of the 127,165 unique, identified Settlement Class Members. *Id.*, ¶ 17.

D. OPT-OUTS

Any request to opt out of the Settlement had to be postmarked by Tuesday, August 6, 2024. Dkt. 298, ¶28. Of the over 127,000 identified Settlement Class Members, only six requests for exclusion have been received—a minuscule

percentage of the Class. *See* Anzari Decl., ¶27. The Exclusion Report is included as Attachment 7 to the Azari Declaration.

E. OBJECTIONS

The deadline for objections was Tuesday, August 6, 2024. To date, no objections have been filed on the docket or received by counsel, showing clearly that the Settlement Class overwhelmingly favors this Settlement. Cecchi Decl. ¶15.

F. CLASS COUNSEL FEES AND EXPENSES AND NAMED PLAINTIFF SERVICE AWARDS

The application for an award of Attorneys' Fees and Reimbursement of Expenses and Named Plaintiff Service Awards was presented to the Court for its consideration and approval by separate motion dated March 29, 2024. Dkt. 300. Class Counsel requested (i) an award of attorneys' fees in the amount of 33.33% of the \$6 million Settlement Amount; (ii) payment of \$1,000,000 for expenses reasonably and necessarily incurred by Class Counsel in prosecuting and resolving the Action; and (iii) payment of \$5,000 service awards to each Settlement Class Representative.

IV. LEGAL ARGUMENT

A. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE, AND SHOULD BE APPROVED

To grant final approval of a class settlement, Rule 23(e) requires a determination by the district court that the proposed settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). There is a strong judicial policy in favor of

resolution of litigation before trial in “class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.” *In re CertainTeed Corp. Roofing Shingle Prods. Liab. Litig.*, 269 F.R.D. 468, 484 (E.D. Pa. 2010); *see also In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995) (“*GMC Truck*”) (“The law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.”); *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594-95 (3d Cir. 2010) (quoting *GMC Truck*, 55 F.3d at 784).

Settlements enjoy a presumption that they are fair and reasonable when, as in this case, they are the product of arm’s-length negotiations conducted by experienced counsel who are fully familiar with all aspects of class action litigation. *See, e.g., GMC Truck*, 55 F.3d at 785; *Sullivan v. DB Invs.*, 667 F.3d 273, 320 (3d Cir. 2011) (*en banc*).

A fair, reasonable and adequate settlement need not be the “ideal settlement.” A settlement is, after all, “a compromise, a yielding of the highest hopes in exchange for certainty and resolution.” *In re Prudential Ins. Co. of Am. Sales Prac. Litig.*, 962 F. Supp. 450, 534 (D.N.J. 1997), *aff’d*, 148 F.3d 283 (3d Cir. 1998) (“*Prudential P*”). As one court has noted, “significant weight should [] be given to ‘the belief of experienced counsel that [the] settlement is in the best interest of the class.’”) *See*

In re Am. Family Enters., 256 B.R. 377, 421 (D.N.J. 2000).

The Third Circuit has adopted a nine-factor test to determine whether a settlement is “fair, reasonable, and adequate” under Rule 23(e)(2). The elements of this test—known as the “*Girsh* factors”—are:

(1) the complexity and duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining a class action; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement in light of the best recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation.

GMC Truck, 55 F.3d at 785 (citing *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975)); see also *In re NFL Players Concussion Injury Litig.*, 821 F.3d 410, 437 (3d Cir. 2019) (affirming continued use of *Girsh* factors). “These factors are a guide and the absence of one or more does not automatically render the settlement unfair.” *In re Am. Family Enters.*, 256 B.R. at 418. Here, the Settlement meets each of these factors, and thus, should be approved.

B. THE *GIRSH* FACTORS WEIGH IN FAVOR OF APPROVAL

1. Continued Litigation Would Be Long, Complex, and Expensive

The first *Girsh* factor is whether the Settlement avoids a lengthy, complex and expensive continuation of litigation. “This factor captures ‘the probable costs, in both time and money, of continued litigation.’” *In re Cendant Corp. Sec. Litig.*, 264 F.3d 201, 233-34 (3d Cir. 2001). “Where the complexity, expense, and duration of

litigation are significant, the Court will view this factor as favoring settlement.” *Bredbenner v. Liberty Travel, Inc.*, 2011 WL 1344745, at *11 (D.N.J. Apr. 8, 2011).

Here, due to the factual and legal complexities involved in this case, continued litigation necessarily would be extremely expensive and time-consuming. Absent a settlement, the Parties would have engaged in substantial factual and expert discovery around the country (and likely Germany) as well as significant motion practice. *See* Cecchi Decl., ¶12. Trial would involve extensive pretrial motions involving complex questions of law and fact, and the trial itself would be lengthy and complicated, and the result is uncertain. *Id.* This favors the settlement of the litigation. *See In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 536 (3d Cir. 2004) (“*Warfarin Sodium*”) (finding the first *Girsh* factor to weigh in favor of settlement after three years of litigation). Post-trial motions and appeal would further delay resolution and increase costs. *Id.* (“[I]t was inevitable that post-trial motions and appeals would not only further prolong the litigation but also reduce the value of any recovery to the class.”); *In re Merck & Co., Vytorin ERISA Litig.*, 2010 WL 547613, at *7 (D.N.J. Feb. 9, 2010) (noting delayed recovery for the class after trial weighs in favor of settlement). Even if Plaintiffs were successful, the result could potentially be less than the very significant benefits afforded by this Settlement, and the BMW Defendants would appeal an adverse judgment, adding further time to a final resolution of this matter if it were litigated. Cecchi Decl., ¶12-13. For these

reasons, the first *Girsh* factor weighs in favor of final approval of the Settlement.

2. The Reaction of the Class to the Settlement

The second *Girsh* factor “attempts to gauge whether members of the class support the Settlement.” *In re Prudential Ins. Co. of Am. Sales Prac. Litig.*, 148 F.3d 283, 318 (3d Cir. 1998) (“*Prudential II*”). Generally, “silence constitutes tacit consent to the agreement.” *GMC Truck*, 55 F.3d at 812. Here, owners of the 45,047 Class Vehicles are eligible for benefits. Azari Decl. ¶10. Because vehicles may go through second and third owners, the actual number of Notices sent by email exceeded 76,000, and by postcard exceeded 119,000. *Id.*, ¶¶10. Yet, to date there have been just six requests for exclusion and ***no objections*** sent to counsel. Cecchi Decl. ¶15; Anzari Decl. ¶27. This represents far below 1% of identified Settlement Class Members and shows clearly that the Settlement Class overwhelmingly favors this Settlement. Where, as here, the number of opt outs is low and there are zero objections, this second factor is readily satisfied. *See Oliver v. BMW of N. Am., LLC*, 2021 WL 870662, at *5 (D.N.J. Mar. 8, 2021) (second *Girish* factor satisfied when more than 99% of Class Members support the settlement).

3. The Stage of the Proceedings

The *third Girish* “factor considers the degree of case development accomplished by counsel prior to settlement.” *Bredbenner*, 2011 WL 1344745, at *12. “Through this lens, courts can determine whether counsel had an adequate

appreciation of the merits of the case before negotiating.” *GMC Truck*, 55 F.3d at 813.

Class Counsel retained and consulted with multiple experts to identify the issues in this case and have also reviewed and analyzed substantial discovery received from the BMW Defendants. Cecchi Decl. ¶¶7. As this Court already recognized, Class Counsel possessed a thorough understanding of the potential liability, damages, and class certification issues, which helped inform the Parties’ negotiations and shape the Settlement. Dkt. 298 at ¶ 5. As such, Class Counsel understood the merits, strengths and weaknesses, and could thus negotiate an appropriate settlement that balanced the resources, time, and expenses required to litigate through trial with providing immediate and significant benefits to tens of thousands of vehicle owners. *See In re NFL Players Concussion Injury Litig.*, 821 F.3d at 438-439 (“[C]ounsel had an adequate appreciation of the merits of the case before negotiating.”).

4. The Risks of Establishing Liability

When evaluating the risks of establishing liability, “[t]he inquiry requires a balancing of the likelihood of success if ‘the case were taken to trial against the benefits of immediate settlement.’” *In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 89 (D.N.J. 2001). Although Class Counsel believe that the claims presented here are meritorious, they are experienced counsel who understand that

the “the risks surrounding a trial on the merits are always considerable.” *Weiss v. Mercedes-Benz of N. Am.*, 899 F. Supp. 1297, 1301 (D.N.J. 1995). The BMW Defendants have zealously defended against these claims, and would surely continue to do so if the litigation were to proceed. *See Cecchi Decl.*, ¶¶ 12. Although Plaintiffs vigorously disagree, the BMW Defendants have asserted numerous defenses to this action which could bar completely, if not substantially reduce, all or many Settlement Class Members’ potential recoveries under the various applicable states’ laws, including: preemption, lack of standing, lack of manifestation of the alleged issue, lack of privity with the BMW Defendants, absence of a duty to disclose under applicable states’ laws, absence of pre-sale knowledge of any alleged emissions performance issue, lack of reliance or causation, lack of recoverable damages, and other statutory and common law complete or partial bars to recovery that may apply to particular Settlement Class Members’ claims. *See Dkt Nos.* 110, 130.

In contrast, the Settlement here presents the Class with immediate, substantial, guaranteed relief. Further, although Plaintiffs are confident that their claims are legally sound, there is always the possibility that the Court or a jury may disagree. *See Cecchi Decl.*, ¶ 13. These risks include the potential denial of class certification, the granting of summary judgment, and loss at trial. *Id.* Thus, these inherently unpredictable risks in establishing liability and the guaranteed relief for the Class weigh in favor of Settlement.

5. The Risks of Establishing Damages

“Like the fourth factor, ‘this inquiry attempts to measure the expected value of litigating the action rather than settling it at the current time.’” *Cendant*, 264 F.3d at 238. In *Warfarin Sodium*, the trial court found that the risk of establishing damages strongly favored settlement because “[d]amages would likely be established at trial through ‘a “battle of experts,” with each side presenting its figures to the jury and with no guarantee whom the jury would believe.’” *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256 (D. Del. 2002), *aff’d*, 391 F.3d 516, 537 (3d Cir. 2004). The same is true here. The risks of establishing damages favor final approval.

6. The Risks of Maintaining the Class Action through Trial

The Court must measure the likelihood of obtaining and maintaining a certified class even before the action were to proceed to trial. *Girsh*, 521 F.2d at 157. Class Counsel believe that this case is wholly appropriate for class certification in the litigation context. *See* Cecchi Decl., ¶¶10-13. That said, there is always a risk that this Court would find this action not suitable for class certification, or find it not suitable for litigation on a multi-state basis. For example, although Plaintiffs continue to believe that class certification is proper, the BMW Defendants would likely assert that numerous individual factual and legal issues predominate and adversely affect the ability to certify a class in the litigation context, including but not limited to: (i) the different conditions of each Class Vehicle; (ii) the manner in

which each vehicle was drive and maintained; (iii) individual facts and circumstances of each Settlement Class Member's decision-making concerning the purchase or lease of the Class Vehicle; and (iv) what, if anything, each Settlement Class Member may have seen, heard or relied upon prior to purchase or lease. The BMW Defendants would also likely argue that certification of a nationwide class would be further unmanageable due to differences in the various state consumer protection and other laws asserted in this action, including differing proof requirements and damages.

In sharp contrast, these issues do not preclude class certification for settlement purposes. *Sullivan*, 667 F.3d at 302-03 (“the concern for manageability that is a central tenet in the certification of a litigation class is removed from the equation” in the case of a settlement class); *O'Brien v. Brain Rsch. Labs, LLC*, 2012 WL 3242365, at *9 (D.N.J. Aug. 9, 2012) (“[B]ecause certification is sought for purposes of settlement and is not contested, the concerns about divergent proofs at trial that underlie the predominance requirement are not present here.”).

Further, even if class certification were granted in the litigation context, class certification can always be reviewed or modified before trial, so “the specter of decertification makes settlement an appealing alternative.” *O'Brien*, 2012 WL 3242365, at *18. Finally, even if a class is certified, there is no sure bet that Plaintiffs would prevail at trial. *See supra* § B.4 -5. In other words, class litigation is inherently

uncertain and subject to many twists and turns, meaning this factor weighs in favor of final approval.

7. Defendants’ Ability to Withstand Greater Judgment

Although there is no dispute that the BMW Defendants have ample resources, countless settlements have been approved where a settling defendant has had the ability to pay greater amounts, and the Third Circuit has noted that this fact alone does not weigh against settlement approval. *See, e.g., Warfarin Sodium*, 391 F.3d at 538. This factor is generally neutral when the defendant’s ability to pay greatly exceeds the potential liability, and was not a factor in settlement negotiations. *CertainTeed*, 269 F.R.D. at 489 (“[B]ecause ability to pay was not an issue in the settlement negotiations, this factor is neutral.”); *Bredbenner*, 2011 WL 1344745, at *15 (“[C]ourts in this district regularly find a settlement to be fair even though the defendant has the practical ability to pay greater amounts.”).

8. Reasonableness of the Settlement in Light of the Best Possible Recovery and All Attendant Risks of Litigation

The final two *Girsh* factors are the reasonableness of the Settlement in light of the best possible recovery, and all the attendant risks of litigation. As this Court has already held in granting Preliminary Approval, the Settlement Amount provides adequate relief to the Settlement Class in the form of the \$6,000,000 Settlement Amount. Dkt. 298, ¶ 6. Settlement Class Members who submit Valid Claim Forms are eligible to receive a Cash Award consisting of a *pro rata* share of the Net

Settlement Fund in an amount proportional to their length of ownership and/or lease of their Class Vehicle. *Id.*

Accordingly, the Settlement provides adequate relief to Class Members. Given that the Claims submission deadline is not until December 18, 2024, Plaintiffs are unable to give an accurate estimate of what each Class Member will receive from the Net Settlement Fund. Plaintiffs, moreover, recognize that any recovery for Class Members must be balanced against the recognition that litigation is uncertain, making compromise of claims in exchange for the Settlement's certain, immediate, and substantial benefits an unquestionably reasonable choice.

Indeed, the Court must balance a proposed settlement against the enormous time and expense of achieving a more favorably result through further litigation. *See McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448, 460 (D.N.J. 2008). Here, as detailed in §§ B.1, 4, and 6 above, the inherent risks, time, and expense of taking the case to trial, obtaining contested class certification and a favorable judgment, and protecting it on appeal support approval of the Settlement. Of course, the stark reality is that such a course could result in no judgment for a trial class. All told, the Settlement is reasonable in light of risks of continued litigation, and these factors weigh in favor of approval of the Settlement.

V. THE NOTICE PROGRAM SATISFIES DUE PROCESS

To protect the rights of absent members of the Class, the Court must ensure

that all Class Members who would be bound by a class settlement are provided the best practicable notice. *See* Fed. Rule Civ. P. 23(e)(1)(B); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-12 (1985). The best practicable notice is that which is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

The notice of a class settlement should:

(i) define the class; (ii) describe clearly the options open to the class members and the deadlines for taking action; (iii) describe the essential terms of the proposed settlement; (iv) disclose any special benefits provided to the class representatives; (v) provide information regarding attorneys’ fees; (vi) indicate the time and place of the hearing to consider approval of the settlement, and the method for objecting to or opting out of the settlement; (vii) explain the procedures for allocating and distributing settlement funds, and, if the settlement provides different kinds of relief for different categories of class members, clearly set out those variations; (viii) provide information that will enable class members to calculate or at least estimate their individual recoveries; and (ix) prominently display the address and phone number of class counsel and the procedure for making inquiries.

See Manual For Complex Litigation (Fourth) § 21.312 (2004); *see also Cendant*, 109 F. Supp. 2d. at 254. The form and manner of Notice approved by this Court meets all these requirements. This Court has approved the Class Notice Plan, holding it “satisfies the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process.” As detailed in the Azari Declaration, as of August 20, 2024, an Email Notice and/or Short Form Notice was delivered to 124,578 of the 127,165 unique, identified Settlement Class Members. Azari Decl. ¶ 17. This means the individual notice

efforts reached approximately 97.9% of the identified Settlement Class Members.³

Id.

The Settlement Administrator also established a national toll-free number so class members could learn more about the Settlement in the form of recorded answers to FAQs and to request a notice packet be mailed to them. *Id.* ¶25. The Settlement Administrator also established a dedicated address and email address, and a Settlement Website featuring (1) instructions on how to submit a Claim for reimbursement either by mail or online submission; (2) details about the lawsuit, the Settlement and its benefits, and the Settlement Class Members' legal rights and options including objecting to or requesting to be excluded from the Settlement and/or not doing anything; (3) instructions on how to contact the Settlement Administrator and Settlement Class Counsel for assistance; (4) a copy of the Claim Form, Long Form Class Notice, the Settlement Agreement, the Preliminary Approval Motion and Order, the Class Counsel Fee and Expenses Application, other pertinent orders and documents; (6) important dates pertaining to the Settlement

³ In addition, "CAFA notice" of the proposed Settlement was sent to the Attorney General of the United States, and the Attorneys General of 50 states, the District of Columbia, and the United States Territories, pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715. *Id.* ¶5, and no Attorney General has objected or, in any way, taken issue with any aspect of this Settlement. *See* Azari Decl., ¶ 8.

including the procedures and deadlines to opt-out of or object to the Settlement, the procedure and deadline to submit a claim for reimbursement, and the date, place and time of the Final Fairness Hearing and (7) answers to Frequently Asked Questions(FAQs). *Id.* ¶ 24; *see also* <https://www.2024dieselsettlement.com/>. Thus, the Notice program that the Court preliminarily approved was fully implemented, has informed the Class fully of their rights and benefits under the Settlement, and unquestionably satisfies all due process requirements.⁴

VI. THE SETTLEMENT CLASS SHOULD BE CERTIFIED

Class certification under Rule 23 has two primary components. First, the party seeking class certification must establish the four requirements of Rule 23(a):

(1) [N]umerosity (a “class [so large] that joinder of all members is impracticable”); (2) commonality (“questions of law or fact common to the class”); (3) typicality (named parties’ claims or defenses “are typical . . . of the class”); and (4) adequacy of representation (representatives “will fairly and adequately protect the interests of the class”).

Warfarin Sodium, 391 F.3d at 527. Second, the Court must find that the class fits within one of the three categories of class actions set forth in Rule 23(b). *In re Cmty. Bank of N. Va.*, 418 F.3d 277, 302 (3d Cir. 2005). Here, Plaintiffs seek certification

⁴ As of August 15, 2024, there have been 26,867 unique visitor sessions to the Settlement Website, and 71,196 pages have been presented. Anzari Decl., ¶24. The toll-free telephone number has also handled 2,166 calls, totaling 5,060 minutes of use. *Id.* Class Counsel have also responded to numerous inquiries made directly to Class Counsel by Settlement Class Members. Cecchi Decl. ¶14.

under Rule 23(b)(3), which requires that common questions “predominate over any questions affecting only individual members” and that class resolution be “superior to other available methods for the fair and efficient adjudication of the controversy.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 592-93 (1997). As detailed below, and as this Court determined in granting preliminary approval, all of the Rule 23 requirements are clearly satisfied for settlement purposes. Dkt. 298, ¶16.

A. THE RULE 23(A) FACTORS ARE MET

1. Numerosity

Rule 23(a)(1) requires that the class be so numerous that joinder of all class members is “impracticable.” *Liberty Lincoln Mercury, Inc. v. Ford Mktg. Corp.*, 149 F.R.D. 65, 73 (D.N.J. 1993). For purposes of Rule 23(a)(1), “impracticable” does not mean impossible, “only that common sense suggests that it would be difficult or inconvenient to join all class members.” *See Prudential I*, 962 F. Supp. at 510.

Here, the Settlement Class includes approximately 45,000 Class Vehicles identified through the Settlement Administrator’s use of a VIN List. Azari Decl., ¶ 10 The identified number of Settlement Class Members, in this nationwide class is over 127,000. *Id.* Given the number and geographic distribution of the Settlement Class Members, joinder of all Class Members would be impracticable, and the proposed Settlement Class easily satisfies Rule 23’s numerosity requirement. *Liberty*, 149 F.R.D. at 73.

2. Commonality

“Rule 23(a)(2)’s commonality element requires that the proposed class members share at least one question of fact or law in common with each other.” *Warfarin Sodium*, 391 F.3d at 527-28. In the context of consumer fraud class actions, a class asserting claims based on a common course of conduct satisfies the commonality requirement. *Prudential I*, 962 F. Supp. at 511-14. The claims of all Class Members address the same common questions involving, among other issues, advertising, the same vehicles, and the same emissions control technology and software, all of which focus on the BMW Defendants’ conduct and not individual Class Members. Accordingly, all Class Members share the same causes of action and are alleged to have suffered the same or similar harm. Rule 23(a)(2)’s requirement of a common question of law or fact is satisfied for settlement purposes.

3. Typicality

In considering typicality under Rule 23(a)(3), the court must determine whether “the named plaintiffs’ individual circumstances are markedly different or ... the legal theory upon which the claims are based differs from that upon which the claims of other class members will perforce be based.” *Johnston v. HBO Film Mgmt., Inc.*, 265 F.3d 178, 184 (3d Cir. 2001). So long as “the claims of the named plaintiffs and putative class members involve the same conduct by the defendant, typicality is usually established regardless of factual differences.” *Newton v. Merrill Lynch*,

Pierce, Fenner & Smith, Inc., 259 F.3d 154, 183-84 (3d Cir. 2001). Typicality is readily established here for settlement purposes. Plaintiffs allege that the BMW Defendants engaged in false advertising in violation of consumer protection laws and committed fraud by (i) selling vehicles that allegedly emit harmful pollutants at excessively high levels; (ii) no informing consumers of the excessive emissions; and (iii) making material misstatements and omissions about the vehicles' performance, fuel-efficiency, and emissions output. Taken together, these claims are typical of the claims of every member of the Class. *See In re: Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prod. Liab. Litig.*, 2016 WL 4010049 (N.D. Cal. July 26, 2016), at *11 (typicality satisfied for diesel emissions settlement class).

4. Adequacy

The adequacy requirement has two components intended to ensure that the absent class members' interests are protected: (a) the named plaintiffs' interests must be sufficiently aligned with the interests of the class, and (b) the plaintiffs' counsel must be qualified to represent the class. *GMC Truck*, 55 F.3d at 800. Here, the requirements for adequacy are satisfied.

As for the first component, the Court must determine whether "the representatives' interests conflict with those of the class." *Johnston*, 265 F.3d at 185. There is no conflict between the Class Representatives and the Class, because, as with all members of the Class, the Class Representatives seek compensation for the

same alleged excessive emissions performance of the Class Vehicles. *See Amchem*, 521 U.S. at 625-27 (courts look at whether the representatives' interest are in any way antagonistic to or in conflict with those of the class members).

As far as the adequacy of counsel is concerned, the Class is represented by Carella Byrne, Hagens Berman, and Seeger Weiss as Co-Lead Class Counsel. These firms are renowned in the class action field generally, and within automotive class litigation specifically, as demonstrated by the firm resumes submitted in connection with their request to be appointed as Interim Co-Lead Counsel. Dkt. 8-1, 8-2, 8-3. Accordingly, both prongs of the adequacy inquiry are satisfied.

B. THE RULE 23(B)(3) FACTORS ARE MET

1. Predominance

Rule 23(b)(3) requires that “questions of law or fact common to class members predominate over any questions affecting only individual members.” As the Supreme Court explained in *Amchem*, “[p]redominance is a test readily met in certain cases alleging consumer [fraud].” 521 U.S. at 625. “Common issues predominate when the focus is on the defendants’ conduct and not on the conduct of the individual class members.” *In re Mercedes-Benz Antitrust Litig.*, 213 F.R.D. 180, 187 (D.N.J. 2003).

Here, the common questions discussed above with respect to Rule 23(a)(2) commonality element are overarching and thus tower over issues relating to

individual Class Members. The salient evidence necessary to prove Plaintiffs' claims is common to both the Class Representatives and all Class Members, and Plaintiffs would present the same evidence of the BMW Defendants' marketing, and the same evidence of alleged wrongdoing. *See Falco v. Nissan N. Am., Inc.*, 2016 WL 1327474 (C.D. Cal. Apr. 5, 2016) (finding predominance satisfied in case alleging a similar defect). Accordingly, predominance is satisfied for settlement purposes. *See In re Chrysler-Dodge Ecodiesel Mktg., Sales Practices, & Prods. Liab. Litig.*, 2019 WL 536661, at *7.

2. Superiority

Rule 23(b)(3) also requires that class resolution be "superior to other available methods for fairly and efficiently adjudicating the controversy." The following factors are relevant to the superiority inquiry:

[A] [T]he class members' interests in individually controlling the prosecution or defense of separate actions, [B] the extent and nature of any litigation concerning the controversy already begun by or against class members, [C] the desirability or undesirability of concentrating the litigation of the claims in the particular forum, [D] the likely difficulties in managing a class action.

Id. at *7; *Danvers Motor Co. v. Ford Motor Co.*, 543 F.3d 141, 149 (3d Cir. 2008).

The superiority inquiry is simplified in the settlement context, because when certifying a settlement only class, the Court need not inquire whether the case, if tried, would pose intractable management problems; one purpose of the settlement is not to have a trial. *Amchem*, 521 U.S. at 620. Moreover, "[f]or the purposes of

settlement, concentrating litigation in one forum is desirable.” *Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 234 (D.N.J. 2005). In making this analysis, the district court may take the proposed settlement into consideration. *Warfarin Sodium*, 391 F.3d at 529 (“When dealing with variations in state laws, the same concerns with regards to case manageability that arise with litigation classes are not present with settlement classes, and thus those variations are irrelevant to certification of a settlement class.”).

Here, a class action is the superior method of resolving the Class Members’ claims for settlement purposes. All the Class Members’ claims are based on the same basic operative facts and legal standards. The Settlement also provides Class Members the ability to obtain predictable, certain, and definite compensatory relief promptly and contains well-defined claim and administrative procedures to assure due process for each Class Member. By contrast, individualized litigation carries with it great uncertainty, risk, and costs, and provides no guaranty that injured Class Members will obtain necessary and timely compensatory relief at the conclusion of the litigation.

VII. CONCLUSION

For all these reasons, Plaintiffs’ Motion should be granted.

Dated: August 20, 2024

Respectfully submitted,

/s/James E. Cecchi

Steve W. Berman
HAGENS BERMAN SOBOL
SHAPIRO LLP
1918 8th Avenue, Suite 3300
Seattle, WA 98101
Tel: (206) 623-7292
steve@hbsslaw.com

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

Christopher A. Seeger
SEEGER WEISS LLP
55 Challenger Road
Ridgefield Park, New Jersey 07660
Tel: (973) 639-9100
cseeger@seegerweiss.com

Settlement Class Counsel

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

GARNER RICKMAN, *et al.*,

Plaintiffs,

vs.

BMW OF NORTH AMERICA, LLC, *et al.*,

Defendants.

Case No. 2:18-cv-4363 (EP) (JBC)

Hon. Evelyn Padin, U.S.D.J.

Hon. James B. Clark, III, U.S.M.J.

**DECLARATION OF JAMES E. CECCHI IN SUPPORT OF PLAINTIFFS’
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

I, James E. Cecchi, declare as follows:

1. I am an attorney with the law firm of Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C. (“Carella Byrne”), counsel of record for Plaintiffs.

2. This Court appointed Carella Byrne, together with Seeger Weiss LLP, and Hagens Berman Sobol Shapiro LLP, as Settlement Class Counsel on February 28, 2024.

3. I make this declaration in support of Plaintiffs’ Motion for Final Approval of Class Action Settlement.

4. I submitted declarations in connection with Plaintiffs’ Motion For Preliminary Approval of Class Action Settlement (ECF No. 297), and Plaintiffs’

Motion For an Award of Attorneys' Fees, Reimbursement of Expenses, and Plaintiffs' Service Awards (ECF No. 300). This declaration supplements those prior declarations and provides additional information in support of Plaintiffs' Motion for Final Approval.

5. Attached as Exhibit 1 is the Declaration of Cameron R. Azari, Esq. of Epiq Class Action and Claims Solutions, Inc., dated August 20, 2024, regarding implementing the class notice and claims processes.

6. In reaching this Settlement, Class Counsel possessed sufficient information to assess the relative strengths and weaknesses of their case and negotiate a favorable settlement.

7. Among other things, Class Counsel examined Class Vehicle engines and retained and consulted with experts to identify the issues in this case. This included expert testing on five of the Class Vehicles and involved thousands of miles of driving under various conditions and measuring the emissions output.

8. Class Counsel and also reviewed and analyzed substantial discovery received from Defendants over more than two years of discovery in addition to third-party and government document requests. Class Counsel devoted substantial time and effort reviewing more than 1.3 million pages of document discovery, including highly technical engineering, testing, and regulatory documents, along

with Defendants' marketing of the Class Vehicles. Class Counsel also conducted a multi-day deposition of BMW's corporate representative.

9. Class Counsel also responded to requests for production to Plaintiffs, including the production of more than 28,000 pages of documents. Each Proposed Class Representative was deposed, and to the extent a Proposed Class Representative still possessed the Class Vehicle, the BMW Defendants inspected it.

10. Class Counsel thus possessed a thorough understanding of the potential liability, damages, and class certification issues, which helped inform the Parties negotiations and shape the Settlement.

11. Accordingly, Class Counsel had the benefit of a well-developed understanding of the strengths and weaknesses of the current litigation.

12. With this unique perspective, Class Counsel were able to assess the risks and benefits of the current litigation and gauge the resources, time, and expenses required to litigate this action through trial instead of a settlement that provides immediate and significant benefits to the Class. Had litigation continued, it would necessarily have involved numerous additional depositions (some located in Germany) as well as extensive motion practice.

13. If this Action continued, Class Members might have received nothing if future rulings were unfavorable to the Class.

14. Class Counsel have also responded to numerous calls and emails made directly to Class Counsel by Settlement Class Members, and will continue to do so.

15. To date, no objections have been filed on the docket and only two written objections have been received, showing clearly that the Settlement Class overwhelmingly favors this Settlement.

16. Class Counsel are proud of this Settlement, which is fair, reasonable, and adequate and respectfully submit that it should be approved.

17. I hereby declare, pursuant to 28 U.S.C. §1746, and under the penalties of perjury, that the foregoing statements made by me are true.

August 20, 2024

s/ James E. Cecchi
James E. Cecchi

EXHIBIT 1

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

GARNER RICKMAN, et al., individually
and on behalf of all others similarly
situated,

Plaintiffs,

v.

BMW OF NORTH AMERICA, LLC, a
Delaware corporation; and BAYERISCHE
MOTOREN WERKE
AKTIENGESELLSCHAFT (BMW AG),

Defendants.

Civ. Action No. 2:18-cv-04363 (JBC)

Hon. James B. Clark, III

**DECLARATION OF CAMERON R. AZARI, ESQ. REGARDING IMPLEMENTATION
AND ADEQUACY OF NOTICE PROGRAM**

I, Cameron R. Azari, Esq. declare as follows:

1. My name is Cameron R. Azari, Esq. I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. I am a nationally recognized expert in the field of legal notice, and I have served as an expert in hundreds of federal and state cases involving class action notice plans.

3. I am a Senior Vice President of Epiq Class Action and Claims Solutions, Inc. (“Epiq”) and the Director of Legal Notice for Hilsoft Notifications, a firm that specializes in designing, developing, analyzing, and implementing large-scale, un-biased, legal notification plans. Hilsoft Notifications is a business unit of Epiq. References to Epiq in this declaration include Hilsoft Notifications.

4. The facts in this declaration are based on my personal knowledge, as well as information provided to me by my colleagues in the ordinary course of my business at Epiq.

OVERVIEW

5. This declaration describes the implementation of the Class Notice Program (“Notice Program”) and Class Notice (the “Notice” or “Notices”) for *Rickman, et al. v. BMW of*

North America, LLC et al., Case No. 2:18-cv-04363, currently pending in the United States District Court, District of New Jersey. I previously executed my *Declaration of Cameron R. Azari, Esq. Regarding Notice Program* (“Notice Plan Declaration”) on November 17, 2023, which described the Notice Program, detailed Hilsoft’s class action notice experience, and attached Hilsoft’s *curriculum vitae*. I also provided my educational and professional experience relating to class actions and my ability to render opinions on overall adequacy of notice plans.

NOTICE PROGRAM METHODOLOGY

6. Federal Rules of Civil Procedure, Rule 23 directs that notice must be “the best notice practicable under the circumstances” and must include “individual notice to all members who can be identified through reasonable effort.”¹ The Notice Program satisfied this requirement. The Notice Program was designed to reach the greatest practicable number of Settlement Class Members through the use of individual notice.

7. This Notice Program as designed and implemented reached the greatest practicable number of Settlement Class Members. The Notice Program’s individual notice efforts reached approximately 97.9% of the Settlement Class with individual notice via email and mail. The reach was further enhanced by digital notice and social media and a Settlement Website, which are not included in the reach calculation. In my experience, the reach of the Notice Program was consistent with other court approved notice programs, was the best notice practicable under the circumstances of this case, and satisfied the requirements of due process, including its “desire to actually inform” requirement.²

CAFA NOTICE

8. On November 27, 2023, Epiq sent 57 CAFA Notice Packages (“CAFA Notice”).

¹ Fed. R. Civ. P. 23(c)(2)(B).

² *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950) (“But when notice is a person’s due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected . . .”).

The CAFA Notice was mailed via United States Postal Service (“USPS”) Certified Mail to 55 officials (the Attorneys General of 49 states, the District of Columbia, and the United States Territories). As per the direction of the Office of the Nevada Attorney General, the CAFA Notice was sent to the Nevada Attorney General electronically via email. The CAFA Notice was also sent via United Parcel Service (“UPS”) to the Attorney General of the United States. Details regarding the CAFA Notice mailing are provided in the *Declaration of Kyle S. Bingham on Implementation of CAFA Notice*, dated November 28, 2023, which is included as **Attachment 1**.

NOTICE PROGRAM DETAIL

9. On February 28, 2024, the Court approved the Notice Program and appointed Epiq as the Settlement Administrator in the *Order Granting Preliminary Approval of Class Action Settlement* (“Preliminary Approval Order”). In the Preliminary Approval Order, the Court approved and certified, for settlement purposes only, the following “Settlement Class” defined as the following:

All Persons who purchased or leased a model year 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d vehicle on or before the Preliminary Approval Date.

Specifically excluded from the Settlement Class are the following persons: (i) the BMW Defendants and their officers, directors, and employees; and the BMW Defendants’ corporate affiliates and corporate affiliates’ officers, directors, and employees; the BMW Defendants and their officers, directors, and employees; and the BMW Defendants’ corporate affiliates and corporate affiliates’ officers, directors, and employees; (ii) Class Counsel; (iii) The judges who have presided over the Action; (iv) Persons who have settled with, released, or otherwise had claims dismissed with prejudice or had claims adjudicated on the merits against the BMW Defendants arising from the same allegations or circumstances as the Action;³ and (iv) all other Persons who timely elect to become Opt-Outs from the Settlement Class in accordance with the Court’s Orders.

³ Plaintiffs whose claims were dismissed from the Action with prejudice to refile their claims against the BMW Defendants as an individual or on behalf of a putative class but without prejudice to their claims as an absent putative class member are not excluded from the Settlement Class.

NOTICE PROGRAM

Individual Notice

10. On November 20, 2023, the BMW Defendants provided Epiq with the list of applicable Vehicle Identification Numbers (“VIN LIST”), which included 45,047 unique VIN numbers. Epiq sent the VIN LIST to IHS Automotive, driven by Polk (“Polk”), to purchase data containing identifying information and last known email addresses and mailing addresses corresponding with the VIN numbers provided by Defendants. Between March 25, 2024, through June 7, 2024, Polk returned a total of 129,468 unique Settlement Class Member records. After deduplication and validation, the final number of Settlement Class Member records was 127,165 associated with the 45,047 unique VIN numbers. As a result, 76,281 Email Notices were sent to all identified Settlement Class Members for whom a valid email address was available, and 119,717 Postcard Notices (“Short Form Notice”) were sent via USPS first class mail to all identified Settlement Class Members with an associated physical address (Settlement Class Members with both a valid email address and an associated physical address were sent both an Email Notice and Short Form Notice).

Individual Notice – Email

11. Commencing on June 7, 2024, Epiq sent 76,281 Email Notices to the unique number of Settlement Class Members – for all identified Settlement Class Members for whom a valid email address was available. The following industry standard best practices were followed for the email notice efforts. The Email Notice was drafted in such a way that the subject line, the sender, and the body of the message would overcome SPAM filters and ensure readership to the fullest extent reasonably practicable. For instance, the Email Notice used an embedded html text format. This format provided easy to read text without graphics, tables, images, attachments, and other elements that would have increased the likelihood that the message would have been blocked by Internet Service Providers (ISPs) and/or SPAM filters. The Email Notices were sent from an IP address known to major email providers as one not used to send bulk “SPAM” or “junk” email

blasts. Each Email Notice was transmitted with a digital signature to the header and content of the Email Notice, which allowed ISPs to programmatically authenticate that the Email Notices were from authorized mail servers. Each Email Notice was also transmitted with a unique message identifier. The Email Notice included an embedded link to the Settlement Website. By clicking the link, recipients will be able to access the Long Form Notice and other information about the case.

12. If the receiving email server could not deliver the message, a “bounce code” was returned along with the unique message identifier. For any Email Notice for which a bounce code was received indicating that the message was undeliverable for reasons such as an inactive or disabled account, the recipient’s mailbox was full, technical autoreplies, etc., at least two additional attempts were made to deliver the Email Notice by email. The Email Notice is included as **Attachment 2**.

Individual Notice – Direct Mail

13. Commencing on June 7, 2024, Epiq sent 119,717 Short Form Notices to all identified Settlement Class Members with an associated physical address. The Short Form Notices were sent via USPS first-class mail. The Short Form Notice clearly and concisely summarized the case and the legal rights of the Settlement Class Members. In addition, the Short Form Notice also directed the recipients to the Settlement Website where they could access additional information. The Short Form Notice is included as **Attachment 3**.

14. Prior to sending the Short Form Notice, all mailing addresses were checked against the National Change of Address (“NCOA”) database maintained by the USPS to ensure Settlement Class Members address information is up-to-date and accurately formatted for mailing.⁴ In

⁴ The NCOA database is maintained by the USPS and consists of approximately 160 million permanent change-of-address (COA) records consisting of names and addresses of individuals, families, and businesses who have filed a change-of-address with the Postal Service™. The address information is maintained on the database for 48 months and reduces undeliverable mail by providing the most current address information, including standardized and delivery-point-coded addresses, for matches made to the NCOA file for individual, family, and business moves.

addition, the addresses were certified via the Coding Accuracy Support System (“CASS”) to ensure the quality of the zip code, and were verified through Delivery Point Validation (“DPV”) to verify the accuracy of the addresses. This address updating process is standard for the industry and for the majority of promotional mailings that occur today.

15. The return address on the Short Form Notices is a post office box that Epiq maintains for this case. The USPS automatically forwards Short Form Notices with an available forwarding address order that has not expired (“Postal Forwards”). Short Form Notices returned as undeliverable were promptly re-mailed to any new address available through USPS information, (for example, to the address provided by the USPS on returned mail pieces for which the automatic forwarding order has expired, but is still within the time period in which the USPS returns the piece with the address indicated). Upon successfully locating better addresses, Short Form Notices were promptly remailed. As of August 15, 2024, Epiq has remailed 8,845 Short Form Notices.

16. Additionally, a Long Form Notice and Claim Form (“Notice Package”) was mailed to all persons who request one via the toll-free telephone number or by mail. As of August 15, 2024, Epiq mailed 536 Notice Packages as a result of such requests. The Long Form Notice and Claim Form are also available to download or print at the Settlement Website. The Long Form Notice is included as **Attachment 4**. The Claim Form is included as **Attachment 5**.

Notice Results

17. As of August 15, 2024, an Email Notice and/or Short Form Notice was delivered to 124,578 of the 127,165 unique, identified Settlement Class Members. This means the individual notice efforts reached approximately 97.9% of the identified Settlement Class Members.

Media Plan

Internet Digital Notice Campaign

18. Internet advertising has become a standard component in legal notice programs. The internet has proven to be an efficient and cost-effective method to target and provide measurable

reach of persons covered by a settlement. According to MRI-Simmons data,⁵ 97% of Adults aged 18+ in the United States are online and 85% of all Adults aged 18+ use social media.⁶

19. The Notice Program included targeted digital advertising on the selected advertising network *Google Display Network*, which represents thousands of digital properties across all major content categories. The Digital Notices were also placed on the social media sites *Facebook*, *Instagram*, and *X* (formerly known as *Twitter*). *Facebook* is the leading social networking site in the United States with 175 million users and *Instagram* has 145 million users in the United States.⁷ *X* is a popular microblogging social media website that allows posts/tweets containing images or videos and up to 280 characters. Users can like, comment, and share/retweet posts. *X* has over 95 million users in the United States.⁸

20. The Digital Notices were targeted to selected target audiences with a List Activation campaign, which matched available Settlement Class Member data (addresses, emails, etc.) with online profiles across *Google*, *Facebook*, *Instagram*, and *X* and then served Digital Notices directly to those individuals.

21. The Digital Notices were designed to encourage participation by Settlement Class Members—by linking directly to the Settlement Website, allowing visitors easy access to relevant information and documents. Consistent with best practices, the Digital Notices used language from

⁵ MRI-Simmons is a leading source of publication readership and product usage data for the communications industry. MRI-Simmons is a joint venture of GfK Mediamark Research & Intelligence, LLC (“MRI”) and Simmons Market Research. MRI-Simmons offers comprehensive demographic, lifestyle, product usage and exposure to all forms of advertising media collected from a single sample. As the leading U.S. supplier of multimedia audience research, the company provides information to magazines, televisions, radio, internet, and other media, leading national advertisers, and over 450 advertising agencies—including 90 of the top 100 in the United States. MRI-Simmons’s national syndicated data is widely used by companies as the basis for the majority of the media and marketing plans that are written for advertised brands in the United States.

⁶ MRI-Simmons 2023 Survey of the American Consumer®.

⁷ Statista Digital 2024: Global Overview Report. Statista, founded in 2007, is a leading provider of worldwide market and consumer data and is trusted by thousands of companies around the world for data. Statista.com consolidates statistical data on over 80,000 topics from more than 22,500 sources and makes it available in German, English, French and Spanish.

⁸ Statista Digital 2024: Global Overview Report.

the Long Form Notice headline, which allowed users to identify themselves as potential Settlement Class Members. All Digital Notices appeared on desktop, mobile, and tablet devices. Digital Notices were also targeted (remarketed) to people who click on a Digital Notice.

22. More details regarding the target audiences, distribution, and specific ad sizes of the Digital Notices, are included in the following table.

<i>Network/Property</i>	<i>Target/Distribution</i>	<i>Ad Sizes</i>	<i>Delivered Impressions</i>
<i>Google Display Network</i>	List Activation Data Match Targeting Settlement Class Members	300x250, 728x90, 300x600, 970x250	818,676
<i>Facebook</i>	List Activation Data Match Targeting Settlement Class Members	Newsfeed & Right Hand Column	719,454
<i>Instagram</i>	List Activation Data Match Targeting Settlement Class Members	Newsfeed	584,776
<i>X (Twitter)</i>	List Activation Data Match Targeting Settlement Class Members	Feed Ads	581,144
TOTAL			2,704,050

23. Combined, over 2.7 million targeted impressions were generated by the Digital Notices nationwide.⁹ The Digital Notices ran from June 7, 2024, through August 5, 2024. Clicking on the Digital Notices linked the reader to the Settlement Website, where they could easily obtain detailed information about the case. Examples of the Digital Notices are included as **Attachment 6**.

Settlement Website

24. On June 6, 2024, Epiq established a dedicated website for the Settlement with an easy to remember domain name (www.2024DieselSettlement.com). Relevant documents, including the Settlement Agreement, Claim Form, Long Form Notice, Complaint, Preliminary Approval Order, Motion for Award of Attorneys' Fees, Reimbursement of Expenses and Service

⁹ The third-party ad management platform, ClickCease was used to audit the Digital Notice ad placements. This type of platform tracks all Digital Notice ad clicks to provide real-time ad monitoring, fraud traffic analysis, blocks clicks from fraudulent sources, and quarantines dangerous IP addresses. This helps reduce wasted, fraudulent, or otherwise invalid traffic (e.g., ads being seen by 'bots' or non-humans, ads not being viewable, etc.).

Awards, and other Court documents, are posted on the Settlement Website. In addition, the Settlement Website includes relevant dates, answers to frequently asked questions (“FAQs”), instructions for how Settlement Class Members were able to opt-out (request exclusion) from or object to the Settlement prior to the deadlines, contact information for the Settlement Administrator, and how to obtain other case-related information. Settlement Class Members are also able to file a Claim Form on the Settlement Website. The Settlement Website address was prominently displayed in all notice documents. As of August 15, 2024, there have been 26,867 unique visitor sessions to the Settlement Website, and 71,196 web pages have been presented.

Toll-free Telephone Number and Postal Mailing Address

25. On June 6, 2024, Epiq established a toll-free telephone number (1-877-540-1859) for the Settlement. Callers are able to hear an introductory message and also have the option to learn more about the Settlement in the form of recorded answers to FAQs, and to request that a Notice Package be mailed to them. The automated telephone system is available 24 hours per day, 7 days per week. The toll-free telephone number was prominently displayed in all notice documents. As of August 15, 2024, the toll-free telephone number has handled 2,166 calls to the toll-free telephone number representing 5,060 minutes of use.

26. A postal mailing address was established and continues to be available, allowing Settlement Class Members the opportunity to request additional information or ask questions.

Requests for Exclusion and Objections

27. The deadline to request exclusion from the Settlement or to object to the Settlement was August 6, 2024. As of August 15, 2024, Epiq has received six requests for exclusion. As of August 15, 2024, Epiq is not aware of any objections to the Settlement. The Exclusion Report is included as **Attachment 7**.

Claim Filing and Distribution Options

28. The Notices provided a detailed summary of the relevant information about the Settlement, including the Settlement Website address and how Settlement Class Members can file

a Claim Form online or by mail. With any method of filing a Claim Form, Settlement Class Members have the option of receiving a digital payment or a traditional paper check.

29. The deadline for Settlement Class Members to file a Claim Form is December 18, 2024. As of August 15, 2024, Epiq has received 3,545 Claim Forms (3,115 online and 430 paper). Since the December 18, 2024, claim filing deadline has not yet passed, these numbers are preliminary. Since the claim filing deadline is more than three months away, I expect additional Claim Forms will be filed by Settlement Class Members. As standard practice, Epiq is in the process of conducting a complete review and audit of all Claim Forms received. There is a likelihood that after detailed review, the total number of Claim Forms received will change due to duplicate and denied Claim Forms.

CONCLUSION

30. In class action notice planning, execution, and analysis, we are guided by due process considerations under the United States Constitution, by federal and local rules and statutes, and further by case law pertaining to notice. This framework directs that the notice plan be designed to reach the greatest practicable number of potential class members and, in a settlement class action notice situation such as this, that the notice or notice plan itself not limit knowledge of the availability of benefits—nor the ability to exercise other options—to settlement class members in any way. All of these requirements were met in this case.

31. The Notice Program included individual notice to identified Settlement Class Members and supplemental media. With the address updating protocols that were used, the Notice Program notice effort reached approximately 97.9% of the identified Settlement Class with individual notice via email and mail. The reach was further enhanced by digital notice and social media and a Settlement Website, which were not included in the reach calculation. In 2010, the Federal Judicial Center (“FJC”) issued a *Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide*, which is illustrative for class actions in state court, states that, “the lynchpin in an objective determination of the adequacy of a proposed notice effort is whether

all the notice efforts together will reach a high percentage of the class. It is reasonable to reach between 70–95%.”¹⁰ Here, we have developed and implemented a Notice Program that readily achieved a reach beyond the high end of that standard.

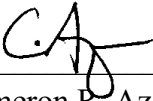
32. The Notice Program followed the guidance for how to satisfy due process obligations that a notice expert gleans from the United States Supreme Court’s seminal decisions, which are: a) to endeavor to actually inform the class, and b) to demonstrate that notice is reasonably calculated to do so:

- A. “But when notice is a person’s due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it,” *Mullane v. Central Hanover Trust*, 339 U.S. 306, 315 (1950).
- B. “[N]otice must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections,” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156 (1974) citing *Mullane* at 314.

33. The Notice Program described in this declaration provided the best notice practicable under the circumstances of this case, conformed to all aspects of Federal Rules of Civil Procedure, Rule 23 regarding notice, comported with the guidance for effective notice articulated in the Manual for Complex Litigation 4th Ed, and followed the FJC’s Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide (2010), and met the requirements of due process, including its “desire to actually inform” requirement.

34. The Notice Program schedule afforded sufficient time to provide full and proper notice to Settlement Class Members before the exclusion request and objection deadlines.

I declare under penalty of perjury that the foregoing is true and correct. Executed August 20, 2024.



Cameron R. Azari

¹⁰ FED. JUDICIAL CTR, JUDGES’ CLASS ACTION NOTICE AND CLAIMS PROCESS CHECKLIST AND PLAIN LANGUAGE GUIDE 3 (2010), available at <https://www.fjc.gov/content/judges-class-action-notice-and-claims-process-checklist-and-plain-language-guide-0>.

Attachment 1

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

GARNER RICKMAN, et al., individually
and on behalf of all others similarly
situated,

Plaintiffs,

v.

BMW OF NORTH AMERICA, LLC, a
Delaware corporation; and BAYERISCHE
MOTOREN WERKE
AKTIENGESELLSCHAFT (BMW AG),

Defendants.

Civ. Action No. 2:18-cv-04363 (EP) (JBC)

DECLARATION OF KYLE S. BINGHAM ON IMPLEMENTATION OF CAFA NOTICE

I, KYLE S. BINGHAM, hereby declare and state as follows:

1. My name is KYLE S. BINGHAM. I am over the age of 25 and I have personal knowledge of the matters set forth herein, and I believe them to be true and correct.

2. I am the Director of Legal Noticing for Epiq Class Action & Claims Solutions, Inc. (“Epiq”), a firm that specializes in designing, developing, analyzing and implementing large-scale, unbiased, legal notification plans. I have overseen and handled Class Action Fairness Act (“CAFA”) notice mailings for more than 400 class action settlements.

3. Epiq is a firm with more than 25 years of experience in claims processing and settlement administration. Epiq’s class action case administration services include coordination of all notice requirements, design of direct-mail notices, establishment of fulfillment services, receipt and processing of opt-outs, coordination with the United States Postal Service (“USPS”), claims database management, claim adjudication, funds management and distribution services.

4. The facts in this Declaration are based on what I personally know, as well as information provided to me in the ordinary course of my business by my colleagues at Epiq.

CAFA NOTICE IMPLEMENTATION

5. At the direction of counsel for Defendants BMW of North America, LLC and Bayerische Motoren Werke Aktiengesellschaft., 57 federal and state officials (the Attorney General of the United States and the Attorneys General of each of the 50 states, the District of Columbia, and the United States Territories) were identified to receive CAFA notice.

6. Epiq maintains a list of these federal and state officials with contact information for the purpose of providing CAFA notice. Prior to mailing, the names and addresses selected from Epiq's list were verified, then run through the Coding Accuracy Support System ("CASS") maintained by the United States Postal Service ("USPS").¹

7. On November 27, 2023, Epiq sent 57 CAFA Notice Packages ("Notice"). The Notice was mailed via USPS Certified Mail to 55 officials (the Attorneys General of 49 states, the District of Columbia, and the United States Territories). As per the direction of the Office of the Nevada Attorney General, the Notice was sent to the Nevada Attorney General electronically via email. The Notice was also sent via United Parcel Service ("UPS") to the Attorney General of the United States. The CAFA Notice Service List (USPS Certified Mail, Email, and UPS) is included as **Attachment 1**.

8. The materials sent to the federal and state officials included a Cover Letter, which provided notice of the proposed Settlement of the above-captioned case. The Cover Letter is included as **Attachment 2**.

9. The cover letter was accompanied by a CD, which included the following:

a. **Per 28 U.S.C. § 1715(b)(1) – Complaint and Any Amended Complaints:**

¹ CASS improves the accuracy of carrier route, 5-digit ZIP®, ZIP + 4® and delivery point codes that appear on mail pieces. The USPS makes this system available to mailing firms who want to improve the accuracy of postal codes, i.e., 5-digit ZIP®, ZIP + 4®, delivery point (DPCs), and carrier route codes that appear on mail pieces.

- Class Action Complaint, *Rickman, et al. v. BMW of North America, LLC et al.*, Case No. 2:18-cv-04363 (D.N.J.) (“*Rickman* action”) (filed March 27, 2018);
- Class Action Complaint, *Evans, et al. v. BMW of North America, LLC, et al.*, Case No. 2:18-cv-08935 (D.N.J.) (“*Evans* action”) (filed May 8, 2018);
- Consolidated Class Action Complaint, *Rickman* action (filed August 3, 2018); and
- First Amended Consolidated Class Action Complaint, *Rickman* action (filed September 20, 2019).

b. **Per 28 U.S.C. § 1715(b)(3) – Notification to Class Members:**

- Claim Form (*Exhibit B to the Class Action Settlement and Release*);
- Short Form Notice (*Exhibit C to the Class Action Settlement and Release*); and
- Long Form Notice (*Exhibit D to the Class Action Settlement and Release*).

c. **Per 28 U.S.C. § 1715(b)(4) – Class Action Settlement Agreement:** The following documents were included:

- Class Action Settlement Agreement and Release; and
 - [Proposed] Order Granting Preliminary Approval of Class Action Settlement (*Exhibit A to the Class Action Settlement Agreement and Release*).

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 28, 2023.



KYLE S. BINGHAM

Attachment 1

CAFA Notice Service List

USPS Certified Mail

Company	FullName	Address1	Address2	City	State	Zip
Office of the Attorney General	Treg Taylor	1031 W 4th Ave	Suite 200	Anchorage	AK	99501
Office of the Attorney General	Steve Marshall	501 Washington Ave		Montgomery	AL	36104
Office of the Attorney General	Tim Griffin	323 Center St	Suite 200	Little Rock	AR	72201
Office of the Attorney General	Kris Mayes	2005 N Central Ave		Phoenix	AZ	85004
Office of the Attorney General	CAFA Coordinator	Consumer Protection Section	455 Golden Gate Ave Suite 11000	San Francisco	CA	94102
Office of the Attorney General	Phil Weiser	Ralph L Carr Colorado Judicial Center	1300 Broadway Fl 10	Denver	CO	80203
Office of the Attorney General	William Tong	165 Capitol Ave		Hartford	CT	06106
Office of the Attorney General	Brian Schwab	400 6th St NW		Washington	DC	20001
Office of the Attorney General	Kathy Jennings	Carvel State Bldg	820 N French St	Wilmington	DE	19801
Office of the Attorney General	Ashley Moody	State of Florida	The Capitol PL-01	Tallahassee	FL	32399
Office of the Attorney General	Chris Carr	40 Capitol Square SW		Atlanta	GA	30334
Department of the Attorney General	Anne E Lopez	425 Queen St		Honolulu	HI	96813
Iowa Attorney General	Brenna Bird	Hoover State Office Building	1305 E Walnut St	Des Moines	IA	50319
Office of the Attorney General	Raul Labrador	700 W Jefferson St Ste 210	PO Box 83720	Boise	ID	83720
Office of the Attorney General	Kwame Raoul	100 W Randolph St		Chicago	IL	60601
Office of the Indiana Attorney General	Todd Rokita	Indiana Government Center South	302 W Washington St Rm 5	Indianapolis	IN	46204
Office of the Attorney General	Kris Kobach	120 SW 10th Ave 2nd Fl		Topeka	KS	66612
Office of the Attorney General	Daniel Cameron	700 Capitol Ave Suite 118		Frankfort	KY	40601
Office of the Attorney General	Jeff Landry	PO Box 94005		Baton Rouge	LA	70804
Office of the Attorney General	Andrea Campbell	1 Ashburton Pl 20th Fl		Boston	MA	02108
Office of the Attorney General	Anthony G Brown	200 St Paul Pl		Baltimore	MD	21202
Office of the Attorney General	Aaron Frey	6 State House Station		Augusta	ME	04333
Department of Attorney General	Dana Nessel	PO BOX 30212		Lansing	MI	48909
Office of the Attorney General	Keith Ellison	445 Minnesota St Ste 1400		St Paul	MN	55101
Missouri Attorney General's Office	Andrew Bailey	207 West High Street	PO Box 899	Jefferson City	MO	65102
Mississippi Attorney General	Lynn Fitch	PO Box 220		Jackson	MS	39205
Office of the Attorney General	Austin Knudsen	215 N Sanders 3rd Fl	PO Box 201401	Helena	MT	59620
Attorney General's Office	Josh Stein	9001 Mail Service Ctr		Raleigh	NC	27699
Office of the Attorney General	Drew H Wrigley	600 E Boulevard Ave Dept 125		Bismarck	ND	58505
Nebraska Attorney General	Mike Hilgers	2115 State Capitol	PO Box 98920	Lincoln	NE	68509
Office of the Attorney General	John Formella	NH Department of Justice	33 Capitol St	Concord	NH	03301
Office of the Attorney General	Matthew J Platkin	25 Market Street	PO Box 080	Trenton	NJ	08625
Office of the Attorney General	Raul Torrez	408 Galisteo St	Villagra Bldg	Santa Fe	NM	87501
Office of the Attorney General	CAFA Coordinator	28 Liberty Street 15th Floor		New York	NY	10005
Office of the Attorney General	Dave Yost	30 E Broad St Fl 14		Columbus	OH	43215
Office of the Attorney General	Gentner Drummond	313 NE 21st St		Oklahoma City	OK	73105
Office of the Attorney General	Ellen F Rosenblum	Oregon Department of Justice	1162 Court St NE	Salem	OR	97301
Office of the Attorney General	Michelle A. Henry	16th Fl Strawberry Square		Harrisburg	PA	17120
Office of the Attorney General	Peter F Neronha	150 S Main St		Providence	RI	02903
Office of the Attorney General	Alan Wilson	PO Box 11549		Columbia	SC	29211
Office of the Attorney General	Marty Jackley	1302 E Hwy 14 Ste 1		Pierre	SD	57501
Office of the Attorney General	Jonathan Skrmetti	PO Box 20207		Nashville	TN	37202
Office of the Attorney General	Ken Paxton	PO Box 12548		Austin	TX	78711
Office of the Attorney General	Sean D Reyes	PO Box 142320		Salt Lake City	UT	84114
Office of the Attorney General	Jason S Miyares	202 N 9th St		Richmond	VA	23219
Office of the Attorney General	Charity R Clark	109 State St		Montpelier	VT	05609
Office of the Attorney General	Bob Ferguson	800 5th Ave Ste 2000		Seattle	WA	98104
Office of the Attorney General	Josh Kaul	PO Box 7857		Madison	WI	53707
Office of the Attorney General	Patrick Morrissey	State Capitol Complex Bldg 1 Room E 26	1900 Kanawha Blvd E	Charleston	WV	25305
Office of the Attorney General	Bridget Hill	109 State Capital		Cheyenne	WY	82002
Department of Legal Affairs	Fainu'ulei Falefatu Ala'ilima-Utu	American Samoa Gov't Exec Ofc Bldg Utulei	Territory of American Samoa	Pago Pago	AS	96799
Attorney General Office of Guam	Douglas Moylan	Administrative Division	590 S Marine Corps Dr Ste 901	Tamuning	GU	96913
Office of the Attorney General	Edward Manibusan	Administration Bldg	PO Box 10007	Saipan	MP	96950
PR Department of Justice	Domingo Emanuelli Hernández	PO Box 9020192		San Juan	PR	00902
Department of Justice	Ariel M. Smith	3438 Kronprindsens Gade Ste 2	GERS BLDG	St Thomas	VI	00802

Email

Company	Contact Format	State
Office of the Attorney General for Nevada	All documents sent to NV AG at their dedicated CAFA email inbox.	NV

UPS

Company	FullName	Address1	Address2	City	State	Zip
US Department of Justice	Merrick B. Garland	950 Pennsylvania Ave NW		Washington	DC	20530

Attachment 2

CAFA NOTICE ADMINISTRATOR

HILSOFT NOTIFICATIONS
10300 SW Allen Blvd
Beaverton, OR 97005
P 503-350-5800
DL-CAFA@epiqglobal.com

November 27, 2023

VIA UPS OR USPS CERTIFIED MAIL

Class Action Fairness Act – Notice to Federal and State Officials

Dear Federal and State Officials:

Pursuant to the Class Action Fairness Act of 2005 (“CAFA”), codified at 28 U.S.C. § 1715, please find enclosed information from Defendants BMW of North America, LLC and Bayerische Motoren Werke Aktiengesellschaft relating to the proposed settlement of a class action lawsuit.¹

- **Case:** *Rickman, et al. v. BMW of North America, LLC et al.*, Case No. 2:18-cv-04363-EP-JBC.
- **Court:** United States District Court for the District of New Jersey.
- **Defendants:** BMW of North America, LLC, and Bayerische Motoren Werke Aktiengesellschaft.
- **Documents Enclosed:** In accordance with the requirements of 28 U.S.C. § 1715, please find copies of the following documents associated with this action on the enclosed CD:

1. Per 28 U.S.C. § 1715(b)(1) – Complaint and Any Amended Complaints:

- Class Action Complaint, *Rickman, et al. v. BMW of North America, LLC et al.*, Case No. 2:18-cv-04363 (D.N.J.) (“*Rickman* action”) (filed March 27, 2018);
- Class Action Complaint, *Evans, et al. v. BMW of North America, LLC, et al.*, Case No. 2:18-cv-08935 (D.N.J.) (“*Evans* action”) (filed May 8, 2018);
- Consolidated Class Action Complaint, *Rickman* Action (filed August 3, 2018); and
- First Amended Consolidated Class Action Complaint, *Rickman* Action (filed September 20, 2019).

2. Per 28 U.S.C. § 1715(b)(2) – Notice of Any Scheduled Judicial Hearing: The Court has set a motion date of December 18, 2023 for the Motion for Preliminary Approval of Class Action Settlement. Unless the Court directs otherwise, the Motion will be decided on the papers by Judge Evelyn Padin.

3. Per 28 U.S.C. § 1715(b)(3) – Notification to Class Members:

- Claim Form (*Exhibit B to the Class Action Settlement and Release*);

¹ Unless otherwise indicated, capitalized terms used in this letter shall have the meaning ascribed to them in the proposed Class Action Settlement Agreement and Release.

CAFA NOTICE ADMINISTRATOR

HILSOFT NOTIFICATIONS
10300 SW Allen Blvd
Beaverton, OR 97005
P 503-350-5800
DL-CAFA@epiqglobal.com

- Short Form Notice (*Exhibit C to the Class Action Settlement and Release*); and
 - Long Form Notice (*Exhibit D to the Class Action Settlement and Release*).
4. **Per 28 U.S.C. § 1715(b)(4) – Class Action Settlement Agreement:** The following documents are included:
- Class Action Settlement Agreement and Release; and
 - [Proposed] Order Granting Preliminary Approval of Class Action Settlement (*Exhibit A to the Class Action Settlement Agreement and Release*).
5. **Per 28 U.S.C. § 1715(b)(5) – Any Settlement or Other Agreements:** No agreement of any kind was made between Class Counsel and Counsel for Defendants other than the proposed Settlement Agreement and a Supplemental Agreement (submitted to the Court under seal) providing for a limit on opt outs.²
6. **Per 28 U.S.C. § 1715(b)(6) – Final Judgment or Notice of Dismissal:** To date, the Court has not issued a final order, judgment or dismissal in the above-referenced action.
7. **Per 28 U.S.C. § 1715(b)(7) – Estimate of Class Members:** At this time, the Defendants do not know and cannot feasibly determine the names of the Settlement Class Members residing in each state, and therefore cannot feasibly estimate the proportionate share of the claims of such members to the entire settlement pursuant to 28 U.S.C. §1715(b)(7)(A) and (B) as the Settlement Class consists of owners and lessees of the Class Vehicles. The Settlement Administrator will be employing the assistance a third-party entity to endeavor to compile the most complete and up to date list of all potential Settlement Class Members using the Class Vehicles' Vehicle Identification Numbers. Upon the Settlement Administrator's completion of compiling the Settlement Class Member list, the Settlement Administrator will provide, if you request, the names of Settlement Class Members who reside in your state and the estimated proportionate share of Settlement Class Members who reside in your state relative to the entire Settlement Class.
8. **28 U.S.C. § 1715(b)(8) – Judicial Opinions Related to the Settlement:** To date, the Court has not issued a final order or judgment in the above-referenced action.

If you have questions or concerns about this notice or the enclosed materials, please contact this office.

Sincerely,

CAFA Notice Administrator

Enclosures

² The Supplemental Agreement that was submitted to the Court under seal is obviously confidential, but we can and will provide a copy of it to you if you execute a mutually-agreeable confidentiality agreement.

Attachment 2

From: [NoReply_2024DieselSettlement](#)
To: [REDACTED]
Subject: BMW X5 xDrive35d and 335D Class Action Settlement

[Click here](#) to view this message in a browser window.

If you purchased or leased a model year 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d vehicle on or before February 28, 2024, you may be entitled to a cash payment from a proposed class action settlement.

This notice is only a summary. It contains information about a class action settlement. More detailed information can be found at: www.2024DieselSettlement.com. Check the website regularly for updates, including about the scope and terms of the Settlement Class and the Settlement. Questions? Call 1-877- 540-1859.

What is this notice about? A proposed Settlement has been reached in a lawsuit filed against BMW of North America, LLC and Bayerische Motoren Werke Aktiengesellschaft (collectively, the “BMW Defendants”). The lawsuit claimed that the BMW Defendants defrauded consumers by developing, advertising and selling model year 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d vehicles that were equipped with so-called “defeat devices” that turned off or down emissions controls when the vehicles were in normal operation and not in a regulatory testing environment. The BMW Defendants deny these allegations. If approved by the Court, the Settlement resolves the case and provides benefits to Settlement Class Members who do not exclude themselves.

Who is included? You may be a Settlement Class Member if you purchased or leased a model year 2009– 2013 BMW X5 xDrive35d or 2009–2011 BMW 335d vehicle on or before February 28, 2024. You may be a Class Member and eligible to submit a claim for benefits even if you no longer own or lease a 2009- 2013 BMW X5 xDrive35d or 2009-2011 BMW 335d.

What can I get if I purchased or leased a model year 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d vehicle on or before February 28, 2024? The proposed Settlement creates a fund of \$6 million to pay Cash Awards to Settlement Class Members, pay the costs of notice and administration of the Settlement, pay Class Counsel their fees and expenses for representing the Settlement Class, and pay Service Awards to the Named Plaintiffs, all of which must be approved by the Court. Cash Awards will be pro rata shares of the Net Settlement Fund based on each Settlement Class Member’s respective length of ownership and/or lease of their Class Vehicle. **To receive this benefit, you must submit a Claim Form at www.2024DieselSettlement.com. You can also download a paper Claim Form from the website or get one by calling the Claims Administrator at 1-877-540-1859.** The completed Claim Form must be submitted online by **December 18, 2024**, or by mail at the address below, postmarked by **December**

18, 2024.

BMW X5 xDrive35d and 335D Settlement
PO Box 2390
Portland, OR 97208-2390

If you would instead prefer payment via Venmo, PayPal, ACH, or Zelle, you must provide by November 20, 2024, an election to receive the Cash Award by Venmo, PayPal, ACH, or Zelle. You can do so at www.2024DieselSettlement.com. If you have any questions about how to adjust your payment method or address, call 1-877-540-1859.

What are my options? If you purchased or leased a model year 2009–2013 BMW X5 xDrive35d or 2009– 2011 BMW 335d vehicle on or before February 28, 2024, you can (1) submit a Claim Form and, if it is properly completed, receive a Cash Award, (2) submit a request by November 20, 2024 that your check be sent to a different address or via Venmo, PayPal, ACH, or Zelle, (3) exclude yourself by August 6, 2024, (4) object to the Settlement by August 6, 2024, or (5) do nothing.

If you exclude yourself, you must do so with respect to all claims covered by this Settlement. You may not exclude yourself with respect to some but not all of these claims. If you do not exclude yourself, and the Court approves the Settlement, you will be bound by the Court's orders and judgments and will release your claims against the BMW Defendants about issues in this case (including any that you have already initiated in any proceeding). For information on how to exclude yourself or object, visit www.2024DieselSettlement.com or call 1-877-540-1859.

What information is needed from me to participate? All of the information you must submit must be submitted on the Claim Form. In addition to your contact information, you will need your VIN, the date you purchased or leased your model year 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d vehicle, and the date you sold or terminated your lease on your model year 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d vehicle if you no longer own or lease it, as well as other supporting documentation noted on the Claim Form.

What happens next? The Court, located in Newark, New Jersey, will hold a hearing on September 19, 2024 at 1:00 p.m. ET (or such other date as set by the Court) to decide whether to approve the Settlement, including how much to pay Class Counsel for their work in representing the Settlement Class and what Service Award, if any, should be given to the Named Plaintiffs. You may attend this hearing, but you do not have to. You or your attorney may ask permission to speak at the hearing at your own cost. The date and time of this hearing may change without further notice. Please check www.2024DieselSettlement.com for updates.

Who represents me? The Court has appointed Steve Berman of Hagens Berman Sobol

Shapiro LLP (1301 2nd Avenue, Suite 2000, Seattle, WA 98101, 206-623-7292), James E. Cecchi of Carella Byrne Cecchi Brody Agnell, P.C. (5 Becker Farm Road, Roseland, NJ 07068, 973-994-1700), and Christopher A. Seeger of Seeger Weiss LLP (55 Challenger Road, Sixth Floor, Ridgefield Park, NJ 07660, 973-679-9100) to represent you as Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

How do I get more information? For more information, including the Mailed Notice, Claim Form, Motions for Approval of Attorneys' Fees and Costs and Plaintiffs' Service Awards and Settlement Agreement, call 1-877-540-1859 or visit www.2024DieselSettlement.com.

PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE.

AK170_v01

Copyright © 2024 Rickman v BMW
Our address is PO Box 2390, Portland, Oregon 97208-2390

If you do not wish to receive future email, [click here](#).

(You can also send your request to **Customer Care** at the street address above.)

Attachment 3

BMW X5 xDrive35d and 335D Settlement
c/o Settlement Administrator
PO Box 2390
Portland, OR 97208-2390

PRESORTED
FIRST-CLASS MAIL
AUTO
U.S. POSTAGE
PAID
PORTLAND, OR
PERMIT NO. 2882

**LEGAL NOTICE BY ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY**

*A federal court authorized this notice.
This is **not** a solicitation from a lawyer.*

**If you purchased or leased a model year
2009–2013 BMW X5 xDrive35d or
2009–2011 BMW 335d vehicle on or
before February 28, 2024, you may
be entitled to a cash payment from a
proposed class action settlement.**

This notice is only a summary. It contains information about a class
action settlement. More detailed information can be found at:
www.2024DieselSettlement.com

Questions? Call 1-877-540-1859.

**Check the website regularly for updates, including about the
scope and terms of the Settlement Class and the Settlement.**



139
90001



What is this notice about? A proposed Settlement has been reached in a lawsuit filed against BMW of North America, LLC and Bayerische Motoren Werke Aktiengesellschaft (collectively, the “BMW Defendants”). The lawsuit claimed that the BMW Defendants defrauded consumers by developing, advertising and selling model year 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d vehicles that were equipped with so-called “defeat devices” that turned off or down emissions controls when the vehicles were in normal operation and not in a regulatory testing environment. The BMW Defendants deny these allegations. If approved by the Court, the Settlement resolves the case and provides benefits to Settlement Class Members who do not exclude themselves.

Who is included? You may be a Settlement Class Member if you purchased or leased a model year 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d vehicle on or before February 28, 2024. You may be a Class Member and eligible to submit a claim for benefits even if you no longer own or lease a 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d.

What can I get if I purchased or leased a model year 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d vehicle on or before February 28, 2024? The proposed Settlement creates a fund of \$6 million to pay Cash Awards to Settlement Class Members, pay the costs of notice and administration of the Settlement, pay Class Counsel their fees and expenses for representing the Settlement Class, and pay Service Awards to the Named Plaintiffs, all of which must be approved by the Court. Cash Awards will be *pro rata* shares of the Net Settlement Fund based on each Settlement Class Member’s respective length of ownership and/or lease of their Class Vehicle. **To receive this benefit, you must submit a Claim Form at www.2024DieselSettlement.com. You can also download a paper Claim Form from the website or get one by calling the Claims Administrator at**

1-877-540-1859. The completed Claim Form must be submitted online by **December 18, 2024**, or by mail at the address below, postmarked by **December 18, 2024**.

BMW X5 xDrive35d and 335D Settlement
PO Box 2390
Portland, OR 97208-2390

If you would instead prefer payment via Venmo, PayPal, ACH, or Zelle, you must provide by November 20, 2024, an election to receive the Cash Award by Venmo, PayPal, ACH, or Zelle. You can do so at www.2024DieselSettlement.com. If you have any questions about how to adjust your payment method or address, call 1-877-540-1859.

What are my options? If you purchased or leased a model year 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d vehicle on or before February 28, 2024, you can (1) submit a Claim Form and, if it is properly completed, receive a Cash Award, (2) submit a request by November 20, 2024 that your check be sent to a different address or via Venmo, PayPal, ACH, or Zelle, (3) exclude yourself by August 6, 2024, (4) object to the Settlement by August 6, 2024, or (5) do nothing.

If you exclude yourself, you must do so with respect to all claims covered by this Settlement. You may not exclude yourself with respect to some but not all of these claims. If you do not exclude yourself, and the Court approves the Settlement, you will be bound by the Court’s orders and judgments and will release your claims against the BMW Defendants about issues in this case (including any that you have already initiated in any proceeding). For information on how to exclude yourself or object, visit www.2024DieselSettlement.com or call 1-877-540-1859.

What information is needed from me to participate? All of the information you must submit must be submitted on the Claim Form. In addition to your contact information, you will need your VIN, the date you purchased or leased

your model year 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d vehicle, and the date you sold or terminated your lease on your model year 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d vehicle if you no longer own or lease it, as well as other supporting documentation noted on the Claim Form.

What happens next? The Court, located in Newark, New Jersey, will hold a hearing on **September 19, 2024 at 1:00 p.m. ET** (or such other date as set by the Court) to decide whether to approve the Settlement, including how much to pay Class Counsel for their work in representing the Settlement Class and what Service Award, if any, should be given to the Named Plaintiffs. You may attend this hearing, but you do not have to. You or your attorney may ask permission to speak at the hearing at your own cost. The date and time of this hearing may change without further notice. Please check www.2024DieselSettlement.com for updates.

Who represents me? The Court has appointed Steve Berman of Hagens Berman Sobol Shapiro LLP (1301 2nd Avenue, Suite 2000, Seattle, WA 98101, 206-623-7292), James E. Cecchi of Carella Byrne Cecchi Brody Agnell, P.C. (5 Becker Farm Road, Roseland, NJ 07068, 973-994-1700), and Christopher A. Seeger of Seeger Weiss LLP (55 Challenger Road, Sixth Floor, Ridgefield Park, NJ 07660, 973-679-9100) to represent you as Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

How do I get more information? For more information, including the Mailed Notice, Claim Form, Motions for Approval of Attorneys’ Fees and Costs and Plaintiffs’ Service Awards and Settlement Agreement, call 1-877-540-1859 or visit www.2024DieselSettlement.com.

PLEASE DO NOT CONTACT THE COURT REGARDING THIS NOTICE.

Attachment 4

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

If you purchased or leased a model year 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d, you may be entitled to a cash payment from a class action settlement.

A federal court has authorized this Notice. This is not a solicitation from a lawyer. Your legal rights are affected whether you act or do not act. Please read this Notice carefully.

All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings provided in the Class Action Settlement Agreement and Release dated February 28, 2024 (the “Settlement Agreement”), which is at www.2024DieselSettlement.com.

- A \$6 million Settlement has been reached in a class action lawsuit filed against BMW of North America, LLC and Bayerische Motoren Werke Aktiengesellschaft (collectively, “BMW” or the “BMW Defendants”). The lawsuit claimed that BMW developed, advertised, and sold model year 2009–2013 BMW X5 xDrive35d and 2009–2011 BMW 335d vehicles that were equipped with so-called “defeat devices” that turned off or down emissions controls when the vehicles were in normal operation and not in a regulatory testing environment. BMW denies all allegations and settled this lawsuit to avoid further litigation. The Court has not decided who is right.
- If you purchased or leased a model year 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d vehicle on or before February 28, 2024, you may be eligible for a Cash Award. Cash Awards will be *pro rata* shares of the Net Settlement Fund based on each Settlement Class Member’s respective length of ownership and/or lease of their Class Vehicle. You may be a Class Member even if you no longer own or lease a 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d.
- Your legal rights are affected whether or not you act. ***Please read this notice carefully.***

Your Rights and Choices		Deadline
Submit a Claim Form	The only way to get a cash payment is to submit a Claim Form.	Submit a Claim Form by: December 18, 2024
Provide Your Preferred Form of Payment	Submit a request that your Cash Award be paid via Venmo, PayPal, ACH, or Zelle at www.2024DieselSettlement.com .	Provide your Preferred Form of Payment by: November 20, 2024
Exclude Yourself (Opt Out)	Get no Cash Award but keep any right to file your own lawsuit against the BMW Defendants about the legal claims in this case.	Request Exclusion by: August 6, 2024
Object	Tell the Court why you do not like the Settlement. If the Settlement is approved, you will still be bound by the Settlement, and you may still receive a Cash Award.	File an Objection by: August 6, 2024
Attend A Hearing	Ask to speak in Court about why you do not support the proposed Settlement or any of its provisions. The Fairness Hearing is September 24, 2024 .	File Notice of Appearance by: August 6, 2024
Do Nothing	Get no cash payment. Give up legal rights.	

- 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. Cash payments will be sent if the Court approves the Settlement and after appeals are resolved. Please be patient.

Questions? Call 1-877-540-1859, or Visit www.2024DieselSettlement.com

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION.....PAGE 3

- 1. Why should I read this Notice?
- 2. What is this lawsuit about?
- 3. What is a class action?
- 4. Why is there a Settlement?

WHO IS IN THE SETTLEMENT.....PAGE 4

- 5. Am I part of the Settlement?
- 6. What are the Class Vehicles?

THE SETTLEMENT BENEFITS – WHAT YOU GET.....PAGE 4

- 7. What does the Settlement provide?
- 8. What can I get from the Settlement?

HOW TO GET BENEFITS FROM THE SETTLEMENT.....PAGE 5

- 9. How can I get my Cash Award?
- 10. When will I receive my Cash Award?
- 11. What am I giving up to receive these Settlement benefits?

THE LAWYERS REPRESENTING YOU.....PAGE 5

- 12. Do I have lawyers in this case?
- 13. How will the lawyers be paid?

YOUR RIGHTS – EXCLUDING YOURSELF FROM THE SETTLEMENT.....PAGE 6

- 14. How do I get out of the Settlement?
- 15. If I exclude myself, can I get anything from this Settlement?

YOUR RIGHTS – OBJECTING TO THE SETTLEMENT.....PAGE 7

- 16. How do I tell the Court that I do not like the Settlement?
- 17. What is the difference between objecting and asking to be excluded?

YOUR RIGHTS – APPEARING AT THE FAIRNESS HEARING.....PAGE 8

- 18. When and where will the Court decide whether to approve the Settlement?
- 19. Do I have to attend the Fairness Hearing?
- 20. May I speak at the Fairness Hearing?

YOUR RIGHTS – DO NOTHING.....PAGE 9

- 21. What happens if I do nothing at all?

GETTING MORE INFORMATION.....PAGE 9

- 22. Are there more details about the Settlement?
- 23. How do I get more information?

BASIC INFORMATION

1. Why should I read this Notice?

A Court has preliminarily established, or “certified,” this case as a class action lawsuit for purposes of settlement.

This Notice explains the class action lawsuit, the proposed Settlement, your legal rights, what benefits are available, who is eligible for the benefits, and how to get the benefits. If you are a Settlement Class Member, you have legal rights and options before the Court decides whether to give final approval to the proposed Settlement. This Notice explains all of these things. For the precise terms and conditions of the Settlement, please review the Settlement Agreement, available at www.2024DieselSettlement.com.

The Court in charge of this case is the United States District Court for the District of New Jersey. The lawsuit is known as *Rickman v. BMW of North America, LLC*, No. 2:18-cv-04363.

2. What is this lawsuit about?

This lawsuit asserts claims for fraudulent concealment and violations of various states’ consumer protection acts.

The lawsuit alleges that the BMW Defendants defrauded consumers by developing, advertising and selling model year 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d vehicles that were equipped with so-called “defeat devices” that turned off or down emissions controls when the vehicles were in normal operation and not in a regulatory testing environment. The BMW Defendants deny all allegations. The Court has not decided who is right.

3. What is a class action?

In a class action lawsuit, one or more persons or entities called named plaintiffs sue on behalf of other persons and entities that have similar claims. The people and entities together are a “Settlement Class” or “Settlement Class Members.” In this lawsuit, the people who sued are called the “Named Plaintiffs.” The entities they are suing, BMW of North America, LLC and Bayerische Motoren Werke Aktiengesellschaft, are called the “BMW Defendants.” One court resolves the issues for everyone in the Settlement Class, except for those people who choose to exclude themselves (opt out) from the Settlement Class.

4. Why is there a Settlement?

The Court has not decided in favor of the Named Plaintiffs or the BMW Defendants. Instead, both sides agreed to a Settlement. By agreeing to settle, both sides avoid the cost and risk of a trial, and all Settlement Class Members who do not opt out and who complete a Valid Claim Form will receive a Cash Award. The Named Plaintiffs and Class Counsel believe the Settlement is best for the Settlement Class and represents a fair, reasonable and adequate resolution of the lawsuit.

The BMW Defendants deny the claims in the lawsuit; deny all allegations of wrongdoing, fault, liability or damage to the Named Plaintiffs and the Settlement Class; and deny that they acted improperly or wrongfully in any way. The BMW Defendants nevertheless recognize the expense and time that would be required to defend the lawsuit through trial and have taken this into account in agreeing to this Settlement.

Questions? Call 1-877-540-1859, or Visit www.2024DieselSettlement.com

WHO IS IN THE SETTLEMENT?

To see if you are eligible for benefits, you first have to determine if you are a Settlement Class Member.

5. Am I part of the Settlement?

You are a Settlement Class Member if you purchased or leased a model year 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d vehicle on or before February 28, 2024.

Excluded from the Settlement are: (i) the BMW Defendants and their officers, directors, and employees; and the BMW Defendants' corporate affiliates and corporate affiliates' officers, directors, and employees; (ii) Class Counsel; (iii) the judges who have presided over the Action; (iv) Persons who have settled with, released, or otherwise had claims dismissed with prejudice or had claims adjudicated on the merits against the BMW Defendants arising from the same allegations or circumstances as the Action; and (v) all other persons who have timely elected to become Opt Outs from the Settlement Class in accordance with the Court's Orders and as approved by the Court.

If you are unsure whether you are included, you can call the Settlement Administrator at 1-877-540-1859. Epiq is the Settlement Administrator for the Settlement.

6. What are the Class Vehicles?

The "Class Vehicles" are model year 2009–2013 BMW X5 xDrive35d and model year 2009–2011 BMW 335d vehicles.

THE SETTLEMENT BENEFITS – WHAT YOU GET

7. What does the Settlement provide?

The \$6 million Settlement Amount will provide Cash Awards to all Settlement Class Members. Notice and Administrative Costs, Attorneys' Fees and Costs and Service Awards to the Named Plaintiffs will also be paid out of the Settlement Amount, if approved by the Court.

8. What can I get from the Settlement?

Cash Award: If you are a Settlement Class Member and you submit a Valid Claim Form with any necessary supporting documentation, you are eligible to receive a Cash Award. Your Cash Award will be a *pro rata* share of the Net Settlement Fund based on each Settlement Class Member's respective length of ownership and/or lease of their Class Vehicle.

If any unclaimed funds remain in the Net Settlement Fund after the initial Cash Awards are distributed, there shall be a second round of distributions to Settlement Class Members who cashed their checks or successfully received an electronic payment via the first distribution of Cash Awards. To the extent funds remain unclaimed after the Second Distribution, additional distributions will be made to Settlement Class Members who cashed their initial checks in the same manner. If Class Counsel, the BMW Defendants and the Settlement Administrator determine that any re-distribution is not cost effective, upon approval by the Court any amount remaining in the Settlement Fund will be distributed to recipient(s) agreed upon by the Parties and reported to the Court.

Claims are limited to one Claim Form for each Class Vehicle owned or leased by a Settlement Class Member.

HOW TO GET BENEFITS FROM THE SETTLEMENT

9. How can I get my Cash Award?

If you are a Settlement Class Member, you must fill out and submit a Claim Form and any supporting documentation to qualify for a Cash Award. You can file your Claim at www.2024DieselSettlement.com. You can also download a paper Claim Form from the website or get one by calling the Claims Administrator at 1-877-540-1859. The completed Claim Form must be submitted online by **December 18, 2024**, or by mail at the address below, **postmarked by December 18, 2024**.

BMW X5 xDrive35d and 335D Settlement
P.O. Box 2390
Portland, OR 97208-2390

Upon receiving a completed Claim Form, the Claims Administrator will review the documentation and confirm or deny your eligibility for a cash payment.

10. When will I receive my Cash Award?

The Court will hold a hearing on **September 24, 2024**, at **2:00 p.m. EDT** (which is subject to change), to decide whether to finally approve the Settlement. Even if the Court finally approves the Settlement, there may be appeals. The appeal process can take time, perhaps more than a year. You will not receive a cash payment until any appeals are resolved. Please be patient.

11. What am I giving up to receive these Settlement benefits?

Unless you exclude yourself (“opt out”) from the Settlement Class by timely submitting a request for exclusion from the Settlement Class, you will remain in the Settlement Class, and that means you cannot sue, continue to sue or be part of any other lawsuit against the BMW Defendants about the claims in this case. It also means that all of the Court’s orders will apply to you and legally bind you. The Release is defined and detailed in the Settlement Agreement, which is available at www.2024DieselSettlement.com.

THE LAWYERS REPRESENTING YOU

12. Do I have lawyers in this case?

The Court has appointed attorneys from the law firms Hagens Berman Sobol Shapiro, LLP, Carella Byrne Cecchi Brody Agnell, P.C. and Seeger Weiss LLP to represent you and the other Settlement Class Members. The lawyers are called Class Counsel. They are experienced in handling similar class action cases. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

You may contact Class Counsel if you have any questions about this Notice or the Settlement. ***Please do not contact the Court.***

Steve Berman Hagens Berman Sobol Shapiro, LLP 1301 2nd Avenue, Suite 2000 Seattle, WA 98101 Tel: 206-623-7292 Email: Steve@hbsslaw.com	James E. Cecchi Carella Byrne Cecchi Brody Agnell, P.C. 5 Becker Farm Road Roseland, NJ 07068 Tel: 973-994-1700 Email: jcecchi@carellabyrne.com	Christopher A. Seeger Seeger Weiss LLP 55 Challenger Road, Sixth Floor Ridgefield Park, NJ 07660 Tel: 973-679-9100 Email: cseeger@seegerweiss.com
--	--	---

Questions? Call 1-877-540-1859, or Visit www.2024DieselSettlement.com

13. How will the lawyers be paid?

Class Counsel has asked the Court for an award of attorneys' fees up to one-third (1/3) (\$2 million) of the \$6 million Settlement Fund, and in addition to fees, reimbursement of litigation costs plus reasonable costs incurred through the Effective Date to not exceed \$1,000,000. Any award of attorneys' fees and costs will be paid from the Settlement Amount. Class Counsel also asked the Court for Service Awards of \$5,000 for each of the Named Plaintiffs. The purpose of the Service Awards is to compensate the Named Plaintiffs for their time, efforts, and risks taken on behalf of the Settlement Class. Any Service Award payment to the Named Plaintiffs will be paid from the Settlement Amount. The Court may award less than these amounts. Class Counsel's Motion for Attorneys' Fees and Costs is available at www.2024DieselSettlement.com.

YOUR RIGHTS – EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do *not* want a Cash Award, and want to keep the right to sue or continue to sue the BMW Defendants on your own about the legal issues in this case, then you must take steps to exclude yourself from the Settlement (get out of the Settlement). This is called “excluding yourself”—or is sometimes referred to as “opting out” of the settlement class.

14. How do I get out of the Settlement?

To exclude yourself from the Settlement, you must send a written “request for exclusion” that includes the following:

- Your name;
- Your address;
- Your telephone number;
- Your personal signature;
- The VIN of your Class Vehicle;
- A statement as to whether you own/owned or lease/leased the Class Vehicle and the beginning and end dates (if applicable) of your ownership or lease of the Class Vehicle; and
- A statement that indicates a desire to exclude yourself from the Settlement Class.

Your request for exclusion must be mailed via U.S. Mail, **postmarked** by **August 6, 2024**, to:

BMW X5 xDrive35d and 335D Settlement
P.O. Box 2390
Portland, OR 97208-2390

Only individual requests for exclusion are allowed. “Mass” or “class” requests for exclusion are not allowed according to the terms of the Settlement.

If you do not follow these procedures and deadlines, you will remain a Settlement Class Member and lose any opportunity to exclude yourself from the Settlement. This means that your rights will be determined in this lawsuit by the Settlement Agreement if it receives final approval from the Court.

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

No. If you exclude yourself, you cannot receive a Cash Award. However, you may sue, continue to sue, or be part of a different lawsuit against the BMW Defendants.

YOUR RIGHTS – OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or some part of it.

16. How do I tell the Court that I do not like the Settlement?

If you are a Settlement Class Member, you can object to the Settlement if you do not like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. You cannot ask the Court for a different Settlement; the Court can only approve or reject the Settlement. If the Court denies approval of the Settlement, no Cash Awards will be sent out, and the lawsuit will continue.

To object, you must file a written objection, which includes the following information:

- Your name, address, and telephone number;
- A statement of whether you are represented by counsel and if so, the name and contact information for your counsel;
- The VIN of your Class Vehicle;
- A statement as to whether you own/owned or lease/leased the Class Vehicle and the beginning and end dates (if applicable) of your ownership or lease of the Class Vehicle;
- A detailed written statement of each objection asserted, including the grounds for objection, any legal authority in support of such objection and reasons for appearing and being heard;
- Any copies of any papers, briefs, declarations, affidavits or other documents upon which the objection is based;
- A statement indicating whether you intend to appear at the Fairness Hearing (either personally or through counsel who files an appearance with the Court in accordance with the Local Rules), and a list of all persons, if any, who will be called to testify in support of the objection;
- A list of all cases in which you or your counsel filed an objection or in any way participated — financially or otherwise — in objecting to a class settlement during the preceding five years; and
- Your actual written or electronic signature as the objector in addition to the signature of your attorney (if any). An attorney's signature alone shall not be deemed sufficient to satisfy this requirement.

Your objection must be submitted to the Court either by mailing to the Clerk for the United State District Court for the District of New Jersey, 50 Walnut Street, Room 4015, Newark, NJ 07101, or electronically by ECF on the docket for this case.

Your objection must also be served by mail or hand delivery, including all papers or evidence in support thereof, upon the Settlement Administrator, Class Counsel and Counsel for the BMW Defendants, at the addresses below by **August 6, 2024**:

Settlement Administrator	Class Counsel	Defense Counsel
<p>BMW X5 xDrive35d and 335D Settlement Administrator P.O. Box 2390 Portland, OR 97208-2390</p>	<p>Zachary A. Jacobs CARELLA, BYRNE, CECCHI, BRODY & AGNELLO, P.C. 222 S. Riverside Plaza, Chicago IL 60606 Telephone: (973) 994-1700</p> <p>Steve A. Berman Peter A. Shaeffer HAGENS BERMAN SOBOL SHAPIRO LLP 1918 8th Avenue, Suite 3300 Seattle, WA 98101 Telephone: (206) 623-7292</p> <p>Scott A. George SEEGER WEISS LLP 55 Challenger Road Ridgefield Park, NJ 07660 Telephone: (212) 584-0700</p>	<p>Sean M. Berkowitz Arthur F. Foerster Johanna Spellman LATHAM & WATKINS LLP 330 North Wabash Avenue, Suite 2800 Chicago, IL 60611</p> <p>Thomas P. Branigan Matthew G. Berard BOWMAN and BROOKE LLP Columbia Center 101 W. Big Beaver Rd., Suite 1100 Troy, MI 48084</p>

If you file a timely objection, it will be considered by the Court at the Fairness Hearing. You do not need to attend the Fairness Hearing for the Court to consider your objection.

17. What is the difference between objecting and asking to be excluded?

Objecting is telling the Court that you do not like something about the Settlement and do not want the Court to approve the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because you are no longer part of the case.

YOUR RIGHTS – APPEARING AT THE FAIRNESS HEARING

18. When and where will the Court decide whether to approve the Settlement?

The Court will hold a “Fairness Hearing” to decide whether to approve the Settlement. You may attend and you may ask to speak, but you do not have to.

The Court will hold a Fairness Hearing on **September 24, 2024 at 2:00 p.m. EDT**, at the United States District Court for the District of New Jersey, 50 Walnut Street, Newark, New Jersey 07102, in Courtroom MLK 4C.

At the hearing, the Court will hear any comments, objections, and arguments concerning the fairness of the proposed Settlement, including the amount requested by Class Counsel for attorneys’ fees and expenses. If there are objections, the Court will consider them. You do not need to attend this hearing. You also do not need to attend to have a comment or objection considered by the Court. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

Note: The date and time of the Fairness Hearing are subject to change by Court Order. Any change will be posted on www.2024DieselSettlement.com. You should check the website to confirm that the date and/or time have not changed.

Questions? Call 1-877-540-1859, or Visit www.2024DieselSettlement.com

19. Do I have to attend the Fairness Hearing?

No. Class Counsel will answer all questions the Judge may have about why the Settlement should be approved and all claims paid. However, you are welcome to attend the hearing at your own expense. If you submit an objection, you do not have to attend the hearing to talk about your objection. As long as you postmarked your written objection by the deadline, the Judge will consider it. You may also pay your own lawyer to attend, but it is not necessary.

20. May I speak at the Fairness Hearing?

If you wish to appear at the Fairness Hearing and orally present your objection to the Court, your written objection must include your statement of intent to appear at the Fairness Hearing.

YOUR RIGHTS – DO NOTHING

21. What happens if I do nothing at all?

If you fit the Settlement Class definition described above and do nothing, you will be part of the Settlement Class, but you will not get a Cash Award from the Settlement. Unless you request to exclude yourself from the Settlement, you will not be permitted to continue to assert claims about the issues in this case or subject to the Release in any other lawsuit against the BMW Defendants ever again.

GETTING MORE INFORMATION

22. Are there more details about the Settlement?

This Notice summarizes the proposed Settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement at www.2024DieselSettlement.com, or by contacting Class Counsel (see contact information in Question 12).

23. How do I get more information?

You can call toll-free 1-877-540-1859, write to P.O. Box 2390, Portland, OR 97208-2390; or go to www.2024DieselSettlement.com, where you will find answers to common questions about the Settlement, motions for approval of the Settlement and Class Counsel's request for attorneys' fees and expenses and other important documents in the case.

You may also contact Class Counsel.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT'S CLERK OFFICE
TO INQUIRE ABOUT THIS SETTLEMENT**

Attachment 5

**Your claim must
be postmarked or
submitted online by:
12/18/2024**

BMW X5 xDrive35d & 335d Settlement
c/o Settlement Administrator
P.O. Box 2390
Portland, OR 97208-2390
1-877-540-1859
www.2024DieselSettlement.com

BMW

BMW X5 XDRIVE35D & 335D SETTLEMENT CLAIM FORM

I. INSTRUCTIONS

You can submit this form by mail to BMW X5 xDrive35d & 335d Settlement, c/o Settlement Administrator, P.O. Box 2390, Portland, OR 97208-2390, or you can file claims online at www.2024DieselSettlement.com. The deadline to submit or postmark a claim is December 18, 2024.

Please carefully read the Class Notice (available at www.2024DieselSettlement.com) regarding the Settlement before filling out this form. Terms in this Claim Form are defined in the Class Notice and/or the Settlement Agreement, both of which are available at the Settlement Website (www.2024DieselSettlement.com), or by calling 1-877-540-1859.

II. OPTIONS FOR OWNERS OR LESSEES OF CLASS VEHICLES

If you purchased or leased a model year 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d vehicle on or before February 28, 2024, and would like a cash payment pursuant to the Settlement Agreement, you **must** complete this Claim Form, including all supporting documentation, by the applicable claims deadline. If you do not fill out this Claim Form and do not exclude yourself from the Settlement Class, you will give up your legal rights and receive no cash payment.

After the Claims Program has begun, the Settlement Administrator will review your Claim Form and supporting documentation for completeness and eligibility. The Settlement Administrator will notify you if there is a deficiency with your claim or supporting information.

If you owned/own or leased/lease more than one model year 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d vehicle, you must submit a Claim Form and supporting documentation for each vehicle.

ALL CLAIMS ARE SUBJECT TO VERIFICATION.

PLEASE KEEP A COPY OF YOUR COMPLETED CLAIM FORM FOR YOUR RECORDS.

INCOMPLETE CLAIMS WILL NOT BE PAID. YOU WILL BE NOTIFIED IF YOUR CLAIM IS INCOMPLETE SO THAT YOU CAN COMPLETE IT.

IMPORTANT: BEFORE FILLING OUT THIS FORM, PLEASE READ THIS ENTIRE CLAIM FORM AND THE CLASS LONG-FORM NOTICE CAREFULLY. THE CLASS LONG-FORM NOTICE CONTAINS ADDITIONAL INFORMATION REGARDING YOUR ELIGIBILITY FOR SETTLEMENT BENEFITS AND OTHER IMPORTANT INFORMATION.

Questions? Call toll-free 1-877-540-1859 or visit www.2024DieselSettlement.com.

Status of Ownership or Lease

Please select one of the following:

- I currently own the vehicle and did not purchase it from a lease.
- I currently own the vehicle and purchased it from a lease.
- I currently lease the vehicle.
- I previously owned the vehicle and no longer possess it.
- I previously leased the vehicle and no longer possess it.
- I purchased the vehicle from a lease and no longer possess it.

Dates of Ownership or Lease Period

If you did not purchase the vehicle from a lease, please enter the date you purchased the vehicle or began leasing the vehicle.

- -
 MM DD YYYY

If you purchased the vehicle from a lease, please enter:

(i) the date you began leasing the vehicle: - - ; and
 MM DD YYYY

(ii) the date of purchase: - -
 MM DD YYYY

If you still own or lease the vehicle, check here:

If you no longer own or lease the vehicle*, please enter the date you sold the vehicle or the date you surrendered the vehicle due to your lease ending (MM/DD/YYYY):

- -
 MM DD YYYY

**If your vehicle was totaled, enter the date the vehicle was transferred to an insurance company (or otherwise sold to a junkyard, salvage dealer, or the equivalent).*

V. SUPPORTING DOCUMENTATION

You must include a copy of the following supporting documentation with your Claim Form to complete your claim:

IF YOU:	DOCUMENTS REQUIRED TO COMPLETE YOUR CLAIM*:
Currently own the vehicle	<ul style="list-style-type: none"> Your current vehicle registration Your driver's license or other government-issued photo identification Proof that you purchased the vehicle and when (which may include your bill of sale, title, registration from time of purchase, DMV registration history, financing agreement, or insurance documentation listing your date of vehicle purchase) If you purchased your vehicle from a lease, please provide proof of when your lease began (such as proof of first lease payment or lease agreement)

Questions? Call toll-free 1-877-540-1859 or visit www.2024DieselSettlement.com.

Currently lease the vehicle	<ul style="list-style-type: none"> • Your current vehicle registration • Your driver’s license or other government-issued photo identification • Your lease agreement or proof of a monthly lease payment
Previously owned the vehicle	<ul style="list-style-type: none"> • Your driver’s license or other government-issued photo identification • Proof that you purchased the vehicle and when (which may include your bill of sale, title, registration from time of purchase, DMV registration history, financing agreement, or insurance documentation listing your date of vehicle purchase) • If you purchased your vehicle from a lease, please provide proof of when your lease began (such as proof of first lease payment or lease agreement) • Proof of when you sold or transferred title to the vehicle (which may include a bill of sale, copy of title transfer, trade-in receipt, or insurance transfer document)
Previously leased the vehicle	<ul style="list-style-type: none"> • Your driver’s license or other government-issued photo identification • Proof of when your lease began (such as proof of first lease payment or lease agreement) • Proof of when your lease ended (such as a proof of final lease payment, lease termination agreement, or lease completion letter)

**You may need to provide additional documentation in certain circumstances. You will be notified if additional information is needed to complete your claim.*

VI. CLAIM CERTIFICATION AND RELEASE

I have received notice of the Settlement, and I submit this Claim Form under the terms of the Settlement. I acknowledge that under the terms of the Settlement, I am bound by any Court judgment that may be entered in this lawsuit and, upon the Effective Date of the Settlement, will release claims against BMW of North America, LLC and Bayerische Motoren Werke Aktiengesellschaft as set forth in the Settlement Agreement. I submit to the jurisdiction of the United States District Court for the District of New Jersey with regard to my claim and for purposes of enforcing the release of claims. I acknowledge that all claims are subject to investigation, and any false claims may be subject to legal action.

I certify under penalty of perjury that all of the foregoing information is true and correct.

Signature of Claimant

Date:

MM	DD

 -

YY	YY	YY	YY

Questions? Call toll-free 1-877-540-1859 or visit www.2024DieselSettlement.com.

Attachment 6

As a tropical rainstorm looms for Florida, some areas are bracing for flooding this week. Click for more. Hotter days are just ahead in the Northeast as a heat wave looms. Click for more.

AccuWeather Los Angeles, CA 72°F

Address, City or Zip Code Location

TODAY HOURLY DAILY RADAR MINUTECAST MONTHLY AIR QUALITY HEALTH & ACTIVITIES FOR BUSINESS



YOU DO YOU NEEDS MORE WE. We spark. We vibe. We celebrate. Smirnoff. WE DO WE.

Sponsored By Smirnoff

Learn More

TODAY'S WEATHER

MON, JUN 10

Clouds giving way to sun Hi: 74° Tonight: Mainly clear this evening; late-night low clouds Lo: 57°

CURRENT WEATHER

3:11 PM

72°F RealFeel® 81° Sunny

RealFeel Shade® 70° Wind SW 5 mph Wind Gusts 9 mph Air Quality Fair

LOOKING AHEAD

Mostly sunny this weekend

LOS ANGELES WEATHER RADAR & MAPS



If you purchased or leased a model year 2009-2013 BMW X5 xDrive35d or 2009-2011 BMW 335d,



Top Stories

HURRICANE Drought to deluge, tropical rainstorm to soak Florida 2 hours ago

SEVERE WEATHER More severe thunderstorms to prowl the central US 2 hours ago

WEATHER FORECASTS Resurgence of heat to impact outdoor plans across the West 3 hours ago

SEVERE WEATHER Severe weather threats to evolve heading into the dog days of summer 3 days ago

WEATHER FORECASTS First heat wave of year on horizon for Northeast 2 hours ago

More Stories

As a tropical rainstorm looms for Florida, some areas are bracing for flooding this week. Click for more. Hotter days are just ahead in the Northeast as a heat wave looms. Click for more.

AccuWeather Los Angeles, CA 72°

Address, City or Zip Code Location

TODAY HOURLY DAILY RADAR MINUTECAST MONTHLY AIR QUALITY HEALTH & ACTIVITIES FOR BUSINESS



YOU DO YOU NEEDS MORE WE.

We spark. We vibe. We celebrate. Smirnoff. WE DO WE.

Sponsored By Smirnoff

Learn More

TODAY'S WEATHER

MON, JUN 10

Clouds giving way to sun Hi: 74°

Tonight: Mainly clear this evening; late-night low clouds Lo: 57°

CURRENT WEATHER

3:11 PM

72° F RealFeel® 81°

Sunny MORE DETAILS >

RealFeel Shade® 70° Wind SW 5 mph Wind Gusts 9 mph Air Quality Fair

LOOKING AHEAD

Mostly sunny this weekend

LOS ANGELES WEATHER RADAR & MAPS



you could receive a payment from a Class Action Settlement. Learn More



Top Stories

HURRICANE Drought to deluge, tropical rainstorm to soak Florida 2 hours ago

SEVERE WEATHER More severe thunderstorms to prowl the central US 2 hours ago

WEATHER FORECASTS Resurgence of heat to impact outdoor plans across the West 3 hours ago

SEVERE WEATHER Severe weather threats to evolve heading into the dog days of summer 3 days ago

WEATHER FORECASTS First heat wave of year on horizon for Northeast 2 hours ago

More Stories

BUSINESS

Kia recalls 460,000 Telluride SUVs over fire risk

The company issued a “park outside” order covering certain vehicles from model years 2020-2024.



By Aaron Gregg

Updated June 10, 2024 at 11:27 a.m. EDT | Published June 10, 2024 at 9:08 a.m. EDT



A 2020 KIA Telluride at the 2019 Pittsburgh International Auto Show on Feb. 14, 2019. (Gene J. Puskar/AP)

Listen 2 min Share Comment 102 Save

Kia is recalling about 460,000 Telluride SUVs from model years 2020 through 2024, telling car owners to park outside because of “a risk of fire while parked or driving,” according to the National Highway Traffic Safety

If you purchased or leased a model year 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d, you could receive a payment from a Class Action Settlement.

[Learn More](#)



If you purchased or leased a model year 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d,



2024 Fiat 500e First Look: Let's Try That Again

Fiat seems to think another all-electric 500 hatchback might be right for us.

Justin Westbrook - Writer; Justin Banner - Writer, Photographer; Brandon Lim - Photographer | Jun 07, 2024



Fiat is in a pretty sorry state in the U.S. at the moment, only selling the bloated and awkward Fiat 500X hatchback SUV stateside after discontinuing everything else it offered after the 2019 model year. In Europe, the brand has introduced an all-new, all-electric version of its Fiat 500 hatchback city car, and at the 2022 Los Angeles auto show, Fiat CEO Francois Olivier has confirmed the 2024 Fiat 500e is officially coming (back) to America. Fiat later announced the 500e would debut in the U.S. as the (RED) Edition version, with more custom editions debuting since. Here's what to expect for the Fiat 500e in 2024.

F.I.A.T.: Fiat In America Tomorrow

We ARE The Heavy Duty Experts™

Find the Heavy Duty Parts You Need at FleetPride

FleetPride

[Open](#)

you could receive a payment from a Class Action Settlement. 

[Learn More](#)

2024 Fiat 500e First Look: Let's Try That Again

Fiat seems to think another all-electric 500 hatchback might be right for us.

[Justin Westbrook](#) - Writer; [Justin Banner](#) - Writer, Photographer; [Brandon Lim](#) - Photographer | Jun 07, 2024



PORSCHE

Be the first with the latest.
ALL-ELECTRIC. ALL PORSCHE. THE ALL-NEW MACAN.



[Sign Up Now](#)

Fiat is in a pretty sorry state in the U.S. at the moment, only selling the bloated and awkward [Fiat 500X hatchback SUV](#) stateside after discontinuing everything else it offered after the 2019 model year. In Europe, the brand has introduced an all-new, all-electric version of its Fiat 500 hatchback city car, and at the 2022 [Los Angeles](#) auto show, Fiat CEO Francois Olivier has confirmed the [2024 Fiat 500e](#) is officially coming (back) to America. Fiat later announced the 500e would debut in the U.S. as the (RED) Edition version, with more custom editions debuting since. Here's what to expect for the Fiat 500e in 2024.

F.I.A.T.: Fiat In America Tomorrow

This would mark the second time in as many decades that Fiat has attempted to make a splashy dent in the U.S. car market, now trying again with the 500e after a

We ARE The Heavy Duty Experts™

Find the Heavy Duty Parts You Need at FleetPride

FleetPride

[Open](#)

Trending Pages

NBA JUN 12 Wed - 8:30 PM ET ABC BOS 2-0 DAL 0-2

ESPN NFL NBA MLB NHL Soccer College Sports

ESPN+ ESPNBET Watch Fantasy

NBA Home Scores Schedule Finals Standings Stats Teams Draft Mock Draft Simulator Daily Lines More

If you purchased or leased a model year 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d, you could receive a payment from a Class Action Settlement.

Learn More



- Tomjanovich given lifetime achievement award
HOUSTON ROCKETS 1d
- The unlikely 20 year bond that has the Boston Celtics on the brink of an NBA title
BOSTON CELTICS 10h - Baxter Holmes
- Ad
Basketball Shooting Machines
DRDISHBASKETBALL.COM
- NBA insiders: The biggest questions from Game 2 between the Mavericks and Celtics
BOSTON CELTICS 19h - NBA Insiders
- Photos: Jaylen Brown's thunderous Game 2 dunk
BOSTON CELTICS 20h - ESPN staff
- Photos: Jaylen Brown's thunderous Game 2 dunk
BOSTON CELTICS 20h - ESPN staff
- Luka takes blame for loss, but 'he's not alone'
DALLAS MAVERICKS 17h - Tim MacMahon
- NBA insiders: The biggest questions from Game 2 between the Mavericks and Celtics
BOSTON CELTICS 19h - NBA Insiders
- Celtics up 2-0; Porzingis (leg) feels good about G3
BOSTON CELTICS 19h - Tim Bontemps
- The twists and turns that led Jrue Holiday back to the NBA Finals
DALLAS MAVERICKS 20h - Brian Windhorst
- 2024 NBA Finals: Series odds, schedule, MVP favorites for Celtics-Mavericks
BOSTON CELTICS 11h - ESPN
- Photos: Jaylen Brown's thunderous Game 2 dunk

Rudy Tomjanovich wins Chuck Daly Lifetime Achievement Award

ESPN News Services
Jun 9, 2024, 02:00 PM ET

Share Like

70

Rudy Tomjanovich is the winner of the 2024 Chuck Daly Lifetime Achievement Award, presented by the National Basketball Coaches Association.

The organization announced the selection Sunday of Tomjanovich, one of just nine coaches in NBA history to win consecutive league titles and a member of the Naismith Memorial Basketball Hall of Fame.

"Chuck Daly and Rudy Tomjanovich have many of the same amazing accomplishments and traits -- both won back to back NBA titles, both coached the United States to Olympic gold and both are absolutely beloved in the coaching community because of their great way with people," [Indiana Pacers](#) coach Rick Carlisle, who is president of the NBCA, said in a statement.

Tomjanovich, 75, was an NBA head coach in parts of 13 seasons and compiled a 527-416 record with the [Houston Rockets](#) (1992-2003) and [Los Angeles Lakers](#) (2004-05).

His 1994 and 1995 teams, led by [Hakeem Olajuwon](#), won NBA championships, bridging the gap between the pair of three-peats won by the [Chicago Bulls](#) in the '90s.


Tomjanovich led his teams to the playoffs seven times and to three conference finals.



- Friends
- Memories
- Saved
- Groups
- Video
- See more

Legal Notice
Sponsored ·

Purchased or leased a 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d? You could receive a payment from a Settlement.



2024DIESELSETTLEMENT.COM
Rickman v. BMW Settlement [Learn more](#)

Like Comment Share


Sponsored




Alper
alper.com





Facebook navigation bar and sidebar. The top bar includes a search bar on the left, navigation icons (Home, Friends, Watch, Marketplace, Community) in the center, and utility icons (Grid, Messenger, Notifications) on the right. The left sidebar contains links for Friends, Memories, and Saved. The main content area features a video player showing a person in a dark room, and a sponsored advertisement for 'Rickman v. BMW Settlement' with a gavel icon and the URL 2024dieselsettlement.com.

Instagram

 legal.notice
Sponsored ⋮



Learn more >

legal.notice Settlement payments for purchasers/lessees of certain BMW X5 xDrive35ds and BMW 335ds



Class Action  @class_notice

If you purchased or leased a model year 2009–2013 BMW X5 xDrive35d or 2009–2011 BMW 335d, you could receive a payment from a Class Action Settlement.



www.2024dieselsettlement.com
Rickman v. BMW Settlement



 Promoted

Attachment 7



Rickman v. BMW
Exclusion Report

Number	Name
1	Aashish Makkar
2	Lawrence Lawrence
3	Dorene Cotter
4	Elda Maribel Sidhu
5	Kristin M McGregor
6	David M Jones