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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11 ALBER KARAMANOUKIAN, as an
12 individual, on behalf of himself, all others
similarly situated, and the general public,

13 Plaintiff,

14 vs.

15 BMW OF NORTH AMERICA, LLC, a
16 Delaware Limited Liability Company;
VALENCIA B IMPORTS INC., a
17 California Corporation; PACIFIC BMW, a
California Corporation; and DOES 1
18 through 10, inclusive,

19 Defendants.

Case No.:
(Class Action)

**CLASS ACTION COMPLAINT FOR
DAMAGES:**

1. **Fraud and Deceit**
2. **Breach of Express Warranty**
3. **Breach of Implied Warranty**
4. **Breach of Warranty (Song-Beverly
Consumer Warranty Act), Civil Code §
1790, et seq.;**
5. **Violation of the California Consumer Legal
Remedies Act (“CLRA”), Civil Code § 1750
et seq.;**
6. **Violation of the California Unfair
Competition Law (“UCL”), Business and
Professions Code § 17200, et seq.**
7. **Violation of the California False Advertising
Laws (“FAL”), Business and Professions
Code § 17500, et seq.**
8. **Nuisance**

DEMAND FOR JURY TRIAL

28 ///

1 **COMPLAINT**

2 NOW COMES Plaintiff, ALBER KARAMANOUKIAN, as an individual, on behalf of himself,
3 all others similarly situated, and the general public, by and through his attorneys, The Margarian Law
4 Firm, with Plaintiff’s Class Action Complaint for Damages against Defendants, BMW OF NORTH
5 AMERICA, LLC, a Delaware Limited Liability Company, and DOES 1 through 10, inclusive:

6 **INTRODUCTION**

7 1. This is a class action lawsuit brought by Plaintiff on behalf of himself and a class of current
8 and former BMW vehicle owners and lessees with defective M Compound Brakes (“Subject Brakes”
9 or “Compound Brakes”) utilized in numerous BMW vehicles sold in the United States, including but
10 not limited to: the 2020 M8 Convertible (collectively, the “Class Vehicles”).¹

11 2. This action arises from Defendant BMW’s failure, despite its longstanding knowledge of a
12 material defect, to properly disclose to Plaintiff and other consumers that the Class Vehicles’ brake
13 system is defective and generates an extremely loud, high-pitched squealing noise (the “Brake
14 Defect”) which impairs the safety and reliability of the Class Vehicles.

15 3. The Brake Defect, which exists in all vehicles that have the Subject Brakes, causes a
16 loud, high-pitched squealing noise when the brakes are applied during ordinary and intended use. The
17 noise exposes the driver and occupants of the Class Vehicles, as well as others who share the road with
18 them, to an increased risk of accident, injury, or death. As discussed further herein, numerous owners
19 and lessees of the Class Vehicles have experienced the loud, high-pitched squealing noise while
20 operating a Class Vehicle, thus placing themselves and those around them in immediate danger.

21 4. The loud, high-pitched squealing noise emitted when the brakes are applied creates a safety
22 hazard due to the potential to startle the Class Vehicle drivers, having an adverse impact on driving
23 decisions and habits of the Class Vehicle drivers. The Brake Defect distracts the Class Vehicle driver
24 and third parties, endangering their physical safety and well-being due to a loss of concentration and
25 focus on the road. Similarly, nearby pedestrians hear the loud braking noise and pay attention to the
26 noise rather than having their full attention on other hazards in their path.

27 _____
28 ¹ Plaintiff reserves the right to amend or add to the vehicles models included in the definition of Class Vehicles after conducting discovery.

1 5. Defendant BMW tried to brush the Brake Defect off as normal. Calling the Brake Defect
2 “normal” is problematic because consumers rely on the squealing noises to indicate when the brakes
3 need to be repaired. If the brakes always squeal and squeak, then consumers will not know when the
4 brakes actually need to be fixed.

5 6. Normal brakes, as Defendant likes to call it, simply do not make this loud, high-pitched
6 squealing noise as consistently as the Class Vehicles do. Plaintiff has had his vehicle for just shy of
7 one (1) year now and the Subject Brakes still make the noise like they did on day one. The noise
8 generated by the Subject Brakes is above and beyond the expectations of an ordinary consumer.

9 7. Defendant BMW has long been aware of the Brake Defect and many owners and lessees of
10 the Class Vehicles have communicated with Defendant or its agents to request that it remedy and/or
11 properly address the Brake Defect. Yet, notwithstanding its longstanding knowledge of this defect and
12 such requests, Defendant BMW has routinely refused to properly repair the Class Vehicles and put a
13 stop to this excessively annoying noise.

14 8. As a result of Defendant BMW’s unfair, deceptive, and/or fraudulent business practices,
15 owners and/or lessees of the Class Vehicles, including Plaintiff, have suffered an ascertainable loss of
16 money and/or property and/or loss in value.

17 9. Had Plaintiff and other Class Members known about the Brake Defect at the time of
18 purchase or lease, they would not have bought or leased the Class Vehicles or would have paid
19 substantially less for them.

20 10. As a result of the Brake Defect and the monetary costs associated with attempting to repair
21 such defect, Plaintiff and the Class Members have suffered injury in fact, incurred damages, and have
22 otherwise been harmed by Defendant BMW’s conduct.

23 11. Accordingly, Plaintiff brings this action to redress Defendant BMW’s fraud and deceit,
24 breaches of express and implied warranties pursuant to the Song-Beverly Consumer Warranty Act
25 (Civil Code § 1790, *et seq.*) and the Magnuson-Moss Warranty Act (15 U.S.C. § 2301, *et seq.*),
26 violation of the California Consumer Legal Remedies Act (“CLRA”) (Civil Code § 1750, *et seq.*), and
27 violation of the California Unfair Competition Act (“UCL”) (Business and Professions Code § 17200,
28 *et seq.*) as well as False Advertisement (Business and Professions Code § 17500, *et seq.*) for Defendant

1 BMW's pattern and practice of fraudulently, unfairly, deceptively, and unlawfully marketing,
2 advertising, promoting, and leasing/selling various vehicles with a defective brake system that
3 generates an extremely loud squealing noise when using the brakes.

4 12. This action seeks redress for Plaintiff and the Class in the form of compensatory damages,
5 punitive damages, and injunctive relief, which would include, *inter alia*, an order directing Defendant
6 BMW to cease the challenged practices, including the manufacture, sale, and installation of defective,
7 noisy brakes and initiate a program to provide refunds, repairs, and/or restitution to Plaintiff and the
8 Class.

9 **PARTIES**

10 13. Plaintiff KARAMANOUKIAN, is and was at all times relevant herein an individual
11 residing in Los Angeles County, California. Plaintiff leased, and during pertinent times was in
12 possession of, one of the Subject Vehicles, a 2020 BMW M8 Convertible bearing the Vehicle
13 Identification Number WBSDZ0C0XLCD34148 ("Subject Vehicle"). The Subject Vehicle was
14 manufactured, sold, or otherwise delivered to Plaintiff with the defective brake system at issue in this
15 case and as described herein.

16 14. Plaintiff appears in this action on behalf of himself, on behalf of all others similarly situated,
17 and pursuant to Business and Professions Code §§ 17200 *et seq.* and 17500 *et seq.*, on behalf of the
18 general public in his capacity as a private attorney general.

19 15. Defendant, BMW, is a Delaware Limited Liability Company licensed to do, and is doing
20 business throughout the United States, with its principal place of business located at 300 Chestnut
21 Ridge Road, Woodcliff Lake, NJ 07677.

22 16. BMW transacts business in Los Angeles County, California, and at all relevant times
23 designed, manufactured, promoted, marketed, distributed, and/or leased/sold the Subject Vehicles that
24 are the subject of this Complaint, throughout the United States including California. Defendant BMW
25 has significant contacts with Los Angeles County and the activities complained of herein occurred, in
26 whole or in part, in Los Angeles County.

27 17. Defendant, Valencia B Imports Inc., a California Corporation ("Valencia BMW"), doing
28 business as Valencia BMW, is licensed to do business, and is doing business in California, at 23435

1 Valencia Boulevard, Valencia, CA 91355.

2 18. Defendant, Pacific BMW, a California Corporation (“Pacific BMW”), is licensed to do
3 business, and is doing business in California, at 800 South Brand Boulevard, Glendale, CA 91204.

4 19. Plaintiff is informed and believes and based thereon alleges that Defendants DOES 1
5 through 10 are corporations or are other business entities or organizations of a nature unknown to
6 Plaintiff.

7 20. Plaintiff is unaware of the true names of Defendants DOES 1 through 10. Plaintiff sues said
8 defendants by said fictitious names and will amend this Complaint when the true names and capacities
9 are ascertained or when such facts pertaining to liability are ascertained, or as permitted by law or by
10 the Court. Plaintiff is informed and believes that each of the fictitiously named defendants is in some
11 manner responsible for the events and allegations set forth in this Complaint.

12 21. Plaintiff is informed and believes and based thereon alleges that at all relevant times, each
13 Defendant was a developer, designer, manufacturer, distributor, and lessor/seller of vehicles; was the
14 principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate,
15 parent corporation, successor in interest, and/or predecessor in interest of some or all of the other
16 Defendants; and was engaged with some or all of the other defendants in a joint enterprise for profit,
17 and bore such other relationships to some or all of the other Defendants so as to be liable for their
18 conduct with respect to the matters alleged in this complaint. Plaintiff is further informed and believes
19 and based thereon alleges that each Defendant acted pursuant to and within the scope of the
20 relationships alleged above, and that at all relevant times, each Defendant knew or should have known
21 about, authorized, ratified, adopted, approved, controlled, aided, and abetted the conduct of all other
22 Defendants. As used in this Complaint, “Defendants” means “Defendants and each of them,” and refers
23 to the Defendants named in the particular cause of action in which the word appears and includes BMW
24 and DOES 1 through 10.

25 22. At all times mentioned herein, each Defendant was the co-conspirator, agent, servant,
26 employee, and/or joint venturer of each of the other Defendants and was acting within the course and
27 scope of said conspiracy, agency, employment, and/or joint venture and with the permission and
28 consent of each of the other Defendants.

1 23. Plaintiff makes the allegations in this Complaint without any admission that, as to any
2 particular allegation, Plaintiff bears the burden of pleading, proving, or persuading, and Plaintiff
3 reserves all of Plaintiff's rights to plead in the alternative.

4 **JURISDICTION AND VENUE**

5 24. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §
6 1331 as this action arises under a federal statute. This Court has supplemental jurisdiction over the state
7 law claims under 28 U.S.C. § 1367.

8 25. Jurisdiction is also proper under the Class Action Fairness Act, 28 U.S.C. § 1332(d)
9 because: (1) at least one Plaintiff is a citizen of a different state than Defendants; (2) the amount in
10 controversy exceeds \$5,000,000; and (3) there are at least 100 individuals in the putative class that
11 Plaintiff seeks to represent through this action.

12 26. This Court has personal jurisdiction over Defendants because Defendants regularly conduct
13 business in California, are present and licensed to conduct business in California, and the events giving
14 rise to this lawsuit occurred in California. Defendants BMW, Valencia BMW, and Pacific BMW have
15 advertised, marketed, promoted, distributed, and sold the Class Vehicles in California.

16 27. Venue is proper in this District under 28 U.S.C. § 1391(b) because Defendants transact
17 substantial business in this District, and a substantial part of the acts, conduct, and events alleged herein
18 occurred within California, including the County of Los Angeles.

19 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

20 28. This action has been brought and may properly be maintained as a class action pursuant to
21 the provisions of California Code of Civil Procedure § 382 and Civil Code § 1781 and other applicable
22 laws on behalf of himself and a class as defined as follows:

- 23 (1) California Class: The Class that Plaintiff seeks to represent ("California Class") consists
24 of all persons and entities who purchased or leased, or will purchase or lease, a Subject
25 Vehicle in California, on or after the date Defendant placed the Subject Vehicles into the
26 stream of commerce (the Class specifically does not include any claims seeking damages
27 for personal injuries or property damage resulting from defects as alleged herein).
28 Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled

1 person of Defendants, as well as the officers, directors, agents, servants, or employees of
2 Defendants, and the immediate family member of any such person. Also excluded is any
3 trial judge who may preside over this case.

4 (2) National Class: The Class that Plaintiff seeks to represent (“National Class”) is defined to
5 include all persons and entities within the United States who purchased or leased, or will
6 purchase or lease, a Subject Vehicle, on or after Defendant placed the Subject Vehicles
7 into the stream of commerce (the Class specifically does not include any claims seeking
8 damages for personal injuries or property damage resulting from defects as alleged
9 herein). Excluded from the National Class are Defendants, any parent, subsidiary, affiliate,
10 or controlled person of Defendants, as well as the officers, directors, agents, servants, or
11 employees of Defendants, and the immediate family member of such person. Also
12 excluded is any trial judge who may preside over this case.

13 29. There is a well-defined community of interest in the litigation, and the proposed class is
14 ascertainable.

15 (1) Common Questions Predominate: Common questions of law and fact exist as to all class
16 members and predominate over any questions that effect only individual members of the
17 class, if there are any individual questions. The common questions of law and fact include,
18 but are not limited to:

- 19 a. Whether the Subject Vehicles were designed, manufactured, sold, and/or otherwise
20 equipped with brake systems that were poor, weak, or inferior in design and/or
21 otherwise defective;
- 22 b. Whether Defendants knew of the defective nature of the brake systems on the Subject
23 Vehicles;
- 24 c. Whether Defendants violated California consumer protection statutes;
- 25 d. Whether Defendants breached its express warranties;
- 26 e. Whether Defendants breached its implied warranties;
- 27 f. Whether Defendants’ brake systems on the Subject Vehicles contained an inherent
28 design and/or manufacturing defect;

- 1 g. Whether the defect in the brake systems on the Subject Vehicles caused and/or
2 contributed to the loud squealing brake noise when used for their intended purpose
3 (driving);
- 4 h. Whether the advertisements and statements made by Defendants were and are false
5 and/or had and have had a tendency to deceive customers, by either failing to disclose
6 the existence of an inherent defect or misrepresenting that the Subject Vehicles
7 contained no defects;
- 8 i. Whether Defendants failed to adequately warn and/or notify class members and the
9 general public regarding the defects of the brake systems on the Subject Vehicles
10 causing loud squealing noises due to their inherent design or defect as described
11 herein;
- 12 j. Whether Defendants have failed to notify all Subject Vehicle owners or lessees of the
13 defect here at issue and repair or correct (or offer to repair or correct) all defective
14 brake systems on the Subject Vehicles at no cost to the owners or lessees of the
15 Subject Vehicles;
- 16 k. Whether Defendants are obligated to inform the Class of their right to obtain, free of
17 charge, repair, and replacement of the defective components of the defective brake
18 system on the Subject Vehicles;
- 19 l. Whether Defendants adequately informed Dealers of the remedies to the design or
20 defect as described herein;
- 21 m. Whether Defendants are required to provide the New Motor Vehicle Board with a
22 copy of BMW's Service Bulletin(s), if any, concerning the remedies to the design or
23 defect as described herein (or the information contained in the bulletin(s)) so that the
24 public could have access to it;
- 25 n. The nature and extent of Defendant's implied warranty of merchantability for the
26 brake system;
- 27 o. Whether BMW's warranty to repair defects in the Subject Vehicles was part of the
28 basis of the bargain as between BMW and members of the Class;

- 1 p. Whether the presence of the defective brake systems in the Subject Vehicles is an
2 unlawful, unfair, and/or “fraudulent” business act or practice within the meaning of the
3 Business and Professions Code §§ 17200 *et seq.*;
- 4 q. Whether Defendants concealed from and/or failed to disclose to Plaintiff and the Class
5 the true defective nature of the brake systems;
- 6 r. Whether Defendants had a duty to Plaintiff and the Class to disclose the defective
7 nature of the brake systems;
- 8 s. Whether the facts concealed and/or otherwise not disclosed by Defendants to Plaintiff
9 and the Class are material facts;
- 10 t. Whether Defendants knew that the brake systems are defective and would result in a
11 loud squealing noise meaning that the Subject Vehicles were not suitable for use as
12 passenger vehicles and otherwise are not as warranted and represented by Defendants;
- 13 u. Whether Defendants knew or reasonably should have known about these inherent
14 defect(s);
- 15 v. When Defendants learned of this inherent defect;
- 16 w. Whether Defendants continued to lease/sell the Subject Vehicles with the defective
17 brake systems as alleged herein despite its knowledge and/or reckless or negligent
18 disregard of this inherent defect;
- 19 x. Whether the Class Members are entitled to damages in terms of cost of replacement
20 (or repair) of the defective brake systems on the Subject Vehicles and any out-of-
21 pocket expenses incurred in connection therewith, and if so, the nature and amount of
22 such damages;
- 23 y. Whether Plaintiff and the Class are entitled to recover damages and the proper
24 measure of damages;
- 25 z. Whether Plaintiff and the Class are entitled to equitable relief, including but not
26 limited to restitution;
- 27 aa. Whether Plaintiff and the Class are entitled to declaratory relief sought herein;
- 28 bb. Whether Plaintiff and the Class are entitled to injunctive relief sought herein;

- 1 cc. Whether Plaintiff and the Class are entitled to punitive damages and, if so, the amount
- 2 of such exemplary damages;
- 3 dd. Whether the defective brake systems caused the amount paid for the purchase or lease
- 4 of the Subject Vehicles to be less than the fair market value of those vehicles; and
- 5 ee. Whether there is a difference between the fair market value of the Subject Vehicles
- 6 and the actual value of those vehicles given the presence of the defective brake
- 7 systems.

8 (2) Typicality: Plaintiff's claims are typical of the claims of the Class Members. Plaintiff and

9 the Class Members sustained the same types of damages and losses.

10 (3) Numerosity and Ascertainability: The Classes are so numerous, thousands of persons, that

11 individual joinder of all class members is impractical under the circumstances. The class

12 members can be ascertained by, among other things, lease/sales records, and by responses

13 to methods of class notice permitted by law.

14 (4) Adequacy: Plaintiff is a member of the Class and will fairly and adequately protect the

15 interests of the members of the Class. The interests of the Plaintiff are coincident with, and

16 not antagonistic to, those other members of the Class. Plaintiff have retained attorneys

17 who are experienced in class action litigation. Plaintiff will fairly and adequately represent

18 and protect the interest of the Plaintiff Class. Plaintiff is an adequate representative of the

19 Class, as he does not have interests that are adverse to the interests of the Class. Plaintiff is

20 committed to the vigorous prosecution of this action and have retained counsel who are

21 competent and experienced in handling complex and class action litigation on behalf of

22 consumers.

23 (5) Superiority and Substantial Benefit: The prosecution of separate actions by individual

24 members of the Class would create a risk of: (1) Inconsistent or varying adjudications

25 concerning individual members of the Class which would establish incompatible standards

26 of conduct for the party opposing the Class; and (2) Adjudication with respect to the

27 individual members of the Class would substantially impair or impede the ability of other

28 members of the Class who are not parties to the adjudications to protect their interests.

1 The class action method is appropriate for the fair and efficient prosecution of this action.
2 Individual litigation of the claims brought herein by each Class Member would produce
3 such a multiplicity of cases that the judicial system having jurisdiction of the claims would
4 remain congested for years. Class treatment, by contract provides manageable judicial
5 treatment calculated to bring a rapid conclusion to all litigation of all claims arising out of
6 the aforesaid conduct of Defendants. The certification of the Class would allow litigation
7 of claims that, in view of the expense of the litigation may be sufficient in amount to
8 support separate actions.

9 **FACTUAL ALLEGATIONS**

10 **A. Defendant’s Development of the Compound Brakes**

11 30. Plaintiff files this class action on behalf of himself, all others similarly situated, and the
12 general public for damages and/or restitution, as appropriate, for the Class from Defendant BMW of
13 North America, LLC (hereinafter “BMW”) for developing, designing, manufacturing, distributing, and
14 selling vehicles with a defective brake system (“Subject Vehicle(s)” or “Class Vehicle(s)”) and
15 Defendant Valencia BMW and Pacific BMW (hereinafter “Dealers”) for selling and/or leasing vehicles
16 with the defective brake system.

17 31. Beginning on or before 2013, BMW manufactured, sold, and distributed vehicles that
18 contain defective M Compound Brakes that results in a loud, high-pitched squealing noise from the
19 brakes, directly affecting the safety, reliability, and use and enjoyment of the vehicle.

20 32. The Class Vehicles contain one or more design and/or manufacturing defects, including but
21 not limited to defects contained in the Class Vehicles’ M Compound Brakes that cause a loud squealing
22 noise when the brakes are applied.

23 33. The Class Vehicles have been designed by BMW, by and through its designers and
24 engineers, including, but not limited to, Adam McNeil (Vice President of Engineering) and Klaus
25 Dullinger (M Engineer). The descriptions of the Class Vehicles which fail to describe the high-
26 performance brakes as noisy have been written and designed by BMW, by and through its team of
27 marketing personnel, including, but not limited to, Adam Sykes (Vice President of Corporate
28 Communications) and Uwe Dreher (Vice President of Marketing). Other key members include

1 Bernhard Kuhn (President and Chief Executive Officer of BMW NA) and David Duncan (Department
2 Head, Corporate and Special Sales).

3 34. The M Compound Brakes have fixed-caliper brakes fitted onto both the front and rear axles.
4 The front axle holds four pistons while the rear axle has two pistons. The setup is a supposed
5 significant performance increase compared to the predecessor where the axles had heavy single-piston
6 sliding calipers.

7 35. According to Klaus Dullinger, the BMW M Engineer responsible for the development of the
8 new standard BMW M Compound Brake system: “M compound brakes have a grey-cast friction ring
9 in a floating arrangement that is connected by pins to the aluminum brake cover. The pin assembly
10 means that as the temperature increases, it can expand freely in a radial direction and subsequently
11 cool down again without any residual deformation.”

12 36. On its North American website, BMW states “A high performance vehicle requires a high-
13 performance brake system. The M Compound brakes are high performance brake systems developed
14 for sports and dynamic driving. We select highly resilient materials with an emphasis on performance
15 over a wide range of operating conditions.”

16 37. Despite the intent to create high performance brake systems the M Compound brakes are
17 made from materials that cause noises and are anything but high performance.

18 38. According to BMW, on the first full tank of gas, it is advised that drivers should restrain
19 from using the maximum deceleration on the brakes and avoid hard emergency braking to allow the M
20 Compound Brakes a “running-in” period. This is when the brake pads get accustomed to the brake
21 discs.

22 39. The Class Vehicles were manufactured with defective M Compound Brakes. This defect
23 renders the Class Vehicles prone to constant loud, high-pitched squealing noises which poses serious
24 safety issues for operators and occupants of the Class Vehicles.

25 40. In many instances, consumers have incurred and will continue to incur expenses for the
26 diagnosis of the Brake Defect, repair, and replacement of the Subject Brakes, despite such defect
27 having been contained in the Class Vehicles when manufactured by Defendant BMW.

28 41. Upon information and belief, Defendant BMW, through (1) its own records of customers’

1 complaints, (2) dealership repair records, (3) records from the National Highway Traffic Safety
2 Administration (“NHTSA”), (4) warranty and post-warranty claims, (5) pre-sale durability testing, and
3 (6) other various sources, was well aware of the Brake Defect but failed to notify consumers of the
4 nature and extent of the problems with the Class Vehicles’ Subject Brakes or provide any adequate
5 remedy.

6 42. Defendant BMW failed to adequately research, design, test, and/or manufacture the Class
7 Vehicles before warranting, advertising, promoting, marketing, and selling the Class Vehicles as
8 suitable and safe for use in an intended and/or reasonably foreseeable manner.

9 43. BMW is experienced in the design and manufacture of consumer vehicles. As an
10 experienced manufacturer, BMW conducts tests, including pre-sale durability testing, on incoming
11 components, including the camshaft adjuster bolts, to verify the parts are free from defect and align
12 with BMW’s specifications.² Thus, BMW knew or should have known the Compound Brakes were
13 defective and prone to put drivers in a dangerous position as a result of the inherent risk of the Brake
14 Defect.

15 44. Additionally, Defendant BMW should have learned of this widespread defect from the sheer
16 number of reports received from dealerships. Defendant BMW’s customer relations department, which
17 interacts with individual dealerships to identify potential common defects, has received numerous
18 reports regarding the Brake Defect, which led to the release of the technical service bulletin (“TSB”).
19 BMW’s customer relations department also collects and analyzes field data including, but not limited
20 to, repair requests made at dealerships, technical reports prepared by engineers who have reviewed
21 vehicles for which warranty coverage is being requested, parts sales reports, and warranty claims data.

22 45. Defendant BMW’s warranty department similarly analyzes and collects data submitted by
23 its dealerships in order to identify trends in its vehicles. It is Defendant BMW’s policy that when a
24 repair is made under warranty, the dealership must provide BMW with detailed documentation of the
25 problem and the fix employed to correct it. Dealerships have an incentive to provide detailed

26 _____
27 ² Akweli Parker, *How Car Testing Works*, HOWSTUFFWORKS.COM, [http://auto.howstuffworks.com/car-](http://auto.howstuffworks.com/car-driving-safety/safety-regulatory-devices/car-testing.htm)
28 [driving-safety/safety-regulatory-devices/car-testing.htm](http://auto.howstuffworks.com/car-driving-safety/safety-regulatory-devices/car-testing.htm) (“The idea behind car testing is that it allows
manufacturers to work out all the kinks and potential problems of a model before it goes into full production.”)
(last viewed June 24, 2021).

1 information to Defendant BMW because they will not be reimbursed for any repairs unless the
2 justification is sufficiently detailed.

3 46. Defendant BMW expressly warranted that the Class Vehicles' brakes would be free from
4 defects for a period of four (4) years or 50,000 miles, whichever comes first ("New Car Limited
5 Warranty" or "NCLW").

6 47. While the NCLW precludes coverage for noises that are normal and characteristic to the
7 product, the noise that originates from the Brake Defect is incorrectly labeled normal and is not the
8 noise the NCLW talks of. BMW says some squealing is inevitable, but noise that is normal and
9 characteristic of a vehicle is intermittent not excessive as is the case here. In fact, Plaintiff's brakes
10 have consistently squealed now for more than three years and there is no indication that they will ever
11 stop squealing.

12 48. Buyers, lessees, and other owners of the Class Vehicles were without access to the
13 information concealed by Defendant BMW as described herein, and therefore reasonably relied on
14 Defendant BMW's representations and warranties regarding the quality, durability, and other material
15 characteristics of their vehicles. Had these buyers and lessees known of the defect and the potential
16 danger, they would have taken steps to avoid that danger and/or would have paid less for their vehicles
17 than the amounts they actually paid or would not have purchased the vehicles.

18 **B. Defendant's Knowledge of Plaintiff's Personal Issue With the M Compound Brakes**

19 49. Plaintiff acquired the Subject Vehicle on November 4, 2020 from Valencia BMW, located
20 and doing business at 23435 Valencia Boulevard, Valencia, CA 91355.

21 50. Plaintiff made his decision to lease the Subject Vehicle, in part, in reliance on
22 representations communicated through Defendant BMW's advertisements and marketing campaigns
23 emphasizing the quality, reliability, and safety of Defendant BMW's vehicles.

24 51. Prior to leasing the vehicle, Plaintiff did not know that the Subject Vehicle suffered from the
25 Brake Defect and did not contemplate that the Subject Vehicle would cause extreme noise disturbances
26 while braking even when virtually brand new.

27 52. On November 18, 2020, Plaintiff brought the Subject to Pacific BMW located and doing
28 business at 800 South Brand Boulevard, Glendale, CA 91204, for repair. The Subject Vehicle had 595

1 miles on it at this time.

2 53. On December 30, 2020, Plaintiff again brought the Subject Vehicle to Pacific BMW for
3 repair. The Subject Vehicle had 2,413 miles on it at this time.

4 54. On January 12, 2021, Plaintiff again brought the Subject Vehicle to Pacific BMW for repair.
5 The Subject Vehicle had 2,826 miles on it at this time.

6 55. On January 19, 2021, Plaintiff again brought the Subject Vehicle to Pacific BMW for repair.
7 The Subject Vehicle had 3,218 miles on it at this time.

8 56. On February 18, 2021, Plaintiff again brought the Subject Vehicle to Pacific BMW for
9 repair. The Subject Vehicle had 5,124 miles on it at this time.

10 57. On February 22, 2021, Plaintiff again brought the Subject Vehicle to Pacific BMW for
11 repair. The Subject Vehicle had 5,193 miles on it at this time. Technician Reynaldo Soto inspected the
12 brakes and told Plaintiff that the squeaking is normal function of BMR performance brakes and referred
13 Plaintiff to the brochure on bulletin 34 10 19.

14 58. On April 6, 2021, Plaintiff again brought the Subject Vehicle to Pacific BMW for repair.
15 The Subject Vehicle had 6,136 miles on it at this time.

16 59. On April 27, 2021, Plaintiff again brought the Subject Vehicle to Pacific BMW for repair.
17 The Subject Vehicle had 7,084 miles on it at this time.

18 60. On June 8, 2021, Plaintiff again brought the Subject Vehicle to Pacific BMW for repair. The
19 Subject Vehicle had 8,044 miles on it at this time.

20 61. On July 9, 2021, Plaintiff again brought the Subject Vehicle to Pacific BMW for repair. The
21 Subject Vehicle had 9,439 miles on it at this time. Technician Edgar Arcos Valentin inspected the
22 brakes and told Plaintiff that the squeaking is normal function of BMR performance brakes and referred
23 Plaintiff to the brochure on bulletin 34 10 19.

24 62. The Subject Vehicle was within the term of the NCLW during all repairs.

25 63. After a reasonable number of repairs, Plaintiff is left with a vehicle that remains defective as
26 it still continues to make the loud, high-pitched squealing noise.

27 64. Plaintiff had at all times driven the Subject Vehicle in a reasonable, ordinary manner, and
28 not in any way which could cause premature failure of her brakes.

1 65. The loud, high-pitched squealing noise emitted when braking impacted Plaintiff’s driving
2 decisions, including, but not limited to, altering the use of his brakes in anticipation of the extremely
3 loud and distracting noise and in fear that the noise is symptomatic of a safety issue affecting the
4 performance and reliability of the braking system.

5 **C. The M Compound Brakes Are Defective**

6 66. The M Compound Brakes were not designed to emit a permanent loud, high-pitched
7 squealing noise. Whether on racetracks or country roads, the high-performance BMW M Compound
8 Brake and BMW M Carbon Ceramic Brake systems were designed to provide sporty dynamics in
9 BMW M cars. None of this, however, excuses the fact that the Subject Brakes are defectively
10 designed.

11 67. A design defect often stems from the manufacturing company’s desire to save time or cut
12 costs. The design of the brake system might use poor-quality parts, for example, or cut corners to save
13 money. If brakes have design flaws, they can be inherently dangerous to consumers even if no
14 manufacturing errors occur.

15 68. In this instance, the design defect is pertinent because it impairs the value of the vehicle.

16 69. In California, a vehicle is defective if it impairs the value of the vehicle. In other words, the
17 defect must diminish the vehicle’s resale value more than a significant amount below the typical resale
18 value for comparable vehicles.

19 70. Squeaky brakes can occur for many reasons. Most brake pads are designed to start making
20 noise when they are worn down to the last 25%. This squeaky or squealing noise can be an indicator
21 that it is time to have your brakes inspected and possibly replaced. Common causes of squeaky brakes
22 include: worn out pads, brake rotor rust, hard braking, or long-life brake pads.

23 71. While some brake noise is normal, there are times when it could be a cause for concern.
24 Unusual brake noise serves as a warning that one of the most essential systems in a vehicle is
25 malfunctioning.

26 72. Brake squealing can be caused by a number of things including but not limited to inferior
27 pads, an improper rotor, lack of adhesive, and/or a mistake in the assembly of the brakes during
28 manufacturer. For example, if the rotors are warped (meaning not perfectly flat) or severely worn, they

1 may produce squealing or squeaking sounds. Usually, warped rotors will produce a squeak, while
2 severely worn rotors will produce a scraping sound. The squealing noise can also originate from
3 defective brake pads as well, as it appears is the case here.

4 73. Here, the Subject Brakes make a loud squealing noise which generally speaking would
5 indicate to the consumer that the Subject Brakes need to be fixed because the brake pads are worn out.
6 The Subject Brakes, however, squeal for no apparent reason. This is problematic because consumers
7 rely on the squealing noises to indicate when the brakes need to be repaired. If the brakes always
8 squeal, then consumers will not know when the brakes need to be fixed.

9 74. One of the most common causes of brake squeak are worn out brake pads that need to be
10 repaired. Worn out brake pads are dangerous for two reasons. First, worn out brake pads and cause
11 extensive rotor damage which can be a costly expense. Second, if the consumer continues to drive with
12 squealing brakes because they are told that is normal, when in reality there is a major issue with the
13 brake pads, the consumer is at higher risk of getting into an accident because now the brakes do not
14 serve the purpose for which they were designed.

15 75. As such, the Subject Brakes are defective and make the loud squealing noises because they
16 are designed incorrectly.

17 76. Under the Transportation Recall Enhancement, Accountability and Documentation Act
18 (“TREAD Act”), 49 U.S.C. §§ 30101-30170, and its accompanying regulations, when a manufacturer
19 learns that a vehicle contains a safety defect, the manufacturer must properly disclose the defect. 49
20 U.S.C. §§ 30118(c)(1) & (2). If it is determined that the vehicle is defective, the manufacturer must
21 notify vehicle owners, purchasers, and dealers of the defect and must remedy the defect. 49 U.S.C. §§
22 30118(b)(2)(A) & (B).

23 77. Upon information and belief, Defendant BMW violated the TREAD Act by failing to timely
24 inform NHTSA of the Brake Defect and allowed the defective Class Vehicles to remain on the road.
25 These same acts and omissions also violated various state consumer protection laws as detailed below.

26 78. Defendant BMW has long known that the Class Vehicles have a defective braking system.
27 Defendant BMW has exclusive access to information about the defects through its dealerships, pre-
28 release testing data, warranty data, customer complaint data, and replacement part sales data, among

1 other sources of aggregate information about the problem. In contrast, the Brake Defect was not known
2 or reasonably discoverable by Plaintiff and Class Members prior to purchase and without experiencing
3 the Brake Defect firsthand.

4 79. Defendant BMW owes a duty to properly disclose the Brake Defect to Plaintiff and Class
5 Members because Defendant BMW has exclusive knowledge or access to material facts about the
6 Vehicles that are not known or reasonably discoverable by Plaintiff and Class Members until the defect
7 has manifested; and because Defendant BMW has actively concealed the Brake Defect from its
8 customers. Improperly operating brakes on a vehicle are per se a safety defect.

9 80. Defendant BMW's contention that the brakes are not defective puts Plaintiff, Class
10 Members, and other consumers at an extreme risk of danger in that they will rely on Defendant BMW's
11 notion that the brakes are normal and will not bring the Class Vehicles in for repair. In essence,
12 Plaintiff and Class Members will ignore the tell-tale signs that the brake system is failing because
13 Defendant BMW is telling them the noise is normal and there is no repair needed. As such, Plaintiff
14 and Class Members will continue to drive the Class Vehicles with the defective brake systems putting
15 themselves and others on the road in the zone of danger.

16 81. As a result of the Brake Defect, Plaintiff and Class Members, either consciously or
17 unconsciously, and in whole or in part, make driving decisions based upon the likelihood, duration, and
18 severity of the noise that is emitted when they use their brakes. This powerful and startling
19 environmental distraction while operating an automobile makes the Class Vehicles unreasonably
20 dangerous and unable to meet a minimum level of quality or safety.

21 82. As a result of the Brake Defect, Plaintiff and Class Members complain about the amount of
22 negative attention the noise from the Subject Brakes attracts while driving in crowded streets within
23 city limits. Additionally, the defect draws the attention of officers of law enforcement agencies, who
24 associate brake squeals with high-speed driving and racing.

25 83. As a result of the Brake Defect, Plaintiff and Class Members have been advised to apply the
26 brakes on their Vehicles in an extreme and unsafe manner in an effort to fix the Brake Defect.

27 84. As a result of their reliance on Defendant BMW's omissions, owners and/or lessees of the
28 Class Vehicles have suffered ascertainable loss of money, property, and/or loss in value of their

1 Vehicles.

2 85. Plaintiff and the Class have been damaged by Defendant BMW’s concealment, and non-
3 disclosure of the Brake Defect in the Class Vehicles, as they now have vehicles whose value has greatly
4 diminished because of Defendant BMW’s failure to timely and properly disclose the serious Brake
5 Defect.

6 86. Had Plaintiff and the Class Members known about the Brake Defect at the time of sale or
7 lease, as well as the associated costs related to the Brake Defect, Plaintiff and the Class Members
8 would not have purchased the Class Vehicles or would have paid less for them.

9 87. As a result of Defendant BMW’s practices, Plaintiff and Class Members purchased vehicles
10 they otherwise would not have purchased, paid more for those vehicles than they would have paid,
11 were subjected to an unreasonable risk to their safety, and unnecessarily paid and will continue to pay
12 repair costs as a result of the Brake Defect. They did not receive the benefit of their bargain.

13 **D. Defendant’s Knowledge of the Issue with the M Compound Brakes and The Attempt to**
14 **“Normalize” The Brake Defect**

15 88. Plaintiff is informed and believes and based thereon alleges that BMW acquired its
16 knowledge of the brake noise defect as of 2013, if not before, through sources not available to Class
17 Members, including but not limited to pre-release testing data, early consumer complaints about the
18 brake noise defect, testing conducted in response to those complaints, aggregate data from BMW
19 dealers, including dealer repair orders and high warranty reimbursement rates that can cost in the
20 thousand dollars for each class vehicle, and from other internal sources.

21 89. Plaintiff’s experience is by no means an isolated or outlying occurrence. Indeed, the internet
22 is replete with examples of blogs and other websites where consumers have complained of the exact
23 same Brake Defect within the Class Vehicles.

24 90. Consumer complaints also indicate Defendant BMW’s awareness of the defect and its
25 potential danger.

- 26 • “I have a 2020 M8 Convertible with 4,500 miles. After the initial 1,200 miles when I
27 slow brake (at the end of the stop) My brakes sound squeak like a bus. Took it to the
28

1 dealer twice and they said it was normal. \$150,000 car with squeaking brakes. Does
2 anyone else have this problem?”³

- 3 • “Lol are you new to M cars? It should not be normal but it happens more often than
4 needed. Have your dealer replace the pads and rotors if possible. This might fix the
5 problem but not likely. Or have them clean and lube it. Most people switch to higher
6 grade performance pads to fix the problem.”⁴
- 7 • “The same issue with noisy brakes occurs with the M5 (F90). There are many posts
8 over on the F90 forum. Besides the noisy brakes when slowing to a stop with the steel
9 brake pads they also produce more brake dust. I installed the Portfield RS-4 brake pads
10 (front and rear) last December and could not be happier. Brake squeal has been 99%
11 eliminated and brake dust has been greatly reduced. I do not track my M5 but I do
12 engage in spirited driving and have not experienced any reduction in braking / stopping
13 performance. Having owned a M3 (F80) for 4 years with the steel brake pads I never
14 experienced the noise of coming to stop like I did with the stock brake pads on my
15 M5.”⁵
- 16 • “I finally convinced BMW to replace both pad and drums!! It only lasted for about
17 1300 miles and the same noise is back. My next move is after market brake pads.”⁶
- 18 • “Yes, same thing is happening with mine. As others stated, it is very embarrassing. I
19 asked dealer and was told that because of the heavy amount of brake dust and the size
20 of the brakes, there is nothing that can be done except to brake later!???? Between the
21

22
23 ³ BIMMER FEST, *M8 and 8 Series*, (Nov. 9, 2020) (Discussion #1)
24 <https://f92.bimmerpost.com/forums/showthread.php?s=98d2f1e10f1b841d3e8dab10eb2b9406&t=1773637>.

25 ⁴ BIMMER FEST, *M8 and 8 Series*, (Nov. 9, 2020) (Discussion #2)
26 <https://f92.bimmerpost.com/forums/showthread.php?s=98d2f1e10f1b841d3e8dab10eb2b9406&t=1773637>.

27 ⁵ BIMMER FEST, *M8 and 8 Series*, (Nov. 20, 2020) (Discussion #10)
28 <https://f92.bimmerpost.com/forums/showthread.php?s=98d2f1e10f1b841d3e8dab10eb2b9406&t=1773637>.

⁶ BIMMER FEST, *M8 and 8 Series*, (Apr. 24, 2021) (Discussion #13)
<https://f92.bimmerpost.com/forums/showthread.php?s=98d2f1e10f1b841d3e8dab10eb2b9406&t=1773637>.

1 squeaks from the seats and the brakes, and rattles and crackling from the speakers, I
2 have to say that these little issues are starting to cause me to sour on the car a bit.”⁷

3 91. Apart from demonstrating how widespread the defect is, most of the online complaints
4 demonstrate that ordinary consumers were not informed, nor did they expect for their vehicles to
5 produce a loud, high-pitched squealing noise when braking. The online complaints also demonstrate
6 how the defect affects the safety, as well as the use and enjoyment of the Class Vehicles and the
7 annoyance that the defect causes to a reasonable person that purchased or leased a Class Vehicle.

8 92. Defendant BMW has a duty to properly disclose the Brake Defect and remedy the
9 associated out-of-pocket repair costs to Class Vehicle owners for many reasons including the fact that
10 the defect poses an unreasonable annoyance. BMW had and has exclusive knowledge or access to
11 material facts about the Class Vehicles and the Brake Defect that were and are not known or reasonably
12 discoverable by Plaintiffs and Class Members and has actively concealed the brake noise defect from
13 its customers.

14 93. Defendant BMW knew of the defects in their brakes, including the brakes’ likelihood of
15 producing sudden and prolonged squealing, before selling the Class Vehicles to Plaintiff and the Class
16 and installing them on their cars, but did not properly disclose this fact to Plaintiff and the Class prior to
17 their purchase. Instead, Defendant BMW classified the noise as “normal” and tried to shrug off all
18 responsibility associated with the Brake Defect.

19 94. Through several Technical Service Bulletins (“TSB”) BMW has admitted that the loud,
20 squealing noise is normal and not an issue. There is no reason, however, that brakes that are “normal”
21 should squeal. Brakes are not designed that way. If it was, then EVERY brake on the market would be
22 squealing.

23 95. The following TSB indicates that BMW was aware of the defect and insist that such defect
24 is in fact normal. Upon information and belief, most often TSBs are only in the possession and control
25 of Defendant BMW and its authorized service centers. Discovery in this matter should reveal whether
26 more TSBs related to the Brake Defect have been issued and when exactly Defendant BMW first
27 learned of this pervasive problem in the Class Vehicles.

28 ⁷ 6Post, *BMW 6-Series Forum M6 (F12/F13)* (Jan. 28, 2013) <https://www.6post.com/forums/showthread.php?t=796066>.

1 96. **TSB #B341019** (November 1, 2019): “Inform the customer during a consultation that the M
2 Compound (standard equipment) and M Carbon Ceramic (optional) brakes are high-performance brake
3 systems which are designed for sport, dynamic driving styles. As a side effect of the highest possible
4 brake performance, customers are likely to hear noises due to the extremely resilient materials. In the
5 same conversation, inform the customer that his/her braking performance can help ensure that the
6 noises do not occur or disappear quickly.”

7 97. According to this TSB, it takes the M Compound Brakes approximately 310 miles until the
8 running-in is completed and the full braking effect of the brake system is reached. During this phase,
9 drive with caution as otherwise the brake can make squeaking noises. Those will disappear after a
10 certain operating period.⁸

11 98. Plaintiff took the vehicle in for repair several times regarding the squeaky brakes. Most
12 recently, Plaintiff took the vehicle in for repair after driving the vehicle 9,439 miles. This is roughly
13 9,000 miles more than BMW claims it takes for the M Compound Brakes to be broken in.

14 99. There is no reason the M Compound Brakes should continue to make the loud squealing
15 noises after the breaking in period.

16 100. Defendant BMW’s attempt to “normalize” the Brake Defect is extremely problematic and a
17 huge part of the problem as to why the Class Vehicles are not safe and why they are not of the quality
18 that a buyer would reasonably expect.

19 101. By classifying the Brake Defect as normal, Defendant BMW is putting Plaintiff and Class
20 Members, other drivers, third parties, and pedestrians on the roads in great danger. The loud, high-
21 pitched squealing noise emitted when braking impacts Plaintiff’s and Class Members’ driving
22 decisions, including, but not limited to, altering the use of their brakes in anticipation of the extremely
23 loud and distracting noise and in fear that the noise is symptomatic of a safety issue affecting the
24 performance and reliability of the braking system. The sudden, loud, and prolonged squealing is
25 disturbing and intrusive to the driver, passenger(s), as well as to other people and even animals in the
26 vicinity, including children and the elderly who are often particularly vulnerable to the sudden loud,

27 _____
28 ⁸ M Skills Vol. 7, *High Performance Braking Systems for BMW M* (Jul. 22, 2019) <https://www.bmw-m.com/en/topics/magazine-article-pool/high-performance-braking-systems-from-bmw-m.html>

1 high-pitched squealing noise s that may distract them from other hazards on or near roadways

2 102. Had Defendant BMW, Valencia BMW, and Pacific BMW properly informed Plaintiff and
3 the Class about the Brake Defect, Plaintiff and the Class would not have purchased the Vehicles from
4 Defendant BMW, Valencia BMW, and Pacific BMW, but rather would have purchased different
5 vehicles. Defendant BMW, Valencia BMW, and Pacific BMW knowingly sold a defective product to
6 Plaintiff and the Class, without properly disclosing such defect, and now refuse to provide an adequate
7 long-term remedy, repair, or restitution for their actions.

8 103. Defendant BMW, Valencia BMW, and Pacific BMW's conduct described herein constitutes
9 an omission of material fact and a deceptive business practice in violation of the California statutory
10 law and California common law.

11 **E. The Brake Defect Has Harmed Plaintiff and The Class**

12 104. The Brake Defect has caused injury to Plaintiff and the Class.

13 105. A vehicle purchased, leased, or retained with a material defect is worth less than the
14 equivalent vehicle leased, purchased, or retained without the defect.

15 106. Purchasers and lessees paid more for the Vehicles, through a higher purchase price or higher
16 lease payments, than they would have had the Brake Defect been properly disclosed. Plaintiff and the
17 Class overpaid for their Vehicles. Because of the misrepresentation regarding the Brake Defect,
18 Plaintiff and the Class did not receive the benefit of their bargains.

19 107. Class Members who purchased new or used Class Vehicles overpaid for their vehicles as a
20 direct result of Defendant BMW's ongoing violations of the TREAD Act and state consumer protection
21 laws by failing to disclose the existence of the Brake Defect.

22 108. Plaintiff and the Class have been denied the use and enjoyment of the Vehicles, suffering
23 distractions by driving Vehicles that emit loud and disturbing squealing noises when the brakes are
24 applied, and being advised by Defendant BMW, Pacific BMW, and/or its agents to drive the Vehicles
25 in an unsafe manner.

26 109. The sudden, loud, and prolonged squealing is disturbing and intrusive to the driver,
27 passenger(s), as well as to other people and animals in the vicinity, including children and the elderly
28 who are often particularly vulnerable to the sudden loud, high-pitched squealing noise s that may

1 distract them from other hazards on or near roadways.

2 110. The Class Vehicles were worth less than they would have been but for Defendant BMW's
3 and Pacific BMW's failure to properly disclose and remedy the Brake Defect.

4 **FACTS COMMON TO ALL CAUSES OF ACTION**

5 111. BMW develops, designs, manufactures, markets, advertises, distributes, and sells various
6 models of vehicles, including the Class Vehicles identified herein that were manufactured and/or
7 equipped with Compound Brakes.

8 112. Plaintiff is informed, believes, and based thereon alleges the Class Vehicles contain a brake
9 system comprised of defective components resulting in the loud, high-pitched squealing noise.

10 113. As a part of BMW's advertising campaign, through its controlled dealership network, BMW
11 distributed to the Class members numerous pamphlets, brochures, and specification sheets which
12 emphasized or focused on the quality and safety of the Class Vehicles here at issue.

13 114. The written materials distributed and disseminated by Defendant BMW in their advertising
14 campaign(s) created express warranties as to the reliability, excellence, and safety of the Class Vehicles
15 at issue and that the components of such vehicles are free from inherent risk of failure, particularly with
16 regard to use and safety. Such warranty was breached by the existence of the defect in the Class
17 Vehicles at issue and BMW's failure to properly warn consumers of its existence.

18 115. These advertisements, due to the national scope and extent of Defendant's multi-media
19 campaign, were uniformly made to all members of the Class. Class members' acts of leasing and/or
20 purchasing the Class Vehicles were consistent with basing such decisions upon such advertisements,
21 and thus formed part of the basis for the transaction at issue.

22 116. Plaintiff is informed, believes, and based thereon alleges that the loud, high-pitched
23 squealing noise generated by the brake system on the Class Vehicle is due, in part, to the defective
24 brake components installed on the Class Vehicles.

25 117. At all relevant times, BMW has been aware of the herein described defect in the brake
26 system on the Class Vehicles and has consciously disregarded the rights and safety of Plaintiff,
27 members of the Class, and the general public in that numerous complaints about the loud, high-pitched
28 squealing noise and defective brake system in the Class Vehicles have been lodged with BMW. Despite

1 said knowledge, BMW, however, has failed to notify owners and lessees of the Class Vehicles of the
2 defects associated with their continued operation as alleged herein.

3 118. At all relevant times, BMW has not fully disclosed to purchasers or lessees of the Class
4 Vehicles, information regarding the high incidence of the loud, high-pitched squealing noise generated
5 by the brakes of the Class Vehicles as detailed herein, nor has it disclosed the true facts that BMW
6 either knew or recklessly or negligently disregarded the existence and reasons for this inherent defect
7 for years.

8 119. Plaintiff is further informed, believes, and based thereon alleges that in not correcting or
9 warning of this defect, BMW has violated its own internal procedures, which require prompt
10 investigation and thorough analysis of all potential defects and notification to vehicle owners and
11 lessees describing the defect, as well as instructions relating to the correction of the defect if a defect is
12 determined to exist.

13 120. Defendant BMW's conduct, as fully described herein, is in violation of Cal. Civ. Code §
14 1795.90 *et seq.* (California's Secret Warranty Law) which was enacted to abolish "secret" warranties
15 and practices as alleged herein. The term "secret warranty" is used herein to describe the practice by
16 which an automaker, such as Defendant BMW, establishes a policy to pay for the repair of that defect
17 without making the defect or the policy known to the public at large. A secret warranty is usually
18 created when the automaker, such as BMW, realizes that a large number of its customers are
19 experiencing a defect not otherwise covered by a factory warranty, and decides to offer warranty
20 coverage to individual customers only if the customer complains about the problem first. The warranty
21 is therefore considered "secret" because owners are not notified of it. Instead, the automaker usually
22 issues a service bulletin to its regional officers and/or dealers on how to deal with the defect. Because
23 owners are kept in the dark about the cost-free repair, the automaker only has to reimburse those
24 customers who complain loudly enough. The quiet consumer instead pays to fix the defect her or
25 herself.

26 121. Section 1795.92 of the California Secret Warranty Law imposes several duties on
27 automakers, including BMW, each of which is designed to do away with secret warranties.

28 122. Specifically, the California Secret Warranty Law requires automakers to notify all eligible

1 owners and lessees (“consumers”) by first class mail, within 90 days of adoption, whenever they enact
2 “any program or policy that expands or extends the consumer’s warranty beyond its stated limit or
3 under which [the] manufacturer offers to pay for all or any part of the cost of repairing, or to reimburse
4 consumers for all or any part of the cost of repairing, any condition that may substantially affect vehicle
5 durability, reliability, or performance[.]”

6 123. The California Secret Warranty Law also requires automakers, including BMW, to provide
7 the New Motor Vehicle Board with a copy of the notice described in the preceding paragraph, so the
8 public can view, inspect, or copy that notice.

9 124. Additionally, the California Secret Warranty Law requires automakers, including BMW, to
10 advise their dealers, in writing, of the terms and conditions of any warranty extension, adjustment, or
11 reimbursement program.

12 125. The California Secret Warranty Law also requires an automaker, such as BMW, to
13 “implement procedures to assure reimbursement of each consumer eligible under and adjustment
14 program who incurs expenses for repair of a condition subject to the program prior to acquiring
15 knowledge of the program.”

16 126. Plaintiff is informed, believes, and based thereon alleges that BMW has, when the
17 customers have complained loudly enough, offered to pay for all or any part of the cost of defective
18 brake replacement or repair for the Class Vehicles and therefore, BMW is obligated to comply with the
19 provisions of the California Secret Warranty Law, but has not done so. Moreover, by extending its new
20 car warranty to cover brake system replacement or repair to some customers and not others, BMW has
21 expanded or extended the consumer’s express warranty beyond its stated limit.

22 127. Specifically, BMW did not notify Plaintiff, or any other owner or lessee, of a Class Vehicle
23 of their right to seek a free repair, replacement, or retrofit of the brake system, or to be reimbursed for
24 the cost of repairing the brake system in these vehicles.

25 128. It was only after a class vehicle owners or lessors complained vehemently that BMW made
26 efforts to repair Class Vehicle’s brake system or replace it during each complaint thereof.

27 129. BMW, by and through its authorized dealerships, engaged in a nationwide conspiracy to
28 cover up the Class Vehicles’ brake defect by systematically refusing to document visits by Plaintiff and

1 other Class Members with the subject complaint.

2 130. By failing to document these visits and provide repair orders BMW systematically deprived
3 Plaintiff and other Class Members of their lemon law rights by distorting the Class Vehicles' repair
4 histories.

5 131. At all times relevant, Plaintiff is informed, believes, and based thereon allege that BMW has
6 not, and did not, comply with the dealer notification provisions of the California Secret Warranty Law,
7 nor has BMW sent a copy of a Service Bulletin to the New Motor Vehicle Board.

8 132. At all times relevant, Plaintiff is informed, believes, and based thereon alleges that BMW
9 has refused to provide the free repair, replacement, or retrofitting of the brake system to owners of the
10 affected vehicles and has refused to reimburse consumers who have paid to have the brake systems
11 repaired in their vehicles except for some who complained enough.

12 133. Knowing the truth and motivated by profit and market share, Defendant BMW, Valencia
13 BMW, and Pacific BMW have knowingly and willfully engaged in the acts and/or omissions to mislead
14 and/or deceive Plaintiff and others similarly situated.

15 134. The defective brake system on the Class Vehicles has resulted, and will continue to result, in
16 significant loss and damage to the Class Members, including but not limited to, diminished use and
17 reduced fair market value.

18 135. Despite the Defendant BMW's, Valencia BMW's, and Pacific BMW's express
19 representations that the Class Vehicles would likely retain their value at a rate higher than competing
20 vehicles and that the vehicles are "reliable," this has simply not occurred. As a result of the problems
21 with the Class Vehicles as described herein and the extremely loud brake squeal noise, the value of the
22 Class Vehicles has been significantly diminished. On the Internet and in other media outlets, hundreds
23 of people have reported the problems they have experienced with their vehicles. There is little doubt
24 that these reports have seriously diminished the resale value of the Class Vehicles. Given the high value
25 and the luxury status of Class Vehicles, the fact that these vehicles produce extremely loud, high-
26 pitched squealing noise s when braking under normal conditions diminishes the value of the vehicles
27 more than the same problems would in lower valued vehicles.

28 136. As a result of the Brake Defect, Plaintiff and all other Class Members suffered economic

1 injury because they bought a defective vehicle they otherwise would not have bought and/or paid more
2 for the Class Vehicle than they should have because the defect depreciated the value of the Class
3 Vehicles. Plaintiff and other Class Members have also spent money to have the brakes of the vehicles
4 repaired or replaced much more frequently than conventional counterparts.

5 137. This action seeks financial compensation for members of the Class in connection with their
6 purchase of the Class Vehicles. Plaintiff does not seek: (i) damages for personal, bodily, or emotional
7 injury or wrongful death; or (ii) damages for becoming subject to liability or legal proceedings by
8 others.

9 **TOLLING OF STATUTE OF LIMITATIONS**

10 138. Any applicable statutes of limitation have been equitably tolled by BMW's affirmative acts
11 of fraudulent concealment, suppression, and denial of the facts alleged herein. Such acts of fraudulent
12 concealment include but are not limited to intentionally covering up and refusing to publicly disclose
13 critical internal memoranda, design plans, studies, Notices of Action, Problem Detail Reports and other
14 reports of failure and injury, as well as affirmative misrepresentations made to NHTSA and people who
15 called or otherwise contacted BMW attempting to identify and resolve this defect. Through such acts of
16 fraudulent concealment, BMW was able to actively conceal from the public for years the truth about the
17 defective design and manufacture of the brake system on the Subject Vehicles, thereby tolling the
18 running of any applicable statute of limitations.

19 139. Defendants are estopped from relying on any statutes of limitation because of their
20 misrepresentation and fraudulent concealment of the true facts, as described herein, concerning the
21 brake system on the Subject Vehicles. Defendants were at all times aware of the true nature of the
22 defects as described herein but at all times continued to manufacture and market the Subject Vehicles
23 despite this knowledge.

24 **FIRST CAUSE OF ACTION**

25 FRAUD AND DECEIT

26 *(Against All Defendants)*

27 140. Plaintiff re-alleges and incorporates by reference as fully set forth herein all paragraphs of
28 Plaintiff's Complaint for Damages.

1 141. California Civil Code § 1710 identifies four kinds of fraud: (1) intentional
2 misrepresentation, (2) concealment, (3) false promise, and (4) negligent misrepresentation.

3 142. Intentional misrepresentation occurs when a defendant represents to another that a fact was
4 true; the representation was actually false; the defendant knew the representation was false (or was
5 reckless about its truth); the defendant intended the other person to rely on the statement; the other
6 person did rely on the statement; the other person was harmed by the reliance; or the other person's
7 reliance on the defendant's representation was a substantial factor in causing the harm suffered. See
8 Civ. Code, § 1710(1); *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.

9 143. The particularity requirement for fraud requires the pleading of facts showing how, when,
10 where, to whom, and by what means the representations were made. (*Stansfield v. Starkey* (1990) 220
11 Cal.All.3d 59, 73.) Every element of fraud herein with specificity have been plead as follows:

12 a. How: On November 4, 2020, Plaintiff visited Valencia BMW with the intent to
13 acquire a vehicle for personal use. Plaintiff spoke with Valencia BMW's Client
14 Sales Rep Katie Durand and Finance Director Nikhil Ahuja, who were following
15 the fraudulent scheme designed by Defendant BMW to misrepresent the Brake
16 Defect. The General Sales Manager and the Finance Director at Valencia BMW
17 verbally represented to Plaintiff that the Subject Vehicle was free from defects, that
18 it was safe, reliable, and fit for its ordinary purpose. The representatives from
19 Valencia BMW said nothing about the loud, high-pitched squealing noises the Class
20 Vehicles make. In fact, they continued to make promises that the Compound Brakes
21 were exceptional high-performance brakes and that the Subject Vehicle was safe,
22 reliable, and fit for its ordinary purpose.

23 b. When: At the time of leasing the Subject Vehicle (on November 4, 2020).
24 Misrepresentations were further made via the TSB on November 1, 2019.

25 c. Where: The oral discussions about the safety, quality, and reliability of the Subject
26 Vehicle took place at Valencia BMW, located at 23435 Valencia Boulevard,
27 Valencia, CA 91355.

28 d. To Whom: The statements were made to Plaintiff and Class Members by the

1 representatives at Valencia BMW and Defendant BMW. The statements were
2 confirmed by representatives at Pacific BMW when the Plaintiff took the Subject
3 Vehicle in for repair.

- 4 e. What Means: The discussions were made by use of English language, simple words,
5 specifically Plaintiff was told by the representatives at Valencia BMW that the
6 Subject Vehicle was safe, reliable, and fit for its ordinary purpose and that the
7 Compound Brakes were exceptional high-performance brakes. Defendant BMW
8 also made these misrepresentations in the TSBs they released about the brakes.

9 144. The requirement of specificity in a fraud action against a corporation requires the plaintiff
10 to allege the names of persons who made the allegedly fraudulent representations, their authority to
11 speak, to whom they spoke, what they said or wrote, and when it was said or written. (Tarmann v.
12 State Far Mut. Auto. Ins. Co. (1991) 2 Cal.App.4th 153, 157.)

- 13 a. Names of Persons: Plaintiff spoke with Valencia BMW's Client Sales Rep Katie
14 Durand and Finance Director Nikhil Ahuja ("Finance Director"), who were
15 following the fraudulent scheme designed by Defendant BMW. The descriptions of
16 the Class Vehicles, which misrepresent the high-performance brakes as normal,
17 have been written and designed by BMW, by and through its team of marketing
18 personnel, including, but not limited to, Adam Sykes (Vice President of Corporate
19 Communications) and Uwe Dreher (Vice President of Marketing). Other key
20 members include Bernhard Kuhn (President and Chief Executive Officer of BMW
21 NA) and David Duncan (Department Head, Corporate and Special Sales).

- 22 b. Authority to Speak: The representatives from Valencia BMW are responsible for
23 speaking with and explaining the BMW vehicles to consumers. Their authority to
24 speak is self-evident in their job titles. Defendant BMW's online and TV
25 advertisements all invite consumers to visit a BMW authorized dealership and speak
26 with a representative regarding their vehicles. The representatives at Valencia
27 BMW were hired to effectuate the plot as designed by BMW's executives (listed
28 previously) to intentionally misrepresent the Brake Defect as normal. The

1 executives, by the very nature of their role within Defendant’s company, had the
2 authority to design and implement the fraudulent representations regarding the
3 Compound Brakes, implement procedures to train dealership personnel, and did do
4 so in fact.

5 c. To Whom They Spoke: The representatives from Valencia BMW spoke with
6 Plaintiff directly.

7 d. What they Said or Wrote: Defendant BMW represented to Plaintiff and the Class
8 that the expensive high-performance brakes are normal and that the Class Vehicles
9 are safe, reliable, and fit for their ordinary purpose. In the TSB, Defendant BMW
10 said the noise is normal and generally not an indication of a malfunction. The
11 representatives at Valencia BMW and Pacific BMW in accordance with the
12 messages from Defendant BMW backed up these representations.

13 e. When It Was Said or Written: At the time of leasing the Subject Vehicle (on
14 November 4, 2020). Misrepresentations were further made via the TSB on
15 November 1, 2019.

16 145. Moreover, in line with *Committee on Children’s Television, Inc. v General Foods Corp.*, 35
17 Cal.3d 197, 216 (1983), Defendants necessarily possess full information concerning the facts of the
18 herein controversy since Defendants designed the defective brake system, labeled the Brake Defect as
19 normal, trained all personnel on how to discuss the brake squeal when the vehicles are brought in for
20 repair, and advertised the Class Vehicles to the public as safe, reliable, and fit for their ordinary
21 purpose. Therefore, despite the heightened pleading standard in a fraud case, in the present matter
22 Defendants are well aware of the entire chain of events which has culminated in this lawsuit.

23 146. “The elements of fraud, which give rise to the tort action for deceit, are (a)
24 misrepresentation (false representation, concealment, or nondisclosure); b) knowledge of falsify (or
25 ‘scienter’); c) intent to defraud, i.e., to induce reliance; d) justifiable reliance; and e) resulting
26 damage.” (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.)

27 a. Here, Defendant BMW misrepresented the quality of the brake in the Class
28 Vehicles. Defendant BMW fraudulently labeled the excessive brake noise as normal

1 and told Plaintiff and the Class that there are no problems with the Class Vehicles
2 and that the Vehicles are safe, reliable, and fit for their ordinary purpose. Valencia
3 BMW and Pacific BMW, under the guidance of Defendant BMW and in accordance
4 with the TSB, told Plaintiff that the squeal was normal and nothing to worry about.

5 b. Defendant BMW, Valencia BMW, and Pacific BMW knew that their
6 representations were false and acted with the conscious and reckless disregard to the
7 truth or falsity of such misrepresentations, promises, and wrongful acts.

8 c. Defendant BMW, Valencia BMW, and Pacific BMW intended to induce Plaintiff
9 and Class Members to rely on their misrepresentations so that Plaintiff and Class
10 Members would purchase the Class Vehicles and pay the extra cost for the Subject
11 Brakes. The only way to induce the lease and the sale of the Subject Brakes was to
12 conceal the Brake Defect and misrepresent to consumers that the brake squeal is
13 normal.

14 d. Plaintiff had no reason to know that the Class Vehicles were defective and as such
15 her reliance was justifiable. To show reasonable reliance, a plaintiff must show: “1)
16 the matter was material in the sense that a reasonable person would find important
17 to determine how he or she would act...’ and 2) it was reasonable for plaintiff to
18 have relied on the misrepresentation.” (*Hoffman v. 162. North Wolfe LLC* (2014)
19 228 Cal.App.4th 1178, 1194.) “Although a plaintiff’s negligence in failing to
20 discover the falsity of the statement or the suppressed information is not a defense
21 to fraud..., a plaintiff’s particular knowledge and experience should be considered
22 in determining whether the reliance upon the misrepresentation or nondisclosure
23 was justified.” (*Ibid.*).

- 24 • A reasonable person wants to know whether their brakes are safe, reliable,
25 and fit for their ordinary purpose. Defendant BMW, Valencia BMW, and
26 Pacific BMW, however, continue to represent that the brakes are normal,
27 and that they are not defective. Plaintiff did her own research and asked the
28 representatives at Valencia BMW if the Subject Vehicle was worth the

1 purchase. Defendant BMW, Valencia BMW, and Pacific BMW used their
2 status as experts in the industry to their advantage and led Plaintiff and the
3 Class to falsely believe that the Class Vehicles are exceptional, free from
4 defects, safe, reliable, and fit for their ordinary purpose. This is clearly not
5 true, but unfortunately Plaintiff and the Class did not learn about this until
6 after they already purchased/leased the Vehicle and experienced the dangers
7 of the Brake Defect firsthand. After all these assurances, it is no surprise that
8 Plaintiff was confused and upset when the Vehicle began to make loud,
9 high-pitched squealing noises for no apparent reason.

10 e. A plaintiff asserting fraud by misrepresentation must establish a complete causal
11 relationship between the alleged misrepresentations and the harm claimed to have
12 resulted therefrom. (*Rossberg v. Bank of America, N.A.* (2013) 219 Cal.App.4th
13 1481, 1499.) “This requires a plaintiff to allege specific facts not only showing he or
14 she actually and justifiably relied on the defendant’s misrepresentations, but also
15 how the actions he or she took in reliance on the defendant’s misrepresentations
16 caused the alleged damages.” (*Ibid.*) But for the representations that the Subject
17 Vehicle was free from defects, Plaintiff and Class Members would not have
18 acquired the Class Vehicle.

19 147. The acts and omissions of Defendant BMW, by and through their joint representatives the
20 General Sales Manager and the Finance Director at Valencia BMW, as complained of herein, were
21 extreme and outrageous and Defendant BMW, Valencia BMW, and Pacific BMW are guilty of malice,
22 oppression, and fraud in that its conduct was despicable, subjected Plaintiff to cruel and unjust
23 hardship, and was carried on with a willful and conscious disregard for Plaintiff’s rights or health for
24 the sole purpose and intent of causing Plaintiff’s damages and losses. Plaintiff is therefore entitled to
25 recover an award of punitive damages for the sake of example and by way of punishing Defendant
26 BMW, Valencia BMW, and Pacific BMW.

27 148. As such, Plaintiff’s justifiable and reasonable reliance on the intentional misrepresentations
28 made by Defendant BMW and the representatives at Valencia BMW and Pacific BMW resulted in

1 substantial damage.

2 149. As a direct and proximate result of the acts and omissions of Defendant BMW, Valencia
3 BMW, and Pacific BMW, Plaintiff has suffered damages for which relief is sought herein.

4 150. Plaintiff's suffered damages and was harmed when he relied on Defendant BMW, Valencia
5 BMW, and Pacific BMW's false representations that the Brake Defect is normal and that the Class
6 Vehicles are safe, reliable, and fit for their ordinary purpose. The full extent of the damages goes
7 beyond the fee for purchasing the Class Vehicle. Damages include the entire cost of the lease paid by
8 Plaintiff, the depreciation in value of the Subject Vehicle, the costs of replacing the Compound brake
9 system, the costs of a replacement vehicle, and emotional distress.

10 151. The harm to Plaintiff was not otherwise inevitable or due to unrelated causes because
11 Plaintiff would simply not have leased the vehicle at all.

12 **SECOND CAUSE OF ACTION**

13 **BREACH OF EXPRESS WARRANTY**

14 *(Against Defendant BMW)*

15 152. Plaintiff re-alleges and incorporates by reference as fully set forth herein all paragraphs of
16 Class Action Complaint for Damages.

17 153. Plaintiff is an intended third-party beneficiary of contracts between Defendant BMW and
18 its authorized dealerships, representatives, and agents. Plaintiff purchased the Subject Vehicle from a
19 BMW authorized dealership, representative, and/or agent. As such, Plaintiff was the intended (and not
20 incidental) third party beneficiary of any and all agreements entered into among Defendant and its
21 authorized dealerships, representatives, and agents, and any warranties, express or implied, flowing
22 therefrom. Plaintiff has had sufficient direct dealings with either BMW or its agents (dealerships) to
23 establish privity of contract.

24 154. Under California law, "[a]ny affirmation of fact or promise made by the seller to the buyer
25 which relates to the goods and becomes part of the basis of the bargain creates an express warranty that
26 the goods shall conform to the affirmation or promise." Cal. Comm. Code § 2313(1)(a). Additionally,
27 "[a]ny description of the goods which is made part of the basis of the bargain creates an express
28 warranty that the goods shall conform to the description." Id. § 2313(1)(b).

1 155. BMW's New Car Limited Warranty ("NCLW"), which provides coverage for all BMW
2 vehicle systems up to four years or 50,000 miles, whichever occurs first, is given to the owner of a
3 BMW vehicle and sold by an authorized BMW dealer in the United States. The NCLW covers any
4 repair or replacement to correct a defect in the manufacturer's material and workmanship (i.e., a
5 mechanical defect). An authorized BMW dealer will repair the defective part or replace it free of
6 charge.

7 156. BMW's written representations in the warranty manual(s), sale brochures, pamphlets, and
8 other writings disseminated by BMW in the promotion, marketing, and sales of the Class Vehicles
9 constitutes an express warranty and/or warranties to Plaintiff and the Class Members.

10 157. BMW's advertising campaign(s) focused on its vehicles being free of defects, including but
11 not limited to, that "there is no substitute" to the Class Vehicles being as printed in their product
12 brochures, pamphlets, and media, and which focused on excellence, reliability, and safety of these
13 vehicles. As such, BMW expressly warranted that such vehicles were free from inherent and latent
14 defects.

15 158. The elements of a claim for breach of express warranty under Uniform Commercial Code
16 ("UCC") 2-313 are as follows: (a) there was a sale of goods; (b) there was an affirmation of fact or
17 promise about the quality of the goods, or a sample or model was provided; (c) the promise or
18 affirmation (or sample or model) was part of the basis of the bargain; (d) the goods were not as
19 warranted; and (e) an economic loss or personal injury occurred as a result of the breach of warranty.

20 159. BMW's written representations in the warranty manual(s), sale brochures, pamphlets, and
21 other writings disseminated by BMW in the promotion, marketing, and sales of the Subject Vehicles
22 constitutes an express warranty and/or warranties to Plaintiff and the Class Members.

23 160. BMW's advertising campaign(s) focused on its vehicles being free of defects, including but
24 not limited to, the Subject Vehicles being "truly exceptional," "biggest, fastest, most fuel-efficient car
25 in its class," "named one of the '10 Best Engines'," "dialed to perfection," "equipped to deliver
26 flawlessly," and "Best in Test" as printed in their product brochures, pamphlets, and media, and which
27 focused on excellence, reliability, and safety of these vehicles. As such, BMW expressly warranted that
28 such vehicles were free from inherent and latent defects.

1 161. The Subject Vehicles are manufactured goods and at all times relevant, Defendant
2 manufactured, sold, and placed these products into the stream of commerce. The transactions by which
3 the Class members purchased the Subject Vehicles were transactions for the sale of goods and at all
4 times relevant, Defendant BMW was in the business of manufacturing, selling, and/or distributing
5 these goods for sale throughout the United States, including California.

6 162. BMW, through its the warranty manual(s), sales brochures, pamphlets, and other writings
7 guaranteed that the vehicles were free from inherent and latent defects.

8 163. For each of the Subject Vehicles at issue, BMW issued a standardized express written
9 warranty which covers the base vehicle, including without limitation, the brake system, and warranted
10 that the vehicles were free of defects. Applying any BMW warranty limitation period to avoid the need
11 to repair this particular defect would be unconscionable in that, *inter alia*, the vehicles at issue contain
12 an inherent latent defect which could arise at any time, the defect was already present at the time of
13 delivery, BMW was either aware of or consciously and/or recklessly disregarded this defect which
14 could not be discovered by Plaintiff and members of the class at the time of such purchase or lease, and
15 purchasers or lessees lacked any meaningful choice with respect to the warranty terms.

16 164. The guarantee that the Subject Vehicles were free from inherent and latent defects was part of
17 the basis of bargain by and between consumers and BMW.

18 165. Defendants have and continue to breach said express warranties in the following ways, among
19 others as follows:

- 20 a. At the time of manufacture and lease/sale of the Subject Vehicles, there existed an inherent,
21 latent defect in the brake system;
- 22 b. The brake system on the Subject Vehicles was not free from defects;
- 23 c. The brake system on the Subject Vehicles was and is at all relevant times defective;
- 24 d. BMW has refused to take responsibility for the defective brake system on the Subject
25 Vehicles, denying all liability or even the existence of the defect as described herein;
- 26 e. BMW has engaged in a nationwide conspiracy to cover up the Subject Vehicles' brake
27 noise defect by systematically refusing to document visits by Plaintiff and other Class
28 Members to authorized dealerships with the subject complaint;

- 1 f. By failing to document these visits and provide repair orders, BMW has systematically
2 deprived Plaintiff and other Class Members of their lemon law rights by distorting the
3 Subject Vehicles' repair histories;
- 4 g. The brake system is not unequivocal or uncompromising as represented by BMW since the
5 brake systems were defective at the time of manufacture, sale, and delivery to Plaintiff and
6 others similarly situated and they were making an unreasonably loud, high-pitched
7 squealing noise which forced Plaintiff and others similarly situated to have the brakes of
8 the vehicles repaired or replaced much more frequently than conventional counterparts; and
- 9 h. Class Vehicles are simply not high performance brakes as warranted by BMW since the
10 defective brake systems make an unreasonably loud, high-pitched squealing noise when
11 braking which causes an impression of the Class Vehicles being dangerous and
12 demonstrates that the Class Vehicles are defective.

13 166. Plaintiff brought the Subject Vehicle to a BMW dealership for service ten (10) times. On
14 February 22, 2021 and July 9, 2021, Plaintiff was specifically told that the brakes are not defective and
15 that the squeaking is normal function of BMR performance brakes and referred Plaintiff to the brochure
16 on bulletin 34 10 19.

17 167. Plaintiff KARAMANOUKIAN provided initial notice to Defendant BMW of their breach as
18 alleged herein on March 28, 2021.

19 168. To date Defendants have failed to remedy their breach pursuant to Plaintiff's notices.

20 169. Plaintiff and all other Class Members suffered economic injury because they bought a
21 defective vehicle they otherwise would not have bought and/or paid more for the Subject Vehicle than
22 they should have because the defect depreciated the value of the Subject Vehicles. Plaintiff and other
23 Class Members have also spent money to have the brakes of the vehicles repaired or replaced much
24 more frequently than conventional counterparts.

25 170. As a result of Defendants' breach of express warranties as set forth above, Plaintiff and others
26 similarly situated have suffered and will continue to suffer damages in an amount to be determined at
27 trial.

28 ///

1 **THIRD CAUSE OF ACTION**

2 **BREACH OF IMPLIED WARRANTY**

3 *(Against Defendant BMW)*

4 171. Plaintiff re-alleges and incorporates by reference as fully set forth herein all paragraphs of
5 Class Action Complaint for Damages.

6 172. A warranty that the Class Vehicles and Compound Brakes were in merchantable condition
7 and fit for their ordinary purpose was implied by law in the instant transaction.

8 173. Implied warranties are promises from the seller to the buyer that the product, if used as it is
9 supposed to be used, is fit for that purpose or of an average quality. See U.C.C. 2-315 and 2-314.

10 174. The elements of a claim for breach of the implied warranty of merchantability under § 2-314
11 are: (a) there was a sale of goods; (b) the seller was a merchant with respect to goods of that kind; (c)
12 the goods were not “merchantable” at the time of sale; and (d) an economic loss or personal injury
13 occurred as a result of the breach of warranty.

14 175. The Subject Vehicles are manufactured goods. The transactions by which the Class
15 members purchased the Subject Vehicles were transactions for the sale of goods.

16 176. At all times relevant, Defendant BMW was in the business of manufacturing, selling, and/or
17 distributing these goods for sale throughout the United States, including California. At all times
18 relevant, Defendant BMW manufactured, sold, and placed these products into the stream of commerce.

19 177. Defendant BMW impliedly warranted that the Class Vehicles, which it designed,
20 manufactured, and sold or leased to Plaintiff and Class Members, were merchantable, fit, and safe for
21 their ordinary use, not otherwise injurious to consumers, and equipped with adequate safety warnings.
22 However, the Class Vehicles are not fit for their ordinary purpose of providing reasonably reliable and
23 safe transportation at the time of sale or thereafter because, *inter alia*, the Class Vehicles and their
24 brakes suffered from the Brake Defect at the time of sale that causes the vehicles to emit loud, high-
25 pitched squealing noises which alters the driving habits of the operator, as well as districts all those on
26 the road. Therefore, the Class Vehicles are not fit for their particular purpose of providing safe and
27 reliable transportation.

28 178. Defendant BMW impliedly warranted that the Class Vehicles were of merchantable quality

1 and fit for such use. This implied warranty included, among other things: (i) a warranty that the Class
2 Vehicles and their brakes were manufactured, supplied, distributed, and/or sold by Defendant BMW
3 were safe and reliable for providing transportation and would not consistently emit loud, high-pitched
4 squealing noises altering driving habits and distracting everyone on the road; and (ii) a warranty that
5 the Class Vehicles and their brakes and related components would be fit for their intended use while
6 the Class Vehicles were being operated.

7 179. Contrary to the applicable implied warranties, the Class Vehicles and the Subject Brakes
8 and related components at the time of sale and thereafter were not fit for their ordinary and intended
9 purpose of providing Plaintiff and the other Class members with reliable, durable, and safe
10 transportation.

11 180. The Class Vehicles were not suited for the ordinary purposes for which they were sold or
12 leased. Plaintiff and Class Members are being told that the brake noise is normal. When Plaintiff and
13 Class Members bring their Vehicles in for repair, they are told there is nothing wrong with the vehicle.
14 Unfortunately, however, that is not necessarily true. Excessively squeaky brakes, like the Subject
15 Brakes, are an indication that the brake system in the vehicle is failing for one or more reasons.
16 Plaintiff and Class Members are driving the Vehicles under the false impression that everything is safe
17 and acceptable.

18 181. The loud, high-pitched squealing noise emitted when the brakes are applied create a safety
19 hazard due to the potential to startle the Class Vehicle drivers, as well as having an adverse impact on
20 driving decisions and habits of the Class Vehicle drivers. The Brake Defect distracts the Class Vehicle
21 driver and third parties, endangering their physical safety and well-being due to a loss of concentration
22 and focus on the road. Similarly, nearby pedestrians hear the loud braking noise then pay attention to
23 the noise rather than having their full attention on other hazards in their path.

24 182. Defendant BMW further breached its implied warranty by failing to properly disclose the
25 Brake Defect. Defendant BMW attempts to brush the major safety issues associated with the Brake
26 Defect by disclosing the Brake Defect as “normal.” The Brake Defect, however, is anything but
27 normal. Normal noise associated with brakes is intermittent. Ongoing brake noises, however like the
28 noise present in the Class Vehicles, is a safety concern and cannot be disclosed as normal. Brakes that

1 always screech are an indication of a defective brake system and should not be callously ignored.

2 183. Upon discovering the latent defects in the defective brake system on the Class Vehicles,
3 Plaintiff took reasonable steps to notify Defendant BMW within a reasonable time that the product did
4 not have the expected quality and contained the defects as alleged herein. All conditions precedent have
5 occurred or been performed.

6 184. BMW has actual notice of its breach of warranty. Through consumer complaints and
7 information from its own repair facilities, BMW learned the defect, the existence an ubiquity of which
8 it knew since at least 2013, has been the subject of publicized consumer disputes nationwide.

9 185. Despite Plaintiff's and the other Class Members' normal and ordinary use, maintenance, and
10 upkeep, the brakes continue to make noise and ultimately fail. The manufacturing and/or design defect
11 existed at the time BMW transferred the Class Vehicles from its possession or control. The defect
12 rendered the Class Vehicles unfit for their ordinary use and caused the vehicles to be unable to perform
13 the tasks they were designed, advertised, and sold to perform.

14 186. The presence of the defect in the Class Vehicles purchased by the Class substantially
15 impairs the use and value of those goods. Moreover, the defects in the Class Vehicles render them non-
16 conforming goods and/or were not the same quality as those generally accepted in the trade, were not
17 fit for the ordinary purposes for which the goods were used, were of poor or below average quality
18 within the description, and/or did not conform to the affirmations of fact made by BMW in its labeling,
19 product inserts, and/or warranty materials it provided along with the lease/sale of the Class Vehicles.

20 187. As a direct and proximate result of the Brake Defect in the Class Vehicles' design and
21 manufacture and Defendant BMW's improper disclosures, Plaintiff has sustained injuries, damages,
22 and loss.

23 188. Defendant BMW is liable to Plaintiff and the Class Members for damages caused by the
24 above defects and inadequacies in the design and manufacture of the Class Vehicles.

25 189. As a direct and proximate result of the foregoing, Plaintiff and all other Class Members
26 sustained significant loss and damage, including but not limited to, a reduction in fair market value and
27 they did not receive the benefit of their bargain. Furthermore, Plaintiff and all other Class Members
28 who leased the Class Vehicles suffered damages in that they leased a vehicle they would not have

1 otherwise leased and made higher monthly payments than they otherwise would have.

2 190. Plaintiff and all other Class Members suffered economic injury because they bought and/or
3 leased a defective vehicle they otherwise would not have bought/leased and/or paid more for the Class
4 Vehicle than they should have because the defect depreciated the value of the Class Vehicles. Plaintiff
5 and other Class Members have also spent money to have the brakes of the vehicles repaired or
6 replaced much more frequently than conventional counterparts.

7 191. Privity is not required in this case because Plaintiff and the Class Members' Class Vehicles
8 are inherently dangerous due to the aforementioned defects and nonconformities.

9 192. Nevertheless, Plaintiff and Class members are intended third-party beneficiaries of
10 contracts, including express warranties, between Defendant BMW and its authorized dealerships,
11 representatives, and agents. On information and belief, Defendant BMW's authorized dealerships,
12 representatives, and agents purchased Class Vehicles from Defendants pursuant to valid and
13 enforceable agreements. Because Plaintiff and Class members—rather than Defendant BMWs'
14 authorized dealerships, representatives, and agents—were the intended end users of Class Vehicles,
15 Plaintiff and Class members were the intended (and not incidental) third party beneficiaries of the
16 agreements entered into among Defendant and its authorized dealerships, representatives, and agents,
17 and any warranties, express or implied, flowing therefrom. Indeed, Defendant BMW's authorized
18 dealerships, representatives, and agents did not and would not purchase Class Vehicles for personal
19 use, therefore the implied warranties flowing to them actually are intended to protect their customers
20 from the losses the Class Vehicles have and will continue to cause them. The dealers were not intended
21 to be the ultimate consumers of the Class Vehicles; the warranty agreements were designed for and
22 intended to benefit the ultimate consumers only. As such, Plaintiff and the other Class Members have
23 had sufficient direct dealings with either BMW or its agents (dealerships) to establish privity of
24 contract between Plaintiff and the Class Members. Accordingly, Defendant BMW is estopped from
25 limiting claims for common law and statutory violations based on a defense of lack of privity.

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1 **FOURTH CAUSE OF ACTION**

2 **BREACH OF WARRANTY**

3 **SONG-BEVERLY CONSUMER WARRANTY ACT, CIVIL CODE § 1790 *ET SEQ.***

4 *(Against Defendant BMW)*

5 193. Plaintiff re-alleges and incorporates by reference as fully set forth herein, all paragraphs of
6 Class Action Complaint for Damages. Plaintiff re-alleges and incorporates by reference as fully set
7 forth herein all paragraphs of Class Action Complaint for Damages.

8 194. Plaintiff and other Class members who purchased the Class Vehicles in California are
9 “buyers” within the meaning of Cal. Civ. Code § 1791(b).

10 195. The Class Vehicles are “consumer goods” within the meaning of Cal. Civ. Code § 1791(a).

11 196. Defendant BMW is a “manufacturer” within the meaning of Cal. Civ. Code § 1791(j).

12 197. Defendant BMW impliedly warranted to Plaintiff and the Class that its vehicles were
13 “merchantable” within the meaning of Cal. Civ. Code §§ 1791.1(a) and 1792, as described above.

14 198. Cal. Civ. Code § 1791.1(a) states that “implied warranty of merchantability” or “implied
15 warranty that goods are merchantable” means that the consumer goods meet each of the following: (1)
16 pass without objection in the trade under the contract description; (2) are fit for the ordinary purpose
17 for which such goods are used; (3) are adequately contained, packaged, and labeled; and (4) conform
18 to the promises or affirmations of fact made on the container or label.

19 199. The Class Vehicles would not pass without objection in the automotive trade because of the
20 Brake Defect that causes the vehicles to emit loud, sudden, and unexpected squealing leading to a
21 serious and unreasonable safety risk to Vehicle drivers, occupants, and nearby third parties.

22 200. The Vehicles are not adequately labeled because the labeling fails to properly disclose the
23 Brake Defect and its dangerous safety implications.

24 201. Defendant BMW breached the implied warranty of merchantability by manufacturing and
25 selling Class Vehicles containing the Brake Defect.

26 202. The Brake Defect has deprived Plaintiff and the Class of the benefit of their bargain and
27 have caused the Class Vehicles to depreciate in value. Plaintiff and Class Members have ultimately
28 paid more money for the Class Vehicles than they otherwise would have had the Brake Defect been

1 properly disclosed. In fact, Plaintiff and Class Members would not have even purchased the Vehicles
2 in the first place if disclosure was proper. Plaintiff and other Class Members have also spent money to
3 have the brakes of the vehicles repaired or replaced much more frequently than conventional
4 counterparts.

5 203. The time limits contained in Defendant BMW's warranty period are also unconscionable
6 and inadequate to protect Plaintiff and the Class Members. Among other things, Plaintiff Class
7 Members had no meaningful choice in determining these time limitations, the terms of which
8 unreasonable favor Defendant BMW. A gross disparity of bargaining power existed between
9 Defendant BMW and Plaintiff and Class Members and Defendant BMW knew or should have known
10 that the Class Vehicles brake systems were defective at the time of sale and would fail well before the
11 end of their useful lives.

12 204. As a direct and proximate result of Defendant BMW's breach of its express warranties,
13 Plaintiff and the other Class Members received goods whose condition substantially impairs their
14 value to Plaintiff and the other Class Members. Plaintiff and the other Class Members have been
15 damaged as a result of, *inter alia*, the diminished value of Defendant BMW's products, the products'
16 malfunctioning, and actual and potential increased maintenance and repair costs.

17 205. Pursuant to Cal. Civ. Code §§ 1793.2 and 1794, Plaintiff and the other Class Members are
18 entitled to damages and other legal and equitable relief including, at their election, the purchase price
19 of the Class Vehicles brake systems, or the overpayment or diminution in value of these devices.

20 206. Pursuant to Cal. Civ. Code § 1794, Plaintiff and the other Class Members are entitled to
21 costs and attorney fees.

22 **FIFTH CAUSE OF ACTION**

23 VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT

24 CIVIL CODE § 1750 ET SEQ.

25 *(Against Defendants BMW)*

26 207. Plaintiff re-alleges and incorporates by reference as fully set forth herein all paragraphs of
27 Class Action Complaint.

28 208. This cause of action is brought pursuant to the California Consumer Legal Remedies Act,

1 *California Civil Code § 1750, et seq.* (“CLRA”).

2 209. The Subject Vehicles are “goods” under the CLRA that was bought primarily for personal,
3 family, or household purposes as defined in the CLRA in *California Civil Code § 1761(a)*.

4 210. Plaintiff and each member of the Class are “consumers” within the meaning of *California*
5 *Civil Code § 1761(d)*.

6 211. Defendants are “persons” as defined by *California Civil Code § 1761(c)*.

7 212. Defendants’ actions, representations, and conduct have violated, and continue to violate
8 the CLRA, because they extend to transactions that are intended to result, or which have resulted, in
9 the sale or lease of goods or services to consumers.

10 213. The Consumer Legal Remedies Act (“CLRA”), *California Civil Code § 1750 et seq.*
11 applies to Defendants’ actions and conduct described herein because it extends to transactions that are
12 intended to result, or which have resulted, in the sale or lease of goods or services to consumers.

13 214. The CLRA prohibits the following unfair methods of competition and unfair or deceptive
14 acts or practices, among others: (5), Defendants have represented that the Subject Vehicles have
15 characteristics and benefits that they do not have; (7) Defendants have represented that the Subject
16 Vehicles are of a particular standard, quality, or grade when they are not; (9) Defendants have
17 advertised the Subject Vehicles without an intent to sell them as advertised; (14) Defendants have
18 misrepresented that a transaction confers or involves legal rights, obligations, or remedies of Plaintiff
19 and other members of the Class concerning the Subject Vehicles when they were not; (18) Defendants
20 have represented that the Subject Vehicles were supplied in accordance with previous representations
21 when they were not; and (19) Defendants unlawfully inserted an unconscionable provision in the
22 contract to purchase or lease the Subject Vehicles here at issue by inserting into such contracts
23 provisions where the consumers purport to waive a right or benefit provided by law to obtain a repair or
24 a retrofit of an inherent defect without a clear statement and consent to such provisions.

25 215. Defendants had a duty to disclose to Plaintiffs that the Subject Brakes are “noisy high-
26 performance brakes” and that the brake noise is NOT normal because (1) such disclosures were
27 necessary in order to make its other statements not misleading; (2) they were known material facts; (3)
28 Defendants knew that it had exclusive knowledge that was not accessible to Plaintiffs; and (4) it was

1 reasonable for Plaintiffs to expect disclosure of such facts.

2 216. Defendants violated the CLRA by misrepresenting the condition of the Subject Brakes and
3 concealing the issue with the brakes by labeling the noise as normal.

4 217. Defendants have a deceptive pattern and practice of: (1) failing to inform consumers that
5 the Subject Vehicles are noisy; (2) falsely advertising the Subject Brakes as “stunning” and “lasting
6 longer than conventional counterparts”; and (3) falsely representing that the Subject Brakes are
7 superior and therefore worth the additional cost.

8 218. Defendants’ deceptive acts alleged herein occurred in the course of selling a consumer
9 product and Defendants have done so continuously through the filing of this Complaint.

10 219. If Defendants are not restrained from engaging in these types of practices in the future,
11 Plaintiffs and other members of the general public will continue to suffer harm.

12 220. As a direct and proximate result of Defendants violation of Civil Code § 1770 *et seq.*,
13 Plaintiff and other Class members have suffered irreparable harm and monetary damages entitling them
14 to both injunctive relief and restitution. Plaintiff, on behalf of himself and on behalf of the Class, seek
15 damages and all other relief allowable under the CLRA.

16 221. Defendants’ wrongful conduct, as set forth above, was willful, oppressive, and malicious.
17 Accordingly, Plaintiff, and others similarly situated, seek punitive damages against Defendants in an
18 amount to deter Defendants from similar conduct in the future.

19 222. Pursuant to Civil Code § 1782, Plaintiff provided notice to Defendants at least thirty days
20 prior to filing this action for damages.

21 223. Defendants failed to make the showing required by Civil Code § 1782(c).

22 224. As a result, Plaintiff seeks actual and punitive damages for violation of the CLRA. In
23 addition, pursuant to Civil Code § 1782(a)(2), Plaintiff and members of the class are entitled to an order
24 enjoining the above-described wrongful acts and practices of Defendants, providing restitution to
25 Plaintiff and the Class, ordering payment of costs and attorneys’ fees, and any other relief deemed
26 appropriate and proper by the Court under Civil Code § 1780.

27 225. On behalf of the general public, Plaintiffs request that an injunction against Defendants be
28 issued to enjoin them from continuing to engage in the unlawful conduct alleged herein, namely selling

1 used cars without disclosing their accurate history, condition, and price.

2 226. Plaintiffs are also entitled to recover attorney’s fees and costs under the CLRA in
3 connection with this litigation.

4 **SIXTH CAUSE OF ACTION**

5 VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW

6 BUSINESS AND PROFESSIONS CODE § 17200 ET SEQ.

7 *(Against Defendant BMW)*

8 227. Plaintiff re-alleges and incorporates by reference as fully set forth herein all paragraphs of
9 Class Action Complaint.

10 228. Plaintiff has standing to bring this claim because Plaintiff has lost money or property as a
11 result of the misconduct alleged. Furthermore, Plaintiff is seeking injunctive relief on behalf of a class
12 who does not have the same knowledge as Plaintiff. Therefore, there is a likelihood of repeat injury to
13 the Class Members who are unaware of Defendant’s misrepresentations. *See Harris v. Las Vegas*
14 *Sands L.L.C.*, No. 12-10858, 2013 WL 5291142 (C.D. Cal. Aug. 16, 2013) (Gee, J.).

15 229. A plaintiff has standing when they (1) lose or are deprived of money or property sufficient
16 to qualify as injury in fact, i.e., economic injury, and (2) the economic injury was the result of, i.e.,
17 caused by, the unfair business practice of false advertising that is the gravamen of the claim. *Kwikset*
18 *Corp. v. Superior Court* (201) 51 Cal.4th 310, 322.

19 230. Economic injury from unfair competition exists if a plaintiff (1) surrenders in a transaction
20 more, or acquires in a transaction less, than he or she otherwise would have; (2) has a present or future
21 property interest diminished; (3) is deprived of money or property to which he or she has a cognizable
22 claim; or (4) is required to enter into a transaction, costing money or property, that would otherwise
23 have been unnecessary. *Id.* at 323.

24 231. Plaintiff brings this claim on behalf of herself, and others similarly situated in her
25 representative capacity as a private attorney general against Defendant BMW for their unlawful,
26 unfair, fraudulent, untrue, and/or deceptive business acts and/or practices pursuant to California
27 Business and Professions Code § 17200 *et seq.* (“UCL”), which prohibits all unlawful, unfair, and/or
28 fraudulent business acts and/or practices.

1 232. Plaintiff asserts these claims as they are representative of an aggrieved group and as a
2 private attorney general on behalf of the general public and other persons who have expended funds
3 that Defendant BMW should be required to pay or reimburse under the restitution remedy provided by
4 California Business and Professions Code § 17200 *et seq.*

5 233. The acts, omissions, misrepresentations, practices, and non-disclosures of Defendant BMW
6 as alleged herein constitute unlawful, unfair, and/or fraudulent business acts and/or practices within the
7 meaning of California Business and Professions Code § 17200 *et seq.*

8 234. The acts, omissions, misrepresentations, practices, non-disclosures, and/or concealments of
9 material facts, and/or deception alleged in the preceding paragraphs occurred in connection with
10 Defendant BMW's conduct of trade and commerce in California.

11 235. As a direct and proximate result of the aforementioned acts, Defendant BMW received
12 monies expended by Plaintiff and others similarly situated who leased/purchased the Class Vehicles.

13 236. A business act or practice is **unlawful** if it violates a law. Laws that can be used to find an
14 unlawful business practice include statutes that are civil or criminal in nature and can range from
15 federal and state statutes to municipal regulations. Defendant BMW's acts and practices are **unlawful**
16 because they violate California Civil Code §§ 1668, 1709, 1710, and 1750 *et seq.*, and California
17 Commercial Code § 2313.95.

18 237. A business act or practice is **unfair** if it is one that offends an established public policy or is
19 immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers. Defendant
20 BMW has engaged in **unfair** business acts or practices in that the justification squealy brakes are
21 outweighed by the gravity of the inevitable harm to the consumer when the brakes wear out and the
22 consumer is unaware, particularly considering the available alternatives. The defective design of the
23 Subject Brakes and the subsequent notion from BMW that the noises coming from them is normal
24 offends public policy, is immoral, unscrupulous, unethical, and offensive, or causes substantial injury
25 to consumers because it induces consumers to purchase the expensive Subject Brakes that ultimately
26 diminish the value of the Class Vehicles and put the Plaintiff and other consumers in grave danger
27 since they are unaware of when the brakes need to be replaced. Furthermore, Defendant BMW's
28 conduct and intent to widely market the Class Vehicles to California consumers, which involved false

1 and misleading advertising, offends the established public policy of the State of California and is
2 immoral, unethical, oppressive, unscrupulous, and substantially injurious.

3 238. A business act or practice is **fraudulent** if it is likely to deceive members of the public.
4 Defendant BMW has engaged in **fraudulent** business acts or practices in that the representations and
5 omissions of material fact described above have a tendency and likelihood to deceive
6 purchasers/lessees of the Class Vehicles and the general public, as is clear by the outcome with
7 Plaintiffs. Defendant BMW falsely advised class members that the non-conformities exhibited by the
8 Class Vehicles as outlined herein were in fact normal and did not constitute a defect.

9 239. Defendant BMW aggressively promoted and advertised their Class Vehicles in an unlawful,
10 unfair, fraudulent, untrue, and/or deceptive manner that is and was likely to deceive the public.

11 240. Defendant BMW falsely advised class members that the non-conformities exhibited by the
12 Class Vehicles as outlined herein were in fact normal and did not constitute a defect.

13 241. Defendant BMW actively engaged in a custom and practice of encouraging failure to
14 and/or failing to document complaints by class members regarding the non-conformities exhibited by
15 the Class Vehicles as outlined herein.

16 242. Defendant BMW's misconduct as alleged in this action constitutes negligence and other
17 tortious conduct and this misconduct gives Defendant BMW an unfair competitive advantage over
18 their competitors.

19 243. Defendant BMW has engaged in unfair competition and unfair, unlawful, or fraudulent
20 business practices by the conduct, statements, and omissions described above, and by knowingly and
21 intentionally concealing from Plaintiff and the Class members that the Class Vehicles suffer from a
22 defect (and the costs, safety risks, and diminished value of the vehicles as a result of these problems).
23 Defendant BMW should have disclosed this information because it was in a superior position to know
24 the true facts related to the defect, and Plaintiff and Class members could not reasonably be expected
25 to learn or discover the true facts related to the defect.

26 244. The defective brake system constitutes a safety issue that triggered Defendant BMW's duty
27 to disclose the safety issue to consumers.

28 245. These acts and practices have deceived Plaintiff and are likely to deceive the public. In

1 failing to disclose the defect and suppressing other material facts from Plaintiff and the Class
2 members, Defendant BMW breached its duties to disclose these facts, violated the UCL, and caused
3 injuries to Plaintiff and the Class members. The omissions and acts of concealment by Defendant
4 BMW pertained to information that was material to Plaintiff and the Class members, as it would have
5 been to all reasonable consumers.

6 246. The injuries suffered by Plaintiff and the Class members are greatly outweighed by any
7 potential countervailing benefit to consumers or to competition, nor are they injuries that Plaintiff and
8 the Class members should have reasonably avoided.

9 247. Plaintiff seeks to enjoin further unlawful, unfair, and/or fraudulent acts or practices by
10 Defendant BMW, to obtain restitutionary disgorgement of all monies and revenues generated as a
11 result of such practices, and all other relief allowed under California Business & Professions Code §
12 17200

13 248. As a direct and proximate result of Defendant BMW's violations, Plaintiff and Class
14 Members suffered injuries in fact and lost money because they purchased the Class Vehicles and paid
15 the price they paid believing the Vehicles to be free from defects when they were not. In fact, Subject
16 Brakes cost consumers an additional cost of at least \$4,000.

17 249. Plaintiff still has the defective Subject Vehicle and continues to be harmed by its defects.

18 250. Defendant BMW's conduct constitutes unfair acts or practices conducted in the course of
19 Defendant BMW's respective businesses, and thereby constitutes violations of California Business and
20 Professions Code § 17200 *et seq.* Defendant BMW's conduct and intent to widely market the Class
21 Vehicles to California consumers involved false and misleading advertising. Such conduct offends the
22 established public policy of the State of California and is immoral, unethical, oppressive, unscrupulous
23 and substantially injurious.

24 251. Pursuant to California Business and Professions Code § 17203 of the UCL, Plaintiff seeks
25 an order of this Court enjoining BMW from continuing to engage in unlawful, unfair or fraudulent
26 business practices, and any other act prohibited by the UCL. Plaintiff also seeks an order requiring
27 BMW to comply with the terms of the California Secret Warranty Law by (a) notifying Class
28 Members of the defective brake warranty; (b) providing free installation of the re-designed brakes to

1 Class Members, (c) notifying dealers of the facts underlying the brake problem and the terms of the
2 brake warranty, (d) notifying the New Motor Vehicle Board of the brake warranty; and (e) identifying
3 and reimbursing Class Members who have paid for brake repairs (including the re-designed brake) to
4 be installed. Plaintiff also seek an order (i) enjoining BMW from failing and refusing to make full
5 restitution of all moneys wrongfully obtained; and (ii) disgorging all ill-gotten revenues and/or profits
6 earned or retained as a result of BMW's violations of the California Secret Warranty Law.

7 252. As set forth, above, BMW has violated the California Secret Warranty Law. As a direct
8 and proximate result of BMW's conduct, BMW obtained secret profits by which it became unjustly
9 enriched at Plaintiff' and the Class members' expense.

10 253. Accordingly, Plaintiff seeks an order establishing BMW as a constructive trustee of the
11 secret profits that served to unjustly enrich BMW, together with interest during the period in which
12 BMW has retained such funds and requiring BMW to disgorge those funds in a manner to be
13 determined by the Court.

14 254. In addition to the relief requested in the Prayer below, Plaintiff seeks the imposition of a
15 constructive trust over, and restitution of, the monies collected, and profits realized by Defendant
16 BMW.

17 255. Defendant BMW's conduct, as fully described herein, constitutes acts of untrue and
18 misleading advertising and are, by definition, violations of California Business and Professions Code §
19 17200 *et seq.*

20 256. The unlawful, unfair, deceptive and/or fraudulent business practices and/or false and
21 misleading advertising of Defendant BMW, as fully described herein, present a continuing threat to
22 members of the public to be injured by the Class Vehicles equipped with the defective brake systems
23 as alleged herein.

24 **SEVENTH CAUSE OF ACTION**

25 VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17500 ET SEQ.

26 *(Against Defendant BMW)*

27 257. Plaintiff re-alleges and incorporates by reference as fully set forth herein all paragraphs of
28 Plaintiff's Complaint for Damages.

1 258. Plaintiff has standing to bring this claim because Plaintiff has lost money or property as a
2 result of the misconduct alleged. Furthermore, Plaintiff is seeking injunctive relief on behalf of a class
3 who does not have the same knowledge as Plaintiff. Therefore, there is a likelihood of repeat injury to
4 the Class Members who are unaware of Defendant BMW's misrepresentations. *See Harris v. Las*
5 *Vegas Sands L.L.C.*, No. 12-10858, 2013 WL 5291142 (C.D. Cal. Aug. 16, 2013) (Gee, J.).

6 259. *Business & Professions Code § 17500* prohibits unfair, deceptive, untrue, and misleading
7 advertising in connection with the disposal of personal property (among other things), including, but
8 not limited to, false statements as to worth, value, and former price.

9 260. Defendant BMW caused to be made or disseminated throughout California and the United
10 States, through advertising, marketing and other publications, statements that were untrue or
11 misleading, and which were known, or which by the exercise of reasonable care should have been
12 known to Defendant BMW, to be untrue and misleading to consumers, including Plaintiff and the other
13 Class members. For example, Defendant BMW assured Plaintiff and Class Members that the Class
14 Vehicles were in excellent mechanical condition, and were safe, reliable, and fit for their ordinary
15 purpose which included brakes that do not make a loud, high-pitched squealing noise.

16 261. Defendant BMW has violated California Business & Professions Code § 17500 because the
17 misrepresentations and omissions regarding the safety, reliability, and functionality of its Class
18 Vehicles as set forth in this Complaint were material and likely to deceive a reasonable consumer.

19 262. Plaintiff still has the defective Subject Vehicle and continues to be harmed by its defects.

20 263. Plaintiff and the other Class members have suffered an injury in fact, including the loss of
21 money or property, as a result of Defendant BMW's unfair, unlawful, and/or deceptive practices. In
22 purchasing or leasing their Class Vehicles, Plaintiff and the other Class members relied on the
23 misrepresentations and/or omissions of Defendant BMW with respect to the safety and reliability of the
24 Class Vehicles. Defendant BMW's representations were untrue because the Class Vehicles are
25 distributed with defective Subject Brakes. Had Plaintiff and the other Class members known this fact,
26 they would not have purchased or leased their Class Vehicles and/or paid as much for them.
27 Accordingly, Plaintiff and the other Class members overpaid for their Class Vehicles and did not
28 receive the benefit of their bargain.

1 264. All of the wrongful conduct alleged herein occurred, and continues to occur, in the conduct
2 of Defendant BMW's business. Defendant BMW's wrongful conduct is part of a pattern or generalized
3 course of conduct that is still perpetuated and repeated, both in the state of California and nationwide

4 265. The acts of untrue and misleading advertising by Defendant BMW described above present
5 a continuing threat to members of the general public in that Defendant BMW persist and continue to
6 engage in these practices with respect to the general public and will not cease doing so unless and until
7 an injunction is issued by this Court.

8 266. As a direct and proximate result of Defendant BMW's conduct, Plaintiff has suffered
9 damages for which relief is sought herein. As such, Plaintiff, individually and on behalf of the other
10 Class members, request that this Court enter such orders or judgments as may be necessary to enjoin
11 Defendant BMW from continuing its unfair, unlawful, and/or deceptive practices and to restore to
12 Plaintiff and the other Class members any money Defendant BMW acquired by unfair competition,
13 including restitution and/or restitutionary disgorgement, and for such other relief set forth below.

14 **EIGHTH CAUSE OF ACTION**

15 NUISANCE

16 *(Against Defendant BMW)*

17 267. Plaintiff re-alleges and incorporates by reference as fully set forth herein all paragraphs of
18 Class Action Complaint.

19 268. Nuisance is a condition of substantial interference that causes unreasonable discomfort.
20 Most often, nuisances are generally in the form of things like noises, odors, or smoke.

21 269. A public nuisance is an act by a defendant that interferes with the public's use or enjoyment
22 of public property. Alternatively, it is an act by the defendant that inconveniences the public in the
23 exercise of rights common to all.

24 270. A public nuisance suit is established if the plaintiff claims that they suffered harm because
25 the defendant created a nuisance. In other words, the defendant, (a) by acting or failing to act, creating a
26 condition, or permitting a condition to exist that was harmful to health; was indecent or offensive to the
27 senses; was an obstruction to the free use of property so as to interfere with the comfortable enjoyment
28 of life or property; unlawfully obstructed the free passage or use in the customary manner, of any

1 navigable lake, river, bay, stream, canal, or basin, or any public park, square, street, or highway; or was
2 a fire hazard to plaintiff's property; (b) the condition affected a substantial number of people at the
3 same time; (c) an ordinary person would be reasonably annoyed or disturbed by the condition; (d) the
4 seriousness of the harm outweighs the social utility of defendant's conduct; (e) plaintiff did not consent
5 to defendant's conduct; (f) plaintiff suffered harm that was different from the type of harm suffered by
6 the general public; and (g) defendant's conduct was a substantial factor in causing plaintiff's harm.

- 7 a. BMW created and permitted and continues to permit, by distributing and selling the Subject
8 Brakes, a condition to exist that is offensive to the senses of the owners and an obstruction
9 to the free use of the Class Vehicles, so as to interfere with the comfortable use and
10 enjoyment of their vehicles
- 11 b. The condition interfered and continues to interfere with the use and enjoyment of Class
12 Vehicles by their owners and lessors. Furthermore, the condition affects a substantial
13 number of people at the same time because anyone in the vicinity of the Subject Vehicle
14 will hear the noise created by the Subject Brakes. Other drivers and pedestrians are startled
15 when they hear the noise.
- 16 c. An ordinary person would be reasonably annoyed or disturbed by the loud squealing noise
17 coming from the brakes when driving at slow speeds.
- 18 d. The seriousness of the harm outweighs the social utility of BMW's conduct.
- 19 e. Plaintiff and the remaining Class Members did not consent to the defective condition for the
20 simple reason that the defective condition was never properly disclosed. Defendant insists
21 on labeling the defective condition as normal.
- 22 f. Plaintiff suffered harm that was different from the type of harm suffered by the general
23 public since he was driving the vehicle that was creating the loud noises. Plaintiff received a
24 significant amount of negative attention because of the noise from Subject Brakes,
25 especially while driving in crowded streets within city limits. Additionally, the noise defect
26 draws the attention of officers of law enforcement agencies, who associate brake squeals
27 with high-speed driving and racing.
- 28 g. If the Subject Brakes did not make noises, then none of the above would have happened.

1 Therefore, BMW’s conduct was a substantial factor in causing Plaintiff’s harm. All Class
2 Members that have the Subject Brakes have been harmed, regardless of whether they
3 complained of the noise to BMW authorized dealerships or not.

4 **PRAYER**

5 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, and also on
6 behalf of the general public, pray for judgment against all Defendants as follows:

- 7 A. An order certifying the case as a class action and appointing Plaintiff and their
8 counsel to represent the Class;
- 9 B. For actual damages;
- 10 C. For statutory damages in an amount of not less than \$1,000 per Plaintiff or Class
11 Member pursuant to California Civil Code § 1780(a)(1);
- 12 D. For restitution as appropriate;
- 13 E. For statutory pre-judgment interest;
- 14 F. For punitive damages in an amount to deter Defendants from similar conduct in the
15 future;
- 16 G. For any additional and consequential damages suffered by Plaintiff and the Class;
- 17 H. For reasonable attorneys’ fees and the costs of this action;
- 18 I. For declaratory and/or equitable relief under the causes of action stated herein; and
- 19 J. For such other relief as this Court may deem just and proper.

20 **PLAINTIFF HEREBY REQUESTS A JURY TRIAL IN THIS MATTER**

21 Plaintiff demands a trial by jury for himself and the Class on all claims so triable.

22 DATED: July 23, 2021

THE MARGARIAN LAW FIRM

23
24 By /s/ Hovanes Margarian
25 Hovanes Margarian,
26 Attorney for Plaintiff,
27 and all others similarly situated.
28

DECLARATION OF HOVANES MARGARIAN

PURSUANT TO CIVIL CODE § 1780(d)

I, HOVANES MARGARIAN, declare as follows:

1. I am an attorney at law duly licensed to practice before all courts of the State of California and am the principal attorney at the Margarian Law Firm, one of the counsels of record for Plaintiff. I have personal knowledge of the matters set forth below and if called upon as a witness could and would competently testify thereto.

2. I am informed and believe that venue is proper in this court pursuant to Civil Code § 1780(d) based on the following facts:

- a. Defendant has performed transactions at issue in this action, or has obtained financial benefit from such transactions, at all times relevant to this action, in Los Angeles, California; and
- b. At all relevant times herein, Plaintiff KARAMANOUKIAN resided in Los Angeles County.

WHEREFORE, I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Declaration was executed this 23rd Day of July 2021 at Glendale, California.

DATED: July 23, 2021

THE MARGARIAN LAW FIRM

By /s/ Hovanes Margarian
Hovanes Margarian,
Attorney for Plaintiff,
and all others similarly situated.