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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12

13 BRIGHTK CONSULTING INC., as a
14 California Corporation, on behalf of itself,
15 all others similarly situated, and the general
public,

16 Plaintiff,

17

18 vs.

19 BMW OF NORTH AMERICA, LLC, a
20 Delaware Limited Liability Company; and
21 DOES 1 through 10, inclusive,

22 Defendants.

23
24

Case No.: 8:21-cv-02063-CJC (JDEx)

Judge: Hon. Cormac J. Carney

**NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS
SETTLEMENT AND DIRECTION
OF NOTICE UNDER FED. R. CIV.
P. 23(e)**

[Filed Concurrently with Declaration of
Hovanes Margarian in Support Thereof
(with exhibits thereto) and [Proposed]
Preliminary Approval Order]

Complaint Filed: December 16, 2021

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1 **TO THE COURT, ALL PARTIES, AND THEIR ATTORNEY OF RECORD:**

2 PLEASE TAKE NOTICE that on October 31, 2022, at 1:30 p.m., or as soon
3 thereafter as the matter can be heard, in Courtroom 9 B of the Ronald Reagan Federal
4 Building and United States Courthouse, 411 West Fourth Street, Santa Ana, CA 92701,
5 Plaintiff BRIGHTK CONSULTING INC. (“Plaintiff”), by and through its attorneys of
6 record, on behalf of itself all others similarly situated, will, and hereby does, move this
7 Court to:

- 8 1. Preliminarily approve the settlement described in the Class Action
9 Settlement Agreement and Release (“Settlement Agreement”), attached as Exhibit A to the
10 Declaration of Hovanes Margarian;
- 11 2. Conditionally certify the Settlement Class;
- 12 3. Appoint Plaintiff as Settlement Class Representative;
- 13 4. Appoint the undersigned counsel as Class Counsel;
- 14 5. Approve distribution of the proposed Class Notice to the Settlement
15 Class;
- 16 6. Appoint Kroll Settlement Administration as the Claims Administrator;
- 17 7. Permit Plaintiff to file a First Amended Complaint that conforms the class
18 definition to the definition of the Settlement Class; and
- 19 8. Set a hearing date and briefing schedule for Final Approval and Plaintiff’s
20 motion for attorney’s fees, costs, and expenses.

21 This Motion is based upon: (1) this Notice of Motion and Motion for
22 Preliminary Approval of Class Action Settlement and Class Notice; (2) the
23 Memorandum of Points and Authorities in Support of Motion for Preliminary Approval
24 of Class Action Settlement and Class Notice; (3) the Declaration of Hovanes Margarian
25 and exhibits thereto which include, *inter alia*, the Settlement Agreement (with proposed
26 Class Notice and Claim Form), the Declaration of Fang Lin, and the Declaration of Jed
27 D. Melnick of JAMS; (5) the records, pleadings, and papers filed in this action; and (6) such
28 other documentary and oral evidence or argument as may be presented to the Court at or

1 prior to the hearing on this Motion.

2 DATED: 9/30/2022

THE MARGARIAN LAW FIRM
801 North Brand Boulevard, Suite 210
Glendale, California 91203

By: /s/ Hovanes Margarian

Hovanes Margarian

Attorney for Plaintiff

BRIGHTK CONSULTING INC.

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7 *A. Class Representative and Class Counsel have zealously represented the Class.*

8 *15*

9 *B. The Proposed Settlement is the product of good faith, informed, and arm’s-*

10 *length negotiations, and it is fair. ----- 16*

11

12 *C. The Proposed Settlement provides significant benefits to settle claims. ----- 17*

13 *D. The Proposed Settlement mitigates the risks, expenses, and delays the Class*

14 *would bear with continued litigation. ----- 17*

15 *E. The Proposed Settlement allows Class Members to easily obtain relief. ----- 18*

16 *F. Class Counsel will seek reasonable attorneys’ fees and costs, which will be paid*

17 *separately by BMW NA and not dilute any recovery to Class Members. ----- 18*

18

19 *G. The Proposed Settlement treats all Class Members equitably. ----- 19*

20 **VI. CERTIFICATION IS APPROPRIATE FOR SETTLEMENT PURPOSES**

21 **19**

22 1. The Settlement Class is sufficiently numerous. ----- 19

23 2. There are common questions of law and fact. ----- 20

24 3. Plaintiffs’ claims are typical of the Class Members’ claims. ----- 20

25 4. Plaintiff and Class Counsel have protected, and will continue to protect, the

26 interests of the Settlement Class. ----- 21

27 *B. The Settlement Class meets the requirements of Rule 23(b)(3). ----- 22*

28 1. Common issues of law and fact predominate. ----- 22

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff and Defendant BMW of North America, LLC (“BMW NA”), have reached a proposed settlement (the “Proposed Settlement”) to resolve class allegations regarding an alleged defect in the front console cupholders contained in 2019-2022 BMW X5 (G05; start of production (“SOP”) 11/2018), 2020-2022 X6 (G06; SOP 11/2019), 2019-2022 X7 (G07; SOP 3/2018), 2020-2022 X5M (F95; SOP 4/2020), 2020-2022 X6M (F96; SOP 4/2020) vehicles (individually referred to as “Class Vehicle,” collectively referred to as “Class Vehicles”).¹ The Proposed Settlement is the result of prolonged arm’s length negotiations during two (2) mediation sessions and ongoing settlement dialogue between May 2022 through July 2022 with mediator Jed D. Melnick of JAMS.

The Proposed Settlement provides substantial relief to the proposed Settlement Class to address the claimed defect that is the subject of this suit: a supplemental restraint system (“SRS”) warning light illumination (and related damage to other components located below the cupholder) that a BMW Center (dealer) determines was caused by liquid that spilled or that otherwise seeped through the cupholder(s) on the front center console of a Class Vehicle onto components below the center console

¹ Plaintiff’s Class Action Complaint for Damages (Dkt. 1) defined the class as a putative nationwide class that includes 2020 model year X7 vehicles. (Dkt. 1, ¶ 1.) Through the parties’ mediation and confirmatory discovery process, the parties agreed that this putative class definition (i.e. the model and model years of vehicles) should be expended such that the settlement benefits apply to additional vehicles—namely, those in the Class Vehicle definition set forth herein and in the Settlement Agreement. As set forth in the concurrently-filed Proposed Preliminary Approval Order, Plaintiff seeks leave to file a First Amended Class Action Complaint that conforms the class definition in the operative complaint to the Settlement Class definition in the proposed settlement. Because the parties have agreed to settle this case on a class basis, they have agreed that BMW NA need not file a responsive pleading once the First Amended Complaint is filed.

1 (“Eligible Repair” or “Eligible Repairs”). The Proposed Settlement provides
2 substantial relief to the Class Members in the form of a 7 year/75,000 mile warranty
3 coverage for Eligible Repairs that become necessary after the dissemination of the
4 Class Notice². The Proposed Settlement also provides a mechanism for Class
5 Members³ to receive full reimbursement for eligible out-of-pocket expenses incurred
6 prior to the Class Notice for Eligible Repairs provided they supply the Required Proof⁴
7 to support their Claim. Further, the Proposed Settlement provides a mechanism for
8 BMW NA to separately pay reasonable attorneys’ fees and costs and a plaintiff service
9 award so that these payments will not dilute any of the benefits available to the Class.

10 As described in detail below, the Proposed Settlement is fair, adequate, and
11 reasonable and provides direct and significant benefits to the Settlement Class, while
12 avoiding the risks and delays associated with further litigation. Accordingly, Plaintiff
13 requests that the Court grant this motion for preliminary approval, approve the form
14 and manner of notice to the Settlement Class, grant Plaintiff leave to file a First
15 Amended Complaint that conforms the putative class definition to the definition of the
16 Settlement Class in the Settlement Agreement, and to set the Final Approval Hearing.

17 ///

18 ///

19 _____
20 ² “Class Notice” or “Settlement Class Notice” means the Court-approved form of notice
21 to current and former owners and lessees of Class Vehicles, in substantially the same
22 form as that attached to the Settlement Agreement as Exhibit “A,” informing them of,
23 among other things, the (i) preliminary approval of the Settlement; (ii) scheduling of
the Final Approval Hearing; (iii) opportunity to submit a claim; (iv) opportunity to
submit an objection; and (v) opportunity to request exclusion.

24 ³ “Class Members,” “Class Members,” or “Settlement Class” means all current and
25 former owners and lessees of a Class Vehicle in the United States, including the District
26 of Columbia and Puerto Rico who do not exclude themselves from (opt-out of) the
class.

27 ⁴ All capitalized terms used in this motion refer to the parallel defined term in the
28 Settlement Agreement.

1 **II. CASE HISTORY**

2 Plaintiff contends the front console cupholders in Class Vehicles are defective
3 because liquid that is spilled into them may leak or seep through the cupholders and, if
4 the moisture reaches components below the console, the SRS warning light may
5 illuminate on the dashboard and/or other components below the cupholder may be
6 damaged, which require a dealer repair. [Dkt. 1, ¶ 3]. Plaintiff initiated this class action
7 on December 16, 2021, contending that SRS illumination repair costs necessitated by
8 liquid that seeps through the front console cupholders should be borne by BMW NA.
9 (*Id.*) Prior to this suit, BMW NA’s warranty did not cover costs for an Eligible Repair
10 because this damage was caused by an “outside influence.” Plaintiff contends BMW
11 NA was aware of this defect in the cupholders and did not disclose it at the time of
12 purchase to consumers. (*Id.* ¶ 7.) Thus, Plaintiff’s Complaint alleges that BMW NA
13 committed fraud and deceit, breached express and implied warranties pursuant to the
14 Song-Beverly Consumer Warranty Act (Civil Code § 1790, *et seq.*) and the Magnuson-
15 Moss Warranty Act (15 U.S.C. § 2301, *et seq.*), violated the California Consumer Legal
16 Remedies Act (“CLRA”) (Civil Code § 1750, *et seq.*), California Unfair Competition
17 Law (“UCL”) (Business and Professions Code § 17200, *et seq.*) and False
18 Advertisement Law (“FAL”) (Business and Professions Code § 17500, *et seq.*). [Dkt.
19 1, pp. 22-45].

20 Shortly after Plaintiff filed the instant action, the Parties agreed to participate in
21 an early mediation, to discuss the facts and law relating to the matters in the present
22 action and determine if an equitable class resolution can be achieved without further
23 litigation. (Declaration of Hovanes Margarian (“Margarian Dec.”) ¶ 14.) Thus, on
24 March 28, 2022, the Parties requested to Court to enter an Order to stay the instant
25 action pending the anticipated May 9, 2022, mediation in this matter.

26 On May 9, 2022, the Parties participated in a full-day in-person mediation with
27 Jed D. Melnick of JAMS in New York. Margarian Dec. ¶17. The Parties discussed
28 their respective positions and exchanged numerous settlement proposals with Mr.

1 Melnick's help during this seven (7) hour mediation session. Margarian Dec. ¶ 18. The
2 case did not settle on May 9, 2022, but the Parties made significant progress on a
3 potential class resolution. Margarian Dec. ¶ 19.

4 The Parties continued their settlement dialogue through Mr. Melnick after May
5 9, 2022. Margarian Dec. ¶ 20. Among other things, the Parties discussed relevant facts,
6 continued to exchange settlement proposals and counter proposals, and BMW NA
7 provided informal discovery that allowed Class Counsel to conduct a thorough
8 examination and investigation related to the subject matter of the instant case.
9 Margarian Dec. ¶ 20. Because their settlement dialogue was ongoing, on July 5, 2022,
10 the Parties requested that this Court extend the stay in this action by an additional sixty
11 (60) days while the Parties continued their settlement negotiations.

12 On July 12, 2022, the Parties participated in a second mediation with Mr.
13 Melnick, and after a half-day mediation agreed to the terms of a proposed class action
14 settlement. Margarian Dec. ¶ 22. The Parties signed a Memorandum of Understanding
15 on July 28, 2022. Margarian Dec. ¶ 23.

16 On September 6, 2022, per the Parties' request the Court ordered the
17 instant action to stay in by an additional thirty (30) days up until and including
18 September 30, 2022, in order the Parties to finalize their settlement documents and
19 prepare to file a motion for preliminary approval of the settlement.

20 **III. TERMS OF THE SETTLEMENT**

21 The Settlement Class generally includes all current and former owners and
22 lessees of a Class Vehicle in the United States, including the District of Columbia and
23 Puerto Rico who do not exclude themselves from (opt-out of) the class. Margarian
24 Dec., Ex. A (¶ 1.HH). BMW NA will pay for and provide Class Notice by first
25 class mail (and electronic mail to Class Members, where possible). Margarian Dec.,
26 Ex. A (¶ 16.A).

27 The major Settlement Agreement benefits are as follows:

28 **- Warranty Coverage for Eligible Repairs after Mailing Date of Class**

1 **Notice (Automatic Relief).** After the Mailing Date of the Class Notice⁵, any Class
 2 Vehicle that requires an Eligible Repair will be repaired by a BMW Center free of
 3 charge during the Extended Warranty Period⁶. To ensure continued customer
 4 satisfaction and in accordance with this Settlement Agreement, BMW NA will
 5 implement the Extended Warranty Period as soon as practicable by way of the Class
 6 Notice and will inform Class Members of warranty coverage available for Eligible
 7 Repairs. No reimbursement is available for Out-of-Pocket Costs⁷ incurred for Eligible
 8 Repairs after the Mailing Date of Class Notice. Margarian Dec. ¶ 30, Ex. A (¶ 3).

9 - **Reimbursement of Out-of-Pocket Costs Incurred Prior to Mailing Date**
 10 **of Class Notice (Claims Submission).** Class Members who have incurred Out-of-
 11 Pocket Costs may file a Claim⁸ for reimbursement up to one hundred twenty (120) days
 12 after the Mailing Date of the Class Notice or up until the Court issues its order on final
 13

14
 15 _____
 16 ⁵ “Mailing Date of the Class Notice” means the date when the Class Notice will be
 17 mailed to Class Members by the Claims Administrator. Margarian Dec., Ex. A (¶ 1.S).

18 ⁶ “Extended Warranty Period” means the period of 7 years/75,000 miles (whichever
 19 occurs first), from the date the Class Vehicles was first placed in service, during which
 an Eligible Repair may be performed. Margarian Dec., Ex. A (¶ 1.O).

20 ⁷ “Out-of-Pocket Costs” mean money paid by Class Members to a BMW Center for an
 21 Eligible Repair prior to the Mailing Date of the Class Notice, and that was not otherwise
 22 paid for or covered by BMW NA under warranty or goodwill, covered by insurance, or
 23 under a third-party reimbursement program or service contract. No other costs,
 24 including but not limited to, costs for rental vehicles and/or loaners, towing costs, or
 25 other claimed incidental or consequential costs are eligible for reimbursement as Out-
 26 of-Pocket Costs. Out-of-Pocket Costs incurred after the Mailing Date of the Class
 Notice are not eligible for reimbursement since Eligible Repairs after that date will be
 repaired pursuant to the Extended Warranty Period and paid for by BMW NA.
 Margarian Dec., Ex. A (¶ 1.W).

27 ⁸ “Claim” means a timely request for reimbursement for an Out-of-Pocket Cost.
 28 Margarian Dec., Ex. A (¶ 1.C).

1 approval of the Settlement⁹, whichever is earlier. Approved claims will be paid on a
2 rolling basis within sixty (60) days after the Settlement’s Effective Date¹⁰ and approval
3 of the Claim. Margarian Dec. ¶ 30, Ex. A (¶ 4). To receive reimbursement on a Claim
4 for an Out-of-Pocket Cost, Class Members must submit a Claim Form to the Claims
5 Administrator that is post-marked during the Claims Submission Period or submitted
6 through the online portal during the Claims Submission Period and includes:

7 1) a legible repair order from a BMW Center that identifies a Settlement Class
8 Vehicle and VIN, and that establishes a BMW Center determination that the
9 repair for which reimbursement is sought was caused by liquid seeping or leaking
10 through the front console cupholders onto components below; and

11 2) proof of payment, in the form of a canceled check, credit-card receipt, credit-
12 card statement, or receipt demonstrating that the Class Member paid for the
13 amount(s) sought for reimbursement (a repair order that itself denotes a payment
14 by check or credit card that is issued from a BMW Center is sufficient proof of
15 payment); and

16 3) the mileage of the Settlement Class Vehicle at the time of Eligible Repair and
17 the date of the Eligible Repair, and

18 4) a description of the Eligible Repair performed with indications as to the parts
19 and labor for the repair.

20 Reimbursement amounts will be reduced by goodwill or other adjustment,
21

22 ⁹ “Settlement” means the agreement by the Parties to resolve the Action, the terms of
23 which have been memorialized and provided for in this Settlement Agreement and all
the exhibits attached hereto. Margarian Dec., Ex. A (¶ 1.DD).

24 ¹⁰ “Effective Date” means the earliest of the following: (1) the date on which the time
25 for appeal from the Final Judgment approving the settlement has elapsed without any
26 appeals being filed; or (2) the date on which all appeals from the Final Judgment
27 approving this Settlement or from any appellate court decisions affirming the Final
28 Judgment have been exhausted, and no further appeal may be taken. Margarian Dec.,
Ex. A (¶ 1.M.)

1 coupon, refund, or payment made by an authorized BMW Center, BMW NA, any
 2 person or entity associated with BMW NA, an insurer, or a provider of an extended
 3 service contract. Margarian Dec. ¶ 30, Ex. A (¶ 4.)

4 - **Attorney’s Fees and Expenses.** BMW NA will pay Class Counsel’s¹¹
 5 reasonable attorneys’ fees and expense reimbursements (“Class Counsel Fees and
 6 Expenses”) in an amount consistent with the terms of the Settlement Agreement and
 7 as approved by the Court. Margarian Dec. ¶ 30, Ex. A (¶ 29.) Payment of attorneys’
 8 fees and expense reimbursement will not impact or diminish any of the Settlement
 9 benefits available to the Class.

10 In exchange for these benefits, all Class Members who do not opt-out of the
 11 Settlement Class will be subject to a release of their claims against Released Parties¹²
 12 related to all claims, including demands, rights, liabilities, and causes of action, of every
 13 nature and description that were asserted or could have been asserted in this action,
 14 which relate to or arises out of complaints or concerns that led to or may lead to an
 15 Eligible Repair, excluding claims for property damage or personal injury.

16 **IV. LEGAL STANDARD**

17 The MANUAL FOR COMPLEX LITIGATION (FOURTH) (2004) (“Manual”)
 18 describes a three-step process to approve a class settlement: (i) preliminary
 19 approval; (ii) dissemination of the notice to class members, providing for an objection
 20 period; and (iii) a formal fairness and final settlement approval hearing. *Manual*

21 _____
 22 ¹¹ “Class Counsel” means The Margarian Law Firm. Margarian Dec., Ex. A (¶ 1.FF).

23 ¹² “Released Parties” means BMW NA and its direct and indirect parents, subsidiaries,
 24 affiliates, successors in interest, officers, directors, agents, authorized BMW dealers,
 25 attorneys, and all other persons or entities acting on their behalf; suppliers, licensors,
 26 licensees, distributors, assemblers, partners, component part designers, manufacturers,
 27 holding companies, joint ventures, and any individuals or entities involved in the chain
 28 of design, development, testing, manufacture, sale, assembly, distribution, marketing,
 advertising, financing, warranting, repair, and maintenance of the Settlement Class
 Vehicles and their component parts. Margarian Dec., Ex. A (¶ 27.A.)

1 §21.63. The preliminary approval stage is an “initial evaluation” of the fairness of the
2 settlement. *Id.* at § 21.632. This motion invokes the first two steps. Preliminary
3 approval should be granted “[i]f the proposed settlement ‘appears to be the product of
4 serious, informed, non-collusive negotiations, has no obvious deficiencies, does not
5 improperly grant preferential treatment to class representatives or segments of the class,
6 and falls within the range of possible approval.’” *Glover v. Laguna Beach*, 2018 WL
7 6131601, at *2 (C.D. Cal. July 18, 2018) (quoting *In re Tableware Antitrust Litig.*, 484
8 F. Supp. 2d 1078, 1079-80 (N.D. Cal. 2007)).¹³

9 Rule 23(e)(2) of the Federal Rules of Civil Procedure directs courts to consider a
10 number of factors, including whether: (A) the class representatives and class counsel
11 have adequately represented the class; (B) the proposal was negotiated at arm’s length;
12 (C) the relief provided for the class is adequate, taking into account the costs, risks, and
13 delay, the effectiveness of distributing relief to the class, the terms of any proposed
14 award of attorney’s fees, and any agreement required to be identified under Rule
15 23(e)(3); and (D) the proposal treats class members equitably relative to each other.
16 These factors are not intended “to displace any factor [previously utilized by district
17 courts], but rather to focus the court and the lawyers on the core concerns of
18 procedure and substance that should guide the decision whether to approve the
19 proposal.” Fed. R. Civ. P. 23, 2018 Amendment Notes to Section (e)(2).

20
21 ¹³ Evaluating fairness is not a trial, and the court does not “reach any ultimate
22 conclusions on the contested issues of fact and law which underlie the merits.” *Officers*
23 *for Justice v. Civil Service Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982). Rather, the
24 Court’s “only role” is to ensure that the settlement is “fair, adequate, and free from
25 collusion.” *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012), *cert. denied*, 134 S.
26 Ct. 8 (2013) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998)).
27 As a matter of “express public policy,” federal courts favor settlements, particularly in
28 class actions, where the costs, delays, and risks of continued litigation might otherwise
overwhelm any potential benefit the class could hope to obtain. *See Class Plaintiffs v.*
City of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992); *see also* Herbert B. Newberg &
Alba Conte, NEWBERG ON CLASS ACTIONS (“Newberg”) §13:1 (5th ed.)

1 Similar to the Fed. R. Civ. P. 23(e)(2) factors, the Ninth Circuit considers the
 2 following factors in determining whether a settlement is fair, reasonable, and adequate:
 3 “the strength of the plaintiffs’ case; the risk, expense, complexity, and likely duration
 4 of further litigation; the risk of maintaining class action status throughout the trial; the
 5 amount offered in settlement; the extent of discovery completed and the stage of the
 6 proceedings; the experience and views of counsel; the presence of a governmental
 7 participant; and the reaction of the class members to the proposed settlement.” *Hanlon*
 8 *v. Chrysler Corp.*, 150 F.3d 1011, 10206 (9th Cir. 1998). The importance of any
 9 particular factor depends on the nature of the claims, the types of relief sought, “and
 10 the unique facts and circumstances presented by each individual case,” and one factor
 11 alone may prove determinative. *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d
 12 615, 625 (9th Cir. 1982); *see also Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*,
 13 221 F.R.D. 523, 525 (C.D. Cal. 2004).

14 **V. THE PROPOSED SETTLEMENT MERITS PRELIMINARY APPROVAL**

15 Both the Fed. R. Civ. P. 23(e)(2)(A)-(D) and Ninth Circuit factors for evaluating
 16 the fairness of a settlement weigh in favor of preliminary approval here.

17 **A. Class Representative and Class Counsel have zealously represented**
 18 **the Class.**

19 The Class Representative¹⁴ and the Class Counsel have prosecuted this action
 20 with vigor and dedication and, due to their pre-filing investigation and mediation-
 21 related discovery, developed substantial evidence. *See* Fed. R. Civ. P. 23(e)(2)(A).
 22 Class Counsel and Plaintiff worked tirelessly to deliver the Proposed Settlement.
 23 Margarian Dec. ¶ 25, Declaration of Fang Lin (“Lin Dec.”) ¶ 8¹⁵. Plaintiff assisted
 24

25 ¹⁴ “Settlement Class Representative” means Brightk Consulting, Inc. (acting by and
 26 through its principal, Lin Fang). Margarian Dec., Ex. A (¶ 1.JJ.), Lin Dec. ¶ 2

27 ¹⁵ Declaration of Fang Lin is attached as Exhibit C to the Declaration of Hovanes
 28 Margarian

1 Class Counsel with fact development and discovery and regularly communicated with
2 counsel to remain up to date on the litigation the Settlement process, and the status of
3 its vehicle condition and repair. Margarian Dec. ¶ 15, Lin Dec. ¶ 6. Further, the Class
4 Counsel’s analysis of the confirmatory discovery and the Class Counsel’s independent
5 investigation establishes they have gathered, reviewed, and assessed sufficient
6 information to enter into a reasoned and well-informed Settlement here. *See, e.g., In re*
7 *Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (“significant
8 investigation, discovery and research” provides parties with sufficient information to
9 make informed settlement decisions); *Byrne v. Santa Barbara Hosp. Serv., Inc.*, 2017
10 WL 5035366, at *8 (C.D. Cal. Oct. 30, 2017) (“[t]he parties must . . . have engaged in
11 sufficient investigation of the facts to enable the court to intelligently make an appraisal
12 of the settlement”) (citation omitted). Both the Class Counsel and Plaintiff have
13 adequately represented the interests of the Class.

14 **B. The Proposed Settlement is the product of good faith, informed, and**
15 **arm’s- length negotiations, and it is fair.**

16 The Proposed Settlement is the product of informed, non-collusive, arm’s length
17 negotiations facilitated by an experienced mediator. See Fed. R. Civ. P. 23(e)(2)(B).
18 Negotiations were difficult and protracted. Margarian Dec. ¶ 25. Mediator Jed D.
19 Melnick of JAMS played a crucial role in helping the parties bridge their differences
20 and evaluate the strengths and weaknesses of their respective positions. Margarian Dec.
21 ¶ 26. Two formal mediations were held, in addition to numerous informal
22 communications. Margarian Dec. ¶¶ 17-22. On July 12, 2022, the Parties reached
23 agreement on material terms to settle the action and executed a Memorandum of
24 Understanding shortly thereafter. Margarian Dec. ¶¶ 22-23. The Parties then spent
25 months finalizing the release, the Settlement Agreement, and related documents.
26 Margarian Dec. ¶ 32. The adversarial nature of the litigation and mediator Melnick’s
27 role weigh in favor of preliminary approval. *Rosales v. El Rancho Farms*, 2015 WL
28 4460918, at *16 (E.D. Cal. July 21, 2015) (quoting *In re Bluetooth Headset Prods.*

1 *Liab. Litig.*, 654 F.3d 935, 946 (9th Cir. 2011)).

2 **C. The Proposed Settlement provides significant benefits to settle claims.**

3 The Proposed Settlement provides substantial relief, considering (i) the costs,
4 risks, and delay of trial and appeal; (ii) the effectiveness of the proposed distribution
5 plan; and (iii) the fair terms of the proposed award of attorney’s fees. *See* Fed. R. Civ.
6 P. 23(e)(2)(C). Resolving these claims through a single class action is superior to
7 potentially thousands of individual suits. “From either a judicial or litigant viewpoint,
8 there is no advantage in individual members . . . prosecut[ing] . . . separate actions.
9 There would be less litigation or settlement leverage, significantly reduced resources
10 and no greater prospect for recovery.” *Hanlon*, 150 F.3d at 1023. Indeed, the terms of
11 the Proposed Settlement demonstrate the advantages of a collective bargaining
12 resolution process.

13 **D. The Proposed Settlement mitigates the risks, expenses, and delays the**
14 **Class would bear with continued litigation.**

15 The Proposed Settlement secures significant benefits in the face of the inherent
16 litigation uncertainties. *See Nobles v. MBNA Corp.*, 2009 WL 1854965, at *2 (N.D.
17 Cal. June 29, 2009) (“risks and certainty” of “continued litigation are factors for the
18 Court to balance in determining” fairness) (citing *Kim v. Space Pencil, Inc.*, 2012 WL
19 5948951, at *5 (N.D. Cal. Nov. 28, 2012)). While the Class Counsel believe in the
20 strength of the case, they recognize there are uncertainties in litigation, trial, and appeal,
21 making compromise in exchange for certain and timely provision to the Settlement
22 Class of the significant benefits described herein a reasonable outcome. *See Nat’l Rural*
23 *Telecomms.*, 221 F.R.D. at 526 (“In most situations, unless the settlement is clearly
24 inadequate, its acceptance and approval are preferable to lengthy and expensive
25 litigation with uncertain results.”). The significant benefits of the Proposed Settlement
26 are based on the Parties’ recognition of the respective strengths of each side’s case
27 measured against the risks and uncertainty associated with continued litigation, and the
28

1 possibility of appeals.¹⁶ This Settlement is also informed by facts collected by the Class
 2 Counsel and shared by BMW NA as part of confirmatory discovery. It is highly
 3 uncertain whether the Settlement Class would be able to obtain a better outcome
 4 through continued litigation and trial. There is a risk that the Settlement Class would
 5 receive less or nothing at all at trial, and, even if Plaintiff prevailed at trial, potential
 6 recovery could come years in the future. That “risk of continued litigation balanced
 7 against the certainty and immediacy of recovery from the Settlement” strongly favors
 8 approval. *In re Omnivision Tech., Inc.*, 559 F. Supp. 2d 1036, 1041 (N.D. Cal. 2007)
 9 (*citing In re Mego*, 213 F.3d at 458).

10 **E. The Proposed Settlement allows Class Members to easily obtain relief.**

11 The Settlement provides automatic and significant benefits for the Class
 12 Members, who will all benefit from the warranty extension and where applicable,
 13 reimbursement of past Out-Of-Pocket costs for Eligible Repairs. Margarian Dec. ¶ 28,
 14 Ex. A (¶¶ 3-5.) The universal benefits available to all Class Members, combined with
 15 a simple claim process, allows Class Members to benefit from the Settlement without
 16 delay.

17 **F. Class Counsel will seek reasonable attorneys’ fees and costs, which**
 18 **will be paid separately by BMW NA and not dilute any recovery to**
 19 **Class Members.**

20 BMW NA has agreed to pay reasonable attorneys’ fees and expense
 21 reimbursement to the Class Counsel as approved by the Court, and as consistent with
 22 the provisions of the Settlement Agreement. Margarian Dec. ¶ 30, Ex. A (¶ 28.)
 23 Importantly, the Parties did not begin negotiating attorneys’ fees, expense
 24

25 ¹⁶ Given Class Counsel’s “experience and familiarity with the facts, their
 26 recommendation that the settlement be approved is entitled to significant weight.”
 27 *Rosales*, 2015 WL 4460918, at *15 (*citing Nat’l Rural Telecomms.*, 221 F.R.D. at 528;
 28 *see also Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 447 (E.D. Cal.
 2013).

1 reimbursement, or service awards¹⁷ for Plaintiff until after all material settlement
 2 benefits for Class Members were negotiated. Margarian Dec. ¶ 34. Waiting until after
 3 the Settlement terms are nailed down before discussing fees is a practice routinely
 4 approved by courts as in the Class Members’ best interest. *See, e.g., In re Volkswagen*
 5 *“Clean Diesel” Marketing, Sales Practices, & Prods. Liab. Litig.*, 2016 WL 6248426,
 6 at *23 (N.D. Cal. Oct. 25, 2016).

7 **G. The Proposed Settlement treats all Class Members equitably.**

8 The Proposed Settlement fairly and equitably allocates benefits among Class
 9 Members without any unwarranted preferential treatment of class representatives or
 10 segments of the Class. *See* Fed. R. Civ. P. 23(e)(2)(D). As noted above, each Class
 11 Member will receive automatic benefits under the Agreement (in the form of a warranty
 12 extension) and have the opportunity to file claims for reimbursement for eligible Out-
 13 of-Pocket costs (with Required Proof) incurred prior to the Class Notice. Margarian
 14 Dec. ¶ 30, Ex. A (¶¶ 3-5.)

15 **VI. CERTIFICATION IS APPROPRIATE FOR SETTLEMENT PURPOSES**

16 **A. The Settlement Class meets the requirements of Rule 23(a).**

17 The Court should determine that the proposed Settlement Class meets the
 18 requirements of Rule 23 of the Federal Rules of Civil Procedure. *See Amchem Prods.*
 19 *v. Windsor*, 521 U.S. 591, 620 (1997); *Manual*, § 21.632.

20 **1. The Settlement Class is sufficiently numerous.**

21 Fed. R. Civ. P. 23(a)(1) requires the class to be so large that joinder of all
 22 members is impracticable, and numerosity is generally satisfied when the class exceeds
 23 40 members. *See, e.g., Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 654 (C.D. Cal. 2000).

24 _____
 25 ¹⁷ Service awards “are fairly typical in class action cases” and “are intended to
 26 compensate class representatives for work done on behalf of the class, to make up for
 27 financial or reputational risk undertaken in bringing the action, and, sometimes, to
 28 recognize their willingness to act as a private attorney general.” *Rodriguez v. W. Publ’g*
Corp., 563 F.3d 948, 958-59 (9th Cir. 2009).

1 Through confirmatory discovery, BMW NA established that there are approximately
2 300,000 Class Vehicles included in the Settlement Class. Margarian Dec. ¶ 8. The large
3 size of the Settlement Class and its geographic dispersal across the United States also
4 renders joinder impracticable. *See Palmer v. Stassinis*, 233 F.R.D. 546, 549 (N.D. Cal.
5 2006). Numerosity is satisfied.

6 **2. There are common questions of law and fact.**

7 “Federal Rule of Civil Procedure 23(a)(2) conditions class certification on
8 demonstrating that members of the proposed class share common ‘questions of law or
9 fact.’” *Stockwell v. City & Cty. of San Francisco*, 749 F.3d 1107, 1111 (9th Cir. 2014).
10 Commonality “does not turn on the number of common questions, but on their
11 relevance to the factual and legal issues at the core of the purported class’ claims.”
12 *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1165 (9th Cir. 2014). “Even a single
13 question of law or fact common to the members of the class will satisfy the
14 commonality requirement.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 369 (2011).
15 Courts routinely find commonality where, as here, the class claims arise from a uniform
16 course of conduct. *See, e.g., Cohen v. Trump*, 303 F.R.D. 376, 382 (S.D. Cal. 2014).
17 The claims here are rooted in common questions of fact as to whether the front console
18 cupholders in the Class Vehicles are defective and whether BMW NA knew about these
19 defects prior to sale and/or lease. Answering these questions generates common
20 answers “apt to drive the resolution of the litigation” for the Settlement Class as a
21 whole. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011). Thus, commonality is
22 satisfied.

23 **3. Plaintiffs’ claims are typical of the Class Members’ claims.**

24 Fed. R. Civ. P. 23(a)(3)’s typicality requirement counsels that “‘the claims or
25 defenses of the representative parties are typical of the claims or defenses of the class.’”
26 *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014) (quoting Fed. R. Civ. P. 23(a)(3)).
27 “Like the commonality requirement, the typicality requirement is ‘permissive’ and
28 requires only that the representative’s claims are ‘reasonably co-extensive with those

1 of absent class members; they need not be substantially identical.” *Rodriguez v. Hayes*,
2 591 F.3d 1105, 1124 (9th Cir. 2010) (quoting *Hanlon*, 150 F.3d at 1020); *Wolin v.*
3 *Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010). Typicality is thus
4 satisfied where a plaintiff suffered a similar injury, and other class members were
5 injured by the same course of conduct. See *Parsons*, 754 F.3d at 685; *Evon v. Law*
6 *Offices of Sidney Mickell*, 688 F.3d 1015, 1030 (9th Cir. 2012). Plaintiff’s claims and
7 injuries are typical of the claims of and injuries suffered by the Class. Plaintiff and
8 members of the Class alike all purchased or leased vehicles with the same allege defect
9 and suffered the same types of injuries. Plaintiff’s interest in obtaining a fair,
10 reasonable, and adequate settlement are identical to the interests of the Settlement Class
11 members. Accordingly, Plaintiffs have established the typicality element.

12 4. **Plaintiff and Class Counsel have protected, and will continue to**
13 **protect, the interests of the Settlement Class.**

14 Fed. R. Civ. P. 23(a)(4)’s adequacy requirement is met when “the representative
15 parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P.
16 23(a)(4). “This requirement is rooted in due-process concerns — ‘absent class members
17 must be afforded adequate representation before entry of a judgment which binds
18 them.’” *Radcliffe v. Experian Info. Sols., Inc.*, 715 F.3d 1157, 1165 (9th Cir. 2013)
19 (quoting *Hanlon*, 150 F.3d at 1020). Adequacy entails a two-prong inquiry: “(1) do
20 the named plaintiffs and their counsel have any conflicts of interest with other class
21 members and (2) will the named plaintiffs and their counsel prosecute the action
22 vigorously on behalf of the class?” *Evon*, 688 F.3d at 1031 (quoting *Hanlon*, 150 F.3d
23 at 1020). Both prongs are satisfied here.

24 Plaintiff has no interests that conflict with the Class Members and will continue
25 to vigorously protect Class Members’ interests, as they have throughout this litigation.
26 Plaintiffs understands its duties as class representatives, has agreed to consider the
27 interests of absent Class Members, and has actively participated in this litigation and
28 will continue to do so. See, e.g., *Loritz v. Exide Tech.*, 2015 WL 6790247, at *6 (C.D.

1 Cal. July 21, 2015) (“All that is necessary is a ‘rudimentary understanding of the present
2 action and ... a demonstrated willingness to assist counsel in the prosecution of the
3 litigation.”). As to counsel, since the beginning of this lawsuit, the Class Counsel have
4 devoted hundreds of hours to identify, investigate, and litigate the claims of Plaintiff
5 and the Settlement Class (and will continue to do so). Margarian Dec. ¶ 15. These
6 efforts led to the Proposed Settlement that provides significant and meaningful benefits
7 to the Settlement Class. And Class Counsel has deep experience in representing
8 plaintiffs and classes in complex litigation, including automobile class actions and
9 individual automotive defect litigation matters. Margarian Dec. ¶ 2.

10 **B. The Settlement Class meets the requirements of Rule 23(b)(3).**

11 Under Rule 23(b)(3), a class may be certified if a court finds that, “the questions
12 of law or fact common to class members predominate over any questions affecting only
13 individual members, and that a class action is superior to other available methods for
14 fairly and efficiently adjudicating the controversy.” When “[c]onfronted with a request
15 for settlement only class certification, a district court need not inquire whether the case,
16 if tried, would present intractable management problems ... for the proposal is that
17 there will be no trial.” *Amchem*, 521 U.S. at 620.

18 **1. Common issues of law and fact predominate.**

19 “The predominance inquiry ‘asks whether the common, aggregation-enabling,
20 issues in the case are more prevalent or important than the non-common, aggregation-
21 defeating, individual issues.’” *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045
22 (2016). “When ‘one or more of the central issues in the action are common to the class
23 and can be said to predominate,’ certification is proper “even though other important
24 matters will have to be tried separately, such as damages or some affirmative defenses
25 peculiar to some individual[s].” *Id.* (citation omitted). “[W]hen common questions
26 present a significant aspect of the case and they can be resolved for all members of the
27 class in a single adjudication, there is clear justification for handling the dispute on a
28 representative rather than on an individual basis.” *Hanlon*, 150 F.3d at 1022.

1 Plaintiff contends that the key evidence necessary to establish its claims is
 2 common to all members of the Settlement Class, who must prove, among other things,
 3 that the Class Vehicles have a common defect and that BMW NA’s conduct was
 4 uniformly wrong. The evidence changes little if there are 100 Class Members or
 5 thousands: either way, Plaintiff would, for instance, present the same evidence that
 6 BMW NA was aware of the defect and concealed it, and that BMW NA caused
 7 economic loss to Plaintiff and the Class. These common issues “are more prevalent or
 8 important than the non-common, aggregation- defeating, individual issues.” *Tyson*
 9 *Foods*, 136 S. Ct. at 1045. Courts often find that such issues predominate in auto defect
 10 class actions. *See, e.g., Wolin*, 617 F.3d at 1173; *Keegan v. Am. Honda Motor Co.*, 284
 11 F.R.D. 504, 532-34 (C.D. Cal. 2012); *Parkinson v. Hyundai Motor Am.*, 258 F.R.D.
 12 580, 596-97 (C.D. Cal. 2008); *Rosen v. J.M. Auto Inc.*, 270 F.R.D. 675, 681-82 (S.D.
 13 Fla. 2009); *Carriuolo v. Gen. Motors Co.*, 823 F.3d 977, 989 (11th Cir. 2016). Here,
 14 common issues of law and fact predominate.

15 **2. Class treatment is superior to other available methods.**

16 “The superiority inquiry . . . requires determination of whether the objectives of
 17 the particular class action procedure will be achieved in the particular case.” *Hanlon*,
 18 150 F.3d at 1023. There is no advantage here in having individual members control the
 19 prosecution of separate actions (even if some wanted to). *Id.* The Proposed Settlement
 20 demonstrates the advantages of a collective bargaining and resolution process. The
 21 efforts and funds required to marshal the evidence necessary to establish liability
 22 against BMW NA would discourage Class Members from pursuing individual
 23 litigation. *See Wolin*, 617 F.3d at 1175; *Amchem*, 521 U.S. at 617. The superiority of
 24 proceeding via the class action mechanism is demonstrated by the results of the
 25 Settlement, which, if approved, will provide the Settlement Class with meaningful
 26 benefits. The class action device provides the superior means to effectively and
 27 efficiently resolve this controversy.

28 ///

1 **VII. THE PROPOSED NOTICE PROGRAM IS ADEQUATE**

2 The Court “must direct notice in a reasonable manner to all class members who
3 would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1)(B). The notice must be
4 “reasonably calculated, under all the circumstances, to apprise interested parties of the
5 pendency of the action and afford them an opportunity to present their objections.”
6 *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). “Notice is
7 satisfactory if it ‘generally describes the terms of the settlement in sufficient detail to
8 alert those with adverse viewpoints to investigate and to come forward and be heard.’”
9 *Churchill Vill., L.L.C., v. GE*, 361 F.3d 566, 575 (9th Cir. 2004) (*quoting Mendoza v.*
10 *Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1352 (9th Cir. 1980)). The notice program,
11 which consists of, among other things, a dedicated website and a robust long form
12 notice that will be sent directly by mail and email, exceeds these standards. *See*
13 *Margarian Dec.*, Ex. A (¶¶ 1.G; 16A.)

14 The Claims Administrator¹⁸ will, among other things, mail or arrange to be
15 mailed by first-class mail, postage prepaid, the Notice and Claim Forms to Class
16 Members or email to each person on the class list the Notice and Claim Forms if email
17 addresses are available; develop processes and procedures for handling deficient Claim
18 Forms and returned mail; prepare and submit to the Court an Opt-Out list of the Class
19 Members requesting exclusion, as well as a list of all persons who submitted objections
20 to the Settlement; maintain a mailing address to which Class Members can send
21 requests for exclusion, objections, Claim Forms and other correspondence; and create
22 and maintain the Settlement website. *Margarian Dec.*, Ex. A (¶¶ 16.A-16.D.) The
23 Notice will clearly state the Class Vehicles that are the subject of this Settlement,
24 explain the relevant alleged defect, describe the benefits of the Settlement and how to
25

26 _____
27 ¹⁸ “Claims Administrator” means Kroll Settlement Administration, the third-party
28 entity which BMW NA will pay for, to administer the Settlement and the claims
process. *Margarian Dec.*, Ex. A (¶ 1.F.)

1 obtain them, and direct Class Members to the Settlement website for more information.
 2 And, in compliance with the attorney general notification provision of the Class Action
 3 Fairness Act (“CAFA”), 28 U.S.C. § 1715, notice of this Proposed Settlement will be
 4 sent to the Attorney General of the United States and the attorneys general of each state
 5 in which a Class Member resides.

6 **VIII. CONCLUSION**

7 Plaintiff respectfully requests that the Court grant the motion and preliminarily
 8 approve the Settlement. The Parties respectfully request that the Court set a schedule
 9 for key dates including a date for a final approval hearing and propose the following:

10 DATE	EVENT
11 10/31/2022	Preliminary Approval Hearing
12 1/30/2023	Last Date for Class Notice of Disseminated (90 Days after 13 Preliminary Approval Order)
14 12/15/2022	Motions for Approval of Attorneys’ Fees and Expenses and 15 Service Awards filed
16 3/30/2023	Motion for Final Approval filed
17 3/16/2023	Objection and Opt-Out Deadline
18 4/13/2023	Reply Memorandum in Support of Final Approval and Fee 19 Application filed (including responses to any objections to 20 proposed settlement)
21 5/1/2023	Settlement Fairness Hearing

22
 23 DATED: 09/30/2022 _____

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25 By /s/ Hovanes Margarian
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BRIGHTK CONSULTING INC.
8

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11

12 BRIGHTK CONSULTING INC., as a
California Corporation, on behalf of itself,
13 all others similarly situated, and the general
public,

14 Plaintiff,

15 vs.

16 BMW OF NORTH AMERICA, LLC, a
17 Delaware Limited Liability Company; and
DOES 1 through 30, inclusive,

18 Defendants.
19

Case No.: 8:21-cv-02063-CJC (JDEx)

Judge: Hon. Cormac J. Carney

**DECLARATION OF HOVANES
MARGARIAN IN SUPPORT OF
PLAINTIFF BRIGHTK
CONSULTING INC.'S NOTICE
OF MOTION AND MOTION
FOR PRELIMINARY
APPROVAL OF CLASS
SETTLEMENT AND
DIRECTION OF NOTICE
UNDER FED. R. CIV. P. 23(e)**

[Filed Concurrently with Plaintiff's
Notice of Motion and Motion for
Preliminary Approval of Class
Settlement and Direction of Notice
Under Fed. R. Civ. P. 23(e); and
[Proposed] Preliminary Approval
Order]

Complaint Filed: December 16, 2021

25 ///
26 ///
27 ///
28 ///

1 exhibited an engine oil overconsumption defect much similar to the
2 case at issue.)

3 b. *Lilith Chakhalyan v. City of Los Angeles et al.*, Case No. BC443367.
4 (We certified a class of approximately 8,000 City of Los Angeles
5 residents who had been overcharged on their Department of Water
6 and Power waste disposal fees. The resulting settlement provided an
7 approximate \$8,000,000 refund to the class.)

8 c. *Jackie Fitzhenry-Russell et al. v. Keurig Dr. Pepper Inc., et al*, Case
9 No. 5:17-cv-00564-NC (N.D. Cal.). (The case was settled with a
10 significant refund for the class and an injunctive order to change the
11 labeling of Canada Dry Giner Ale to exclude the phrase “made with
12 real giner.”)

13 d. *Armen G. Kojikian et al. v. American Honda Motor Co Inc.*, Case No.
14 BC606392. (The case was settled with over 17,000 class members
15 getting repairs which exceeded \$70 million dollars in aggregate repair
16 costs paid out by the manufacturer.)

17 5. I have the experience necessary to litigate such matters and have litigated the
18 present matter to the point of obtaining a settlement agreement that parallels the best
19 results obtained in similar cases.

20 6. I completed my Juris Doctor degree at the University of Southern California
21 Gould School of Law in 2006 and immediately founded The Margarian Law Firm,
22 focusing on automotive litigation.

23 7. I am a member of the Consumer Attorneys Association of Los Angeles
24 (CAALA).

25 8. This is a class action brought by Plaintiff on behalf of itself and a class of current
26 and former BMW vehicle owners and lessees with defective front console cupholders
27 contained in numerous BMW vehicles sold in the United States. It was originally filed on
28

1 behalf of owners and lessees of certain BMW X7 vehicles. Through mediation and
2 confirmatory discovery, I learned the potentially affected vehicles are broader and include
3 2019-2022 BMW X5 (G05; start of production (“SOP”) 11/2018), 2020-2022 X6 (G06;
4 SOP 11/2019), 2019-2022 X7 (G07; SOP 3/2018), 2020-2022 X5M (F95; SOP 4/2020),
5 2020-2022 X6M (F96; SOP 4/2020) vehicles (individually referred to as “Class Vehicle,”
6 collectively referred to as “Class Vehicles”). Plaintiff intends to file a First Amended
7 Class Action Complaint that expands the class definition to include these Class Vehicles.

8 9. This action arose from Defendant BMW OF NORTH AMERICA, LLC, a
9 Delaware Limited Liability Company’s (“BMW NA”) (together with Plaintiff referred to
10 as the “Parties”) failure, despite its longstanding knowledge of a material defect, to
11 properly disclose to Plaintiff and other consumers that the Class Vehicles’ front console
12 cupholders were defective. Namely a supplemental restraint system (“SRS”) warning light
13 illumination a BMW NA authorized repair facility determines was caused by liquid that
14 spilled or that otherwise seeped through the cupholder(s) on the front center console of a
15 Class Vehicle onto components below the center console (“Eligible Repair” or “Eligible
16 Repairs”).

17 10. As a result of BMW NA’s unfair, deceptive, and/or fraudulent business practices,
18 owners and/or lessees of the Class Vehicles, including Plaintiff, have suffered an
19 ascertainable loss of money and/or property and/or loss in value.

20 11. On December 16, 2021, Plaintiff initiated this class action contending that SRS
21 illumination repair costs necessitated by liquid that seeps through the front console
22 cupholders should be borne by BMW NA.

23 12. Prior to this suit, BMW NA’s warranty did not cover costs for an Eligible
24 Repair because this repair necessitated by an “outside influence.”

25 13. Plaintiff alleges that BMW NA committed fraud and deceit, breached express
26 and implied warranties pursuant to the Song-Beverly Consumer Warranty Act (Civil Code
27 § 1790, et seq.) and the Magnuson-Moss Warranty Act (15 U.S.C. § 2301, et seq.), violated
28

1 the California Consumer Legal Remedies Act (“CLRA”) (Civil Code § 1750, et seq.),
2 California Unfair Competition Law (“UCL”) (Business and Professions Code § 17200, et
3 seq.) and False Advertisement Law (“FAL”) (Business and Professions Code § 17500,
4 et seq.).

5 14. Shortly after Plaintiff filed the instant action, the Parties agreed to participate
6 in an early mediation, to discuss the facts and law relating to the matters in the present
7 action and determine if an equitable class resolution can be achieved without further
8 litigation.

9 15. Since the beginning of this lawsuit, I have devoted hundreds of hours to
10 identify, investigate, and litigate the claims of Plaintiff and the Settlement Class (and will
11 continue to do so). Plaintiff assisted me with fact development and discovery and regularly
12 communicated with me to remain up to date on the litigation, the Settlement¹ process, and
13 the status of its vehicle condition and repair.

14 16. On March 28, 2022, the Parties requested to Court to enter an Order to stay the
15 instant action pending the anticipated May 9, 2022, mediation in this matter.

16 17. On May 9, 2022, the Parties participated in a full-day in-person mediation with
17 mediator Jed D. Melnick of JAMS.

18 18. The Parties negotiated extensively by discussing their respective positions and
19 exchanging numerous settlement proposals with Mr. Melnick’s help at this in-person
20 mediation session in New York. The settlement discussions were conducted for over seven
21 (7) hours.

22 19. The Parties did not reach a resolution on May 9, 2022, but made significant
23 progress on a potential class resolution.

24 20. The Parties continued their settlement dialogue through Mr. Melnick after May
25 9, 2022, as well as they continued to be engaged in an extensive formal and informal

26
27 ¹ “Settlement” means the agreement by the Parties to resolve the instant action, the terms of which have been
28 memorialized and provided for in the Settlement Agreement and all the exhibits attached thereto.

1 discovery and conducted a thorough examination and investigation related to the subject
2 matter of the instant case.

3 21. On July 5, 2022, per the Parties' request the Court ordered the instant
4 action to stay in by an additional sixty (60) days while the Parties continue their
5 settlement negotiations.

6 22. On July 12, 2022, the Parties participated in a second mediation with Mr.
7 Melnick, and after a half-day mediation agreed to the terms of a proposed class action
8 settlement.

9 23. On July 28, 2022, the Parties signed a Memorandum of Understanding.

10 24. The proposed class action settlement
11 ("Proposed Settlement") resolves all claims and class allegations regarding the Class
12 Vehicles. A true and correct copy of the Proposed Settlement agreement is attached hereto
13 as Exhibit A to this declaration.

14 25. The Proposed Settlement is the product of informed, non-collusive, arm's length
15 negotiations facilitated by an experienced mediator. Negotiations were difficult and
16 protracted. Additionally, Plaintiff and I worked tirelessly to deliver the Proposed
17 Settlement.

18 26. Mr. Melnick played a crucial role in helping the Parties bridge their differences
19 and evaluate the strengths and weaknesses of their respective positions, and reach a fair
20 agreement. Attached hereto and marked as Exhibit B to this declaration is a true and
21 correct copy of the Declaration of Jed D. Melnick in Support of Plaintiff Brightk
22 Consulting Inc.'s Notice of Motion and Motion for Preliminary Approval of Class
23 Settlement and Direction of Notice Under Fed. R. Civ. P. 23(e).

24 27. The Proposed Settlement provides a seven (7) year/ seventy-five thousand
25 (75,000) mile warranty coverage for Eligible Repairs that become necessary after the
26
27
28

1 dissemination of the Class Notice².

2 28. The Proposed Settlement also provides a mechanism for qualifying Class
3 Members³ to receive full reimbursement for eligible out-of-pocket expenses for Eligible
4 Repairs they paid for before the Class Notice.

5 29. Further, the Proposed Settlement provides a mechanism for BMW NA to
6 separately pay reasonable attorneys' fees and costs and a plaintiff service award so that
7 these payments will not dilute any of the benefits available to the Class.

8 30. The Settlement Agreement and Release ("Settlement Agreement") provides the
9 following major benefits:

10 - **Warranty Coverage for Eligible Repairs after Mailing Date of Class Notice**
11 **(Automatic Relief)**. After the Mailing Date of the Class Notice⁴, any Class Vehicle that
12 requires an Eligible Repair will be repaired by a BMW Center free of charge during the
13 Extended Warranty Period⁵. To ensure continued customer satisfaction and in accordance
14 with this Settlement Agreement, BMW NA will implement the Extended Warranty Period
15 as soon as practicable by way of the Class Notice and will inform Class Members of
16 warranty coverage available for Eligible Repairs. No reimbursement is available for Out-
17 of-Pocket Costs⁶ incurred for Eligible Repairs after the Mailing Date of Class Notice.

18 _____
19 ² "Class Notice" or "Settlement Class Notice" means the Court-approved form of notice to current and former
20 owners and lessees of Class Vehicles, in substantially the same form as that attached hereto as Exhibit "A,"
21 informing them of, among other things, the (i) preliminary approval of the Settlement; (ii) scheduling of the Final
22 Approval Hearing; (iii) opportunity to submit a claim; (iv) opportunity to submit an objection; and (v) opportunity
23 to request exclusion.

24 ³ "Settlement Class Members," "Class Members," or "Settlement Class" means all current and former owners and
25 lessees of a Class Vehicle in the United States, including the District of Columbia and Puerto Rico who do not
26 exclude themselves from (opt-out of) the class.

27 ⁴ "Mailing Date of the Class Notice" means the date when the Class Notice will be mailed to Class Members by
28 the Claims Administrator.

⁵ "Extended Warranty Period" means the period of 7 years/75,000 miles (whichever occurs first), from the date the
Class Vehicles was first placed in service, during which an Eligible Repair may be performed.

⁶ "Out-of-Pocket Costs" mean money paid by Class Members to a BMW Center for an Eligible Repair prior to the

1 Agreement, ¶ 3.

2 - **Reimbursement of Out-of-Pocket Costs Incurred Prior to Mailing Date of**
3 **Class Notice (Claims Submission).** Class Members who have incurred Out-of-Pocket
4 Costs may file a Claim⁷ for reimbursement up to one hundred twenty (120) days after the
5 Mailing Date of the Class Notice or up until the Court issues its order on final approval of
6 the Settlement⁸, whichever is earlier. Approved claims will be paid on a rolling basis within
7 sixty (60) days after the Settlement’s Effective Date⁹ and approval of the Claim.

8 Agreement, ¶ 4.

9 - **Required Proof.** To receive reimbursement on a Claim for an Out-of-Pocket
10 Cost under Paragraph 4, Class Members must submit a Claim Form to the Claims
11 Administrator that is post-marked during the Claims Submission Period or submitted
12 through the online portal during the Claims Submission Period and includes:

- 13 A. a legible repair order from a BMW Center that identifies a Settlement Class
- 14 Vehicle and VIN, and that establishes a BMW Center determination that
- 15 the repair for which reimbursement is sought was caused by liquid seeping
- 16 or leaking through the front console cupholders onto components below;

19 Mailing Date of the Class Notice, and that was not otherwise paid for or covered by BMW NA under warranty or
20 goodwill, covered by insurance, or under a third-party reimbursement program or service contract. No other costs,
21 including but not limited to, costs for rental vehicles and/or loaners, towing costs, or other claimed incidental or
22 consequential costs are eligible for reimbursement as Out-of-Pocket Costs. Out-of-Pocket Costs incurred after the
Mailing Date of the Class Notice are not eligible for reimbursement since Eligible Repairs after that date will be
repaired pursuant to the Extended Warranty Period and paid for by BMW NA.

23 ⁷ “Claim” means a timely request for reimbursement for an Out-of-Pocket Cost.

24 ⁸ “Settlement” means the agreement by the Parties to resolve the Action, the terms of which have been memorialized
25 and provided for in this Settlement Agreement and all the exhibits attached hereto.

26 ⁹ “Effective Date” means the earliest of the following: (1) the date on which the time for appeal from the Final
27 Judgment approving the settlement has elapsed without any appeals being filed; or (2) the date on which all appeals
28 from the Final Judgment approving this Settlement or from any appellate court decisions affirming the Final
Judgment have been exhausted, and no further appeal may be taken.

- 1 B. proof of payment, in the form of a canceled check, credit-card receipt,
2 credit-card statement, or receipt demonstrating that the Class Member
3 paid for the amount(s) sought for reimbursement (a repair order that itself
4 denotes a payment by check or credit card that is issued from a BMW
5 Center is sufficient proof of payment);
- 6 C. the mileage of the Settlement Class Vehicle at the time of Eligible Repair;
- 7 D. the date of the Eligible Repair, and
- 8
- 9 E. a description of the Eligible Repair performed with indications as to the
10 parts and labor for the repair.

11 Reimbursement amounts will be reduced by goodwill or other adjustment, coupon,
12 refund, or payment made by an authorized BMW Center, BMW NA, any person or entity
13 associated with BMW NA, an insurer, or a provider of an extended service contract.
14 Agreement, ¶ 4.

15 - **Attorney's Fees and Expenses.** BMW NA will pay Class Counsel's¹⁰
16 reasonable attorneys' fees and expense reimbursements ("Settlement Class Counsel Fees
17 and Expenses") in an amount consistent with the terms of the Settlement Agreement and
18 as approved by the Court. Agreement, ¶ 29. Payment of attorneys' fees and expense
19 reimbursement will not impact or diminish any of the Settlement benefits available to the
20 Class.

21 31. In exchange for these benefits, all Class Members who do not opt-out of the
22 Settlement Class will be subject to a release of their claims against Released Parties¹¹

23 _____
24 ¹⁰ "Class Counsel" means The Margarian Law Firm.

25 ¹¹ "Released Parties" means BMW NA and its direct and indirect parents, subsidiaries, affiliates, successors in
26 interest, officers, directors, agents, authorized BMW dealers, attorneys, and all other persons or entities acting on
27 their behalf; suppliers, licensors, licensees, distributors, assemblers, partners, component part designers,
28 manufacturers, holding companies, joint ventures, and any individuals or entities involved in the chain of design,
development, testing, manufacture, sale, assembly, distribution, marketing, advertising, financing, warranting,
repair, and maintenance of the Settlement Class Vehicles and their component parts.

1 related to all claims, including demands, rights, liabilities, and causes of action, of every
2 nature and description that were asserted or could have been asserted in this action, which
3 relate to or arises out of complaints or concerns that led to or may lead to an Eligible
4 Repair, excluding claims for property damage or personal injury.

5 32. The Parties have spent months in finalizing the release, the Settlement
6 Agreement, and related documents.

7 33. On September 6, 2022, per the Parties' request the Court ordered the instant
8 action to stay in by an additional thirty (30) days up until and including September 30,
9 2022, in order the Parties to finalize their settlement documents and prepare to file a
10 motion for preliminary approval of the settlement.

11 34. The Parties did not begin negotiating Plaintiff's attorneys' fees, expense
12 reimbursement, or service awards¹² for Plaintiff until after all material settlement benefits
13 for Class Members were negotiated.

14 35. Plaintiff, by and through its Chief Executive Officer, Fang Lin, participated in all
15 the stages of litigation and provided the information necessary to advocate for the Class
16 and ensured that the Class interests were protected by the settlement terms. Attached
17 hereto and marked as Exhibit C to this declaration is a true and correct copy of the
18 Declaration of Fang Lin in Support of Plaintiff Brightk Consulting Inc.'s Notice of Motion
19 and Motion for Preliminary Approval of Class Settlement and Direction of Notice Under
20 Fed. R. Civ. P. 23(e).

21 //

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25 _____
26 ¹² Service awards "are fairly typical in class action cases" and "are intended to compensate class representatives for
27 work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,
28 and, sometimes, to recognize their willingness to act as a private attorney general." *Rodriguez v. W. Publ'g Corp.*,
563 F.3d 948, 958-59 (9th Cir. 2009).

1 36.I declare under penalty of perjury under the laws of the State of California and
2 the United States of America that the foregoing is true and correct.

3 DATED: 09/30/2022

THE MARGARIAN LAW FIRM
801 North Brand Boulevard, Suite 210
Glendale, California 91203

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5
6 By /s/Hovanes Margarian
7 Hovanes Margarian
8 Attorney for Plaintiff
9 BRIGHTK CONSULTING INC.
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EXHIBIT A

SETTLEMENT AGREEMENT AND RELEASE

Plaintiff Brightk Consulting, Inc. (“Plaintiff” or the “Settlement Class Representative”), by and through its counsel, and Defendant BMW of North America, LLC (“BMW NA” or “Defendant”) by and through its counsel, hereby enter into this Settlement Agreement providing, subject to the approval of the Court, for the settlement of the claims herein described against Defendant (the “Settlement”) in the Action. BMW NA and Plaintiff are collectively referred to herein as the “Parties.”

WHEREAS, on December 16, 2021, Plaintiff filed a putative class action against Defendant in the United States District Court for the Central District of California captioned *Brightk Consulting, Inc. v. BMW of North America, LLC*, Case No. 21-CV-02063-CJC-JDE (the “Action”); and

WHEREAS, following commencement of the action and in connection with their mediation efforts, the Parties exchanged formal and informal discovery; and

WHEREAS, Plaintiff and Defendant have conducted a thorough examination and investigation of the facts and law relating to the matters in the Action; and

WHEREAS, on May 9, 2022 the parties participated in a full-day mediation with mediator Jed Melnick of JAMS and thereafter, continued their settlement dialogue directly and through the mediator, and participated in a second mediation on July 12, 2022; and

WHEREAS, after extensive, vigorous discussions and arm’s-length negotiations, and numerous exchanges of information and settlement proposals, the Parties were able to reach an agreement to resolve the Action and the disputes between them during the July 12, 2022 mediation; and

WHEREAS, the Parties stipulated to the filing of a First Amended Complaint that conforms the pleadings to this Settlement;

WHEREAS, for purposes of this settlement only, the Parties agree to the certification of a settlement class (“Class” or “Settlement Class”), as defined below; and

WHEREAS, Defendant expressly denies any wrongdoing alleged in the pleadings and does not admit or concede any actual or potential fault, wrongdoing, or liability in connection with any facts or claims that have been or could have been alleged against it in the Action. Even though Defendant expressly denies any wrongdoing, Defendant has concluded that settlement is desirable in order to avoid the time, expense, and inherent uncertainties of defending protracted litigation and to resolve, finally and completely, all pending and potential claims of the Plaintiff and all members of the Class which were or that could have been asserted by Plaintiff and the members of Class in the Action; and

WHEREAS, while Plaintiff firmly believes in the merits of its case, Plaintiff recognizes the substantial benefits to Plaintiff and the Class under the terms of this Settlement Agreement and the costs, risks, and uncertainty of protracted litigation, especially in complex actions such as this, as well as the difficulties and delays inherent in such litigation, and believes that it is in its interest, and the interest of all Class Members, to resolve the Action, and any and all claims asserted in the Action against Defendant, in order to provide effective relief promptly to Plaintiff and the Class in this Settlement Agreement; and

WHEREAS, the undersigned Parties believe that this Settlement Agreement offers significant benefits to Class Members and is fair, adequate, reasonable, and in the best interest of Class Members; and

WHEREAS, this Settlement Agreement is made and entered into by and among Plaintiff individually and on behalf of the Class, and Defendant;

NOW, THEREFORE, it is hereby stipulated and agreed, by and between the undersigned Parties, as follows:

DEFINITIONS.

1. As used in this Settlement Agreement and the attached exhibits (which are an integral part of this Settlement Agreement and are incorporated in their entirety by reference), the following terms will have the meanings set forth below, unless this Settlement Agreement specifically provides otherwise. Where appropriate, terms used in the singular will be deemed to include the plural and vice versa.

A. Action. “Action” means the litigation entitled *Brightk Consulting, Inc. v. BMW of North America, LLC*, Case No. 21-CV-02063-CJC-JDE (the “Action”), pending before the United States District Court, Central District of California.

B. BMW NA. “BMW NA” means Defendant BMW of North America, LLC.

C. Claim. “Claim” means a timely request for reimbursement for an Out-of-Pocket Cost.

D. Claim Form. “Claim Form” means a form in substantially the same form as that attached hereto as Exhibit “B” to be used for making a Claim.

E. Claim Validation Process. “Claim Validation Process” means the process by which properly submitted Claims which are conditionally approved by the Claims Administrator will be reviewed and validated by BMW NA to determine that (1) the Class Vehicle’s New Passenger Vehicle Limited Warranty has not been invalidated, (2) neither BMW NA nor a BMW authorized dealer (i.e., “BMW Center” hereinafter) has previously paid for the same claim(s) being submitted for reimbursement, (3) in the event the Settlement Class Member has received “goodwill” or other cost/price adjustment, coupon, reimbursement, or refund from BMW NA, a BMW Center, any person or entity associated with Defendant, an insurer, or a

provider of an extended service contract, then that amount will be applied against the amount of the claim submitted; and (4) the claim has not been fraudulently submitted.

F. Claims Administrator. “Claims Administrator” means Kroll Settlement Administration, the third-party entity which Defendant will pay for, to administer the Settlement and the claims process.

G. Class Notice. “Class Notice” or “Settlement Class Notice” means the Court-approved form of notice to current and former owners and lessees of Class Vehicles, in substantially the same form as that attached hereto as Exhibit “A,” informing them of, among other things, the (i) preliminary approval of the Settlement; (ii) scheduling of the Final Approval Hearing; (iii) opportunity to submit a claim; (iv) opportunity to submit an objection; and (v) opportunity to request exclusion.

H. Claims Submission Period. “Claims Submission Period” means the time period during which Class Members may submit Claims, which will commence with the Mailing Date of the Class Notice and will conclude one hundred twenty (120) days after the Mailing Date of the Class Notice or the date the Court issues its order on final approval of the settlement, whichever is earlier.

I. Class Vehicles. “Class Vehicles” means the following model year and model BMW brand motor vehicles: 2019-2022 BMW X5 (G05); 2020-2022 X6 (G06); 2019-2022 X7 (G07); 2020-2022 X5M (F95); 2020-2022 X6M (F96).

J. Court. “Court” means the United States District Court for the Central District of California, the Honorable Cormac J. Carney, presiding, or his duly appointed successor.

K. Defendant. “Defendant” means BMW NA, as well as its predecessors, successors, assigns, parents, affiliates, directors, officers, agents, attorneys, representatives, and employees.

L. Defendant’s Counsel. “Defendant’s Counsel” means Lewis, Brisbois, Bisgaard & Smith, LLP.

M. Effective Date. “Effective Date” means the earliest of the following: (1) the date on which the time for appeal from the Final Judgment approving the settlement has elapsed without any appeals being filed; or (2) the date on which all appeals from the Final Judgment approving this Settlement or from any appellate court decisions affirming the Final Judgment have been exhausted, and no further appeal may be taken.

N. Eligible Repair. “Eligible Repair” means a repair performed by a BMW Center in the United States on a Class Vehicle during the Extended Warranty Period to address or remedy a customer complaint of an SRS warning light illumination and/or damage to other components (if any) below the cupholder that the BMW Center determines or determined was caused by liquid that spilled or that otherwise seeped through the cupholder(s) on the front center console of a Class Vehicle. An SRS warning light illumination and/or damage to other components (if any) below the cupholder that a BMW Center determines is caused by reasons other than liquid seeping through the cupholder is not an Eligible Repair covered by this Settlement and will be subject to normal warranty coverage terms and conditions, if any.

O. Extended Warranty Period. “Extended Warranty Period” means the period of 7 years/75,000 miles (whichever occurs first), from the date the Class Vehicles was first placed in service, during which an Eligible Repair may be performed.

P. Final Approval Hearing. “Final Approval Hearing” means the hearing at which the Court will consider and decide whether to enter the Final Approval Order.

Q. Final Approval Motion. “Final Approval Motion” means the motion Plaintiff will file in support of the Court's final approval of the Settlement.

R. Final Approval Order. “Final Approval Order” means the Court order that approves this Settlement Agreement and makes such other final rulings as are contemplated by this Settlement Agreement.

S. Mailing Date of Class Notice. “Mailing Date of the Class Notice” means the date when the Class Notice will be mailed to Class Members by the Claims Administrator.

T. Objection Deadline. “Objection Deadline” means forty-five (45) days after Mailing Date of the Class Notice or a date otherwise ordered by the Court in the Preliminary Approval Order, by which time any Class Members who wish to do so must object to the Settlement Agreement’s terms or provisions and submit any required statements, proof, or other materials and/or argument.

U. Opt-Out Deadline. “Opt-Out Deadline” means forty-five (45) days after Mailing Date of the Class Notice or a date otherwise ordered by the Court in the Preliminary Approval Order, by which time any Settlement Class Members who do not wish to be included in the Settlement Class and participate in the Settlement Agreement must complete the acts necessary to properly effect such election.

V. Opt-Out List. “Opt-Out List” means a written list prepared by Settlement Class Counsel or the Claims Administrator of all Settlement Class Members who submit timely Requests for Exclusion.

W. Out-of-Pocket Cost. “Out-of-Pocket Cost” means money paid by a Class Member to a BMW Center for an Eligible Repair prior to the Mailing Date of the Class Notice, and that was not otherwise paid for or covered by BMW NA under warranty or goodwill, covered by insurance, or under a third-party reimbursement program or service contract. No other costs, including but not limited to, costs for rental vehicles and/or loaners, towing costs, or other claimed incidental or consequential costs are eligible for reimbursement as Out-Of-Pocket Costs. Out-of-Pocket Costs incurred after the Mailing Date of the Class Notice are not eligible for reimbursement since Eligible Repairs after that date will be repaired pursuant to the Extended Warranty Period and paid for by BMW NA.

X. Parties. “Parties” means the Plaintiff and Defendant.

Y. Plaintiff. “Plaintiff” means Settlement Class Representative Brightk Consulting, Inc. (acting by and through its principal, Lin Fang).

Z. Preliminary Approval Motion. “Preliminary Approval Motion” means the motion Plaintiff files to obtain the Court’s preliminary approval of the Settlement.

AA. Preliminary Approval Order. “Preliminary Approval Order” means the order of the Court preliminarily approving this Settlement Agreement.

BB. Release. “Release” means the release and waiver set forth in paragraph 27 herein and its subsections, and that will be reproduced in the Final Approval Order.

CC. Request for Exclusion. “Request for Exclusion” means any request by any Settlement Class Member to be excluded from (opt-out of) the Settlement.

DD. Settlement. “Settlement” means the agreement by the Parties to resolve the Action, the terms of which have been memorialized and provided for in this Settlement Agreement and all the exhibits attached hereto.

EE. Settlement Agreement. “Settlement Agreement” means this Settlement Agreement and all the exhibits attached hereto.

FF. Settlement Class Counsel. “Settlement Class Counsel” means The Margarian Law Firm.

GG. Settlement Class Counsel Fees and Expenses. “Settlement Class Counsel Fees and Expenses” means the reasonable attorneys’ fees and expenses not to exceed three hundred seventy five thousand dollars (\$375,000.00), as approved by the Court, to be paid separately by Defendant.

HH. Settlement Class Members or Settlement Class. “Settlement Class Members” or “Settlement Class” means all current and former owners and lessees of a Class Vehicle purchased in the United States, including the District of Columbia and Puerto Rico who do not exclude themselves from (opt-out of) the class. Excluded from the Settlement Class are:

- BMW, its related entities, parent companies, subsidiaries and affiliates, and their respective officers, directors, and employees;
- BMW Group dealers or independent repair shops;
- Insurers of the Class Vehicles;
- all persons and/or entities claiming to be subrogated to the rights of Class Members;
- issuers or providers of extended vehicle warranties or issuers or providers of extended service contracts;
- individuals and/or entities who validly and timely opt-out of the Settlement;
- consumers or businesses that have purchased Class Vehicles previously deemed a total loss (i.e. salvage title; subject to verification through Carfax or other means) or that were purchased with a branded title or where the vehicle was sold “as is” and the purchase price for such vehicle therefore reflects such condition;
- current and former owners of a Class Vehicle that previously have released their claims against BMW with respect to the issues raised in the Action;

- United States residents that have purchased Class Vehicles in the United States but have since transported the vehicle outside the United States for permanent use abroad;
- Individuals or entities that have purchased and/or leased Class Vehicles as “fleet” vehicles (i.e. rentals or company vehicles);
- the Judge(s) to whom the Action is or will be assigned and any members of the Judge(s)’ family or Judge(s)’ chambers (law clerks, secretaries, deputy clerk, etc.);
- Class counsel or employees of Class Counsel.

II. Settlement Class Notice. “Settlement Class Notice” means the same thing as Class Notice.

JJ. Settlement Class Representative. “Settlement Class Representative” means Brightk Consulting, Inc. (acting by and through its principal, Lin Fang).

KK. Settlement Class Representative Service Payment. “Settlement Class Representative Service Payment” means the reasonable service payments approved by the Court for the Settlement Class Representative’s incentive payment not to exceed three thousand dollars (\$3,000.00).

LL. Settlement Class Vehicles. “Settlement Class Vehicles” means Class Vehicles currently or formerly owned or leased by Settlement Class Members.

MM. VIN. “VIN” means Vehicle Identification Number.

REQUIRED EVENTS.

2. Promptly after execution of this Settlement Agreement by all Parties:

A. Settlement Class Counsel and Defendant’s Counsel will take all reasonable and necessary steps, subject to the Court’s availability, to obtain entry of the Preliminary Approval Order and the Final Approval Order as expeditiously as possible.

i. The Parties will seek entry of a Preliminary Approval Order. Plaintiff will file its Preliminary Approval Motion with the proposed Preliminary Approval Order and supporting documents. The Preliminary Approval Order will, among other things:

a. Certify a nationwide (United States, District of Columbia, and Puerto Rico) settlement-only class; approve BrightK Consulting, Inc. as Settlement Class Representative; and appoint its counsel as Settlement Class Counsel, pursuant to Fed. R. Civ. P. 23;

b. Preliminarily approve the Settlement;

c. Appoint the Claims Administrator;

d. Require Defendant's Counsel to provide notice under the Class Action Fairness Act, 28 U.S.C. § 1715 to the States' Attorneys General within ten (10) days from the date of the Preliminary Approval Order, if they have not already done so;

e. Require that the Claims Administrator, within forty-five (45) days of the date of the Preliminary Approval Order, establish and maintain a website and 800 number, which will remain available until all Claims decisions by the Claims Administrator and payment to claimants have been made;

f. Require the dissemination of Settlement Class Notice as soon as practicable to Settlement Class Members' last known addresses based on BMW NA's records (with skip tracing or Department of Motor Vehicle updates and re-mailing for undeliverable or returned Class Notices), but in no event, later than ninety (90) days of the date of the Preliminary Approval Order or such additional time as is reasonably required, and the taking of all necessary and appropriate steps to accomplish this task;

g. Determine that the Settlement Class Notice complies with all legal requirements, including, but not limited to, the Due Process Clause of the United States Constitution;

h. Schedule a date and time for a Final Approval Hearing, not less than one hundred and thirty-five (135) days after the date of the Preliminary Approval Order, to determine whether the Settlement should be finally approved by the Court;

i. Set a deadline for all Claims by Settlement Class Members to be submitted, one hundred twenty (120) days after the Mailing Date of Class Notice or up until the Court issues its Final Approval Order, whichever is earlier;

j. Require Settlement Class Members who wish to exclude themselves from or object to the Settlement to submit an appropriate and timely written request for exclusion or objection by a date certain as specified in the Class Notice that will be forty-five (45) days after the Mailing Date of Class Notice;

k. Require Settlement Class Members who wish to appear to object to the Settlement Agreement to submit an appropriate and timely written statement by a date certain as specified in the Class Notice that will be forty-five (45) days after the Mailing Date of Class Notice;

l. Require attorneys representing objecting Settlement Class Members, at the time the objection is filed, at the objecting Settlement Class Members' expense, to file a notice of appearance by a date certain as specified in the Class Notice that will be forty-five (45) days after the Mailing Date of Class Notice;

m. Require Settlement Class Counsel to file their motion for an award of attorneys' fees, inclusive of costs, expenses, and Settlement Class Representative Service Payment, forty-five (45) days after the entry of the Preliminary Approval Order;

n. Require Settlement Class Counsel to file their Final Approval Motion one hundred fifty (150) days after the Preliminary Approval Order;

o. Require Defendant to file with the Court an affidavit no less than fifteen (15) days prior to the Final Approval Hearing from the Claims Administrator: (i) indicating the number of claims, requests for exclusion, and objections submitted by Settlement Class Members to date; and (ii) attesting that Settlement Class Notice was disseminated in a manner consistent with the terms of this Settlement Agreement and the Class Action Fairness Act, 28 U.S.C. §1711 *et seq.*, or those otherwise required by the Court; and

p. Issue other related orders as necessary to effectuate the preliminary approval of the Settlement Agreement.

ii. After the Preliminary Approval Hearing, the Parties will seek to obtain from the Court a Final Approval Order in a form to be agreed upon by the Parties. The Final Approval Order will be determined by the Court but is expected to, among other things:

a. Find that the Court has personal jurisdiction over all Settlement Class Members, subject-matter jurisdiction over the claims asserted in the Action, and that venue is proper;

b. Approve the Settlement Agreement, pursuant to Fed. R. Civ. P. 23;

c. Finally certify the Settlement Class for settlement purposes only;

d. Find that the Settlement Class Notice was the best practicable notice and complied with all laws, including, but not limited to, the Due Process Clause of the United States Constitution;

e. Determine and award reasonable Settlement Class Counsel Fees and Expenses and Settlement Class Representative Service Payment to be paid to Settlement Class Counsel;

f. Dismiss the Action with prejudice;

g. Incorporate the Release set forth in the Settlement Agreement and make the Release effective as of the date of the Final Approval Order;

h. Authorize the Parties to implement the terms of the Settlement Agreement;

i. Retain jurisdiction relating to the administration, consummation, enforcement, and interpretation of the Settlement Agreement, the Final Approval Order, and for any other necessary purpose; and

j. Issue any related orders necessary to effectuate the final approval of the Settlement Agreement and its implementation.

iii. The Parties will use their best efforts, consistent with the terms of this Settlement Agreement, to promptly obtain a Final Approval Order.

iv. If the Court fails to issue the Preliminary Approval Order, or fails to issue the Final Approval Order without leave to resubmit, the terms of this Settlement Agreement

are voidable by either Party. However, the Parties agree to use their best efforts, consistent with this Settlement Agreement, to cure any defect(s) identified by the Court.

v. The Parties acknowledge that prompt approval, consummation, and implementation of the Settlement set forth in this Settlement Agreement are essential. The Parties will cooperate with each other in good faith to carry out the purposes of and to effectuate this Settlement Agreement, will promptly perform their respective obligations hereunder, and will promptly take any and all actions and execute and deliver any and all additional documents and all other materials or information reasonably necessary or appropriate to carry out the terms of this Settlement Agreement and the transactions contemplated hereby.

vi. Upon Entry of the Final Approval Order, the Action will be dismissed, on its merits and with prejudice, subject to the continuing jurisdiction of this Court, and Settlement Class Members will be forever barred and enjoined from pursuing any claims which have been resolved by this Settlement.

SETTLEMENT TERMS.

3. **Warranty Coverage for Eligible Repairs after Mailing Date of Class Notice (Automatic Relief).** After the Mailing Date of the Class Notice, any Class Vehicle that requires an Eligible Repair will be repaired by a BMW Center free of charge during the Extended Warranty Period. No reimbursement is available for Out-of-Pocket Costs incurred for Eligible Repairs after the Mailing Date of Class Notice. To ensure continued customer satisfaction and in accordance with this Settlement, BMW NA will implement the Extended Warranty Period as soon as practicable by way of the Class Notice and will inform Class Members of warranty coverage available for Eligible Repairs.

4. **Reimbursement of Out-of-Pocket Costs Incurred Prior to Mailing Date of Class Notice (Claims Submission).** Class Members who have incurred Out-of-Pocket Costs may

file a Claim for reimbursement up to one hundred twenty (120) days after the Mailing Date of the Class Notice or up until the Court issues its order on final approval of the settlement, whichever is earlier. Approved claims will be paid on a rolling basis within sixty (60) days after the Settlement's Effective Date and approval of the Claim.

5. **Required Proof.** To receive reimbursement on a Claim for an Out-of-Pocket Cost under Paragraph 4, Settlement Class Members must submit a Claim Form to the Claims Administrator that is post-marked during the Claims Submission Period or submitted through the online portal during the Claims Submission Period and includes:

A. a legible repair order from a BMW Center that identifies a Settlement Class Vehicle and VIN;

B. proof of payment, in the form of a canceled check, credit-card receipt, credit-card statement, or receipt demonstrating that the Settlement Class Member paid for the amount(s) sought for reimbursement (a repair order that itself denotes a payment by check or credit card that is issued from a BMW Center is sufficient proof of payment);

C. the mileage of the Settlement Class Vehicle at the time of Eligible Repair;

D. the date of the Eligible Repair, and

E. a description of the Eligible Repair performed with indications as to the parts and labor for the repair.

Reimbursement amounts will be reduced by goodwill or other adjustment, coupon, refund, or payment made by an authorized BMW Center, BMW NA, any person or entity associated with BMW NA, an insurer, or a provider of an extended service contract.

Claim Review and Processing, Claim Validation, and Appeal from Denial.

6. Claim Review and Processing. All Claims properly submitted for reimbursement will be reviewed on a rolling basis upon receipt by the Claims Administrator, which will be responsible for conditionally approving the claim by ensuring that all information and documentation required under this Settlement Agreement has been submitted and otherwise qualifies as an Eligible Repair. Thus, as part of its Claims review responsibilities, the Claims Administrator will be responsible for making sure (1) the Claim relates to a Class Vehicle, (2) the VIN number associated with the Claim matches the Settlement Class Member vehicle's VIN number, (3) the Claim is for an Eligible Repair; (4) the Claim is not for a vehicle excluded from the Settlement Class; and (5) the Claim has not been submitted by someone excluded from the Settlement Class under the definition of Settlement Class Member (paragraph 1(II) herein). The Claims Administrator will submit those properly supported and conditionally approved claims to BMW NA for the Claim Validation Process, pursuant to paragraph 8, below.

7. Deficient Claims: Any Settlement Class Member whose claim is deemed deficient will receive from the Claims Administrator by first-class mail, postmarked within thirty (30) days of the determination that the claim is deficient, a written explanation stating the reason(s) the claim was deemed deficient, including steps the Settlement Class Member can take to cure the deficiencies, if possible. The Settlement Class Member receiving such notice will be allowed thirty (30) days from mailing to cure the deficiency if possible. If the Settlement Class Member does not provide the materials identified in the Claims Administrator's letter or fails to respond to the Claims Administrator's letter within the allotted time, the claim will no longer be eligible for reimbursement or appeal.

8. Claim Validation Process: After Claim Review and Processing, the Claims Administrator will calculate the amount due to each Settlement Class Member for all claims approved as complying with the requirements of this Settlement Agreement. The Claims Administrator will, on a weekly rolling basis, submit those conditionally approved claims to Defendant for the Claim Validation Process to determine if there is any reason to believe that a claim is fraudulent or otherwise invalid. Within a rolling forty-five (45) days basis of Defendant's receipt from the Claims Administrator of the conditionally approved claims, Defendant may object to the approval of the claim based on evidence that:

A. the vehicle's warranty was voided because (i) the VIN has been altered or cannot be read; (ii) the vehicle was purchased from a salvage yard/junkyard/recycler, was declared a total loss, was sold for salvage purposes, or had a "salvage" title before an Eligible Repair; (iii) or the odometer of the vehicle was tampered with or the true mileage of the vehicle is unknown;

B. the VIN associated with the Claim does not match the Settlement Class Member's vehicle's VIN;

C. the Claim is for an item or service that is not an Eligible Repair covered under this Settlement Agreement;

D. the Claim is for a vehicle excluded from the Settlement Class;

E. the Claim has already been made and paid (i.e., a duplicate claim);

F. the Claim is submitted by someone excluded from the Settlement Class;

G. the Claim is fraudulently submitted; or

H. the Settlement Class Member has received "goodwill" or other cost/price adjustment, coupon, reimbursement, or refund from BMW NA, a BMW Center, any person or

entity associated with Defendant, an insurer, or a provider of an extended service contract, in which case that amount will be applied against the amount of the claim submitted.

9. Denied Claims: Any Settlement Class Member whose claim is denied, in whole or in part, will receive from the Claims Administrator by first-class mail a written explanation stating the reason(s) for the denial. The Claims Administrator's letter will also inform Settlement Class Members that they may appeal from a denial only if they have a basis to do so and have timely submitted all required documentation in support of an eligible claim by submitting an appeal in writing to the Claims Administrator within thirty (30) days of mailing of the notice of denial.

10. Appeals from Claim Denial. Settlement Class Members must appeal in writing, if they have a basis to do so, to the Claims Administrator within thirty (30) days of mailing of the notice of the denial, setting forth in detail why the Settlement Class Member believes his or her Claim should have been approved. On appeal, Settlement Class Members may not submit additional documents beyond those they submitted to the Claims Administrator in connection with their Claim. The Claims Administrator will maintain a file of all timely-submitted appeals from claim denials.

11. Thirty (30) days after the Claims Administrator sends the last claim denial letter, the Claims Administrator will provide Settlement Class Counsel and Defendant's Counsel with a list of all timely-submitted appeals and all documents related to such Settlement Class Members' appeals.

12. Settlement Class Counsel and Defendant's Counsel will review all timely filed appeals within thirty (30) days after receipt of the Claims Administrator's list of all timely-submitted appeals and all documents related to such Settlement Class Members' appeals. The

Parties will conduct only one such review session, it being the intention of the Parties to resolve all appeals expeditiously, in good faith, and at one time.

13. If the Parties cannot agree on whether a timely-submitted appeal should be granted, the Parties agree to submit the claim for review to a third-party neutral, who will make the final and binding decision regarding the claim. Each party will bear its own costs in connection with such appeals.

14. Exclusions From Right to Appeal. Claims that were denied for failing to submit all required documentation in support of an eligible claim, either with the initial submission or within the additional time period after being notified of a deficiency by the Claims Administrator, or for Claims seeking reimbursement for an item or service that is not covered under this Settlement Agreement, or for Claims seeking reimbursement for an expense that was incurred after the Mailing Date of the Class Notice, are not eligible for appeal.

15. Claim Payment: Starting sixty (60) days after the Effective Date, the Claims Administrator will issue checks on a rolling basis for approved and validated Claims.

NOTIFICATION TO CLASS MEMBERS.

16. Unless otherwise specified, Defendant will pay all costs related to the following notice program which, subject to the Court approving the same, will commence within ninety (90) days after entry of the Preliminary Approval Order, as follows:

A. BMW will email the Class Notice to Settlement Class Members whose email address is known to BMW through its customer databases. Where an email address is not available, or in jurisdictions where the warranty extension notice laws or statutes require mailed notice, the Class Notice will be sent by first class mail. In the case of email or mailed notice, the Class Notice will be sent to both current and former owners and lessees of the Class Vehicles whose names and contact information are within BMW NA's customer database or can be obtained

through a third party DMV information service provider or other available sources if BMW does not have such Class Members' contact information. Where updated contact information is required for Class Members, Defendant will retain a third party to obtain mailing addresses from the applicable state motor vehicle agencies' registration databases or other available sources. The Claims Administrator or the DMV records provider will use current U.S. Postal Service software and the National Change of Address database to update the address records so that Settlement Class Members' most recent addresses will be used. If a Settlement Class Notice is returned to the Claims Administrator by the U.S. Postal Service because the address of the recipient is no longer valid, and the envelope contains a forwarding address, the Claims Administrator will re-send the Settlement Class Notice to the forwarding address within seven (7) days of receiving the returned Settlement Class Notice.

B. Within forty-five (45) days after entry of the Preliminary Approval Order, the Claims Administrator will be responsible for, without limitation: (a) establishing, maintaining, and administering a toll-free telephone number dedicated to the Settlement which will provide recorded information about the Settlement and (b) establishing and maintaining a website dedicated to the Settlement which (i) will provide information about the Settlement and all relevant documents, including the Claim Form available for download; (ii) an email address for Class Members to ask the Claims Administrator questions; and (iii) will provide an online claims submission portal and instructions on how Settlement Class Members may submit their claims by U.S. Mail or via an online submission portal. The website and toll-free telephone number will remain available until all claims decisions by the Claims Administrator and payment to claimants have been made.

C. Within ninety (90) days of the Preliminary Approval Order, the Claims Administrator will disseminate the Settlement Class Notice to the Settlement Class as specified in the Preliminary Approval Order, and in compliance with all applicable laws, including, but not limited to, the Due Process Clause of the Constitution.

D. All costs associated with Settlement Administration will be paid by Defendant. BMW NA, however, will not pay for notice costs other than those specifically listed herein. Any costs incurred by Class Counsel to publish the class notice or other information on their own websites, or any other website and/or publication will not be paid by BMW NA. Postings by Class Counsel (if any) relating to the Settlement will be limited to the same information contained in the Class Notice.

E. Contents of the Settlement Class Notice: The Settlement Class Notice, in a form substantially similar to the one attached to the Settlement Agreement as Exhibit “A,” will advise Class Members of the following:

i. General Terms: The Settlement Class Notice will contain a plain and concise description of the nature of the Action, the history of the Action, the preliminary certification of the Settlement Class, and the proposed Settlement, including information on the identity of Settlement Class Members, how the proposed Settlement would provide relief to the Settlement Class Members, what claims are released under the proposed Settlement, and other relevant terms and conditions.

ii. Exclusion/Opt-Out Rights: The Settlement Class Notice will inform Settlement Class Members that they have the right to request exclusion from (opt out of) the Settlement. The Settlement Class Notice will provide the deadlines and procedures for exercising this right.

iii. Objection to Settlement: The Settlement Class Notice will inform Settlement Class Members of their right to object to the proposed Settlement and to appear at the Final Approval Hearing. The Settlement Class Notice will provide the deadlines and procedures for exercising these rights.

iv. Attorneys' Fees and Expenses, and Settlement Class Representative Service Payment: The Settlement Class Notice will inform Settlement Class Members about the amounts being sought by as Settlement Class Counsel Fees and Expenses, as well as any Settlement Class Representative Service Payment, and will explain what Defendant will pay and that such payment is in addition to and will not reduce the relief being made available to Settlement Class Members.

v. Claim Form: The Settlement Class Notice will include the Claim Form, in a form substantially similar to the one attached to the Settlement Agreement as Exhibit "B," which will inform the Settlement Class Member that he/she must fully complete and timely return the Claim Form and supporting documents within the Claim Period to be eligible to obtain a recovery.

vi. Media Inquiries: If the media contacts any Party, that Party may respond to the inquiry by directing the media to the Settlement website and by stating that the parties engaged in arm's length negotiations through a respected mediator and agreed to a fair, adequate, and reasonable class settlement on a disputed claim that provides substantial class benefits. A party may also explain the claim and the settlement terms.

REQUESTS FOR EXCLUSION BY SETTLEMENT CLASS MEMBERS.

17. The provisions of this paragraph will apply to any Request for Exclusion. Any Settlement Class Member may make a Request for Exclusion by mailing or delivering such request in writing to the Claims Administrator. Any Request for Exclusion must be postmarked and

received not later than the Opt-Out Deadline specified in the Court's Preliminary Approval Order. Any Request for Exclusion must (1) state the Settlement Class Member's full name and current address; (2) identify the model year, model, and VIN of his/her Class Vehicle(s) and the date(s) of purchase or lease; (3) specifically and clearly state his/her desire to be excluded from the Settlement and from the Settlement Class; and (4) include the Settlement Class Member's signature.

18. Any Settlement Class Member who submits a timely Request for Exclusion may not file an objection to the Settlement and will be deemed to have waived any rights or benefits under this Settlement Agreement.

OBJECTIONS BY SETTLEMENT CLASS MEMBERS.

19. Any Settlement Class Member who has not filed a timely written Request for Exclusion and who wishes to object to the fairness, adequacy, or reasonableness of this Settlement Agreement or the Settlement, or to the requested Settlement Class Counsel Fees and Expenses, or Settlement Class Representative Service Payment, must file with the Clerk of the Court a written notice of objection by the Objection Deadline. To state a valid objection to the Settlement, an objecting Settlement Class Member must provide the following information in the Settlement Class Member's written objection: (1) his/her full name, current address, and current telephone number; (2) the model year and model of his/her Class Vehicle(s), as well as the VIN of his/her Class Vehicle(s) and the date(s) of purchase or lease; (3) a statement of the position(s) the objector wishes to assert, including the factual and legal grounds for the position; (4) a statement as to whether the objector intends to appear to be heard at the Final Approval Hearing, and (5) any other documents that the objector wishes to submit in support of his/her position.

20. To be valid, an objection must include a detailed statement of each objection asserted, including the grounds for each objection. In addition, any Settlement Class Member

objecting to the Settlement must provide a detailed statement of any objections to any other class action settlements submitted in any court, whether state, federal, or otherwise, in the United States in the previous five (5) years. Upon the filing of an objection, of their own choosing, Settlement Class Counsel may take the deposition of the objecting Settlement Class Member pursuant to the Federal Rules of Civil Procedure at an agreed-upon time and location, and to obtain any evidence relevant to the objection. Failure by an objector to make himself or herself available for deposition or comply with expedited discovery may result in the Court striking the objection. The Court may tax the costs of any such discovery to the objector or the objector's counsel if the Court determines that the objection is frivolous or is made for an improper purpose.

21. Finally, subject to approval of the Court, any objecting Settlement Class Member may appear, in person or by counsel, at the Final Approval Hearing held by the Court, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, or object to the requested Settlement Class Counsel Fees and Expenses or Settlement Class Representative Service Payment. The objecting Settlement Class Member must file with the Clerk of the Court and serve upon all counsel designated in the Settlement Class Notice a Notice of Intention to Appear by the Objection Deadline or on such other date that may be set forth in the Settlement Class Notice. The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class Member (or his/her counsel) will present to the Court in connection with the Final Approval Hearing. Any Settlement Class Member who does not provide a Notice of Intention to Appear in complete accordance with the deadlines and other specifications set forth in the Settlement Class Notice, and who has not filed an objection in complete accordance with the deadlines and other specifications set forth in this Settlement and

the Settlement Class Notice, may be deemed to have waived any objections to the Settlement and will be barred from speaking or otherwise presenting any views at the Final Approval Hearing.

22. The agreed-upon procedures and requirements for filing objections in connection with the Final Approval Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Settlement Class Member's objection to the Settlement, in accordance with such Settlement Class Member's due process rights.

23. The Preliminary Approval Order and Settlement Class Notice will require all Settlement Class Members who have any objections to submit such notice of objection or request to be heard with the Court, and serve by mail or hand delivery such notice of objection or request to be heard upon the Claims Administrator at the addresses set forth in the Settlement Class Notice, by no later than the Objection Deadline.

24. The Preliminary Approval Order will further provide that objectors who fail properly and/or timely to file their objections with the Court, along with the required information and documentation set forth above, or to serve them as provided above, will not be heard during the Final Approval Hearing, and their objections will be waived and will not be considered by the Court.

25. Settlement Class Counsel will be responsible for addressing all objections and any appeals from the Final Approval Order.

26. Any Settlement Class Member who objects to the Settlement will be entitled to all of the benefits of the Settlement if this Settlement Agreement and the terms contained herein are approved, as long as the objecting Settlement Class Member complies with all the requirements of this Settlement Agreement applicable to Settlement Class Members.

RELEASE, DISMISSAL OF ACTION, AND JURISDICTION OF COURT.

27. The Parties agree to the following release and waiver, which will take effect upon the Effective Date:

A. By this Settlement Agreement and the following Release, the released parties include BMW NA and its direct and indirect parents, subsidiaries, affiliates, successors in interest, officers, directors, agents, authorized BMW dealers, attorneys, and all other persons or entities acting on their behalf; suppliers, licensors, licensees, distributors, assemblers, partners, component part designers, manufacturers, holding companies, joint ventures, and any individuals or entities involved in the chain of design, development, testing, manufacture, sale, assembly, distribution, marketing, advertising, financing, warranting, repair, and maintenance of the Settlement Class Vehicles and their component parts (together “Released Parties”). The released claims refer to any and all claims, including demands, rights, liabilities, and causes of action, of every nature and description that were asserted or could have been asserted in this action, which relate to or arises out of complaints or concerns that led to or may lead to an Eligible Repair, excluding claims for property damage or personal injury (“Released Claims”). Upon the effective date of settlement, the representative class plaintiffs and Settlement Class Members shall each and do hereby forever release, discharge, waive, and covenant not to sue the Released Parties regarding any and all of the Released Claims. This release includes any such claims that the Settlement Class Representative and Settlement Class Members do not know of or suspect to exist in their favor at the time of this release and that, if known by them, might have affected their settlement and release of the Released Parties, or might have affected their decision not to object to this agreement. The foregoing waiver includes without limitation an express waiver, to the fullest extent permitted by California law, and any and all other state laws, including of any and all rights conferred by section 1542 of the *California Civil Code*, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

The foregoing waiver also includes without limitation an express waiver, to the fullest extent permitted by law, of any and all rights under any law of any state or territory of the United States, including the District of Columbia, and any federal law or principle of common law or equity, or of international foreign law, that is comparable to section 1542 of the *California Civil Code*. The representative class plaintiffs and Settlement Class Members recognize that even if they later discover facts in addition to or different from those they know or believe to be true, they nevertheless agree that upon entry of the final approval order and judgment, the Settlement Class Representative and Settlement Class Members fully, finally, and forever settle and release any and all of the Released Claims. The foregoing waiver and release was bargained for and is a material element of this Settlement Agreement.

B. The Settlement Class Representative represents and warrants that it is the sole and exclusive owner of the claims it has asserted and is releasing under this Settlement Agreement. The Settlement Class Representative further acknowledges that it has not assigned, pledged, or in any manner whatsoever sold, transferred, assigned, or encumbered any right, title, interest, or claim arising out of or in any way whatsoever pertaining to the Action, including, without limitation, any claim for benefits, proceeds, or value under the Action, and that the Settlement Class Representative is not aware of anyone other than itself claiming any interest, in whole or in part, in the Action or in any benefits, proceeds, or values under the Action.

C. The Settlement Class Representative further represents that, as of the date of this agreement, it is not aware of any Settlement Class Members who have filed claims or actions for the relief sought in this Action, other than the Settlement Class Representative.

D. Without in any way limiting its scope, this Release encompasses, by example and without limitation, any and all claims for attorneys' fees, costs, expert fees, consultant fees, interest, litigation fees, costs, or any other fees, costs, and/or disbursements incurred by Settlement Class Counsel or by Plaintiff, except to the extent otherwise specified in the Settlement Agreement.

E. The Settlement Class Representative expressly agrees that this Release will be and may be raised as a complete defense to and will preclude any action or proceeding relating to the Released Claims.

F. This Settlement Agreement and Release does not affect the rights of Settlement Class Members who timely and properly request exclusion from (opt-out of) the Settlement.

G. The administration and consummation of the Settlement as embodied in this Settlement Agreement will be under the authority of the Court. The Court will retain jurisdiction to protect, preserve, and implement the Settlement Agreement including, but not limited to, the Release. The Court expressly retains jurisdiction to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement Agreement.

H. Upon the Effective Date: (1) the Settlement Agreement will be the exclusive remedy for any and all Settlement Class Members for Released Claims, except those who have properly requested exclusion from (opted out of) the Settlement in accordance with the terms and provisions hereof; (2) the Defendant will not be subject to liability or expense of any kind to any Settlement Class Member(s) for Released Claims except as set forth herein; and (3) Settlement Class Members will be permanently barred from initiating, asserting, or prosecuting any and all

Released Claims against Defendant in any federal or state court in the United States or any other tribunal.

I. Nothing in this Release will preclude any action to enforce the terms of the Settlement Agreement, including participation in any of the processes detailed herein.

ATTORNEYS' FEES AND EXPENSES AND SERVICE PAYMENTS.

28. All expenses incurred in administering this Settlement Agreement, including, without limitation, all attorneys' fees and costs, the cost of the Settlement Class Notice, and the cost of distributing and administering the benefits of the Settlement Agreement, will be paid by Defendant, subject to the terms and limitations contained herein. The Settlement Class Counsel Fees and Expenses, and Settlement Class Representative Service Payment, if any, will be paid separate and apart from any relief provided to the Settlement Class.

29. As part of the resolution of the Action, the Parties have agreed that Settlement Class Counsel may apply for an award of attorneys' fees, inclusive of costs and expenses, not to exceed \$375,000.00, and a single Settlement Class Representative Service Payment of \$3,000.00. The Parties have further agreed that Settlement Class Counsel shall not seek payment of any amount for any fees, costs and expenses in excess of \$375,000.00 if awarded by the Court. The Settlement Class Counsel Fees and Expenses will be paid separate and apart from any relief provided to the Settlement Class. Defendant does not oppose, and will not encourage or assist any third party in opposing, Settlement Class Counsel's request for attorneys' fees, costs and expenses up to and not exceeding \$375,000.00, nor will Defendant contest the reasonableness of the amounts requested under this Agreement.

30. Also as part of the resolution of the Action, the Parties have agreed that Settlement Class Counsel will seek a Settlement Class Representative Service Payment not to exceed \$3,000.00, to be paid separate and apart from any relief provided to the Settlement Class.

Settlement Class Counsel will apply to the Court for an award to the Settlement Class Representative for its effort, service, time, and expenses in connection with pursuing the case. Defendant does not oppose, and will not encourage or assist any third party in opposing, Settlement Class Counsel's request for a Settlement Class Representative Service Payment up to and not exceeding \$3,000.00, nor will Defendant contest the reasonableness of the amounts requested under this Agreement.

31. As agreed upon herein, the total amount of Settlement Class Counsel Fees, Expenses and Settlement Class Representative Service Payment awarded by the Court, subject to Settlement Class Counsel's and Defendant's maximum agreed-upon amount, will be paid by wire transfer by BMW NA within thirty (30) days after the Effective Date of this Settlement. Defendant will not be liable for or obligated to pay any fees, expenses, costs, or disbursements to, or incur any expense on behalf of, any person or entity, either directly or indirectly, in connection with this Action, this Settlement Agreement, or the proposed Settlement, other than the amount or amounts expressly provided for in this Settlement Agreement.

32. Defendant is not responsible for any of Settlement Class Counsel's attorneys' fees and/or internal costs for the settlement, including, but not limited to, any investigative, expert, and/or actuarial costs, or any other claims for fees or expenses incurred or that may be incurred in the future in connection with obtaining final approval of this Settlement (including an appeal from the Final Approval Order, if any), other than the attorneys' fees and expenses awarded by the Court pursuant to this Agreement.

REPRESENTATIONS, WARRANTIES, AND COVENANTS.

33. Settlement Class Counsel, who are signatories hereof, represent and warrant that they have the authority, on behalf of Plaintiff and Settlement Class Counsel, to execute, deliver, and perform this Settlement Agreement and to consummate all of the transactions contemplated

hereby. This Settlement Agreement has been duly and validly executed and delivered by Settlement Class Counsel and Plaintiff and constitutes their legal, valid, and binding obligation.

34. Defendant, through its undersigned attorneys, represent and warrant it has the authority to execute, deliver, and perform this Settlement Agreement and to consummate the transactions contemplated hereby. The execution, delivery, and performance by Defendant of this Settlement Agreement and the consummation by it of the actions contemplated hereby have been duly authorized by all necessary corporate action on the part of Defendant. This Settlement Agreement has been duly and validly executed and delivered by Defendant and constitutes its legal, valid, and binding obligation.

MISCELLANEOUS PROVISIONS.

35. The Parties expressly acknowledge and agree that this Settlement Agreement and the exhibits and related documents thereto along with all related drafts, motions, pleadings, conversations, negotiations, and correspondence, constitute an offer of compromise and a compromise within the meaning of Federal Rule of Evidence 408 and any equivalent rule of evidence in any state. In no event will this Settlement Agreement, any of its provisions, or any negotiations, statements, or court proceedings relating to its provisions in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Action, any other action, or in any judicial, administrative, regulatory, or other proceedings, except in a proceeding to enforce this Settlement Agreement or the rights of the Parties or their counsel.

36. Without limiting the foregoing, this Settlement Agreement, the exhibits thereto, any related documents, any related negotiations, statements, or court proceedings will not be construed as, offered as, received as, used as, or deemed to be evidence or an admission or concession of any liability, wrongdoing, fault, or omission of any kind whatsoever by Defendant with respect to any alleged wrongdoing, fault, or omission of any kind whatsoever, regardless of whether or not this

Settlement Agreement results in entry of a Final Approval Order as contemplated herein. Defendant specifically denies all of the allegations made in connection with the Action. Neither this Settlement Agreement nor any class certification pursuant to it will constitute, in this or in any other proceeding, an admission by the Defendant, or evidence or a finding of any kind, that any requirement for class certification is satisfied with respect to the Action, or any other litigation, except for the limited purpose of settlement pursuant to this Settlement Agreement. This Settlement Agreement also is made with the Parties' understanding and agreement that (1) under applicable laws, it is appropriate that a class be certified for settlement purposes only (*i.e.*, without needing to satisfy fully the standard required for certification of the matter for litigation purposes); (2) Defendant contests and denies that any class, including the proposed Settlement Class, is suitable for certification as a class under the law of any jurisdiction, other than for the purposes of this Settlement Agreement; and (3) notwithstanding any other provisions of this Settlement Agreement, all actions and proceedings pursuant to it will be consistent with the foregoing. This provision will survive the expiration or voiding of the Settlement Agreement.

37. This Settlement Agreement is entered into only for purposes of settlement. If the Final Approval Order is not entered, then this Settlement Agreement, including any releases or dismissals hereunder, is canceled, and no term or condition of this Settlement Agreement, or any draft thereof, or of the discussion, negotiation, documentation or other part or aspect of the Parties' settlement discussions, will have any effect, nor will any such matter be admissible in evidence for any purpose, or used for any purposes whatsoever in the Action, and all Parties will be restored to their prior rights and positions as if the Settlement Agreement had not been entered into.

38. This Settlement Agreement will terminate by decision of either the Defendant or the Plaintiff, through Settlement Class Counsel, if: (1) the Court, or any appellate court(s), rejects,

modifies, or denies approval of any portion of this Settlement Agreement or the proposed Settlement that the terminating Party reasonably determines(s) is material, including without limitation, the terms of relief, the findings or conclusions of the Court, the provisions relating to notice, the definition of the Class, or the terms of the Release; (2) the Court, or any appellate court, does not enter or completely affirm, or alters or expands, any portion of the Final Approval Order, or any of the Court's findings of fact or conclusions of law, that the terminating Party reasonably determine(s) is material; or (3) more than two percent (2%) of Class Members exclude themselves from (opt out of) the Settlement. The terminating Party must exercise the option to withdraw from and terminate this Settlement Agreement, as provided in this paragraph, no later than twenty (20) days after receiving notice of the event prompting the termination. In such event, the Parties will be returned to the positions that they occupied as of the date of this Settlement, as reflected in the signature boxes below.

39. Further, Defendant may unilaterally withdraw from and terminate this Settlement Agreement within twenty (20) days after receiving notice of either of the following events:

A. any state attorney general, federal agency, or regulatory or administrative authority institutes a proceeding against the Defendant arising out of or otherwise related to the Release and any of the terms or conditions of this Settlement Agreement; or

B. any federal or state regulator or agency: (a) objects either to any aspect or term of the Settlement Agreement and (b) requires any substantial modification to the Settlement Agreement, including, without limitation, a constriction or expansion of the scope of the contemplated relief that Defendant, in its sole discretion, deems reasonably material.

40. If this Settlement Agreement is terminated pursuant to paragraphs 38 or 39 herein, then:

A. This Settlement Agreement will be null and void and will have no force or effect and no Party to this Settlement Agreement will be bound by any of its terms;

B. The Parties will petition to have lifted any stay orders entered pursuant to this Agreement;

C. All of the provisions, and all negotiations, statements, and proceedings relating to it, will be without prejudice to the rights of Defendant, Plaintiff, or any Settlement Class Member, all of whom will be restored to their respective positions they occupied as of the date of this Settlement, as reflected in the signature boxes below, except that the Parties will cooperate in requesting that the Court set a new scheduling order such that no Parties' substantive or procedural rights are prejudiced by the attempted settlement;

D. Defendant expressly and affirmatively reserves all defenses, arguments, and motions as to all claims that have been or might later be asserted in the Action, including, without limitation, the argument that this Action may not be litigated as a class action;

E. Neither this Settlement Agreement, nor the fact of its having been made, nor the negotiations leading to it, nor any discovery or action taken by a Party or Settlement Class Member pursuant to this Settlement Agreement, will be admissible or entered into evidence for any purpose whatsoever;

F. Any Settlement-related order(s) or judgment(s) entered in this Action after the date of execution of this Agreement will be deemed vacated and will be without any force or effect;

G. Settlement Class Members, Plaintiffs, and Settlement Class Counsel shall not in any way be responsible or liable for any Settlement Administration expenses or taxes, including costs of notice and administration associated with this Settlement or this Agreement,

except that each Party shall bear its own attorneys' fees and costs and Defendant's future payment obligations shall cease; and

H. Defendant shall have no further obligations to pay Settlement Class Members, Plaintiff, or Settlement Class Counsel under the terms of this Settlement set forth in this Agreement and shall be responsible for only the Settlement Administration expenses and taxes actually incurred, for which Plaintiff and Settlement Class Counsel are not liable.

41. The headings of the sections and paragraphs of this Settlement Agreement are included for convenience only and will not be deemed to constitute part of this Settlement Agreement or to affect its construction.

42. This Settlement Agreement, including all exhibits attached hereto, may not be modified or amended except in writing and signed by all of the Parties and with approval of the Court.

43. This Settlement Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. Signatures may be obtained electronically via DocuSign, AdobeSign or similar service.

44. This Settlement Agreement and any amendments thereto will be governed by and construed in accordance with the substantive laws of the State of California. The Settlement Agreement will be interpreted and enforced pursuant to California law. Federal law (including Fed. R. Civ. P. 23 and federal case law) will govern approval of the settlement, preliminary and final certification of the Settlement Class, and all related issues such as Class Counsel's motion for attorneys' fees and expenses.

45. Any disagreement or action to enforce this Settlement Agreement will be commenced and maintained only in the Court in which this Action is pending.

46. Except as otherwise provided in this Settlement Agreement, each Party to this Settlement Agreement will bear his, her, or its own costs of the Action.

47. The Parties to this Settlement Agreement reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extensions of time that may be necessary to carry out any of the provisions of this Settlement Agreement, as well as to correct any inadvertent, mistakes, clerical errors, or typographical errors contained in any of the Settlement papers, without additional costs or attorneys' fees.

48. Proper notice will be given to Plaintiff and Defendant of all applications for Court approval or Court orders required under this Settlement Agreement.

49. The determination of the terms of, and the drafting of, this Settlement Agreement, including its exhibits, has been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel. Since this Settlement Agreement was drafted with the participation of all Parties and their counsel, the presumption that ambiguities will be construed against the drafter does not apply. Each of the Parties was represented by competent and effective counsel throughout the course of settlement negotiations and in the drafting and execution of this Settlement Agreement, and there was no disparity in bargaining power among the Parties to this Settlement Agreement. No parol or other evidence may be offered to explain, modify, construe, contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which this Settlement Agreement was made or executed.

50. All of the exhibits to this Settlement Agreement are material and integral parts hereof, and are fully incorporated herein by reference. This Settlement Agreement and the exhibits

hereto constitute the entire, fully integrated agreement among the Parties and cancel and supersede all prior written and unwritten agreements and understandings pertaining to the Settlement of the Actions.

51. The Parties agree that any disputes regarding the meaning of the terms and conditions of this Settlement Agreement, the Parties' rights and obligations under this Settlement Agreement, or the manner in which any issue or dispute arising under this Settlement Agreement should be resolved, will be submitted to the Court for resolution.

52. The Parties agree and acknowledge that this Settlement Agreement includes a covenant of good faith and fair dealing.

53. The waiver by one Party of any breach of this Settlement Agreement by another Party will not be deemed a waiver of any prior or subsequent breach of this Settlement Agreement.

54. If one Party to this Settlement Agreement considers another Party to be in breach of its obligations under this Settlement Agreement, that Party must provide the breaching Party with written notice of the alleged breach within ten (10) days of discovery of the breach and provide a reasonable opportunity to cure the breach before taking any action to enforce any rights under this Settlement Agreement.

55. All time periods set forth herein will be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Settlement Agreement or by order of the Court, the day of the act, event, or default from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is a Saturday, Sunday, or legal holiday, or, when the action to be done is the filing of a paper in court, a day on which conditions or events have made the office of the clerk of the court inaccessible, in which event the period will run until the end of the next day that is not

one of the aforementioned days. As used in this section “legal holiday” includes New Year’s Day, Birthday of Martin Luther King, Jr., Presidents’ Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States.

56. All notices to the Parties or counsel required by this Settlement Agreement will be made in writing and communicated by electronic and regular mail to the following addresses (unless one of the Parties subsequently designates one or more other designees):

If to Class Counsel: Hovanes Margarian, Esq.
The Margarian Law Firm
462 W Colorado St.
Glendale, California 91204
hovanes@margarianlaw.com

If to Defendant’s Counsel: Eric Y. Kizirian, Esq.
Lewis Brisbois Bisgaard & Smith LLP
633 W. 5th Street, Suite 4000
Los Angeles, California 90071
eric.kizirian@lewisbrisbois.com

IN WITNESS WHEREOF, Plaintiff and Defendant, and through their respective counsel, have executed this Settlement Agreement as of the date(s) indicated on the lines below.

DocuSigned by:



F364FA37ADD84B3...

Name: Fang Lin
On behalf of Plaintiff
BrightK Consulting, Inc.

Name: _____
On behalf of Defendant
BMW of North America, LLC

Date: 9/29/2022

Date: _____

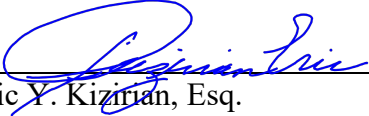
DocuSigned by:

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Hovanes Margarian, Esq.
The Margarian Law Firm
462 W Colorado St.
Glendale, California 91204

Date: 9/29/2022

*Attorneys for Plaintiff
and the Settlement Class*



Eric Y. Kizirian, Esq.
Lewis Brisbois Bisgaard & Smith LLP
633 W. 5th Street, Suite 4000
Los Angeles, California 90071

Date: September 29, 2022

*Attorneys for Defendant
BMW of North America, LLC*

EXHIBIT A
TO CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE
BRIGHTK CONSULTING, INC. V. BMW OF NORTH AMERICA, LLC
C.D. CAL. CASE NO. 21-CV-02063-CJC-JDE

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

If You Have Ever Owned Or Leased A BMW

**X5 (2019-2022), X5M (2020-2022), X6 (2020-2022),
X6M (2020-2022), or X7 (2019-2022)**

You May Be Entitled To Benefits Under This Proposed Class Action Settlement.

Please Read This Notice Carefully, As It Affects Your Legal Rights.
The U.S. District Court for the Central District of California, authorized this notice.
This is not a solicitation from a lawyer.

*Para obtener este aviso al grupo afectado en español, visite el sitio web del acuerdo en
www._____ .com*

- ❖ There is a proposed settlement in a class action lawsuit against BMW of North America, LLC (“BMW NA”). This lawsuit alleges that the front cupholders in BMW X5 (2019-2022) (G05), BMW X5M (2020-2022) (F95), BMW X6 (2020-2022) (G06), BMW X6M (2020-2022) (F96), or BMW X7 (2019-2022) (G07) vehicles (together “**Class Vehicles**”) are permeable to spilled liquids. Thus, Plaintiff claims that if liquid spills from cups in or around the Class Vehicles’ cupholders, it may seep through the cupholders onto components below, which in turn may result in illumination of the Supplemental Restraint System (“SRS”) warning light.
- ❖ The proposed settlement resolves claims by current and former owners and lessees of Class Vehicles against BMW NA, the distributor of these vehicles, and BMW NA’s parent, subsidiaries, affiliates, and related entities, for Out-of-Pocket Costs incurred or that may be incurred in the future due to “**Eligible Repairs**” (i.e. a repair performed by a BMW Center in the United States on a Class Vehicle during the “**Extended Warranty Period**” (defined below) to address or remedy a customer complaint of an SRS warning light illumination and/or damage to other components below the cupholder caused by liquid that spilled or that otherwise seeped through the cupholder(s) on the front center console of a Class Vehicle.)
- ❖ You are covered by the settlement if you own or lease a Class Vehicle, or previously owned or leased a Class Vehicle. The proposed settlement provides for, among other things, a warranty extension (as detailed herein) and reimbursement of certain “**Out-Of-Pocket Costs**” (as defined herein).
- ❖ BMW NA’s records show you own or lease, or have previously owned or leased, a Class Vehicle. As a result, you have legal rights and options under the proposed settlement, and there are deadlines for exercising those rights and options, as set forth in this notice. *Please review this notice carefully and check the settlement website for important deadlines.*

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
PARTICIPATE IN THE SETTLEMENT	If you agree with the proposed settlement, you need not do anything to remain in the class. To receive certain benefits, however, you must file a claim, with the required proof, as detailed herein.
EXCLUDE YOURSELF	You will not be entitled to participate in the settlement and will not receive certain settlement benefits.

OBJECT / COMMENT	Write to the Claims Administrator and explain why you do, or do not, like the settlement. You must remain in the class to comment in support of, or in opposition to, the settlement. If the Court approves the settlement and overrules your objection, you will be bound by the settlement's terms. You may also, but are not required to attend the Final Approval Hearing to object to or comment on the settlement.
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1. WHAT IS THIS LAWSUIT ABOUT?

Plaintiff Brightk Consulting, Inc. (acting by and through its principal, Lin Fang) filed this lawsuit on December 16, 2021 in the United States District Court for the Central District of California. The name of the lawsuit is *Brightk Consulting, Inc. v. BMW of North America, LLC*, Case No. 21-CV-02063-CJC-JDE (the "Action"). The lawsuit alleges that Class Vehicles are defective because liquid that may be spilled in the cupholder(s) on the front center console of a Class Vehicle may seep through or around the cupholder onto components below, which in turn may cause an illumination of the SRS warning light on the dashboard. The lawsuit does not seek money for any personal injury claims. Instead, Plaintiff claims it lost money when it paid out-of-pocket to repair an SRS warning light illumination when liquid that spilled into the cupholder seeped through the cupholder onto components below.

Plaintiff asserts claims for violations of California consumer protection laws (Cal. Civ. Code section 1750 *et seq.*; Cal. Bus. & Prof. Code sections 17200 *et seq.* and 17500 *et seq.*), for fraud and deceit, for breach of express and implied warranty (Song-Beverly Consumer Warranty Act and California Commercial Code), for strict liability, and for negligence. You can read the First Amended Class Action Complaint for Damages by visiting the settlement website, www._____.com

BMW NA denies that it violated any law, denies liability, denies that it engaged in any wrongdoing with respect to the manufacture, distribution, or sale of the Class Vehicles, and denies the Class Vehicles are defective or any claimed out-of-pocket or other costs claimed to be incurred by owners or lessees of Class Vehicles is caused by a defect in the Class Vehicles or the Class Vehicles' cupholders. The parties agreed to resolve the case before these liability issues were decided by the Court.

2. WHY DID I GET THIS NOTICE?

Records show you may be a member of the class because you presently own or lease, or previously owned or leased, a Class Vehicle. This notice is designed to inform members of the class of the pendency of this litigation and of the proposed settlement, and to describe your rights and options if you are a member of the class.

3. WHO IS A CLASS MEMBER?

The United States District Court for the Central District of California has conditionally certified a "**Settlement Class**" that includes all current and former owners and lessees of a Class Vehicle purchased in the United States, including the District of Columbia and Puerto Rico.

Excluded from the Settlement Class are:

- (1) BMW, its related entities, parent companies, subsidiaries and affiliates, and their respective officers, directors, and employees;
- (2) BMW Group dealers or independent repair shops;
- (3) Insurers of the Class Vehicles;
- (4) All persons and/or entities claiming to be subrogated to the rights of Class Members;
- (5) Issuers or providers of extended vehicle warranties or issuers or providers of extended service contracts;
- (6) Individuals and/or entities who validly and timely opt-out of the Settlement;

- (7) Consumers or businesses that have purchased Class Vehicles previously deemed a total loss (i.e. salvage title; subject to verification through Carfax or other means) or that were purchased with a branded title or where the vehicle was sold “as is” and the purchase price for such vehicle therefore reflects such condition;
- (8) Current and former owners of a Class Vehicle that previously have released their claims against BMW with respect to the issues raised in the Action;
- (9) United States residents that have purchased Class Vehicles in the United States but have since transported the vehicle outside the United States for permanent use abroad;
- (10) Individuals or entities that have purchased and/or leased Class Vehicles as “fleet” vehicles (i.e. rentals or company vehicles);
- (11) The Judge(s) to whom the Action is or will be assigned and any members of the Judge(s)’ family or Judge(s)’ chambers (law clerks, secretaries, deputy clerk, etc.); and
- (12) Class counsel or employees of Class Counsel

4. DO I HAVE A LAWYER REPRESENTING ME?

To represent the Settlement Class, the Court has appointed The Margarian Law Firm (www.margarianlaw.com) to act as Class Counsel. You will not be charged for contacting this law firm.

The Margarian Law Firm
462 W Colorado Street
Glendale, CA 91204
(818) 553-1000
info@margarianlaw.com

5. WHAT BENEFITS DOES THE SETTLEMENT PROVIDE?

Refer to the complete Settlement Agreement and Release for a full description of all settlement terms and conditions. You can review the Settlement and Release in its entirety at the settlement website (www._____.com). The following is a summary of the benefits set forth in the settlement.

- (a) **Reimbursement of Out-of-Pocket Costs Incurred Prior to Mailing Date of Class Notice (Claims Submission):** BMW will reimburse you for valid and eligible “**Out-of-Pocket Costs**” incurred prior to the date of this Class Notice (subject to providing the Required Proof, as explained below).
- An “**Out-Of-Pocket Cost**” is money you paid for an **Eligible Repair** prior to the mailing date for this Class Notice, and that was not otherwise paid for or covered by BMW NA under warranty or goodwill, covered by insurance, or under a third-party reimbursement program or service contract.
 - An “**Eligible Repair**” is a repair performed by a BMW Center in the United States on a Class Vehicle during the **Extended Warranty Period** to address or remedy a customer complaint of an SRS warning light illumination that the BMW Center determines or determined was caused by liquid that spilled or that otherwise seeped through the cupholder(s) on the front center console of a Class Vehicle. An SRS warning light illumination that a BMW Center determines is illuminated for reasons other than liquid seeping through the cupholder is not an **Eligible Repair** covered by this Settlement and will be subject to normal warranty coverage terms and conditions, if any.
 - The “**Extended Warranty Period**” means the period of 7 years/75,000 miles (whichever occurs first), from the date your Class Vehicle was first placed in service, during which an **Eligible Repair** may be performed.

To get reimbursed for an Out-Of-Pocket Cost, you must submit online or transmit via U.S. mail a Claim Form and **Required Proof** (as described below) by the claims deadline. *Please check the Settlement website frequently for any updates to the this claim deadline.* Under the Settlement Agreement, the deadline to submit a claim for an Out-Of-Pocket Cost is one hundred twenty (120) days after the mailing date of this

Class Notice or up until the Court issues its order on final approval of the settlement, whichever is earlier. **Currently, the deadline to submit a claim is _____.**

The **Required Proof** for a valid claim for **Out-of-Pocket Costs** is:

- (1) a legible repair order from a BMW Center that identifies a Class Vehicle and VIN; and
 - (2) proof of payment, in the form of a canceled check, credit-card receipt, credit-card statement, or receipt demonstrating that you paid for the amount(s) sought for reimbursement (a repair order that itself denotes a payment by check or credit card that is issued from a BMW Center is sufficient proof of payment); and
 - (3) the mileage of your vehicle at the time of **Eligible Repair**; and
 - (4) the date of the **Eligible Repair**, and
 - (5) a description of the **Eligible Repair** performed with indications as to the parts and labor for the repair.
- (b) **Warranty Coverage for Eligible Repairs After this Class Notice:** If your Class Vehicle requires an **Eligible Repair** after the mailing date of this Class Notice, you must take it to a BMW Center during the **Extended Warranty Period**. No reimbursement is available for **Out-of-Pocket Costs** you incur for **Eligible Repairs** after the mailing date of this Class Notice. If the dealer determines the SRS illumination is an **Eligible Repair**, the concern will be addressed free of charge under warranty.

This warranty coverage for Eligible Repairs will be honored prior to the Court's approval of this settlement. If your Class Vehicles receives an Eligible Repair under warranty after this Class Notice but before Final Approval of the settlement, you will be bound by the release in this Settlement even if you "opt out" of the Settlement.

6. WHO PAYS CLASS COUNSEL'S FEES AND EXPENSES?

To date, Class Counsel has not been paid for time spent prosecuting the case and has not been reimbursed for any out-of-pocket costs. If the Court approves the proposed settlement, Class Counsel will apply to the Court for an award of attorneys' fees and reimbursement for costs not to exceed \$375,000. Class Counsel also will apply to the Court for a service award of \$3,000 for the Settlement Class Representative (Brightk Consulting, Inc.) for its initiative and effort in pursuing this litigation for the benefit of the class. Any award of attorneys' fees and expenses and any service award will be paid by BMW NA separately and will not reduce the benefits available to you under the settlement. You are not personally liable for these attorneys' fees and costs or the service award.

7. WHAT HAPPENS IF THE COURT APPROVES THE SETTLEMENT?

If you fall within the class definition and elect to remain in the class, and the settlement is approved, the Court will enter a judgment dismissing the lawsuit with prejudice, and releasing any and all claims that you may have against BMW NA and its direct and indirect parents, subsidiaries, affiliates, successors in interest, officers, directors, agents, authorized BMW dealers, attorneys, and all other persons or entities acting on their behalf; suppliers, licensors, licensees, distributors, assemblers, partners, component part designers, manufacturers, holding companies, joint ventures, and any individuals or entities involved in the chain of design, development, testing, manufacture, sale, assembly, distribution, marketing, advertising, financing, warranting, repair, and maintenance of the Settlement Class Vehicles and their component parts (together "Released Parties") from any and all claims or causes of action, including unknown claims, under the laws of any jurisdiction, including federal law, state law, and common law, whether at law or equity that relate to or arise out of complaints or concerns that led to or may lead to an Eligible Repair, excluding claims for property damage or personal injury ("Released Claims").

8. WHAT ARE MY OPTIONS NOW THAT I'VE RECEIVED THIS NOTICE?

If you are a member of the class, you have the following options:

- (a) **PARTICIPATE IN THE SETTLEMENT:** If you agree with the proposed settlement, you need not do anything to remain in the class. If you have **Out-of-Pocket Costs** that are eligible for reimbursement, you are required to submit a **timely** Claim for reimbursement along with **Required Proof**, or comply with other deadlines as set forth herein and in the Settlement Agreement and Release. For information on the status of settlement approval and other settlement related information, please visit the settlement website at www._____.com.
- (b) **REQUEST TO BE EXCLUDED:** If you do not want to stay in the class, then you must send a written notice of your request to exclude yourself from the class, **postmarked no later than [45 DAYS AFTER CLASS NOTICE]** to the Claims Administrator at the following address:

Claims Settlement Administrator
[ADDRESS]
[ADDRESS]

Your request must be signed by you, include your full name and current address, identify your vehicle's model, model year, and vehicle identification number (VIN), and specifically state that you request to be excluded from the Settlement Class in *BrightK Consulting, Inc. v. BMW of North America, LLC*.

If you validly and timely request exclusion from the Settlement Class, (1) you will be excluded from the class; (2) you will not be entitled to the settlement benefits; (3) you will not be bound by the terms of the Settlement Agreement, the judgment dismissing the Action, or the release of claims provided by the Settlement Agreement; and (4) you will not be entitled to object to the proposed settlement or be heard at the fairness hearing described below.

If you do not exclude yourself, you will be bound by any judgment entered in the case, whether favorable or unfavorable, and will be bound by the release in the Settlement Agreement.

Please note, however, that if you obtain an Eligible Repair after this Class Notice but before the Settlement Agreement receives final approval from the Court, you are precluded from opting out of the settlement even if an otherwise valid and timely opt-out notice is sent to the Claims Administrator.

- (c) **OBJECT TO THE SETTLEMENT:** If you are a Settlement Class Member and you do not request to be excluded, you may object to the terms of the Settlement, Class Counsel's request for attorneys' fees and costs, or the incentive award requested for the Settlement Class Representative. You can ask the Court to deny approval by filing an objection. You cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court does not approve the settlement, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. You may, *but need not*, enter an appearance through counsel of your choice, but you will be responsible for paying your own attorney.

If you object to the settlement, your objection must be mailed (**post-marked**) **on or before [45 days after class notice]**.

The objection must be mailed to the Claims Administrator at this address:

Claims Settlement Administrator
[ADDRESS]
[ADDRESS]

The written objection must include (i) a reference to *Brightk Consulting, Inc. v. BMW of North America, LLC*, Case No. No. 21-CV-02063-CJC-JDE; (ii) your full name, current address, and current telephone number; (iii) the year, model, and vehicle identification number (VIN) of the Class Vehicle that you own or lease or previously owned or leased; (iv) a statement of the position(s) the you wish to assert, including the factual and legal grounds for the position; (v) a statement as to whether you intend to appear to be heard at the Final Approval Hearing, (vi) any other documents that you wish to submit in support of his/her position, and and (vii) your signature or if you are represented by counsel, your counsel’s signature. You may but are not required to personally appear at the final approval hearing for your objection to be considered by the Court.

Please note that by objecting, you will remain a member of the class and will have released your claims as set forth herein.

9. WHEN IS THE FINAL APPROVAL HEARING?

On [date, time] the United States District Court for the Central District of California, the Honorable Cormac J. Carney, U.S. District Court Judge, will hold a fairness hearing for the purpose of deciding (a) whether the settlement should be approved as fair, reasonable, and adequate for the class; (b) whether a judgment granting approval of the settlement and dismissing the lawsuit with prejudice should be entered; and (c) whether Class Counsel’s application for attorneys’ fees and expenses and incentive award for the Settlement Class Representative should be granted. The hearing may be postponed, adjourned, or rescheduled by the Court without further notice to the class. You do not need to attend this hearing to remain a member of the class or participate in the settlement.

10. WHERE CAN I REVIEW SETTLEMENT DOCUMENTS AND OTHER INFORMATION ON THE SETTLEMENT?

This notice summarizes the proposed settlement. For full details of the matters discussed in this notice, you may wish to review the Settlement Agreement and Release dated August __, 2022 a copy of the operative complaint, and other settlement related documents, on file with the Court, and also available at the dedicated website of www._____.com, or by contacting class counsel, Hovanes Margarian (hovanes@margarianlaw.com; 818.553.1000), the Margarian Law Firm, 462 W Colorado St, Glendale, CA 91204.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THIS NOTICE, THE SETTLEMENT OR THE CLAIM PROCESS.

BY ORDER OF THE COURT

Dated: _____

EXHIBIT B
TO CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

BRIGHTK CONSULTING, INC. V. BMW OF NORTH AMERICA, LLC

C.D. CAL. CASE NO. 21-CV-02063-CJC-JDE

Brightk Consulting, Inc. v. BMW of North America, LLC
Case No. 21-CV-02063-CJC-JDE (U.S. Dist. Ct., Central District of CA)

To make a claim in the class action settlement in the above case, please complete this form online or mail this form with the required proof (see below), postmarked no later than [deadline] to:

Brightk Consulting, Inc. v. BMW of North America, LLC

[address]

[address]

Note: This Claim Form only applies to claims for reimbursement for Out-Of-Pocket Costs (as defined in the Settlement Agreement and Class Notice). Only Out-of-Pocket Costs incurred prior to [MAILING DATE OF CLASS NOTICE] may be claimed. You must provide the required proof in order to be eligible for reimbursement of out of pocket costs.

A. REGISTERED VEHICLE OWNER/LESSEE INFORMATION


Name:	
Address:	
City, State, ZIP Code:	
Telephone Number (day/evening):*	
Email Address (if available):*	

****Please see consent information below with respect to telephone, email, or text contacts related to this claim at the number or email address provided herein.***

B. INFORMATION ON CLASS VEHICLE

Model:	
Model Year:	
Vehicle Identification No. (VIN):	_____

C. INFORMATION ABOUT YOUR PAST SRS WARNING LIGHT REPAIR

1	Did you, prior to your receipt of the class notice, take your Class Vehicle to a BMW Center (dealership) because the SRS Warning Light (example below) was illuminated in your car? 	___ YES ___ NO
2	Did the BMW Center determine that the SRS Warning Light was illuminated due to liquid that had spilled or seeped through the front cupholder(s) in your vehicle?	___ YES ___ NO
3	Did you pay the BMW Center out-of-pocket to have the SRS Warning Light illumination or other damage to components repaired in your vehicle due to liquid or condensation leaking/seeping through the cupholder?	___ YES ___ NO
4	Did the repair relating to the SRS Warning Light illumination or other damaged part occur while the car was less than 7 years old and had under 75,000 miles on the odometer? If <i>yes</i> , state the date _____ and odometer reading _____ miles at the time of the repair.	___ YES ___ NO
5	How much did you personally pay the BMW Center for the repair (<i>do not include any amounts or discount provided for this repair by BMW, BMW dealer, insurance, etc., if any</i>)?	\$ _____

If you answered YES to all four questions, you are eligible to make a claim for reimbursement of an Out-of-Pocket cost. Please proceed to Section D for a listing of Required Proof to make a claim. You must provide the required proof to support your claim.

D. REQUIRED PROOF

To obtain reimbursement for Out-Of-Pocket Costs incurred prior to the Class Notice for an Eligible Repair, you must provide, **in addition to timely submission of this fully completed Claim Form:**

- (1) a repair order/invoice from a BMW dealer that pre-dates the Class Notice and that:
 - a. states the date of the Eligible Repair; and
 - b. states your vehicle's mileage at the time of the Eligible Repair; and
 - c. identifies your class vehicle by (i) including *both* your name and the model/model year of your vehicle, and (ii) by your vehicle's VIN (Vehicle Identification Number); *and*
 - d. Describes the Eligible Repair performed with indications as to the parts and labor for the repair; and
 - e. states the amount charged for the Eligible Repair
- (2) Proof that you paid the amount you claim in reimbursement for the Eligible Repair. Acceptable proof of payment can be a canceled check, credit-card receipt, credit-card statement, or receipt demonstrating that you paid for the amount(s) sought for reimbursement (a repair order that itself denotes a payment by check or credit card that is issued from a BMW Center is sufficient proof of payment).

F. CERTIFICATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that (1) I complained about an SRS warning light illumination in my Class Vehicle, (2) a BMW Center (dealer) performed an Eligible Repair before I received the Class Notice, and (3) I or a family member personally paid for the amounts claimed in this Claim Form. I further declare that the foregoing is true and correct.

***CONSENT – PLEASE READ CAREFULLY:** Notwithstanding any current or prior election to opt in or opt out of receiving calls or SMS messages (including text messages) from BMW of North America, LLC (“BMW NA”), its agents, representatives, affiliates, or anyone calling on BMW NA’s behalf, you expressly consent to be contacted by BMW NA, its agents, representatives, affiliates, or anyone calling on BMW NA’s behalf for any and all purposes arising out of or relating to your claim under the settlement in the *Brightk Consulting, Inc. v. BMW of North America, LLC* settlement, at any telephone number, or physical or electronic address you provide or at which you may be reached. You agree BMW NA, its agents, representatives, affiliates, or anyone calling on BMW NA’s behalf may contact you in any way, including SMS messages (including text messages), calls using prerecorded messages or artificial voice, and calls and messages delivered using auto telephone dialing system or an automatic texting system. Automated messages may be played when the telephone is answered, whether by you or someone else. In the event that an agent or representative calls, he or she may also leave a message on your answering machine, voice mail, or send one via text.

Signature

_____/_____/_____
Date

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EXHIBIT B

1 Jed D. Melnick, Esq.
2 JAMS
3 620 8th Avenue, 34th Floor
4 New York, NY 10018
5 Telephone Number: (212) 751-2700
6 Facsimile Number: (212) 751-4099
7 E-Mail: jmelnick@jamsadr.com

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 BRIGHTK CONSULTING INC., as a
11 California Corporation, on behalf of itself,
12 all others similarly situated, and the general
13 public,

14 Plaintiff,

15 vs.

16 BMW OF NORTH AMERICA, LLC, a
17 Delaware Limited Liability Company; and
18 DOES 1 through 30, inclusive,

19 Defendants.

Case No.: 8:21-cv-02063-CJC (JDEx)

Judge: Hon. Cormac J. Carney

**DECLARATION OF JED D.
MELNICK IN SUPPORT OF
PLAINTIFF BRIGHTK
CONSULTING INC.'S NOTICE
OF MOTION AND MOTION
FOR PRELIMINARY
APPROVAL OF CLASS
SETTLEMENT AND
DIRECTION OF NOTICE
UNDER FED. R. CIV. P. 23(e)**

[Filed Concurrently with Plaintiff's
Notice of Motion and Motion for
Preliminary Approval of Class
Settlement and Direction of Notice
Under Fed. R. Civ. P. 23(e) and
Declaration of Hovanes Margarian in
Support Thereof]

Complaint Filed: December 16, 2021

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DECLARATION OF JED D. MELNICK

I, Jed D. Melnick, hereby declare as follows:

1. I am a JAMS Mediator and Special Master. I have personal knowledge of the facts stated in this declaration and if called upon as a witness, I could and would competently testify thereto. While the mediation process is subject to mediation privilege, I am submitting this declaration with the permission of the parties to the mediation for the limited purpose of addressing the matters herein.

2. I serve as a mediator in complex business litigation matters pending throughout the United States and internationally. My representative matters include but are not limited to consumer class actions, coverage litigation, securities class actions, anti-trust class actions and contract disputes. My full biography can be found here: <https://www.jamsadr.com/melnick/>

3. I became a full-time mediator in 2005, and I have resolved over one thousand (1,000) disputes, with an aggregate value in the billions of U.S. dollars.

4. I served as mediator for the parties in the above-referenced litigation and in the process, learned and understood the claims and defenses of the parties on issues framed by the case. Plaintiff BRIGHTK CONSULTING INC., as a California Corporation, filed this suit, on behalf of itself, all others similarly situated, and the general public (“Plaintiff”) against BMW of North America LLC (“BMW”). Both parties submitted fulsome briefing with exhibits subject to mediation privilege. I reviewed those submissions in preparation for the mediation.

5. On May 9, 2022, I mediated this case during a full-day in-person mediation session in Westchester, New York. The Parties negotiated extensively and at arm’s length during the mediation session and conducted settlement discussions for nearly seven (7) hours.

6. Although the Parties did not reach a resolution on May 9, 2022, they made significant progress on a potential class resolution.

1 7. Through my mediation efforts the Parties continued their settlement dialogue
2 zealously following the first mediation. The parties then schedule a second mediation
3 session for July 2022.

4 8. On July 12, 2022, during a second half-day remote mediation session, the Parties
5 agreed to the terms of a proposed class action settlement (“The Proposed Settlement”)
6 providing benefits to current and former owners and lessees of 2019-2022 BMW X5 (G05;
7 start of production (“SOP”) 11/2018), 2020-2022 X6 (G06; SOP 11/2019), 2019-2022 X7
8 (G07; SOP 3/2018), 2020-2022 X5M (F95; SOP 4/2020), 2020-2022 X6M (F96; SOP
9 4/2020) vehicles (individually referred to as “Class Vehicle,” collectively referred to as
10 “Class Vehicles”).

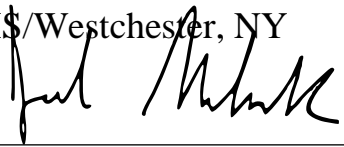
11 9. The Parties reached agreement on the Proposed Settlement through vigorous and
12 arm’s length negotiations during the second mediation session on July 12, 2022.

13 10. The Parties did not negotiate the Plaintiff’s attorneys’ fees, expense
14 reimbursement, or service awards for Plaintiff during the aforementioned mediation
15 sessions until after all settlement terms for the Class had been agreed upon.

16 11. I declare under penalty of perjury under the laws of the State of New York
17 and the United States of America that the foregoing is true and correct.

18
19 DATED: 09/30/2022

JAMS/Westchester, NY

By 

Jed D. Melnick, Esq.
JAMS Mediator and Special Master

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EXHIBIT C

1 Hovanes Margarian, SBN 246359
 hovanes@margarianlaw.com
 2 Armen Margarian, SBN 313775
 armen@margarianlaw.com
 3 Shushanik Margarian, SBN 318617
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 4 THE MARGARIAN LAW FIRM
 801 North Brand Boulevard, Suite 210
 5 Glendale, California 91203
 Telephone Number: (818) 553-1000
 6 Facsimile Number: (818) 553-1005

7 Attorneys for Plaintiff
 BRIGHTK CONSULTING INC.
 8

9 **UNITED STATES DISTRICT COURT**
 10 **CENTRAL DISTRICT OF CALIFORNIA**
 11

12 BRIGHTK CONSULTING INC., as a
 California Corporation, on behalf of itself,
 13 all others similarly situated, and the general
 public,

14 Plaintiff,

15 vs.

16 BMW OF NORTH AMERICA, LLC, a
 Delaware Limited Liability Company; and
 17 DOES 1 through 30, inclusive,

18 Defendants.
 19

Case No.: 8:21-cv-02063-CJC (JDEx)

Judge: Hon. Cormac J. Carney

**DECLARATION OF FANG LIN
 IN SUPPORT OF PLAINTIFF
 BRIGHTK CONSULTING INC.'S
 NOTICE OF MOTION AND
 MOTION FOR PRELIMINARY
 APPROVAL OF CLASS
 SETTLEMENT AND
 DIRECTION OF NOTICE
 UNDER FED. R. CIV. P. 23(e)**

[Filed Concurrently with Plaintiff's
 Notice of Motion and Motion for
 Preliminary Approval of Class
 Settlement and Direction of Notice
 Under Fed. R. Civ. P. 23(e) and the
 [Proposed] Preliminary Approval
 Order]

Complaint Filed: December 16, 2021

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DECLARATION OF FANG LIN

I, Fang Lin, declare as follows:

1. I am an individual over the age of 18 residing in the County of Orange, State of California.

2. I act on behalf of Plaintiff BRIGHTK CONSULTING INC., as a California Corporation (“Plaintiff”), which is the Class Representative in this action. I have personal knowledge of the facts stated in this declaration and if called upon as a witness, I could and would competently testify thereto.

3. This declaration is submitted in support of Plaintiff’s Motion for Preliminary Approval of Class Settlement and Direction of Notice Under Fed. R. Civ. P. 23(E).

4. My company, Plaintiff is the purchaser of a BMW X7, which is the Class Vehicle for this action due to having experienced the alleged defect which is the subject of this lawsuit and BMW NA having refused to cover the repair costs.

5. Ultimately, I, on behalf of Plaintiff, decided to file a class action lawsuit against BMW NA.

6. I, on behalf of Plaintiff, have assisted my attorney Hovanes Margarian, who is the Class Counsel in this action, in the prosecution of the class action. I consulted with the Class Counsel, providing my experience with the vehicle, the repair process, and relevant documents.

7. I, on behalf of Plaintiff, assisted the Class Counsel with fact development and discovery and regularly communicated with the Class Counsel to remain up to date on the litigation, the settlement process, the mediation, and the status of the BMW X7 Class Vehicle condition and repair.

8. I also reviewed the settlement terms discussed during the mediation sessions and during the negotiations, individually conferring with Class Counsel, before agreeing to the terms on behalf of Plaintiff and the Class.

9. Class Counsel and I worked diligently to deliver the Proposed Settlement.

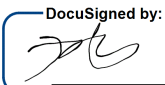
1 10. Given the fact that the primary objective as a Class Vehicle owner was to have
2 the vehicle's front console cupholder issue repaired and to provide a similar remedy for
3 other Class Vehicle owners in the same situation, I find that the terms stipulated in the
4 Settlement Agreement and Release are fair and adequate.

5 11. On behalf of Plaintiff, I humbly request the Court to approve the terms of the
6 Settlement Agreement and Release.

7 I declare under penalty of perjury under the laws of the State of California and
8 the United States of America that the foregoing is true and correct.

9 ///

10 DATED: 9/30/2022

By 
F364FA37ADD84B3...
Fang Lin on behalf of Plaintiff
BRIGHTK CONSULTING INC.

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7 Attorneys for Plaintiff
BRIGHTK CONSULTING INC.

8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 BRIGHTK CONSULTING INC., as a
California Corporation, on behalf of itself,
13 all others similarly situated, and the general
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14 Plaintiff,

15 vs.

16 BMW OF NORTH AMERICA, LLC, a
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DOES 1 through 30, inclusive,

18 Defendants.
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Case No.: 8:21-cv-02063-CJC (JDEx)

Judge: Hon. Cormac J. Carney

**[PROPOSED] PRELIMINARY
APPROVAL ORDER
GRANTING PLAINTIFF
BRIGHTK CONSULTING INC.'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS
SETTLEMENT**

[Filed Concurrently with Plaintiff's
Notice of Motion and Motion for
Preliminary Approval of Class
Settlement and Direction of Notice
Under Fed. R. Civ. P. 23(e) and
Declaration of Hovanes Margarian in
Support Thereof (with exhibits
thereto)]

Complaint Filed: December 16, 2021

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1 **[PROPOSED] PRELIMINARY APPROVAL ORDER GRANTING PLAINTIFF**
2 **BRIGHTK CONSULTING INC.’S MOTION FOR PRELIMINARY APPROVAL**
3 **OF CLASS SETTLEMENT**

4 On October 31, 2022, at 1:30 p.m., in Courtroom 9 B of the Ronald Reagan Federal
5 Building and United States Courthouse, 411 West Fourth Street, Santa Ana, CA 92701,
6 with the Honorable Cormac J. Carney presiding, the Motion by Plaintiff BRIGHTK
7 CONSULTING INC. (“Plaintiff”) for preliminary approval of class action settlement,
8 conditional certification of the class for settlement purposes, and approval of Class Notice
9 direction (the “Motion”) came on for hearing before the Honorable Cormac J. Carney.

10 Defendant BMW OF NORTH AMERICA, LLC (“BMW NA”) does not oppose to
11 the Motion.

12 The court having reviewed and considered the Motion, the Settlement Agreement
13 and Release (“Settlement” or “Settlement Agreement”), all accompanying declarations
14 and exhibits to the Motion, thereto, and all of the legal authorities and documents
15 submitted in support of the Motion, and in recognition of the Court’s duty to make a
16 preliminary determination as to the reasonableness of any proposed class action
17 settlement, and if preliminary determined to be reasonable, to ensure proper notice is
18 provided to Class Members in accordance with due process requirements, and to set a
19 Final Fairness Hearing to consider the proposed Settlement as to the good faith, fairness,
20 adequacy, and reasonable of any settlement,

21 **IT IS HEREBY ORDERED** that the Motion for Preliminary Approval of Class
22 Settlement is Granted, subject to the following findings and orders:

23 1. The Order incorporates by reference the definitions of the Settlement
24 Agreement, and all terms defined therein shall have the same meaning as set forth in the
25 Settlement Agreement;

26 2. This Court has both subject matter jurisdiction and personal jurisdiction over
27 this Action and all Parties before it;

28 3. The Settlement Agreement is sufficiently fair, reasonable, and adequate to

1 allow dissemination of the Class Notice and hereby is preliminarily approved as having
2 been arrived at in good faith, following arms-length negotiations;

3 4. Plaintiff has made a sufficient showing that a Settlement Class should be
4 certified for Settlement purposes only, subject to the Final Approval Hearing;

5 5. The Court finds that the requirements of Federal Rules of Civil Procedure §
6 23 for the preliminary approval of the Settlement and conditional certification of the
7 proposed Settlement Class are met;

8 6. Pursuant to the Fed. R. Civ. P 23 (a)(1), the following Settlement Class is
9 hereby conditionally certified for purposes of settlement only: All residents of the United
10 States, including the District of Columbia and Puerto Rico, who currently own or lease, or
11 previously owned or leased, a Class Vehicle, which is defined as 2019-2022 BMW X5
12 (G05) ; 2020-2022 X6 (G06); 2019- 2022 X7 (G07); 2020-2022 X5M (F95); 2020-2022
13 X6M (F96);

14 7. Excluded from Settlement Class are: (a) BMW, its related entities, parent
15 companies, subsidiaries and affiliates, and their respective officers, directors, and
16 employees; (b) BMW Group dealers or independent repair shops; (c) Insurers of the Class
17 Vehicles; (d) all persons and/or entities claiming to be subrogated to the rights of Class
18 Members; (e) issuers or providers of extended vehicle warranties or issuers or providers
19 of extended service contracts; (f) individuals and/or entities who validly and timely opt-
20 out of the Settlement; (g) consumers or businesses that have purchased Class Vehicles
21 previously deemed a total loss (i.e. salvage title; subject to verification through Carfax or
22 other means) or that were purchased with a branded title or where the vehicle was sold “as
23 is” and the purchase price for such vehicle therefore reflects such condition; (h) current
24 and former owners of a Class Vehicle that previously have released their claims against
25 BMW with respect to the issues raised in the Action; (i) United States residents that have
26 purchased Class Vehicles in the United States but have since transported the vehicle
27 outside the United States for permanent use abroad; (j) Individuals or entities that have
28 purchased and/or leased Class Vehicles as “fleet” vehicles (i.e. rentals or company

1 vehicles); (k) the Judge(s) to whom the Action is or will be assigned and any members of
2 the Judge(s)' family or Judge(s)' chambers (law clerks, secretaries, deputy clerk, etc.); (l)
3 Class counsel or employees of Class Counsel;

4 8. For the Settlement purposes only, the Court appoints Plaintiff as Settlement
5 Class Representative;

6 9. For the Settlement purposes only, the Court appoints the Margarian Law Firm
7 as Settlement Class Counsel;

8 10. BMW NA's Counsel to provide notice under the Class Action Fairness Act,
9 28 U.S.C. § 1715 to the States' Attorneys General within ten (10) days from the date of
10 the Preliminary Approval Order, if they have not already done so;

11 11. For the Settlement purposes only, the Court appoints Kroll Settlement
12 Administration as the Claims Administrator;

13 12. The Claims Administrator shall administer this Settlement in accordance with
14 the Settlement Agreement and the Class Notice therein, and this Order, and BMW NA
15 will bear all costs and expenses related to the administration of this Settlement;

16 13. The Claims Administrator shall within forty-five (45) days of the date of the
17 Preliminary Approval Order, establish and maintain a website and 800 number, which will
18 remain available until all Claims decisions by the Claims Administrator and payment to
19 claimants have been made;

20 14. The Court hereby approves, without material alteration, the Class Notice
21 annexed to the Settlement Agreement as Exhibit A and the Claim Form annexed to the
22 Settlement Agreement as Exhibit B, being in compliance with all legal requirements,
23 including, but not limited to, the Due Process Clause of the United States Constitution;

24 15. The dissemination of Settlement Class Notice shall be made as soon as
25 practicable to Settlement Class Members' last known addresses based on BMW NA's
26 records (with skip tracing or Department of Motor Vehicle updates and re-mailing for
27 undeliverable or returned Class Notices), but in no event, later than ninety (90) days of the
28 date of the Preliminary Approval Order or such additional time as is reasonably required,

1 and the taking of all necessary and appropriate steps to accomplish this task;

2 16. The deadline for all Claims by Settlement Class Members to be submitted,
3 one hundred twenty (120) days after the Mailing Date of Class Notice or up until the Court
4 issues its Final Approval Order, whichever is earlier;

5 17. Settlement Class Members who wish to exclude themselves from or object to
6 the Settlement shall submit an appropriate and timely written request for exclusion or
7 objection by a date certain as specified in the Class Notice that will be forty-five (45) days
8 after the Mailing Date of Class Notice;

9 18. Settlement Class Members who wish to appear to object to the Settlement
10 Agreement shall submit an appropriate and timely written statement by a date certain as
11 specified in the Class Notice that will be forty-five (45) days after the Mailing Date of
12 Class Notice;

13 19. Attorneys representing objecting Settlement Class Members, at the time the
14 objection is filed, at the objecting Settlement Class Members' expense, shall file a notice
15 of appearance by a date certain as specified in the Class Notice that will be forty-five (45)
16 days after the Mailing Date of Class Notice;

17 20. Any Settlement Class Member who has not filed a timely written Request for
18 Exclusion and who wishes to object to the fairness, adequacy, or reasonableness of this
19 Settlement Agreement or the Settlement, or to the requested Settlement Class Counsel
20 Fees and Expenses, or Settlement Class Representative Service Payment, must file with
21 the Clerk of the Court a written notice of objection by the Objection Deadline. To state a
22 valid objection to the Settlement, an objecting Settlement Class Member must provide the
23 following information in the Settlement Class Member's written objection: (1) his/her full
24 name, current address, and current telephone number; (2) the model year and model of
25 his/her Class Vehicle(s), as well as the VIN of his/her Class Vehicle(s) and the date(s) of
26 purchase or lease; (3) a statement of the position(s) the objector wishes to assert, including
27 the factual and legal grounds for the position; (4) a statement as to whether the objector
28 intends to appear to be heard at the Final Approval Hearing, and (5) any other documents

1 that the objector wishes to submit in support of his/her position

2 21. The Court permits Plaintiff to file a First Amended Complaint that conforms
3 the class definition to the definition of the Settlement Class;

4 22. Settlement Class Counsel shall file their motion for an award of attorneys'
5 fees, inclusive of costs, expenses, and Settlement Class Representative Service Payment,
6 forty-five (45) days after the entry of the Preliminary Approval Order;

7 23. Settlement Class Counsel shall file their Final Approval Motion one hundred
8 fifty (150) days after the Preliminary Approval Order;

9 24. BMW NA shall file with the Court an affidavit no less than fifteen (15) days
10 prior to the Final Approval Hearing from the Claims Administrator: (i) indicating the
11 number of claims, requests for exclusion, and objections submitted by Settlement Class
12 Members to date; and (ii) attesting that Settlement Class Notice was disseminated in a
13 manner consistent with the terms of this Settlement Agreement and the Class Action
14 Fairness Act, 28 U.S.C. §1711 et seq., or those otherwise required by the Court;

15 25. The court sets the following schedule:

DATE	EVENT
10/31/2022	Preliminary Approval Hearing
1/30/2023	Last Date for Class Notice of Disseminated (90 Days after Preliminary Approval Order)
12/15/2022	Motions for Approval of Attorneys' Fees and Expenses and Service Awards filed
3/30/2023	Motion for Final Approval filed
3/16/2023	Objection and Opt-Out Deadline
4/13/2023	Reply Memorandum in Support of Final Approval and Fee Application filed (including responses to any objections to proposed settlement)
5/1/2023	Settlement Fairness Hearing

1 26. The Court reserves the right to adjourn or continue the Final Approval
2 Hearing, or any further adjournment or continuance thereof, and to approve the settlement
3 with modifications, if any, consented to by the Class Counsel and BMW NA’s Counsel
4 without further notice.

5 27. Pending final determination of the application for approval of this Settlement
6 Agreement, all proceedings in this Litigation other than settlement approval proceedings
7 shall be stayed.

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9 **IT IS SO ORDERED**

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11 Date: _____

HONORABLE CORMAC J. CARNEY
UNITED STATES DISTRICT JUDGE

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3 Shushanik Margarian, SBN 318617
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4 THE MARGARIAN LAW FIRM
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Telephone Number: (818) 553-1000
6 Facsimile Number: (818) 553-1005

7 Attorneys for Plaintiff
BRIGHTK CONSULTING INC.
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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12

13 BRIGHTK CONSULTING INC., as a
California Corporation, on behalf of itself,
14 all others similarly situated, and the general
public,

15 Plaintiff,

16 vs.

17 BMW OF NORTH AMERICA, LLC, a
18 Delaware Limited Liability Company; and
DOES 1 through 10, inclusive,

19 Defendants.
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Case No.: 8:21-cv-02063-CJC (JDEx)

PROOF OF SERVICE

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PROOF OF SERVICE

Brightk Consulting Inc. v. BMW of North America, LLC, et al.
United States Central District of California
District Court Case No.: 8:21-cv-02063-CJC (JDEx)

I declare that I am employed by The Margarian Law Firm. I am over the age of eighteen years and not a party to the within cause; my business address is 801 North Brand Boulevard, Suite 210, Glendale, California 91203.

On the date set forth below, I served the foregoing document(s) described as:

1. **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT AND DIRECTION OF NOTICE UNDER FED. R. CIV. P. 23(e)**
2. **DECLARATION OF HOVANES MARGARIAN IN SUPPORT OF PLAINTIFF BRIGHTK CONSULTING INC.'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT AND DIRECTION OF NOTICE UNDER FED. R. CIV. P. 23(e)**
3. **[PROPOSED] PRELIMINARY APPROVAL ORDER GRANTING PLAINTIFF BRIGHTK CONSULTING INC.'S MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT**

On the parties in said cause:

LEWIS BRISBOIS BISGAARD & SMITH LLP 633 West 5 th Street, Suite 4000 Los Angeles, California 90071 Eric Y. Kizirian, SB# 210584 Zourik Zarifian, SB# 306368 Email: eric.kizirian@lewisbrisbois.com zourik.zarifian@lewisbrisbois.com	Telephone: 213.250.1800 Facsimile: 213.250.7900 <i>Attorneys for Defendant</i> BMW OF NORTH AMERICA, LLC.
--	---

(BY E-FILE): I caused such documents to be transmitted by e-file with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to the following:
eric.kizirian@lewisbrisbois.com, zourik.zarifian@lewisbrisbois.com.

(FEDERAL): I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.
I declare under penalty of perjury that the foregoing is true and correct, and that

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this declaration was executed on October 21, 2022, at Los Angeles, CA.

/s/ Hovanes Margarian
Hovanes Margarian