UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ARTEM V. GELIS, BHAWAR PATEL, ROBERT MCDONALD, JAMES V. OLSON, GREGORY HEYMAN, SUSAN HEYMAN, DEBRA P. WARD, DARRIAN STOVALL, ALEX MARTINEZ, AMANDA GOREY, CHRIS WILLIAMS, ASHOK PATEL, KENNETH GAGNON, MICHAEL CERNY, MARIA MEZA, ANDRE MALSKE, NICOLE GUY, DAVID RICHARDSON, STACEY TURNER, and ERIC T. ZINN, individually and on behalf of all others similarly situated, *Plaintiffs*, v. BMW NA OF NORTH AMERICA, LLC, *Defendant*.	Civil Action No. 2:17-cv-007386-SDW-CLW **[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT, AWARDING ATTORNEYS' FEES AND EXPENSES AND CLASS REPRESENTATIVE SERVICE PAYMENTS**

On February 16,2021, this Court heard Plaintiffs Artem V. Gelis, Bhawar Patel, Robert McDonald, James V. Olson, Gregory Heyman, Susan Heyman, Debra P. Ward, Darrian Stovall, Alex Martinez, Amanda Gorey, Chris Williams, Ashok Patel, Kenneth Gagnon, Michael Cerny, Maria Meza, Andre Malske, Nicole Guy, David Richardson, Stacey Turner, and Eric T. Zinn ("Plaintiffs") motion for final approval of the class-action settlement (the "Motion").

The Court previously entered an Order dated September 9, 2020, preliminarily approving the Settlement, certifying the putative class in the above-captioned action (the "Action") for settlement purposes only, ordering notice to be provided to Class Members and publication with a Settlement Website that posted the Full Notice and certain docket entries from this case, scheduling a Final Approval Hearing for February 16, 2021, and providing an opportunity for Class Members to object to the proposed settlement (the "Preliminary Approval Order").

NOW THEREFORE, upon review and consideration of the Motion and supporting papers, including the Settlement Agreement and Release ("Settlement Agreement")[1], any objections filed with or presented to the Court, the Parties' responses to any objections, and Counsel's arguments, and finding that substantial and sufficient grounds exist for entering this Order,

IT IS this _____ day of _____, 2021

ORDERED and ADJUDGED as follows:

1. The Court has jurisdiction over the subject matter of this Action and all Parties to the Action, including all Class Members, and venue is proper in this District.

2. Upon review of the record, the Court hereby finds that the Settlement Agreement is, in all respects, fair, adequate, and reasonable, and therefore approves it. The Court has come to this determination pursuant to the factors outlined in cases such as *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975) and *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283 (3d Cir. 1998). Among other matters considered, the Court took into account:

a. The complexity, expense, and likely duration of the litigation. This case presents complex factual and legal questions that, absent settlement, would have to be resolved through extensive proceedings for which the outcome is uncertain, including contested class certification proceedings involving experts and an extensive factual record, *Daubert* challenges, summary judgment briefing, and a complicated, lengthy trial of any claims that survive summary judgment. An appeal almost certainly would follow any ruling on class certification, summary judgment, and/or trial, whatever its outcome, thereby further delaying this case's final

[1] The Settlement Agreement, including all exhibits thereto, are hereby incorporated into this Order. Unless otherwise stated herein, the terms defined in the Settlement Agreement shall have the same meanings herein.

resolution for a period of months or even years.

b. ***The reaction of the Class to the Settlement.*** The reaction of the Class to the Settlement has been highly favorable. Of the more than 575,300 potential Class Members, only ____ have timely opted out and only __ objections have been filed.

c. ***The stage of the proceedings and the amount of discovery completed.*** There has been sufficient discovery during the three years this Action has been pending. The Parties have conducted an investigation of the facts and have analyzed the relevant legal issues in regard to the claims and defenses asserted in the Action. The Parties have participated in extensive fact discovery, including exchanging numerous written discovery requests and responses, as well as discovery conducted in connection with the mediation.

d. ***The risks of establishing liability and the risks of establishing damages.*** Defendant BMW NA of North America, LLC ("BMW NA NA") vigorously disputes both liability and damages, as well as the ability to make those determinations on a class-wide basis. Plaintiff's ability to establish both liability and damages will likely hinge in large part on expert testimony, which is admissible only if it meets the requirements of the Federal Rules of Evidence and *Daubert*.

e. ***The risks of maintaining class action status through trial.*** While BMW NA consents to the certification of a class for settlement purposes, it has indicated its vehement opposition to any attempt to certify a litigation class for trial. Plaintiff acknowledges, and the Court finds, that there is a risk that a class action cannot be maintained through a trial.

f. ***The ability of Defendant to withstand a greater judgment.*** The Third Circuit has

explained that the mere fact that a Defendant "could afford to pay more does not mean that it is obligated to pay any more than what [the class members] are entitled to under the theories of liability that existed at the time the settlement was reached." *In re Warfarin Sodium Antitrust Litig*., 391 F.3d 516, 538 (3d Cir. 2004). Here, the Settlement represents a fair, reasonable, and adequate payment under the Plaintiff's theories of liability.

g. The reasonableness of the Settlement in light of the best possible recovery and in light of all the attendant risks of litigation. The Settlement Agreement provides significant monetary relief that that, depending on miles and years-in-service, reimburses class members anywhere from 100% to 40% provides in costs for a one time replacement of one (1) failed Chain Assemblies (including replacement of both assemblies) and, if also damaged, one (1) engine, as well as a one year safe harbor provision and an extended warranty benefit up to eight years or 100,000 miles for Class Members who have not excluded themselves from the class represent a substantial recovery in light of BMW NA's numerous challenges to Plaintiff's theories of liability.

3. ***Negotiated Settlement.*** The Court finds that extensive arm's-length negotiations have taken place, in good faith, between Class Counsel and BMW NA's Counsel resulting in the Settlement Agreement. *See Demmick v. Cellco P'ship*, 2015 WL 13643682, at *5 (D.N.J. May 1, 2015). These negotiations were presided over by an experienced mediator, former United States District Judge Stephen Orlofsky.

4. ***Notice to Class.*** The Court finds that BMW NA provided notice to Class Members in compliance with Section IV of the Settlement Agreement, due process, and Rule 23 of the

Federal Rules of Civil Procedure. The notice: (i) fully and accurately informed Class Members about the lawsuit and settlement; (ii) provided sufficient information so that Class Members were able to decide whether to accept the benefits offered, opt-out and pursue their own remedies, or object to the proposed settlement; (iii) provided procedures for Class Members to file written objections to the proposed settlement, to appear at the hearing, and to state objections to the proposed settlement; and (iv) provided the time, date, and place of the final Fairness Hearing.

5. ***Class Certification for Settlement Purposes.*** For the reasons stated in the Preliminary Approval Order, and having found nothing in any submitted objections that would disturb these previous findings, the Court finds and determines that the proposed Settlement Class, as defined below, meets all of the legal requirements for class certification for settlement purposes under Federal Rule of Civil Procedure 23(a) and (b)(3).

6. ***Class Members.*** The Class Members are defined as:

> All current (as of the Effective Date) and former owners and lessees in the United States, including the District of Columbia and Puerto Rico, of certain of the following U.S.-specification BMW NA vehicles distributed for sale, registered, and operated in the United States, including the District of Columbia and Puerto Rico:

Model Description	Model Years
X1 SAV	2012 - 2015
X3 SAV	2013 - 2015
X4 SAV	2015
Z4	2012 - 2015
228i Coupe, Convertible	2014 - 2015
320i Sedan	2012 - 2015
328i Sedan, Sports Wagon, Gran Turismo	2012 - 2015
428i Coupe, Convertible, Gran Coupe	2014 - 2015
528i Sedan	2012 - 2015

**Model Years are not fully indicative of actual Class Vehicles, which will depend on production ranges.*

7. ***Class Representative Service Payments.*** A Service Payment to each Plaintiff of $_____ is fair and reasonable in light of: (a) Plaintiffs' risks in commencing this Action as Class Representatives and (b) the time and effort spent by Plaintiffs in litigating this Action as Class Representatives. Payment shall be made pursuant to the timeline stated in Section VIII D and F of the Settlement Agreement.

8. ***Attorneys' Fees and Costs***. Class Counsel is awarded $_____ in fees and costs. Payment shall be made pursuant to the timeline stated in Section VIIIF of the Settlement Agreement.

9. ***Release***. Plaintiff and all Class Members who did not properly request exclusion are: (1) deemed to have released and discharged BMW NA from all claims arising out of or asserted in this Action and claims released under the Settlement Agreement; and (2) barred and permanently enjoined from asserting, instituting, or prosecuting, either directly or indirectly, these claims. The full terms of the release described in this paragraph are set forth in Section VII of the Settlement Agreement and are specifically incorporated herein by this reference.

10. ***Binding Effect of Order***. This Order applies to all claims or causes of action settled under the Settlement Agreement, and binds all Class Members, including those who did not properly request exclusion under Paragraph 11 of the Preliminary Approval Order. This Order does not bind persons who filed timely and valid Requests for Exclusion. [Attached as Exhibit A is a list of persons who properly requested to be excluded from the Settlement.]

11. ***No Admissions***. Nothing in this Order is, or may be construed as, an admission or concession on any point of fact or law by or against any Party.

12. ***Court's Jurisdiction***. Without affecting the finality of this Order, or the judgment

to be entered pursuant hereto, in any way, the Court shall retain jurisdiction over the Parties to the Settlement Agreement to administer, supervise, construe, and enforce the Settlement in accordance with its terms for the mutual benefit of the Parties.

ENTER:

_____

Honorable Cathy L. Waldor
United States Magistrate Judge