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

DEEPKARN SINGH BEDI, On Behalf
of Himself and All Others Similarly
Situated,

Plaintiff,

v.

BMW OF NORTH AMERICA, LLC,

Defendant.

No.

CLASS ACTION

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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

INTRODUCTION

1. This is a class action brought by Plaintiff against Defendant, BMW of North America, LLC (“BMW” or “Defendant”), on behalf of all current and former owners and lessees of new and Certified Pre-Owned BMW vehicles equipped with single-turbocharger engines that BMW calls “TwinPower Turbo” engines (“Vehicle(s)” or “Class Vehicles”), challenging BMW’s deceptive sales and marketing of those Vehicles.

2. In 2009, BMW unveiled a new proprietary term called “TwinPower Turbo” to describe all of its turbocharged engines in cars beginning with model year (“MY”) 2010. Used by BMW worldwide, “TwinPower Turbo” is the nomenclature used to describe each turbocharged engine manufactured by BMW. The phrase “TwinPower Turbo” strongly suggests, and is designed to suggest, twin turbos, a well-known, highly prestigious, and powerful engine arrangement that commands a price premium in the market.

3. Earlier, from 2006 to 2008 (MY2007-09), BMW manufactured the twin-turbo “N54” engines. BMW’s sales and marketing of its twin-turbo N54 engine created immense publicity and market awareness amongst consumers, existing BMW owners and lessees, and likely BMW purchasers and lessees. The N54 6-cylinder engine generated 8-cylinder-engine levels of horsepower and torque, while maintaining the fuel consumption and weight of a 6-cylinder unit. BMW received numerous auto industry accolades for its N54 engine and sold hundreds of thousands of cars and sports activity vehicles (“SAVs”) equipped with this power plant.

4. For a variety of reasons, including the significant volume of high pressure fuel pump failures associated with its N54 engine, as well as the need to meet Federal Corporate Average Fuel Economy regulations, BMW significantly scaled down production of its N54 engine, limiting its use to a small subset of its vehicles (*e.g.*, special variants such as its performance 335is coupe and sedan, and Z4 sDrive 35i convertible).

5. BMW replaced the N54 with the “N55,” a single-turbo engine. In other words, it contained just one turbocharger, and was therefore a cheaper, less powerful, less prestigious engine than its twin-turbo N54 predecessor.

6. BMW described its N55 engine as “TwinPower Turbo” so as to maintain the market prestige built up by its prior twin-turbo N54 engine, and to trade off of the prestige of twin turbos in the marketplace generally. The “TwinPower Turbo” terminology enabled BMW to evoke the recent heritage of its twin-turbo N54 engines and capitalize on the strong, positive, consumer sentiment earned by those engines.

7. The N55 “TwinPower Turbo” is therefore a “False Twin” - an engine marketed as a TwinPower Turbo to manipulate consumers into believing that the vehicle contained twin turbos, when, in actuality, it contains only a single turbo.

8. BMW repeated this false marketing practice with its N20, N26, and B38 engines, marketing all of those engines as “TwinPower Turbo,” even though they are single-turbo engines and, therefore, also False Twins.

9. BMW developed the terminology “TwinPower Turbo” specifically to lead consumers to believe that engines bearing that description used twin turbos.

10. By using its “TwinPower Turbo” nomenclature, BMW reaped profits, prestige, and market share through inflated purchase prices and lease terms accepted by consumers who erroneously believed their BMW vehicles were True Twins, when, in fact, the “TwinPower Turbo” N20, N26, N55 and B38 engines

were actually False Twins. BMW unjustly enriched itself by holding out its “TwinPower Turbo” offerings as twin-turbo charged, but simply delivering single-turbo-charged vehicles.

11. BMW’s use of the misleading “TwinPower Turbo” nomenclature continues to this day, as BMW uses “TwinPower Turbo” to describe many single-turbo MY 2014 cars, including the 228i, M235i, 320i, 328i, 335i, 428i, 435i, 528i, 535d, 535i, 640i, 740i, 740li, Z4 sDrive28i, Z4 sDrive35i, and Z4 sDrive35is. They are all False Twins.

12. Plaintiff brings this class and representative action on behalf of a class of all persons who purchased, leased, and/or currently own or lease, certain new or Certified Pre-Owned “TwinPower Turbo” BMW vehicles using a single-turbo engine.

13. Plaintiff and the class have been damaged by BMW’s misrepresentations, concealment, and non-disclosure of the true nature of BMW’s “TwinPower Turbo” engines, and because they were misled into purchasing or leasing Vehicles of a quality different than they were led to believe they were obtaining, and ultimately paying more for the Vehicles than they would have if the true nature of the “TwinPower Turbo” engine had been disclosed.

14. Plaintiff assert claims, individually and on behalf of the class (defined below), violations of the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, *et seq.* (“Magnuson-Moss Act”), for breach of express warranty (or, alternatively, unjust enrichment) and for violations of the New Jersey Consumer Fraud Act (“CFA”) or, in the alternative, under the consumer protection laws of the states of purchase or lease.

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

THE PARTIES

16. Bedi is an individual who was, at all times relevant to this action, a resident of Tiburon, Marin County, California.

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

JURISDICTION AND VENUE

18. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2), because the matter in controversy, upon information and belief, exceeds \$5,000,000, exclusive of interests and costs, and this matter is a class action in which certain class members are citizens of a different state than that of Defendant.

19. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, because Defendant is a resident of this judicial district and does business throughout this

district, and a substantial part of the events or omissions giving rise to Plaintiff's claims took place within this district.

FACTUAL ALLEGATIONS

A. Performance: Twin-turbo engines perform objectively, measurably better than single-turbo engines.

20. Twin-turbo engines are objectively superior to single-turbo engines. Conventional driving tests can measure this superior performance. For example, twin-turbo engines boast reduced turbo lag, superior throttle response, smoother delivery of power and torque, and greater ease of tuning.

21. Testing by the well-known automotive resource website, Edmunds.com, revealed that BMW's MY 2011 740i sedan, equipped with an N54 and a 6-speed transmission, was faster than the 300 lbs. lighter MY 2011 535i sedan, equipped with an N55 engine and an 8-speed transmission. Generally, a heavier vehicle will require more engine power to move at the same rate as a lighter vehicle. Accordingly, if the N55 was a superior engine, it would cause the lighter 2011 535i sedan to be faster than the heavier 2011 740i sedan with the N54. This proved not to be the case even though the lighter 2011 535i sedan also benefited from an 8-speed transmission compared to the 2011 740i's 6-speed transmission. Attached hereto as Exhibit 1 are true and correct copies of road test specifications obtained from Edmunds.com for the 2011 BMW 740i sedan and 535i sedan. While approximately 300 lbs. heavier than the 535i, the 740i posted faster 0-60 mph (5.8 vs. 5.9 seconds) and quarter mile (14.1 vs. 14.3 seconds) times than the 535i.

22. Automobilemag.com performed a dynamometer test on two MY 2011 BMW 335 (335is and 335i) vehicles, one with a N54 variant and the other with an N55 engine. The test concluded that the N55 "[d]oesn't, in fact, make as much power as the [N54]...Obviously, the N54 'is' engine [(the engine equipped

in the 335is]] is vastly more powerful [than the N55] in the midrange and slightly more so up top.”

23. Twin-turbocharging is widely accepted in the automotive industry as a superior arrangement than single turbocharging. For larger engines, it is better to use a pair of small turbochargers instead of a big one, because small turbines result in less turbo lag.

24. Twin turbos outperform single turbos, as they spool up more rapidly than a single large turbocharger, and thereby exhibit less turbo lag.

Turbochargers use engine exhaust gases to spin their turbines, which in turn spin a connected turbine that forces air into the engine at greater than atmospheric pressure, creating a stronger, more potent engine charge. A large single turbocharger requires more exhaust gas to spin its turbines, causing turbo lag. Turbo lag is undesirable, because its power delivery is not instantaneous or smooth.

25. Twin turbos are prestigious and highly coveted by consumers generally, and are particularly coveted by car tuners. The inclusion of twin turbos allows for a higher degree of tuning than is permitted by a single turbo. Plaintiff and class members paid, and would pay, a premium for the “tuning opportunity” presented by “True Twins.” Tuning opportunity refers to the opportunity an enthusiast has to tune (or configure) the engine in a way to improve performance. For example, the original version of the twin-turbo N54 normally produces 306 horsepower at 5800 rpm, but a later variant (essentially an in-house tune) produces 335 horsepower at 5900 rpm. By contrast, BMW could only tune the False Twin N55 (which normally produces 302 horsepower at 5800 rpm), to increase the total horsepower to 315 at 5900 rpm. This 13-hp increase was less than half the 29-hp increase achieved by tuning the True Twin N54.

B. The marketplace: “Twin Turbo” is a known term in the marketplace.

26. When consumers hear or read that an automobile is described as a “twin turbo,” or contains “twin turbos,” they understand that the vehicle has two turbos. “Twin turbo” is a descriptive term routinely employed by automobile manufactures to denote the presence of two turbos.

27. For example, Cadillac advertises certain variants of its MY 2014 CTS sedan as equipped with a “3.6L V6 Twin Turbo” engine. Those models of the 2014 CTS sedan actually contain two turbos. Cadillac also describes certain variants of its MY 2014 XTS sedan as equipped with a “3.6L Twin Turbo SIDI V6” engine. Those vehicles actually contain twin turbos.

28. Ford manufactures a “3.5L V6 EcoBoost® Engine,” which Ford advertised as containing “intercooled twin turbochargers,” which is found in certain models of the MY 2015 Expedition SUV, 2014 Explorer SUV, 2014 F-150 truck, 2014 Flex crossover, and 2014 Taurus sedan. All of the aforementioned vehicles equipped with the 3.5L V6 EcoBoost® Engine actually contain twin turbos.

29. Maserati advertises its Ghibli and Ghibli S Q4 sedans as equipped with a “Twin-Turbo V6,” and its Quattroporte GTS and Quattroporte S Q4 as equipped with a “Twin-Turbo V8.” All of the aforementioned Maseratis actually contain twin turbos.

30. The world’s top automotive manufacturers nearly exclusively utilize twin turbos in their high-end turbocharged vehicles. Porsche employs twin turbos in all of its turbocharged vehicles. Nissan’s GT-R, one of the world’s quickest and fastest production sports cars, employs and advertises the use of a “3.8-liter twin-turbocharged 24-valve V6.” Mercedes Benz’s high-performance AMG division offers at least 12 separate twin-turbo-engine-equipped models.

31. BMW itself touts the superiority of twin-turbocharged engines versus single-turbocharged engines through its own “M” (Motorsports) line of high-performance luxury vehicles. The M line is replete with twin-turbocharged vehicles, including the M5 sedan, both the M6 coupe and convertible, X5 M SAV, X6 M SAV, 6 Gran Coupe M sedan, and the forthcoming M4 coupe and M3 sedan. Furthermore, BMW’s 550i sedan, 750i/Li sedans, 760Li sedan and its 650i coupe, convertible, and 6 Gran Coupe are all equipped with engines powered by twin turbos.

32. BMW’s actions demonstrate the importance of twin-turbocharging in establishing brand prestige and performance, so as to command a price premium. Had it been otherwise, BMW would have more routinely employed single-turbo engines in place of the twin turbos.

C. Price premium: Twin-turbo engines command a higher price in the marketplace due to their objective superiority.

33. Because a twin-turbo engine is significantly better than a single-turbo engine, twin-turbo engines are particularly prestigious and sought after, thereby commanding a price premium relative to non-twin-turbo vehicles.

34. For example, a MY 2014 Cadillac CTS sedan with a 3.6L Twin Turbo engine has a starting MSRP of \$59,995, compared to a starting MSRP of \$54,625 for the non-turbo 3.6L engine 2014 Cadillac CTS – a premium of \$5,370 for the twin turbo.

35. The MY 2014 Cadillac XTS sedan with a 3.6L Twin Turbo engine has a starting MSRP of \$63,020, compared to a starting MSRP of \$45,525 for the non-turbo 3.6L engine 2014 Cadillac XTS – a premium of \$17,495 for the twin turbo.

36. Greater engine performance translates to higher value in the

marketplace. Vehicles equipped with twin-turbo engines generally command a higher price than equivalent vehicles with single-turbo engines.

37. In particular, BMW charged a MSRP premium of \$7,500 more for a twin-turbocharged 2012 335is coupe than it does for a single-turbocharged 2012 335i coupe. That \$7,500 price differential is the difference in value for BMW between a twin-turbo and a single-turbo engine for that particular model.

38. The \$7,500 premium is indicative of the “Twin Turbo Premium.” The “Twin Turbo Premium” is the premium commanded by selling and leasing of False Twins under the misleading “TwinPower Turbo” terminology.

D. BMW’s Marketing.

39. BMW repeatedly touted the superior performance of its twin-turbo engines when compared to its single-turbo engines.

40. In 2007 BMW produced a document it referred to as a “training module” (hereinafter, the “2007 Training Module”). The 2007 Training Module, a true copy of which is attached hereto as Exhibit 2 and incorporated by reference, included details about the true twin-turbo N54 engine. In the 2007 Training Module, BMW itself touts and admits the superiority of twin turbos:

Utmost importance is attached to turbocharger response in the N54 engine. A delayed response to the driver’s command, i.e., the accelerator-pedal position, is not acceptable. The driver therefore must not experience any so-called “turbo lag.”

This requirement is met in the N54 engine with two small turbochargers, which are connected in parallel...

The advantage of a small turbocharger lies in the fact that, as the turbocharger runs up to speed, the lower moment of inertia of the turbine causes fewer masses to be accelerated, and thus the compressor attains a higher boost pressure in a shorter amount of time.

(Ex. 2, p. 11 (section entitled “Bi-turbocharging”).)

41. Then, in the section entitled “Engine Introduction,” BMW describes the N54 engine:

Overall, the N54 provides the driver with uncompromising response and high end torque output in a package that is up to 150 pounds lighter than a V-8 engine. The new technology used in the N54, allows for maximum efficiency and the required low tailpipe emissions figures to meet ULEV II guidelines.

(Ex. 2, p. 7.)

These attributes directly resulted from the N54's twin turbos, which helped improve power while maintaining fuel economy and minimizing tailpipe emissions.

42. The N54's superior performance compared to its predecessor 6-cylinder engines, derived from its twin turbos, prompted BMW to continue to employ variants of the twin-turbo N54 engine in many of its high-performance vehicles, despite the availability of the single-turbo N55. For example, N54 variants continued to be used in 2011 in BMW's 335is coupe, 335is convertible, 1 Series M coupe, and 740i sedan (part of BMW's flagship 7 Series sedan line).

E. BMW justifies using “TwinPower Turbo” to describe False Twins by the fact that those engines have twin “scrolls” (but not twin turbos).

43. BMW's False Twin engines house a single twin-scroll turbo. Twin scrolls are an improvement over a single-scroll turbo, but the performance of a single twin-scroll turbo vehicle is markedly worse than the performance of a twin turbo. For example, BMW uses the twin-turbo N54HP engine for its performance-oriented 335is coupe, 335is sedan, and Z4 sDrive 35is performance convertible. BMW's decision to use its twin-turbo N54 engine, rather than an upgraded version of its single-turbo twin-scroll N55 engine, demonstrates the relative superiority of the twin turbo engine.

44. As demonstrated by the Edmunds.com comparison cited above, a heavier 2011 740i sedan, equipped with a twin-turbo N54, outperformed the much lighter 2011 535i sedan equipped with a single-turbo twin-scroll N55.

45. As demonstrated by the test conducted by Automobilemag.com cited above, the N54 is vastly more powerful than the N55 in the midrange, and slightly more so up top.

46. Other manufacturers that make use of a single-turbo twin-scroll design do not call their engines “twin turbos.” For example, both the Kia Optima SX Turbo and Optima Limited sedans have single-turbo, twin-scroll engines similar to BMW’s False Twins. Kia simply describes its single-turbo twin-scroll engines as “turbocharged engines,” not systematically referring to the engines as “twins” or otherwise suggesting that there are two turbos, as BMW does. Similarly, Hyundai offers single-turbo twin-scroll turbo engines in its Veloster coupe and Sonata sedans, referring to them as simply the “Veloster Turbo” or “Sonata Turbo,” not using the term “twin” or otherwise suggesting that there are two turbos, as BMW does.

F. BMW deceptively markets vehicles with “TwinPower Turbo” engines to deceive customers into believing that False Twin engines are twin-turbo powered.

47. In developing the single-turbo N55 engine to replace the twin-turbo N54, BMW faced a marketing problem stemming from the loss of a turbo, and a deviation from the proud heritage of the N54. Because the N55 might be perceived as a downgrade from the N54 (going from a twin turbo to a single turbo), BMW described the False Twin N55 engine, and vehicles with the same, as “TwinPower Turbo.” In doing so, BMW relied on the cachet associated with the twin-turbo N54.

48. However, the N55 engine is a False Twin because it contains a single turbo employing twin scrolls - *not* two turbos. By affixing the powerful “TwinPower Turbo” term to advertising associated with all N55 vehicles, including directly and visibly stamping “TwinPower Turbo” atop the engine

covers of all N55 vehicles, BMW linked the N55 engine to the True Twin N74 and N63 engines. BMW's marketing in 2010 did not explicitly state that the N55 engine was only a single turbo, relying instead on its "TwinPower Turbo" description.

49. BMW also described the single-turbo, twin-scroll N20, and N26 4-cylinder engines, available in the lowest-end 3 and 5 Series cars, as "TwinPower Turbo," again trading on customers' association of "TwinPower Turbo" with the True Twin N74 and N63 engines.

50. The N20, N26, and N55 engines are False Twins. By marketing the False Twins as "TwinPower Turbos," consumers are led to falsely believe that the False Twins contained twin turbos. As a result, consumers paid a TwinPower Turbo Premium for False Twins, and expected the False Twins to have greater value than they actually do. BMW was able to produce the False Twins at a lower cost than True Twins, but continued to charge the True Twin Premium for the False Twins.

51. False Twin N55 TwinPower Turbo vehicles. BMW used the "TwinPower Turbo" label to describe all N55 and variant engines, which are included in the following vehicles:

- 2009-current F07 Gran Turismo sedan, and 535i GT;
- 2009-present F10 535i/xDrive sedan;
- 2010-2011 E90 335i sedan;
- 2010-2013 E92 335i coupe and convertible;
- 2010-current E25 X3 xDrive35i SAV;
- 2010-current E70 X5 xDrive35i SAV;
- 2010-current E82 135i;
- 2010-current E84 X1 xDrive35i SAV;
- 2012-present F13 640i/xDrive Coupe and F12 convertible;
- 2012-present F30 335i/xDrive sedan;
- 2012-present E71 X6 xDrive;
- 2012-present F21 M135i;
- 2012-present F01 740i/Li sedan;
- 2012-present E82/E88 135is coupe and convertible; and
- 2013-present F32 435i/xDrive coupe and convertible.

52. False Twin N20/N26 TwinPower Turbo vehicles. BMW used the “TwinPower Turbo” label to describe all N20 engines and variants, which are included in the following vehicles:

2011-present E84 X1 xDrive/sDrive20i; xDrive/sDrive28i SAV;
2011-present E89 Z4 sDrive20i; sDrive 28i;
2012-present F10 528i/xDrive sedan;
2012-present F20 125i/xDrive
2012-present F25 X3 xDrive20i; xDrive28i SAV;
2012-present F30 320i;
2012-present F10 520i;
2012-present F30 328i/xDrive sedan; and
2013-present F32 428i/sDrive coupe and convertible.

53. The vehicles identified in paragraphs 51 and 52 above constitute the “Class Vehicles.”

G. BMW uses the “TwinPower Turbo” label deceptively.

54. BMW has presented its “TwinPower Turbo” brand to consumers through numerous uniform means, including: (1) its website; (2) uniform official Vehicle sales brochures (both print and electronic versions); (3) Monroney stickers affixed to the Class Vehicles; (4) use of the “TwinPower Turbo” lettering stamped atop the engine covers of Class Vehicles; and (5) publicity in the media, including written articles, advertisements, and other means. Attached hereto as Exhibit 3 are exemplars of BMW’s use of the “TwinPower Turbo” brand. The exemplars demonstrate that BMW routinely describes its single-turbo cars as “TwinPower Turbo,” without making clear to consumers that the vehicles only contain a single turbo.

55. For example, BMW described its F10 550i and 535 sedans as “TwinPower Turbos;” however, only the 550i is a True Twin. Rather than specifying that the False Twin 535i contained only a single turbo, BMW chose instead to describe the 535i as using “a twin-scroll charger.” This specific sentence was highly misleading, because, in the same material, BMW used the words “two turbochargers” to describe the engine in its 550i sedan, but then used

the term “a twin-scroll charger” to describe the engine in its 535i sedan. Upon information and belief, the average BMW consumer (or automobile consumer, for that matter) does not know what a “scroll” is, and could understand “twin-scroll” to mean “twin-turbo.” Upon information and belief, BMW omitted the word “turbocharger” and instead cobbled together the phrase “a twin-scroll charger” to describe the 535i engine to conceal the fact that this vehicle had only one turbocharger.

56. BMW published a sales brochure (the “5 Series Brochure”) for its model year 2011 F10 5 Series with the following side-by-side description of two higher-end models, both described as “TwinPower Turbo,” but only one of which had an engine with two turbochargers:

True Twin
BMW 550i

BMW’s 4.4 liter TwinPower Turbo V-8 is the essence of an iron fist in a velvet glove. Calling on two parallel turbochargers, its robust 400 hp accelerates the 550i from zero to 60 mph in 5.0 seconds, while the boost from 450-lb feet peak torque is sustained all the way from 1750 to 4500 rpm.

False Twin
BMW 535i TwinPower Turbo

This unique engine combines a twin-scroll TwinPower Turbo, High Precision direct fuel injection, and - in a first for turbocharged engines - BMW’s Valvetronic variable intake technology that helps the engine “breathe” better. The result: turbo lag is virtually eliminated, while posting one of the most fuel-efficient ratings in its class.

57. Though the 550i is the True Twin, it is the 535i False Twin that invokes the concept of “two” more often and more prominently: the True Twin uses “TwinPower Turbo” and “two,” whereas the False Twin uses “TwinPower Turbo” (prominently, in the heading), then “twin-scroll,” then “TwinPower Turbo” again. The advertising text for the 535i False Twin never uses the term “single” or clarifies that there is one turbocharger. By describing the engine in the 535i as both “twin-scroll” and “TwinPower Turbo,” consumers were led to

believe “TwinPower Turbo” means something other than twin-scroll, lest the “TwinPower Turbo” descriptor prove redundant. Accordingly, consumers are led to the logical conclusion that “TwinPower Turbo” means the engine had twin turbos.

58. In a sales brochure for its 3 Series line (the “3 Series Brochure”), BMW similarly used the deceptive “TwinPower Turbo” terminology to describe the False Twin 335i:

BMW 335i TwinPower Turbo

This unique engine combines a twin-scroll TwinPower Turbo, High Precision Direct injection and in a first for turbocharged engines, BMW’S Valvetronic Variable intake Technology that helps the engine “breathe” better. The result: turbo lag is virtually eliminated, while posting one of the most fuel efficient ratings in its class.

59. As with the 5 Series, BMW described the 335i’s engine as both “twin-scroll” and “TwinPower Turbo.” Because the 335i’s engine is described as both “twin-scroll” and “TwinPower Turbo,” BMW leads consumers to believe that “TwinPower Turbo” means something other than twin-scroll; namely, that the False Twin 335i has twin turbos.

60. BMW’s use of the “TwinPower Turbo” verbiage is pervasive, in connection with the Class Vehicles, and is used to lead consumers to believe the “TwinPower Turbo” brand is indicative of twin turbos.

61. Vehicles with True Twin and False Twin engines are physically marked atop their engine covers in near identical fashions with the “TwinPower Turbo” verbiage, so as to create the misimpression that False Twins actually have twin turbos.

62. The term “TwinPower Turbo” led reasonable consumers of BMW vehicles to believe that the engine being described had twin turbos.

63. By using “TwinPower Turbo” to describe True Twin engines, BMW further buttressed the misimpression among consumers that False Twin engines have twin turbos, when they actually do not.

64. BMW’s use of the term “TwinPower Turbo” and its selective description of the number of turbos in a given engine (for example, by avoiding explicitly identifying the number of turbos in the False Twin engines) deceived consumers of False Twins.

H. BMW extracts a price premium by marketing its vehicles as being of superior quality, and specifically by promoting the presence of twin turbos.

65. BMW’s well-known motto, “the Ultimate Driving Machine,” is featured prominently on its website, www.bmwusa.com, (the “Website”) and in its promotional material. The message, that its vehicles are ultimate driving machines, resonates with consumers and gets substantial traction as a marketing technique because BMW’s engineering and manufacturing are considered top-notch. As such, BMW conveys an elite, prestigious image. This image allows BMW to extract a price premium in the vehicle market, especially the high-end segment of the market.

66. BMW markets its cars in the United States through a policy that could be described as “Trickle Down Marketing.” BMW introduces interior and exterior styling cues along with technological advances in its high-end vehicles, such as the 7 Series sedan. High-end products set the tone at the top of BMW’s lineup, with the visual and technical advances introduced in 7 Series cars distributed downwards in later model years to its midlevel 5 Series, and entry-level 3 Series lines. BMW introduces its cars and features in this sequence: “7-5-3,” or priciest to midlevel to entry-level.

67. The auto industry refers to expensive vehicles such as the 7 Series sedans as “halo cars,” a term derived from the marketing term “halo effect.” In a June 2, 2006 Bloomberg Businessweek article entitled, “Halo Cars that Shine,” a “halo car” is described as:

a showcase vehicle, typically intended to represent the best of a manufacturer’s talents, such as [the] Dodge Viper ... All the performance and styling a brand can muster are wrapped into one drool-worthy, rare, expensive package. “Traditionally, these vehicles are intended to epitomize everything a brand stands for, everything a brand can do,” says Wes Brown, a partner in the Los Angeles consumer marketing-research firm Iceology. “But they’re also supposed to draw traffic to the showrooms.”

68. Halo cars, such as the 7 Series, employ styling and technological advancements to attract potential buyers into showrooms and generate positive publicity amongst the public at large. But because BMW’s 750i and Li sedans start at over \$70,000, few consumers can afford to purchase or lease them. To leverage the desirable styling and technology of its pricey 7 Series, BMW launches its midlevel 5 Series cars, which resemble the 7 Series and share much of their technology. Because the 5 Series cars begin at approximately \$50,000, they are accessible to a larger segment of the population than the 7 Series.

69. In the U.S., BMW’s largest-volume seller and biggest profit source is its entry-level 3 Series line of coupes and sedans. In 2012, BMW launched an all-new 3 Series sedan, styled essentially as a three-quarter scale version of its pricier 5 Series siblings. BMW priced its 3 Series sedans starting at approximately \$30,000, attainable to a larger portion of the population than either the 7 or 5 Series. To maintain the luxury brand image coveted by many consumers, BMW styled its 3 Series sedan to resemble its costlier 5 Series kin.

70. For BMW, engine technology is perhaps the most important technological feature of its cars. Certainly, a company that touts itself as the “Ultimate Driving Machine” would likely want to support that claim by

manufacturing engines that deliver on its marketing slogan. For many years, BMW produced some of the finest engines in the automotive industry – such as the N54.

71. In early 2009, BMW developed the proprietary marketing term “TwinPower Turbo” to describe all of its turbocharged engines. BMW used “TwinPower Turbo” to describe the mighty twin-turbo V-12 N74 engine in its flagship 760Li sedan. The 760Li was a “True Twin” – an engine marketed as “TwinPower Turbo” that actually contained twin turbos. By describing its twin-turbocharged V-12 as “TwinPower Turbo,” BMW invested its new term “TwinPower Turbo” with the plain and obvious meaning of “twin turbo.”

72. BMW also used “TwinPower Turbo” to describe the potent twin-turbo V-8 N63 engine equipping the 750i and Li sedans. BMW’s 7 Series sedan ushered in the company’s new exterior and interior design language, setting the tone for the entire car lineup. BMW elected to use its 7 Series to deploy the “TwinPower Turbo” term as a way to convince consumers that “TwinPower Turbo” means twin turbo.

73. BMW similarly used “TwinPower Turbo” to describe its N54-HP (a higher-powered variant of the N54 engine), N63, and S63 engines – all True Twins.

74. Following the principle of “Trickle Down Marketing,” BMW used the same N63 TwinPower Turbo true twin-turbo V-8 from its 750i and Li in its midlevel 550i sedan.

75. BMW extensively used, and continues to use, “TwinPower Turbo” to describe True Twins. For example, and in addition to the above, BMW uses “TwinPower Turbo” to describe various vehicles with the True Twin N63 engine. In 2010 these included the 550i sedan and the 550i Gran Turismo crossover; in 2011, the 650i coupe, and the 650Ci convertible; in 2012, the 6 Gran Coupe

sedan; from calendar year 2011 to the present, BMW M5 sedans, M6 coupes, and M6 convertibles; and from calendar year 2012 to the present, 6 Gran Coupe M vehicles.

76. Through a carefully considered application of the “TwinPower Turbo” label, BMW associated “TwinPower Turbo” with True Twins in the minds of consumers.

77. BMW is able to extract a premium for its vehicles through its deceptive use of the TwinPower Terminology, and subsequent consumer confusion. For example, with its 2013 1 Series vehicles, BMW sells a non-turbo 128i coupe, equipped with a 3.0-liter, DOHC, inline 6-cylinder engine, and rear-wheel drive at an MSRP of \$31,500. BMW’s 2013 135i coupe, similarly equipped with 3.0-liter, DOHC, inline 6-cylinder engine, and rear-wheel drive, but with “TwinPower Turbo” technology (a False Twin with the N55), sells for an MSRP of \$39,600 – a premium of \$8,100 for the False Twin.

I. BMW’s “TwinPower Turbo” Nomenclature Causes Actual Consumer Confusion.

78. On May 2, 2010, “mikese” posted the following message on an internet message board available at www.n54tech.com:

335is - twin turbo or single turbo? - 05-02-2010, 09:08 PM

So does the 335is have the N54 or N55? It says twinpower turbo for the 335is on BMW’s website, which is the same turbo in the new N55 335i. So if the 335is supposedly has the N54, why doesn’t it say “twin turbo” anywhere on the specs? All it says is “twinpower turbo technology,” which is very different from “twin turbo”... Anyone have the facts?... Terry?

79. In reply to “Mikse,” user “Remonster” posted on the same message board, also on May 2, 2010, “BMW is very confusingly using ‘TwinPower’ on both engines. The ‘is’ models use the N54.”

80. On July 29, 2012, on www.f10.5post.com, user “richiemail” posted:

520d Engine Cover?

I received MY2013 520d couple of days ago, and (with the exception of not getting the old, not the all new Pro Nav system) I've been thrilled. So thrilled in fact that it's 2 days later before I opened on (sic) the bonnet [hood] to take a look at the engine bay. There I found something that puzzled me...The Engine cover has "Twin Power Turbo" written across it. The 525d I know is now a 2L plant with twin turbos, and the 520d is 2L with single turbo. Is this just some marketing term for the single turbo or did the wrong engine cover (or god forbid wrong engine) get installed in the factory? Can anyone else with a recent 520d tell me what's written on theirs? Thanks.

81. On August 5, 2012, user "Peter" quoted the following question posted on www.bmwland.co.uk/forums, "Bro in law just picked up 61 plate 120d sport Engine cover had twin power Turbo. But (sic) it single turbo?" Peter replied:

Just had this on another forum (5post) BMW have gone for marketing hype, it seems, and it is giving mixed messages to folks. Yes the 120 d is still a single VGT turbo. To quote one of the motoring hacks, Richard Aucock, "Ignore confusing names for now: BMW muddles things with its TwinPower Turbo naming system. The assumption this means 'twin turbos' is incorrect, but it's not entirely obvious what it does actually mean. Nor is the fact it means different things for different fuels."

82. On December 11, 2010, user "M Anthony" posted on www.1addicts.com:

I was under the impression that the "TwinPower (Turbo) branding was exclusively for the new twin-scroll turbo and not the twin turbo setup found on the N54. If they're using it for both, then that's awfully confusing, because I've only seen it on the new models like the 2011 135i, 535i, etc.

83. The foregoing are selected postings from a few online message boards. More importantly, these message boards are used by technically savvy, sophisticated car enthusiasts and tuners, who are nonetheless confused by BMW's "TwinPower Turbo" marketing term. For the average consumer who uses the Website to get a sense of the kind of car he or she wants, and then goes to a BMW dealership, there is no real opportunity to learn that every single BMW

N20 and N55 TwinPower Turbo engine has only one turbocharger. In fact, BMW goes to great lengths to lead average consumers to believe that “TwinPower Turbo” means a twin-turbo engine.

Bedi’s Experience With His Vehicle

84. In or about December 2012, Bedi researched and testdrove the 2013 BMW 335is coupe (“335is”) and the 2013 BMW 335i coupe (“335i”). BMW’s marketing and sales materials - including its printed brochures and Website - describe both of these vehicles as “TwinPower Turbo” equipped. Based on these materials, Bedi reasonably believed that both the 335is and the 335i possessed twin turbochargers.

85. Bedi decided to lease a 335i Vehicle from an authorized BMW dealership. On or about January 13, 2013, Bedi personally went to the dealership to take possession of his 335i. He saw that the Monroney sticker advertised the car’s “TwinPower Turbo” engine. In addition, the engine cover of the 335i, visible to Bedi and anyone who opened the Vehicle’s hood, bore the label “TwinPower Turbo.” Based on these representations, Bedi believed that his 335i had twin turbos. BMW never informed Bedi that the 335i possessed only one turbocharger. Bedi accepted delivery of the 335i and entered into a signed lease contract with the dealership.

86. Since his purchase, Plaintiff has discovered that his 335i was a False Twin. If Bedi had known that the 335i had only one turbocharger, he would not have leased it for the price he agreed to pay. Bedi paid that price for a twin-turbo vehicle, but he did not receive a twin-turbo vehicle.

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

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

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

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

90. A substantial number of members of the class also reside in New Jersey and bought Vehicles in New Jersey.

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

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

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

94. In the alternative, the Court may apply the substantive law of the states where Plaintiff purchased and/or leased his Vehicle - California.

CLASS ACTION ALLEGATIONS

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

Class:

All current and former owners and lessees of new or Certified Pre-Owned Class Vehicles in the United States who purchased or leased their Class Vehicle(s) between January 1, 2009 to the present (“Class”).

Excluded from the Class are BMW, any entity in which BMW has a controlling interest, and any of BMW’s subsidiaries, affiliates, officers, directors, employees, authorized dealers, legal representatives, heirs, successors, or assignees. Also excluded from the Class are any individuals asserting claims for personal injury and the Court to which this matter is assigned. Plaintiff reserves the right to amend the definition of the Class if discovery and/or further investigation reveals that the Class should be expanded or otherwise modified.

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

97. Numerosity/Impracticability of Joinder: The members of the Class are so numerous that joinder of all members is impracticable. Plaintiff reasonably estimates that there are more than 200,000 Class members who purchased and/or leased the Class Vehicles. The precise number of Class members can be readily ascertained by reviewing documents in Defendant’s possession, custody, and control.

98. Commonality and Predominance: There is a well-defined community of interest and common questions of law and fact, which predominate over any questions affecting only individual members of the Class. These common legal and factual questions, which do not vary from one Class member to another, and

which may be determined without reference to the individual circumstances of any Class member, include, but are not limited to, the following:

- a. Whether BMW's use of the phrase "TwinPower Turbo" is "deceptive" and/or "misleading";
- b. Whether BMW's use of the term "TwinPower Turbo" to describe Class Vehicles created the perception or belief that all vehicles described by BMW as "TwinPower Turbo" possess engines powered by two turbochargers;
- c. Whether BMW ever explicitly described the Class Vehicles as having only one turbocharger, notwithstanding BMW's repeated, misleading "TwinPower Turbo" verbiage;
- d. Whether BMW engaged in unfair or unlawful business practices with respect to the advertising, marketing, sale, and leasing of Class Vehicles;
- e. Whether BMW violated the New Jersey CFA;
- f. Whether BMW violated the Magnuson-Moss Act;
- g. Whether BMW breached express warranties with Plaintiff and the Class;
- h. Whether BMW was unjustly enriched at the expense of the Class;
- i. Whether Plaintiff and the Class are entitled to damages;
- j. Whether Plaintiff and the Class are entitled to equitable relief or other relief and the nature of such relief; and
- k. Whether BMW'S "TwinPower Turbo" terminology simultaneously describes engines with twin turbos and engines with single turbos.

99. Typicality: The representative Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all Class members have suffered

the same injuries as a result of Defendant's wrongful conduct. Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of the Class members and are based on the same legal theories.

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

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

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

FIRST COUNT
VIOLATIONS OF NEW JERSEY CONSUMER FRAUD ACT
(N.J.S.A. § 56:8-1, *et seq.*)

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

104. The CFA was enacted and designed to protect consumers against unfair, deceptive and fraudulent business practices. N.J. Stat. Ann. §56:8-1, *et seq.*

105. N.J. Stat. Ann. §56:8-2 provides:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice

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

107. The Class Vehicles manufactured and sold by BMW are “merchandise” within the meaning of the CFA, and Plaintiff and other members of the Class are “consumers” within the meaning of the CFA and, thus, are entitled to the statutory remedies made available in the CFA.

108. Defendant, through its advertisements, used unconscionable commercial practices, deception, fraud, false pretense, false promise, and misrepresentation in violation of the CFA in connection with the marketing of the Class Vehicles as alleged above.

109. BMW also knowingly concealed, suppressed and consciously omitted material facts to Plaintiff and other members of the Class knowing that consumers would rely on the advertisements and packaging to purchase, including by concealing scientific studies and data that did not support its claims.

110. The foregoing acts, omissions and practices directly, foreseeably and proximately caused Plaintiff and other members of the Class to suffer an ascertainable loss in the form of, *inter alia*, monies spent to purchase the Class Vehicles and they are entitled to recover such damages, together with appropriate penalties, including treble damages, attorneys' fees and costs of suit.

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

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

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

113. The Class Vehicles and respective turbochargers are "consumer products," as defined by 15 U.S.C. § 2301(1).

114. Plaintiff and Class members are "consumers," as defined by 15 U.S.C. § 2301(3).

115. BMW is a "supplier," as defined by 15 U.S.C. § 2301(4).

116. BMW is a "warrantor," as defined by 15 U.S.C. § 2301(5).

117. BMW provided Plaintiff and the Class with "written warranties," as defined by 15 U.S.C. § 2301(6).

118. Section 15 U.S.C. § 2301(d)(1) provides that a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this title, or a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief in any court of competent jurisdiction in any state or in an appropriate district court of the United States.

119. BMW breached its express warranties by selling BMW Vehicles that contained just one turbo charger despite BMW's use of the term "TwinPower Turbo" in describing these Vehicles.

120. BMW further breached its express warranties by refusing to compensate owners and lessees who bought or leased the Vehicles that BMW described as "TwinPower Turbo," but whose engines only contained a single turbo charger.

121. Due to the conduct described herein, any attempt by BMW to limit its express warranties in a manner that would exclude or limit coverage for the Class Vehicles described as "TwinPower Turbo"-equipped, but whose engines only contain a single turbocharger, is unconscionable, and any such effort to disclaim or limit liability is void.

122. Plaintiff and the Class members' damages for the breach of warranties include, without limitation, the additional monies expended by purchasers and lessees who reasonably believed that they were acquiring vehicles whose engines had two turbochargers, but who only received Vehicles with engines equipped with single turbochargers.

THIRD COUNT
Asserted On Behalf Of The Class Against BMW Under New Jersey Law
(Breach Of Express Or Written Warranty)

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

124. Plaintiff and Class members entered into a written contract with authorized BMW dealerships under which Plaintiff and Class members agreed to buy or lease Class Vehicles described in writing online, in print brochure, on their Monroney sticker, and in lettering stamped atop its engine block as a “TwinPower Turbo” engine car.

125. Prior to entering into those agreements, in the course of the negotiations, BMW represented and warranted to Plaintiff and Class members, orally and in writing, that the Class Vehicles came equipped with a “TwinPower Turbo” engine. That promise served as the basis of the bargain between the parties and therefore constituted an express warranty.

126. In the course of the negotiations, Plaintiff and Class members referred to descriptions of goods in BMW’s sales brochures for the Class Vehicles, and on the Website, for the technical specifications for the Class Vehicles, which are posted on the Website, and read the Monroney sticker affixed to the Class Vehicles they ultimately purchased or leased.

127. All of these sources of information provided by BMW stated that the Class Vehicles came with a “TwinPower Turbo” engine. Through BMW’s conduct, Plaintiff and the Class were led to believe that a “TwinPower Turbo” engine came equipped with twin turbos.

128. On the basis of the “TwinPower Turbo” description, and the implied presence of twin turbos, Plaintiff and Class members agreed to purchase or lease a Class Vehicle from BMW. An express warranty that the goods conformed to

the description, therefore, became part of the basis of the bargain between the parties.

129. Plaintiff and the Class have performed all conditions, covenants, and promises required on their part to be performed in accordance with the terms and conditions of the purchase or lease contract.

130. The goods Plaintiff and the Class received did not conform to BMW's express warranty as alleged above, in that the Class Vehicles did not come with a twin-turbo engine. Rather, the Class Vehicles only had a single turbo engine, despite BMW's pervasive use of the "TwinPower Turbo" verbiage to describe the Vehicles.

131. BMW failed and refused, and continues to fail and refuse, to replace the nonconforming goods with goods conforming to Defendant's express warranty as to Plaintiff and the Class, or to compensate Plaintiff and the Class in any way for the diminished value of the goods supplied.

132. As a proximate result of BMW's breach of warranty, Plaintiff and the Class have been damaged in the amount of the difference in lease or purchase payments, and resale value, between the Class Vehicles falsely advertised as twin-turbocharged but only single-turbocharged, and the cost of leasing or purchase, and value from reselling, a similar car containing just one turbocharger.

133. As a direct and proximate result of BMW's breach of an express warranty, Plaintiff and the Class have been damaged in an amount to be proven at trial. The precise amount of these damages is unknown at the present time but is in excess of the jurisdictional limits of the Court.

134. Alternatively, Plaintiff seeks to recover for BMW's breach of express warranty under the laws of the state of his purchase, specifically California.

FOURTH COUNT
Asserted On Behalf Of The Class Against BMW Pursuant
To New Jersey Law
(Unjust Enrichment)

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

136. BMW unjustly and wrongfully described many BMW cars and SAVs as “TwinPower Turbo,” when they were simply single-turbocharged vehicles. In doing so, BMW commanded price and market share premiums from Plaintiff and Class members whom it misled into believing that they were paying for twin-turbocharged Vehicles.

137. On information and belief, BMW reaped profits, market share gains, and benefits due to its wrongful use of the false and deceptive “TwinPower Turbo” phrase.

138. The amount of the unjust enrichment reaped by BMW may be measured by the price and/or lease differential, and resale value, between a twin-turbocharged “TwinPower Turbo” vehicle and a single-turbocharged “TwinPower Turbo” vehicle.

139. Upon information and belief, BMW’s concealment of the fact that most of its “TwinPower Turbo” vehicles only contain single-turbocharged engines demonstrates that BMW relied on its misleading “TwinPower Turbo” terminology to generate additional profits, revenues, earnings, and benefits.

140. Upon information and belief, BMW has gained market share and publicity by the wrongful use of its “TwinPower Turbo” terminology to describe the Class Vehicles.

FIFTH COUNT
Asserted In the Alternative
(Violations of California's Consumers Legal Remedies Act)

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

142. Plaintiff asserts this count in the alternative to his count under the New Jersey Consumer Fraud Act.

143. On October 5, 2013, Plaintiff provided written notice, through a Consumer Legal Remedies Act ("CLRA") demand letter sent via certified U.S. mail, return receipt requested, as required by Civil Code section 1782, to BMW, regarding violations of the CLRA, and demanded that BMW remedy the below-referenced violations within 30 days from receipt of the written notice. BMW acknowledged receipt of that notice on October 10, 2013 by email response.

144. Plaintiff and the Class are "consumers" within the meaning of the CLRA by virtue of their purchase or lease of the Class Vehicles. Because Plaintiff and the Class paid an inflated price for a BMW product, the Twin Turbo Premium, which did not contain material promised features, Plaintiff and the Class have suffered financial damages.

145. BMW violated the following provisions of the CLRA:
"[r]epresenting that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities [engines with two turbochargers] which they do not have..." Cal. Civ. Code § 1770(a)(5); "Representing that goods or services are of a particular standard [dual turbocharged], quality, or grade, or that goods are of a particular style or model, if they are of another [single turbocharged]. Cal. Civ. Code 1770(a)(7); "[a]dvertising goods or services with intent not to sell them as advertised." Cal. Civ. Code § 1770(a)(9).

146. BMW's use of the phrase "TwinPower Turbo" to describe its N20 4-cylinder single-turbocharged and N55 6-cylinder single-turbocharged engines is a representation that cars equipped with these engines contain two turbochargers, a "characteristic" they do not contain, thereby violating California Civil Code § 1770(a)(5). Using the term "TwinPower Turbo" for single-turbocharged N20 and N55 cars and SAVs is a representation that cars so equipped contain two turbochargers, and thus are of a "particular standard, quality or grade" and "a particular style or model" when, in fact, they are not, thereby violating California Civil Code § 1770(a)(7).

147. By advertising its N20 and N55 cars and SAVs as "TwinPower Turbo" when they are merely single-turbocharged, BMW is "[a]dvertising goods or services with intent not to sell them as advertised," *i.e.*, BMW advertises N20- and N55-equipped vehicles as "TwinPower Turbo," but has no intent to actually sell dual-turbocharged N20 and N55 cars, in violation of California Civil Code § 1770(a)(9).

148. By marketing "TwinPower Turbo" vehicles without adequately disclosing that most such vehicles are actually single-turbocharger-equipped, BMW violates the following provision of the CLRA: "(d) Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not." Cal. Civ. Code § 1770(a)(16).

149. BMW aggressively marketed and advertised the Class Vehicles. BMW used the Website, print sales brochures, the Monroney sticker, and "TwinPower Turbo" lettering stamped atop the very engine cover of the car to mislead and deceive Plaintiff and the Class into believing that they would be purchasing or leasing a twin-turbocharged car, when it knew and understood Plaintiff and the Class would be purchasing or leasing a single-turbocharged car.

150. BMW had a duty to disclose that its N55 and N20 "TwinPower

Turbo” engines are all just single-turbo engines given (1) its exclusive knowledge of material facts not known to Plaintiff; namely, that all of its N55, N20, and B38 “TwinPower Turbo” engines are just single-turbocharged; (2) its active concealment of the material fact that the so-called “TwinPower Turbo” N55 and N20 engines had one turbo through its failure to list the number of turbos explicitly in its written and online sales brochures, on the Monroney stickers affixed to the cars, in writing on the engine covers of the cars, and on the Website; (3) its partial representations that the N55 and N20 engines had “a twin scroll turbocharger” or “a twin scroll charger” while also suppressing the fact that these engines did not have two turbos. Bedi and the Class members have been damaged by Defendant’s misconduct, described above, in an amount to be determined at trial.

151. Pursuant to California Civil Code 1780(a)(4), Plaintiff and the Class are entitled to punitive damages as result of Defendant’s violation of the CLRA.

SIXTH COUNT
Asserted in the Alternative
(Unfair Competition and Unlawful Practices in Violation of
Cal. Bus. Prof. Code §17200)

152. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth here.

153. Plaintiff asserts this count in the alternative to his count under the New Jersey Consumer Fraud Act.

154. Since approximately January 1, 2009, and continuing to the present time, BMW has committed acts of unfair competition, as defined by California Business & Professions Code § 17200, by engaging in the practices described in the preceding paragraphs.

155. BMW published its misleading “TwinPower Turbo” phrase on its Website; atop the engine covers of Class Vehicles; in advertising consisting of

ongoing visual and print statements online, and in television, radio, and magazines; on Monroney stickers; and in media releases throughout the United States, falsely implying that its N20 and N55 engine-equipped cars are twin-turbocharged, when they are not, which is “false advertising” and thus an unlawful business act or practice within the meaning of California Business & Professions Code § 17200.

156. As a direct, proximate, and foreseeable result of BMW’s wrongful conduct, as alleged above, Plaintiff and the Class bought and leased Class Vehicles without knowing that those Vehicles contained one turbo charger, but reasonably assuming that they contained twin turbos as a result of BMW’s conduct. Plaintiff and the Class paid a Twin Turbo premium for their False Twins.

157. As a direct, proximate, and foreseeable result of BMW’s wrongful conduct, as alleged above, Plaintiff and the Class members were subjected to BMW’s pervasive use of its “TwinPower Turbo” terminology with insufficient notice that the Class Vehicles carrying this description were False Twins.

158. Plaintiff and the Class overpaid on leases and purchases for new and Certified Pre-Owned BMW Class Vehicles. Plaintiff and Class members are entitled to relief, including full restitution and/or disgorgement of all revenues, earnings, profits, compensation and benefits which BMW may have obtained as a result of such unfair business acts or practices.

159. Plaintiff and the Class are informed and believe, and based thereon allege that BMW’s unfair acts, as described above, are a serious and continuing threat to Plaintiff, the Class, and the public. If BMW is allowed to continue its wrongful acts, Plaintiff, the Class, and the public will suffer immediate and irreparable injury, loss, and damages.

160. BMW’s systematic use of the term “TwinPower Turbo” to describe

False Twins is an unlawful business practice in violation of California Business & Professions Code § 17200, in that BMW's actions violate the CLRA, Business & Professions Code § 17500, the False Advertising Law, the Magnusson-Moss Warranty Act, and constitute fraud and breach of express warranties as set forth in the preceding causes of action. BMW profits from these violations of law because it commands a Twin Turbo Premium.

161. Plaintiff and the Class are informed and believe, and based thereon allege, that BMW's illegal acts, as described above, are a serious and continuing threat to Plaintiff, the Class, and the public. If Defendant is allowed to continue its wrongful acts, Plaintiff, the Class, and the public will suffer further immediate and irreparable injury, loss and damage. In the absence of a temporary restraining order and preliminary and permanent injunctions as prayed for below, Defendant will continue to violate the CLRA, California Business & Professions Code § 17200, 17500, Magnuson-Moss Warranty Act, and express warranties and also unjustly enrich themselves and thus breach Bedi's, Class Members', and the public's right to be free of false and misleading advertising and unlawful business practices.

SEVENTH COUNT
Asserted in the Alternative
(False Advertising in Violation of Cal. Bus. Prof. Code §17500)

162. Plaintiff repeats and realleges the allegations of the preceding paragraphs as if fully set forth here.

163. Plaintiff asserts this count in the alternative to his count under the New Jersey Consumer Fraud Act.

164. On information and belief, BMW engaged in the TwinPower Turbo advertising, described above, with the intent to directly or indirectly dispose of

personal property, namely, BMW vehicles and SAVs, and/or induce the public to enter into lease or sales contracts relating to the cars and SAVs described herein.

165. BMW's advertising was untrue or misleading and caused injury in fact to Plaintiff and the Class, resulting in loss of money in that the "TwinPower Turbo" technical description/advertising of the Class Vehicles misled consumers into believing that such cars and SAVs possessed twin turbo engines when, in fact, the vast majority of them did not.

166. In making and disseminating the "TwinPower Turbo" statements herein alleged, BMW knew, or by the exercise of reasonable care should have known, that the statements were untrue or misleading and thus acted in violation of Section 17500 of the California Business & Professions Code.

167. Plaintiff and the Class overpaid on leases and purchases for new and Certified Pre-Owned BMW Class Vehicles as a result of the false advertising. Plaintiff and Class members are entitled to relief, including full restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits which BMW may have obtained as a result of such false advertising.

168. Bedi and the Class are informed and believe, and based thereon, allege, that BMW's false advertising, as described above, is a serious and continuing threat to Plaintiff, the Class, and the public. If BMW is allowed to continue its wrongful acts, Plaintiff, the Class, and the public will suffer immediate and irreparable injury, loss and damages. In the absence of a temporary restraining order and preliminary and permanent injunctions as prayed for below, BMW will continue to violate California Business & Professions Code § 17500, thus tending to render judgment in the instant action ineffectual.

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

- a. An Order certifying the proposed Class and appointing Plaintiff as Class representative and his undersigned counsel of record as Class counsel;
- b. Restitution and disgorgement of all amounts obtained by BMW as a result of its misconduct, together with interest thereon from the date of payment, to the victims of such violations;
- c. All recoverable compensatory and other damages sustained by Plaintiff and the Class;
- d. Actual and/or statutory damages for injuries suffered by Plaintiff and the Class in the maximum amount permitted by applicable law;
- e. An Order permanently enjoining Defendant from engaging in the unlawful practices, as alleged herein, and requiring BMW to refund to Plaintiff and all members of the Class the funds paid to BMW for the Class Vehicles and all costs related thereto;
- f. Statutory pre-judgment and post-judgment interest on any amounts;
- g. Payment of reasonable attorneys' fees and costs as may be allowable under applicable law; and
- h. Such other and further relief as this Court may deem just and proper, including any extraordinary equitable relief and/or injunctive relief as permitted by law or equity to attach, impound or otherwise restrict BMW's assets to ensure that Plaintiff and the members of the Class have an effective remedy.

Dated: March 13, 2015

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Deepkarn Singh Bedi
(b) County of Residence of First Listed Plaintiff Marin County, CA
(c) Attorneys (Firm Name, Address, Email and Telephone Number)
James C. Shah, SHEPHERD, FINKELMAN, MILLER & SHAH, LLP
475 White Horse Pike, Collingswood, NJ 08107
Phone: 856-858-1770 Email: jshah@sfmslaw.com

DEFENDANTS
BMW of North America, LLC
County of Residence of First Listed Defendant Bergen County, NJ
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State 1 1 Incorporated or Principal Place of Business In This State 4 4
Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State 5 5
Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Section 1332 (d)(2)
Brief description of cause:
Deceptive sales and marketing of BMW vehicles equipped with TwinPower Turbo engines

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 03/13/2015 SIGNATURE OF ATTORNEY OF RECORD s/James C. Shah

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 - Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
 - Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 - Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 - Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.