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

COURTNEY LOUGHREY, TONY TROSCLAIR,
RONALD ROTHROCK, and KARA FINCH on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v .

BAYERISCHE MOTOREN WERKE
AKTIENGESELLSCHAFT, and BMW of
NORTH AMERICA, LLC,

**CLASS ACTION
COMPLAINT AND
DEMAND FOR JURY TRIAL**

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The allegations herein are based on personal knowledge as to Plaintiffs' own conduct and are made on information and belief as to all other matters based on an investigation by counsel:¹

I. INTRODUCTION

1. Plaintiffs Courtney Loughrey, Tony Trosclair, Ronald Rothrock, and Kara Finch ("Plaintiffs") bring this class action against Bayerische Motoren Werke Aktiengesellschaft ("BMW AG") and BMW of North America, LLC ("BMW NA"), (collectively, "BMW" or "Defendants"), individually and on behalf of all persons in the United States who purchased, own, owned, lease, or leased a Class Vehicle (defined below) for Defendants' violations of common and statutory law and concealment of a known defect in the Class Vehicles.

2. Defendants wrongfully and intentionally concealed a defect in the sunroofs and/or moonroofs (the "Defective Sunroofs") of the Class Vehicles, which can explode or shatter unexpectedly, exposing Plaintiffs and members of the Classes (defined below) to a shower of glass from the exploding Defective Sunroofs and forcing them to incur out of pocket costs to repair or replace the Defective Sunroofs and/or repair or replace other vehicle parts damaged by the explosion.

3. The Defective Sunroofs present a significant safety risk for Plaintiffs and members of the Classes because when the Defective Sunroofs suddenly and unexpectedly explode, shattered glass can be showered over the driver and passengers of the Class Vehicles. In addition, drivers and occupants of the Class Vehicles are at risk for collisions as a result of driver distraction caused by the exploding Defective Sunroofs. Drivers have compared the explosion of the Defective

¹ Counsel's investigation includes an analysis of publicly available information, including investigative reports, consumer complaints to the National Highway Traffic Safety Administration ("NHTSA") and other sites, and additional analysis. Plaintiffs believe that a reasonable opportunity for discovery will provide further support for the claims alleged herein.

Sunroofs to the sound of a gunshot and have expressed shock and confusion upon hearing the sound when driving.

4. In October 2017, *Consumer Reports* published an investigation detailing hundreds of complaints of exploding sunroofs across numerous brands, including BMW.² According to the Report, exploding sunroofs are an underreported problem and the consumer complaints in the NHTSA database “are only a fraction of the actual sunroof explosions occurring in the U.S.”³ *Consumer Reports* determined that exploding sunroofs “have happened in every month of the year in every part of the country, in vehicles from all over the world; they have occurred on interstates, on country roads, and even while parked in driveways.”⁴

5. Many of the complaints relate to panoramic sunroofs/moonroofs which have risen in popularity over at least the past decade. Vehicle manufacturers have added panoramic sunroofs/moonroofs—large or multi-panel sunroofs that provide light to the front and rear passengers of a vehicle—as a design feature for which they often charge premium prices.

6. BMW began installing panoramic sunroofs/moonroofs in certain of the Class Vehicles in or around 2004, generally marketing the panoramic sunroofs/moonroofs as a luxury upgrade. For example, the BMW X5 xDrive 35i advertises the “[p]anoramic moonroof with fully automatic, 2-piece glass panel, power slide and lift control, wind deflector and power interior sunshade” as a feature adding to the vehicle’s “Comfort and convenience[.]”⁵ Similarly, the Mini

² See Jeff Plungis and Thomas Germain, *Exploding Sunroofs: Danger Overhead*, CONSUMER REPORTS (Oct. 12, 2017) <https://www.consumerreports.org/car-safety/exploding-sunroofs-danger-overhead/> (the “Report”).

³ *Id.*

⁴ See *id.*

⁵ See *The X5 xDrive35i, Features & Specs*, <https://www.bmwusa.com/vehicles/x-models/x5/x5-xdrive35i.html> (last visited Mar. 12, 2018).

Clubman touts its dual-pane panoramic sunroof with “[a]lmost 11 square feet of glass [that] enhance[s] the view for both front and rear passengers.”⁶ According to the Report, experts agree that “[t]he bigger the expanse of glass, the harder to ensure it won’t shatter.”⁷

7. In November 2017, United States Senators Richard Blumenthal and Edward Markey sent letters to numerous car manufacturers, including BMW, asking the manufacturers to answer detailed questions regarding sunroof materials, design and defects. The senators demanded information concerning manufacturers’ glass suppliers and whether BMW, among others, is tracking incidents of exploding sunroofs, by December 4, 2017. The senators stated: “It is vital that [BMW and others] take steps to assure consumers of the structural integrity of their sunroofs.”⁸

8. Industry experts have also expressed concerns over the safety of panoramic sunroofs. According to Jason Levine, executive director at the Center for Auto Safety: “The fact that the roof is half glass instead of a quarter glass or no glass doesn’t change the responsibility of the industry and the individual automaker to make sure the compartment is as safe as possible . . . The concern has to be for safety first, and then the aesthetics.”⁹

9. In addition to complaints regarding panoramic sunroofs/moonroofs in the Class Vehicles, numerous complaints have been made to NHTSA and other online forums relating to non-panoramic sunroofs/moonroofs in the Class Vehicles.¹⁰

⁶ See *The Mini Clubman, Motoring Features*, <http://www.miniusa.com/content/miniusa/en/why-mini/programs-and-events/clubman-retail.html> (last visited Mar. 12, 2018).

⁷ Report at 2.

⁸ See Jeff Plungis, *Senators Press Auto Industry on Exploding Sunroofs*, CONSUMER REPORTS, (Nov. 15, 2017) <https://www.consumerreports.org/car-safety/senators-press-auto-industry-on-exploding-sunroofs/>.

⁹ Report at 7.

¹⁰ See, e.g., ¶¶ 65-66; see also www.safercar.gov.

10. The affected vehicles include the following vehicles containing a sunroof or moonroof: MY 2005-2018 BMW 3 series; MY 2005-2018 BMW 5 series; MY 2004-2018 BMW X5; MY 2005-2018 X3; MY 2009-2018 BMW X1; MY 2008-2018 MINI Clubman, MY 2006-2018 MINI Cooper, MY 2011-2018 MINI Countryman, MY 2009-2018 MINI Hardtop and MY 2013-2018 MINI Pacemans(the “Class Vehicles”).

11. The Defective Sunroofs are defective in design, manufacturing, materials and/or workmanship. Despite Defendants’ knowledge of the defect in the Defective Sunroofs, Defendants never disclosed to Plaintiffs and members of the Classes that the defect exists or that drivers and occupants of the Class Vehicles are at risk.

12. Replacement of the Defective Sunroofs typically costs thousands of dollars. On information and belief, Defendants have wrongfully refused to cover replacement of the Defective Sunroofs under the Class Vehicles’ applicable warranties. Thus, Defendants have wrongfully and intentionally transferred the cost of repair or replacement of the Defective Sunroofs to Plaintiffs and members of the Classes by fraudulently concealing the existence of the defect.

13. In connection with the purchase or lease of each of the Class Vehicles, Defendants provide warranty coverage for the Class Vehicles under one or more manufacturer’s warranties. For illustrative purposes, Defendants currently provide a New Vehicle Limited Warranty which includes coverage for defects in materials or workmanship to the first retail purchaser and each subsequent purchaser for 4 years or 50,000 miles, whichever occurs first.¹¹ Under warranties provided to members of the Classes, Defendants promised to repair or replace covered defective

¹¹ See *BMW Service and Warranty Books*, <https://www.bmwusa.com/explore/bmw-value/bmw-ultimate-service/service-and-warranty-books.html> (last visited Mar. 12, 2018); *MINI, 4-Year/50,000-Mile Limited Warranty* (“MINI Warranty”), <http://www.miniusa.com/content/miniusa/en/why-mini/why-mini/covered-maintenance.html> (last visited Mar. 12, 2018).

parts arising out of defects in materials and/or workmanship, including the Defective Sunroofs, at no cost to owners and lessees of the Class Vehicles. However, on information and belief, Defendants have concealed the defect in the Defective Sunroofs by, *inter alia*, blaming the damage on rocks or other foreign matter, and have refused to provide warranty coverage.

14. These warranties were provided in Class Vehicle window labels, owner's manuals and brochures, and advertised on Defendants' websites. As described on MINI's website: "At MINI, our commitment to quality, durability and customer satisfaction is clearly demonstrated by the 4-year/50,000-mile MINI New Passenger Car Limited Warranty and a 12-year/unlimited mileage warranty against rust perforation. And we're not just talking about a couple key parts of your MINI. Our warranty covers everything, bumper to bumper and everything in between, except the tires."¹² As described by BMW on its website, "When you own The Ultimate Driving Machine, you should get the service to match," touting that the New Vehicle Warranty provides "[p]rotection for the first four years or 50,000 miles. Clearly, we stand behind our engineering."¹³

15. Defendants breached their express and implied warranties through which they promised to, *inter alia*, (1) provide Class Vehicles fit for the ordinary purpose for which they were sold; and (2) repair and correct manufacturing defects or defects in materials or workmanship of any parts they supplied, including the Defective Sunroofs. Because the defect in the Defective Sunroofs was present at the time of sale or lease of the Class Vehicles, Defendants are required to repair or replace the Defective Sunroofs under the terms of the warranties. Further, Defendants have wrongfully transferred the costs of repair or replacement of the Defective Sunroofs to

¹² See MINI Warranty.

¹³ See *BMW Maintenance Program 4 Yrs or 50K Miles*, <http://www.miniusa.com/content/miniusa/en/why-mini/why-mini/covered-maintenance.html> (last visited Mar. 12, 2018); see also *BMW Ultimate Service 4 Years or 50,000 Miles*, <https://www.bmwusa.com/explore/bmw-value/bmw-maintenance/ultimate-service.html> (last visited May 30, 2018).

Plaintiffs and members of the Classes through fraudulent concealment of the defect and by blaming rocks or other foreign matter for the explosions of the Defective Sunroofs. These costs are significant and range in the hundreds or thousands of dollars, and no reasonable consumer expects to incur such costs when purchasing or leasing the Class Vehicles.

16. Defendants benefited from increased profit margins by upselling Class Vehicles with the Defective Sunroofs to Plaintiffs and members of the Classes, as the panoramic sunroofs or moonroofs are often not a standard feature in the base models, but rather require an upgrade by consumers, oftentimes costing consumers thousands of dollars more than the purchase price of the vehicles to contain such a feature.¹⁴ Defendants continue to profit from the lease and sale of Class Vehicles to unsuspecting consumers.

17. Knowledge and information regarding the defect in the Defective Sunroofs was in the exclusive and superior possession of Defendants and their dealers, and was not provided to Plaintiffs and members of the Classes, who could not reasonably discover the defect through due diligence. Based on pre-production testing, design failure mode analysis, and consumer complaints to dealers and NHTSA, *inter alia*, Defendants were aware of the exploding or shattering of the Defective Sunroofs in the Class Vehicles and fraudulently concealed the defect from Plaintiffs and members of the Classes.

18. Defendants misrepresented the standard, quality or grade of the Class Vehicles and knowingly, actively, and affirmatively concealed the existence of the defect in the Defective Sunroofs to increase profits and decrease costs by selling additional Class Vehicles and transferring the costs of repair or replacement of the Defective Sunroofs to owners and lessees of the Class Vehicles, including Plaintiffs and members of the Classes.

¹⁴ See Report at 9.

19. Plaintiffs and members of the Classes assert claims against Defendants for violation of the Magnuson-Moss Warranty Act (“MMWA”), 15 U.S.C. § 2301 *et seq.*, fraud, breach of express and implied warranties, violations of consumer fraud and unfair and deceptive trade practices statutes under the laws of Illinois and Pennsylvania, redhibitory defects, violations of the Louisiana Products Liability Act (“LPLA”), LA. R.S. 9:2800.51 *et seq.*, and violations of the South Carolina Manufacturers, Distributors and Dealers Act (the “Dealers Act”), S.C. CODE ANN. § 56-15-10, *et seq.*

20. Defendants knowingly omitted, concealed, and suppressed material facts regarding the defect in the Defective Sunroofs and its corresponding safety risk, and misrepresented the standard, quality or grade of the Class Vehicles, which directly caused harm to Plaintiffs and members of the Classes. As alleged herein, Defendants’ wrongful conduct has harmed owners and lessees of the Class Vehicles, and Plaintiffs and members of the Classes are entitled to damages and injunctive and declaratory relief.

21. As a direct result of Defendants’ wrongful conduct, Plaintiffs and members of the Classes have suffered damages, including, *inter alia*: (1) out-of-pocket expenses for repair or replacement of the Defective Sunroofs and/or other vehicle parts damaged by the exploding sunroofs; (2) costs for future repair or replacement of the Defective Sunroofs; (3) time lost associated with the repair or replacement of the Defective Sunroofs and/or expenses related to obtaining alternative transportation during the repair or replacement of the Defective Sunroofs; (4) sale of their vehicles at a loss; and/or (5) diminished value of their vehicles.

II. JURISDICTION AND VENUE

22. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2). The matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$5,000,000 and is a class action in which there are more than 100 members of the Classes, members of the Classes

(as defined below) are citizens of states different from Defendants, and greater than two-thirds of the members of the Classes reside in states other than the states in which Defendants are citizens. This Court has jurisdiction over supplemental state law claims pursuant to 28 U.S.C. § 1367 and jurisdiction over the MMWA claim by virtue of diversity jurisdiction being exercised under the Class Action Fairness Act (“CAFA”).

23. Venue properly lies in this District pursuant to 28 U.S.C. § 1391(a), (b) and (c) because BMW NA maintains its principal place of business in New Jersey, a substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in this District, and Defendants conduct a substantial amount of business in this District. Defendants have marketed, advertised, sold, and/or leased the Class Vehicles within this District through numerous dealers doing business in the District, and made decisions related to advertisement, marketing, sales, warranties, and recalls of vehicles under the BMW and MINI brand names from their Woodcliff Lake, New Jersey headquarters, which is located within this District. BMW NA and MINI maintain at least the following offices and/or facilities in New Jersey: (1) BMW NA headquarters in Woodcliff Lake, New Jersey; (2) MINI headquarters in Woodcliff Lake, New Jersey; (3) BMW NA’s Eastern Regional Headquarters and Technical Training Center in Woodcliff Lake, New Jersey; and (4) BMW NA’s Vehicle Preparation Center in Port Jersey, New Jersey. Accordingly, Defendants have sufficient contacts with this District to subject Defendants to personal jurisdiction in the District and venue is proper.

III. PARTIES

Plaintiffs

24. Plaintiff Courtney Loughrey is a citizen of the State of Illinois and resides in Edwards, Illinois. On or around October 2015, Plaintiff Loughrey purchased a 2011 BMW 328xi with a sunroof in from Phillips Chevrolet in Frankfort, Illinois for personal or household use.

Plaintiff Loughrey continues to own the 2011 BMW 328xi. Unbeknownst to Plaintiff Loughrey at the time of purchase of her BMW 328xi, Plaintiff Loughrey's Class Vehicle contained the Defective Sunroof, which exposed Plaintiff Loughrey and her passengers to the risk of sudden explosion or shattering of the sunroof.

25. On or around April 10, 2018, Plaintiff Loughrey was driving her vehicle when she heard an explosion. Following the explosion, Plaintiff Loughrey – and the cabin of her vehicle – were covered in glass from her shattered sunroof. Plaintiff Loughrey incurred damages related to time lost associated with the repair of her vehicle, the lost use of her Class Vehicle during the repair, and the expense of obtaining alternative transportation in at least the amount of \$500.00.

26. Plaintiff Tony Trosclair is a citizen of the State of Louisiana and resides in Youngsville, Louisiana. On or around July 7, 2016, Plaintiff Trosclair purchased a used 2013 BMW 535i with a sunroof from Brian Harris BMW in Baton Rouge, Louisiana for personal or household use. Unbeknownst to Plaintiff Trosclair at the time of purchase of his BMW 535i, Plaintiff Trosclair's Class Vehicle contained a Defective Sunroof which exposed Plaintiff Trosclair and his passengers to the risk of sudden explosion or shattering of the sunroof.

27. On or around February 12, 2018, while Plaintiff Trosclair was driving his Class Vehicle, he heard a loud sound and stopped his vehicle. When he exited his vehicle, he noticed that the Defective Sunroof in his Class Vehicle completely shattered. Plaintiff Trosclair incurred damages related to time lost associated with the repair of his vehicle, the lost use of his Class Vehicle during the repair, and the expense of obtaining alternative transportation.

28. Plaintiff Ronald Rothrock is a citizen of the Commonwealth of Pennsylvania and resides in West Chester, Pennsylvania. On or around September 2014, Plaintiff Rothrock purchased a used 2008 BMW 535i with a sunroof in Delaware County, Pennsylvania in a private

sale for personal or household use. Plaintiff Rothrock continues to own the 2008 BMW 535i. Unbeknownst to Plaintiff Rothrock at the time of purchase of his BMW 535i, Plaintiff Rothrock's Class Vehicle contained the Defective Sunroof, which exposed Plaintiff Rothrock and his passengers to the risk of sudden explosion or shattering of the sunroof.

29. On or around March 11, 2017, while Plaintiff Rothrock was driving his vehicle, he heard a loud boom. Upon pulling over and exiting his vehicle, Plaintiff Rothrock noticed that the sunroof had exploded. Plaintiff Rothrock incurred damages related to time lost associated with the repair of his vehicle, the lost use of his Class Vehicle during the repair, and the expense of obtaining alternative transportation in at least the amount of \$800.00.

30. Plaintiff Kara Finch is a citizen of South Carolina and resides in Mt. Pleasant, South Carolina. On or around May 2016, Plaintiff Finch purchased a used 2013 BMW 328i with a sunroof from Lowcountry Volkswagen in Mt. Pleasant, South Carolina for personal or household use. Plaintiff Finch continues to own the 2013 BMW 328i. Unbeknownst to Plaintiff Finch prior to the shattering of the Defective Sunroof, Plaintiff Finch's Class Vehicle contained the Defective Sunroof, which exposed Plaintiff Finch and her passengers to the risk of sudden explosion or shattering of the sunroof.

31. On or around March 26, 2018, Plaintiff Finch was driving her vehicle when she heard a loud boom and she felt glass shards falling on her from her sunroof. Plaintiff Finch incurred considerable expense repairing/replacing her vehicle's Defective Sunroof and associated damaged vehicle parts in at least the amount of \$1,001.00. Plaintiff Finch also incurred damages related to time lost associated with the repair of her vehicle and the lost use of her Class Vehicle during the repair.

32. None of the advertisements reviewed or representations received by Plaintiffs and members of the Classes contained any disclosure relating to the Defective Sunroofs and associated safety risk. Defendants never warned Plaintiffs of the Defective Sunroof and corresponding safety risk associated with their Class Vehicles. Had Defendants disclosed that the Class Vehicles contained a Defective Sunroof and corresponding safety risk, Plaintiffs and members of the Classes would not have purchased or leased their vehicles, would have paid less for their vehicles, or would not have purchased the upgrades that include the Defective Sunroof as an added feature.

33. When Plaintiffs and members of the Classes purchased or leased their Class Vehicles, they reasonably relied on the reasonable expectation that the Class Vehicles would be equipped with a sunroof/moonroof that was free from defects and safe to operate. In fact, Defendants have always emphasized the quality and reliability of the Class Vehicles and know that consumers, including Plaintiffs and the members of the Classes, rely upon such factors when purchasing or leasing Class Vehicles. Had Defendants disclosed that the Defective Sunroofs in the Class Vehicles could suddenly explode or shatter, Plaintiffs and members of the Classes would not have purchased or leased their vehicles, or would have paid less for their vehicles.

34. The Class Vehicles were operated in a reasonably foreseeable manner and as the vehicles were intended to be used. Plaintiffs and members of the Classes have suffered an ascertainable loss as a result of Defendants' unfair and deceptive conduct, breach of common law and statutory duties, and omissions and/or misrepresentations associated with the Defective Sunroofs and associated safety risk, including but not limited to, out-of-pocket losses and diminished value of their respective vehicles.

35. Neither Defendants nor any of their agents, dealers or other representatives informed Plaintiffs and members of the Classes of the Defective Sunroofs and associated safety

risk prior to the purchase or lease of the Class Vehicles or during their ownership of the Class Vehicles.

Defendants

36. Defendant BMW AG is a German business entity with its principal place of business in Munich, Germany. BMW AG designs, develops, manufactures, and/or sells luxury automobiles under the BMW and MINI brand names. BMW AG is the parent corporation of BMW NA.

37. Defendant BMW NA is a Delaware corporation with its corporate headquarters located in Woodcliff Lake, New Jersey. BMW NA's Eastern Regional Headquarters and Technical Training Center are also located in Woodcliff Lake, New Jersey and its Vehicle Preparation Center is located in Port Jersey, New Jersey. BMW NA advertises, markets and sells luxury automobiles under the BMW brand name throughout the United States. According to BMW NA,¹⁵ MINI USA is an unincorporated division of BMW NA, and it advertises, markets and sells luxury automobiles under the MINI brand name throughout the United States.

38. At all relevant times, BMW NA and MINI acted as authorized agents, representatives, servants, employees and/or alter egos of BMW AG while performing activities including but not limited to advertising, warranties, warranty repairs, dissemination of technical information and monitoring the performance of BMW and MINI vehicles in the United States, including substantial activities that occurred within this jurisdiction.

39. At all times relevant to this action, Defendants manufactured, distributed, sold, leased, and warranted the Class Vehicles under the BMW and MINI brand names throughout the

¹⁵ See Defendant BMW of North America, LLCs Rule 7.1 Disclosure Statement, *Oscar v. MINI USA*, No. 09-00011 (S.D.N.Y. Apr. 7, 2010), ECF No. 43.

United States. Defendants and/or their agents designed, manufactured, and/or installed the Defective Sunroofs in the Class Vehicles. Defendants and/or their agents also developed and disseminated the owner's manuals, warranty booklets, maintenance schedules, advertisements, and other promotional materials relating to the Class Vehicles.

40. On information and belief, at all times relevant to this action, BMW NA and MINI made decisions related to advertisement, marketing, sales, warranties, and recalls of vehicles under the BMW and MINI brand names from their Woodcliff Lake, New Jersey headquarters, which is located within this District.

IV. FACTUAL ALLEGATIONS

A. The Defective Sunroofs

41. The Class Vehicles are equipped with the Defective Sunroofs, which expose Class members and their passengers to the risk of sudden explosion or shattering of the Defective Sunroofs.

42. According to *Consumer Reports*, the occurrence of an exploding sunroof has recently become all too common. Incidents involving exploding sunroofs have occurred in every month of the year in every part of the country, and the number of exploding sunroof complaints has steadily increased from 1995 through present.¹⁶

43. The *Consumer Reports* investigation revealed that while the issue of exploding sunroofs is well-known to the auto industry, drivers generally assume their sunroofs are safe. Even though they are aware of the defect, with a few exceptions, automakers, such as Defendants, are

¹⁶ Report at 1, 7.

not acknowledging or resolving the issue; rather they regularly upsell the Defective Sunroofs as a premium feature in the Class Vehicles.¹⁷

44. Features like panoramic sunroofs are often designed into luxury vehicles, such as those manufactured by Defendants.¹⁸ Automakers have learned that consumers will frequently spend thousands of dollars for luxury packages, including those that contain the Defective Sunroofs.¹⁹ As such, manufacturers, such as Defendants, are incentivized to sell vehicles containing the Defective Sunroofs as a way to increase margins, as the sunroofs or panoramic sunroofs/moonroofs are typically considered an “upgrade.” For example, when designing a vehicle on BMW’s website, in many models that BMW advertises, consumers do not have the option of a panoramic moonroof with a standard package, but rather must upgrade to the “Convenience Tier” to add a panoramic moonroof as an additional feature, increasing the purchase price by thousands of dollars.²⁰ Similarly, when designing a new MINI, the Dual-Pane Panoramic Sunroof often only becomes available to consumers with the upgraded “Premium Package,” adding \$1,800 to the purchase price.²¹ Defendants profit significantly from upselling these products to unsuspecting members of the Classes.

¹⁷ Report at 2.

¹⁸ See Report at 8.

¹⁹ *Id.* at 9.

²⁰ See, e.g., *Choose your Features Tier, X1 sDrive28i*, <https://www.bmwusa.com/byo.html#!/build/feature/dijuq55z> (last visited Mar. 12, 2018) (adding \$2,500 to the X1 sDrive28i’s purchase price of \$33,900 for the “Convenience Tier” which includes the panoramic moonroof as an added feature).

²¹ See, e.g., *Cooper S Hardtop 2 Door, Packages*, <http://www.miniusa.com/content/miniusa/en/tools/learning/build/build.html#/config/coopers/build/1/?year=2018> (last visited Mar. 12, 2018) (demonstrating that the Dual-Pane Panoramic Sunroof is only available in the upgraded “Premium” or “Fully Loaded” Packages, adding \$1,800 or \$4,750, respectively, to the Cooper S Hardtop 2 Door’s purchase price of \$26,550).

45. BMW began installing panoramic sunroofs/moonroofs in certain of the Class Vehicles in or around 2004, generally marketing the panoramic sunroofs/moonroofs as a luxury upgrade. For example, the BMW X5 xDrive 35i advertises the “[p]anoramic moonroof with fully automatic, 2-piece glass panel, power slide and lift control, wind deflector and power interior sunshade” as a feature adding to the vehicle’s “Comfort and convenience[.]”²² Similarly, the Mini Clubman touts its dual-pane panoramic sunroof with “[a]lmost 11 square feet of glass [that] enhance[s] the view for both front and rear passengers.”²³ According to the Report, experts agree that “[t]he bigger the expanse of glass, the harder to ensure it won’t shatter.”²⁴

46. To date, American consumers, including members of the Classes, have lodged at least 859 complaints with the federal government about exploding sunroofs in their vehicles.²⁵ Almost all of the exploding sunroof incidents occur with no warning.²⁶

47. The hazard of a sunroof shattering is a clear safety risk. When sunroofs shatter, they make a sudden and loud noise, startling the driver and increasing the risk of accident, and often send shards of glass raining down on the driver and passengers. Further, the shards of glass can cut the driver and their passengers and cause damage to the interior of the vehicles.

48. Automakers, such as Defendants, have tried to explain away and conceal the defect, by informing consumers that the exploding sunroofs are caused by a rock or some other foreign

²² See *The X5 xDrive35i, Features & Specs*, <https://www.bmwusa.com/vehicles/x-models/x5/x5-xdrive35i.html> (last visited Mar. 12, 2018).

²³ See *The Mini Clubman, Motoring Features*, <http://www.miniusa.com/content/miniusa/en/why-mini/programs-and-events/clubman-retail.html> (last visited Mar. 12, 2018).

²⁴ Report at 2.

²⁵ *Id.*

²⁶ See Jennifer Geiger, *Consumer Reports Investigates Exploding Sunroofs*, CARS.COM (October 12, 2017) <https://www.cars.com/articles/consumer-reports-investigates-exploding-sunroofs-1420697540165/>.

object.²⁷ But, Tarek Zohdi, a professor of mechanical engineering at University of California, Berkeley, rejects this explanation.²⁸ According to Mr. Zohdi, a rock lofted into the air by a vehicle tire would reach a height of 10-15 feet and would have to come down at 70-80 miles an hour to break the sunroof.²⁹ “There is not a chance in the world that an unintentional rock that is lofted by a vehicle would ever break a sunroof panel,” Mr. Zohdi opined. He further stated that the maximum velocity of a rock coming down would be 25 miles an hour, falling far short of the 70 miles an hour he calculated would be necessary to cause breakage.³⁰ It is more likely, according to Mr. Zohdi, that sunroofs are shattering due to the stress caused by changes in temperatures or from fatigue.³¹ In Mr. Zohdi’s opinion, “the car manufacturer has the problem; basically it’s a manufacturers defect.”³²

49. Based on the increasing number of complaints related to panoramic sunroofs, executive director at the Center for Auto Safety, Jason Levine, says, “Something is going on. Calling it an act of God feels like an old industry playbook for a new car feature. The fact the roof is half glass instead of a quarter glass or no glass doesn’t change the responsibility of the industry and the individual automaker to make sure the compartment is as safe as possible.” Mr. Levine added that “[t]he concern has to be for safety first, and then the aesthetics.”³³

²⁷ See Jeff Plungis, *Senators Press Auto Industry on Exploding Sunroofs*, CONSUMER REPORTS, (Nov. 15, 2017) <https://www.consumerreports.org/car-safety/senators-press-auto-industry-on-exploding-sunroofs/>.

²⁸ See Michael Finney, *UC professor solves shattered sunroof problem*, (Mar. 21, 2011, 12:00 AM) <http://abc7news.com/archive/8026317/>.

²⁹ See *id.*

³⁰ See *id.*

³¹ See *id.*

³² See *id.*

³³ Report at 7.

50. Research has shown that when a vehicle's sunroof does shatter, vehicle owners typically bear the cost of repair or replacement as automakers often refuse to cover repair or replacement of sunroofs under the applicable warranties.³⁴ As described in the NHTSA complaints herein, Defendants similarly have refused to repair or replace the Defective Sunroofs free of charge for members of the Classes. Moreover, Defendants have not recalled the Class Vehicles to replace the Defective Sunroofs.

51. David Friedman, former acting administrator of NHTSA in 2014, and current director of cars and product policy and analysis at Consumers Union, the policy and mobilization division of Consumer Reports, states: “[w]hen you have evidence of a problem like this, regardless of what the standards say, automakers should develop a better approach. . . . They don’t need to wait for NHTSA to prod them.”³⁵

52. In April 2016, NHTSA investigated Defendants, and twelve other motor vehicle manufacturers.³⁶ The Secretary of Transportation issued a General Order to the vehicle manufacturers as part of NHTSA Investigation No. EA14-002, an investigation into allegations of optional sunroofs shattering unexpectedly.³⁷ As a part of the NHTSA General Order, NHTSA demanded the Defendants, and other vehicle manufacturers, file certain reports concerning unexpected sunroof shatter incidents by May 16, 2016.³⁸ Such reports were required to, *inter alia*, describe the history of panoramic sunroofs in the vehicles Defendants manufactured, identify and

³⁴ Report at 3.

³⁵ Report at 4.

³⁶ See *In re: Kia Sorento Sunroofs*, EA14-002, “General Order Directed to Motor Vehicle Manufacturers,” (U.S. Dept. of Trans. Nat’l Highway Traffic Safety Admin. Apr. 14, 2016). (“NHTSA General Order”).

³⁷ See *id.*

³⁸ See *id.*

enumerate the total population of vehicles manufactured with a panoramic sunroof as original equipment, provide information regarding the sunroof manufacturer and the standard to which the sunroof was manufactured, and identify the number of incidents involving an allegation that a panoramic sunroof has spontaneously shattered in a vehicle manufactured by Defendants.³⁹

53. In addition to complaints regarding panoramic sunroofs/moonroofs in the Class Vehicles, numerous complaints have been made to NHTSA and other online forums relating to non-panoramic sunroofs/moonroofs in the Class Vehicles.

54. In November 2017, Senators Blumenthal and Markey sent letters to the automakers, including BMW, asking for answers regarding sunroof materials, design and defects. The senators gave BMW a December 4, 2017 deadline to provide information on glass suppliers and whether BMW is tracking incidents of exploding sunroofs. The senators informed BMW: “It is vital that you take steps to assure consumers of the structural integrity of their sunroofs.”

55. No reasonable consumer expects to purchase a vehicle with a Defective Sunroof upgrade that exposes them and their passengers to an exploding or shattering sunroof. Further, Plaintiffs and members of the Classes do not reasonably expect Defendants to omit or conceal a defect in the Class Vehicles or omit or conceal a known safety risk. Plaintiffs and members of the Classes had no reasonable way to know that Class Vehicles contained Defective Sunroofs which were defective in materials, workmanship, design and/or manufacture and posed a safety risk.

56. As alleged herein, Plaintiffs and members of the Classes unknowingly purchased, leased, own, or owned vehicles that contain the Defective Sunroofs and suffered diminished market value and other damages as a direct result of Defendants’ material misrepresentations and omissions regarding the standard, quality or grade of the Class Vehicles and/or the existence of

³⁹ See *id.*

the Defective Sunroofs and safety risk. The fact that the Class Vehicles contain the Defective Sunroofs is material to Plaintiffs and members of the Classes because it diminishes the value of the Class Vehicles, exposes Plaintiffs and Class members (and their passengers) to exploding or shattering sunroofs and an associated safety risk, and causes monetary losses associated with the repair or replacement of the Defective Sunroofs.

57. As a result of Defendants' material misrepresentations and omissions, including their failure to disclose that the Class Vehicles incorporate the Defective Sunroofs, Defendants have caused Plaintiffs and members of the Classes to suffer actual damages, including but not limited to out-of-pocket expenses and the diminished value of their vehicles.

B. Defendants' Knowledge of the Defect in the Defective Sunroofs and Associated Safety Risk

58. Defendants fraudulently, intentionally, negligently, and/or recklessly concealed from Plaintiffs and members of the Classes the defect in the Class Vehicles even though Defendants knew or should have known that defects in design, manufacturing, materials, and/or workmanship were causing defects in Class Vehicles if Defendants had adequately tested the Defective Sunroofs in the Class Vehicles.

59. Knowledge and information regarding the defect in the Defective Sunroofs were in the exclusive and superior possession of Defendants and their dealers, and that information was not provided to Plaintiffs and members of the Classes. Based on pre-production testing, pre-production design or failure mode analysis, production design or failure mode analysis, early consumer complaints made to Defendants' network of exclusive dealers, aggregate warranty data compiled from those dealers, repair order and parts data received from the dealers, consumer complaints to dealers and NHTSA, and testing performed in response to consumer complaints, *inter alia*, Defendants were aware (or should have been aware) of the exploding or shattering of

the Defective Sunroofs in the Class Vehicles and fraudulently concealed the defect and safety risk from Plaintiffs and members of the Classes.

60. Defendants knew, or should have known, that the defect in the Defective Sunroofs was material to owners and lessees of the Class Vehicles and was not known or reasonably discoverable by Plaintiffs and members of the Classes before they purchased or leased Class Vehicles, or before the warranties on their Class Vehicles expired.

61. Defendants had actual knowledge that defects in design, manufacturing, materials and/or workmanship were causing a defect in the Defective Sunroofs shortly after production of the Class Vehicles commenced. Further, Defendants gained their knowledge of the defect through sources not available to Plaintiffs and members of the Classes.

62. Notwithstanding Defendants' exclusive and superior knowledge of the defect in the Defective Sunroofs, Defendants failed to disclose the defect to consumers at the time of purchase or lease of the Class Vehicles (or any time thereafter) and continued to sell Class Vehicles containing the defect through and including the 2018 model year. Defendants have intentionally concealed that the Defective Sunroofs are defective, prone to exploding or shattering, and present a safety risk rather than disclosing this risk to consumers, including Plaintiffs and members of the Classes, and failed to recall the Class Vehicles to remedy the defect.

NHTSA Complaints

63. Consumers who purchased or leased Class Vehicles have filed numerous complaints with NHTSA, beginning in at least 2002, reporting and detailing the defect in the Defective Sunroofs.

64. Federal law requires Defendants to monitor defects that can cause a safety issue and report them within five (5) days of learning of them. Defendants therefore regularly monitor the NHTSA website and the complaints filed therein in order to comply with their reporting

obligations under federal law and were provided knowledge of the defect through these complaints, *inter alia*.⁴⁰

65. Despite these complaints, Defendants have yet to issue a recall or even inform owners and lessees of the defect in the Defective Sunroofs and the associated safety risk. Defendants' deceptive acts, misrepresentations and/or omissions regarding the defect in the Defective Sunroofs create a safety risk for drivers and occupants of the Class Vehicles who may be showered with broken glass from an exploding Defective Sunroof and members of the public who may be involved in accidents with Class Vehicles that experience an exploding or shattering sunroof. The reasonable expectation that the Class Vehicles are safe and reliable to drive (and ride in) is and was material to Plaintiffs and members of the Classes when they purchased or leased their Class Vehicles and at all relevant times.

66. Below is a sample of consumer complaints made to NHTSA regarding the exploding or shattering of Defective Sunroofs:

- **February 12, 2002- 2002 BMW 325i**
 NHTSA ID Number: 758131
 Incident Date February 9, 2002
 Consumer Location BREWSTER, NY
 Vehicle Identification Number WBAEV33432K
Summary of Complaint:
 URGENT - MY 2002 325I'S FIRST SUNROOF GLASS EXPLODED ON ME ON 1/25/02. THE REPLACEMENT GLASS HAS TWO SURFACE HAIRLINE CRACKS AND TWO HAIRLINE CRACKS BENEATH THE SURFACE OF THE GLASS. THIS CANNOT BE AN ISOLATED INCIDENT. PLEASE EXAMINE YOUR SUNROOF CAREFULLY FOR DEFECTS. NO ONE AT BMW IS TAKING THIS SERIOUSLY ENOUGH.*AK
- **March 23, 2006- 2005 BMW X5**
 NHTSA ID Number: 10153549

⁴⁰ Complainants must identify themselves and enter detailed contact and vehicle information, which is reviewed and analyzed by NHTSA. NHTSA does not share complainants' personal information with the general public and adds complaints to the public NHTSA database only after removing all personally identifying information.

Incident Date March 2, 2006
Consumer Location ERIE, CO
Vehicle Identification Number 5UXFA93545L

Summary of Complaint:

I WAS DRIVING DOWN I-25 IN MARCH OF 2006, WHEN THE PANORAMIC SUNROOF OF MY 2005 BMW X5 4.8IS (PURCHASED NEW ON DECEMBER 2, 2005, WHICH ONLY HAVE 5000 MILES ON IT) EXPLODED SUDDENLY AND UNEXPECTEDLY FOR NO REASON WHAT SO EVER. I AM VERY GLAD THAT I DIDN'T HAVE THE SUN SHADE OPEN OR ELSE I WOULD'VE HAD GLASS ALL OVER ME!!!!*JB

- **August 3, 2009- 2008 BMW 3 Series**

NHTSA ID Number: 10279116
Incident Date August 2, 2009
Consumer Location Unknown
Vehicle Identification Number WBAWB73588P

Summary of Complaint:

CATASTROPHIC FAILURE OF THE SUNROOF ON MY 3.35I BMW COUPE 2008 MODEL. NO KNOWN CAUSE. IT JUST EXPLODED AND SHOWERED THE PASSENGER COMPARTMENT WITH GLASS SHARDS. *TR

- **March 27, 2013- 2011 BMW 328i**

NHTSA ID Number: 10504739
Incident Date March 27, 2013
Consumer Location CLEARWATER, FL
Vehicle Identification Number N/A

Summary of Complaint:

WHILE APPROACHING THE INTERSTATE AND INCREASING IN SPEED, DRIVER HEARD LOUD EXPLOSION (LIKE A GUN) COMING FROM ABOVE AND STARTED TO FEEL GLASS DEBRIS COMING FALL FROM CRACK. THE OUTSIDE TEMPERATURE WAS AROUND 40 DEGREES FAHRENHEIT AND THERE WERE NO OVERPASSES NEARBY WHERE DEBRIS COULD HAVE FALLEN AND NO DEBRIS COMING FROM OTHER CARS. WHEN PULLED OVER, THE SUNROOF HAD COMPLETELY SHATTERED. *TR

- **June 18, 2013-2012 BMW X5**

NHTSA ID Number: 10520566
Incident Date June 12, 2013
Consumer Location BLAINE, WA
Vehicle Identification Number: 5UXZW0C58CL

Summary of Complaint:

WHILE DRIVING AT 70 MPH ON THE FREEWAY, MY SUNROOF SPONTANEOUSLY SHATTERED INTO A MILLION PIECES. NO OTHER VEHICLES WERE AROUND AND NO FALLING DEBRIS WAS NEARBY. THESUNROOF EXPLODED OUTWARD WITH A LOUD BANG, LIKE A

GUNSHOT. GLASS RAINED DOWN INSIDE THE CAR AND MY PASSENGER AND I WERE CUT WHILE TRYING TO REMOVE PIECES OF GLASS FROM THE INTERIOR. *TR

- **August 23, 2013- 2009 BMW 3 Series**

NHTSA ID Number: 10536990

Incident Date August 23, 2013

Consumer Location OTTAWA LAKE, MI

Vehicle Identification Number: WBAPH77589N

Summary of Complaint:

SUNROOF EXPLODED UPWARD MAKING A “GUN SHOT” TYPE SOUND LEAVING A BASKETBALL SIZED HOLE IN THE ROOF. *TR

- **July 30, 2014- 2010 BMW X5**

NHTSA ID Number: 10617626

Incident Date July 9, 2014

Consumer Location SAN CLEMENTE, CA

Vehicle Identification Number WBANU5C59AC

Summary of Complaint:

I WAS TRAVELING ON FREEWAY TO THE AIRPORT WHEN MY WIFE AND I HEARD A LOUD BOOM AND SUDDENLY HEARD LOUD AIRFLOW. I PULLED OFF TO SIDE OF ROAD AND INSPECTED CAR. THE SUNROOF HAD EXPLODED AND SHATTERED. THE CAR TRAVELING BEHIND ME ALSO STOPPED TO INSPECT HIS VEHICLE BECAUSE OF FLYING GLASS. THE CABIN DOOR TO THE SUNROOF HAD LUCKILY HAD BEEN CLOSED SO AS MY WIFE AND I AVOIDED THE FLYING GLASS. WHEN WE RETURNED FROM OUR TRIP I TOOK VEHICLE TO DEALER, THE VEHICLE WAS UNDER WARRANTY. THE DEALER SAID THIS PART WAS NOT COVERED AND WOULD COST \$3600 TO REPAIR. WE GOGGLED BMW5 SERIES EXPLODING SUNROOFS AND DISCOVERED WE WERE NOT THE ONLY ONES TO EXPERIENCE EXPLODING SUNROOFS. SURELY BMW KNOWS ABOUT THIS POTENTIALLY GRIEVOUS PROBLEM. WE CALLED BMW NORTH AMERICA AND FILED A COMPLAINT WITH THE RESOLUTION DEPARTMENT. THE NEXT DAY BMW TO MY CHAGRIN WAS WILLING TO PAY 50 PERCENT OF THE REPAIR COST. I EXPECTED FULL COVERAGE. I NEEDED THE CAR BACK AND EXCEPTED OFFER VOWING NEVER TO BUY A BMW AGAIN. I EXPECTED TO BECOME WHOLE AND NOT EXPECTING BMW IGNORING THE PROBLEM THUS ENDANGERING THEIR DRIVERS FOR ECONOMIC REASONS. ONCE AGAIN GOGGLE BMW 5 SERIES EXPLODING SUNROOFS. I TOOK VEHICLE TO LEXUS DEALER AND TRADED IT. I WANTED NOTHING TO DO WITH THAT CAR. UNFORTUNATELY I OWN ANOTHER BMW5. WHAT I WANT FROM NHTSA IS TO INSPECT THE PROBLEM AND I STILL WANT TO BE COMPENSATED FOR THE ENTIRE COST OF THE PROBLEM NOT JUST 50 PERCENT. *TR

- **May 5, 2015- 2007 BMW 3 Series**

NHTSA ID Number: 10714764

Incident Date May 5, 2015

Consumer Location DUNWOODY, GA

Vehicle Identification Number WBAWB73597P

Summary of Complaint:

SUNROOF EXPLODED FOR NO APPARENT REASON. WAS MERGING ONTO A HIGHWAY IN THE ONRAMP AT ABOUT 45MPH, VERY BRIGHT AND SUNNY (BUT NOT HOT, MAYBE 75F) DAY. DRIVER SIDE WINDOW WAS OPEN, A/C OFF, SUNROOF WAS CLOSED, SUNSHADE WAS ALSO CLOSED. SUDDENLY I HEAR WHAT BASICALLY SOUNDS LIKE A GUNSHOT RIGHT ABOVE MY HEAD, AND SINCE HAVING ALREADY HEARD ABOUT THIS PHENOMENON HAPPENING ON A CAR FORUM (E90POST.COM) I REGULARLY VISIT, I INSTANTLY GUESSED WHAT HAD HAPPENED. I LOOK IN MY REARVIEW MIRROR AND SEE LARGE PIECES OF MY SUNROOF BOUNCING ALONG ON THE ROAD BEHIND ME. ONCE I ARRIVED AT MY DESTINATION AND GOT OUT OF THE CAR, I SAW THE SUNROOF HAD EXPLODED OUTWARDS. THE BROKEN GLASS WAS CURVED UP AROUND THE HOLE. FROM THAT SAME FORUM THERE ARE SEVERAL THEORIES FLOATING AROUND, THE ONE MOST PEOPLE SEEM TO AGREE ON AS BEING MOST PLAUSIBLE IS THERE'S A HEAT/PRESSURE DIFFERENCE BETWEEN THE SUNSHADE/SUNROOF AND THE OUTSIDE OF THE CAR. THE NEGATIVE PRESSURE ON THE OUTSIDE + THE INCREASE OF HEAT UNDER THE GLASS IS ENOUGH TO STRESS WHATEVER IMPERFECTION MIGHT HAVE ALREADY BEEN IN THE GLASS AND LITERALLY SUCK IT OUT. *TR

- **October 26, 2016- 2009 BMW 3 Series**

NHTSA ID Number: 10919184

Incident Date October 26, 2016

Consumer Location Unknown

Vehicle Identification Number WBAWB73529P

Summary of Complaint:

I WAS DRIVING ON THE HIGHWAY WHEN ALL OF THE SUDDEN I HEARD AND EXPLOSION. ACTUALLY MY SUNROOF BURST IN TO PIECES WITHOUT ANY REASON. *TR

- **December 8, 2016- 2008 BMW 3 Series**

NHTSA ID Number: 10933957

Incident Date November 18, 2016

Consumer Location ANCHORAGE, AK

Vehicle Identification Number: WBAWC73528E

Summary of Complaint:

NOVEMBER 18, 2016, AT APPROXIMATELY 7:45 AM, I WAS DRIVING ON SEWARD HIGHWAY TOWARDS WEST INTERNATIONAL AIRPORT ROAD IN ANCHORAGE, ALASKA AND ALL OF A SUDDEN MY SUNROOF EXPLODED AND GLASS SHARDS FELL ABOVE MY HEAD AND ALL OVER THE INTERIOR OF MY CAR. I CALLED BMW CORPORATE FOR A RESOLUTION BUT THEY INITIALLY DENIED MY CLAIM SAYING IT MUST HAVE BEEN HIT WITH A ROCK AND I SHOULD BE CALLING MY CAR INSURANCE INSTEAD. I CONTACTED BMW CORPORATE FOR THE SECOND TIME. THEY WERE ABLE TO ESCALATE MY ISSUE AND OFFERED ME A "GOODWILL" OFFER TO REPLACE ALL PARTS INVOLVED FREE OF CHARGE ON MY ISSUE, BUT NOT LABOR. LABOR CHARGE IS APPROXIMATELY \$900 AND THEY REQUIRE IT TO BE DONE AT THE DEALERSHIP. IT IS ABSURD! I'M NOT PAYING FOR A DAMAGE WHICH I'M NOT RESPONSIBLE. IT SEEMS LIKE THEY ARE NOT CONSIDERING THIS AS A BIG PROBLEM AND RATHER DENYING DEFECTS ON THEIR SUNROOFS. I WAS FURIOUS AND EXCLAIMED THAT IT IS A SAFETY ISSUE AND I COULD HAVE BEEN INJURED, COULD HAVE BEEN KILLED, OR WORSE, COULD HAVE KILLED SOMEONE ELSE. WITH THEIR "GOODWILL" OFFER AND THE ABSURD LABOR CHARGE, I DON'T THINK I COULD GET THIS ISSUE RESOLVED WITHOUT THE HELP OF NHTSA TO PRESS BMW TO DO FURTHER INVESTIGATION. THIS ISSUE HAS TO BE FIXED ASAP BEFORE SOMEONE GETS KILLED. *TR

- **February 7, 2017- 2014 BMW X5**

NHTSA ID Number: 10950065

Incident Date January 14, 2017

Consumer Location LAKE OSWEGO, OR

Vehicle Identification Number N/A

Summary of Complaint:

TL* THE CONTACT OWNS A 2014 BMW X5. WHILE DRIVING AT AN UNKNOWN SPEED, AN ABNORMAL BANG SOUND EMITTED FROM THE VEHICLE. THE CONTACT PULLED OVER AND DISCOVERED THAT THE SUN ROOF EXPLODED FROM WITHIN THE VEHICLE. THE CONTACT AND THE DRIVER SUSTAINED HEARING LOSS THAT REQUIRED MEDICAL ATTENTION. THE VEHICLE WAS TAKEN TO THE DEALER AND THE SUN ROOF WAS REPLACED; HOWEVER, THE CAUSE OF THE FAILURE WAS NOT DETERMINED. THE MANUFACTURER WAS NOT NOTIFIED OF THE FAILURE. THE FAILURE MILEAGE AND VIN WERE UNKNOWN.

- **April 18, 2017- 2016 BMW X5**

NHTSA ID Number: 10979007

Incident Date April 13, 2017

Consumer Location Unknown

Vehicle Identification Number N/A

Summary of Complaint:

WHILE DRIVING DOWN THE HIGHWAY, WITHOUT OVERPASSES OR CLIFFS NEAR, THE SUNROOF EXPLODED OUTWARD, AND RAINING GLASS DOWN ON TO THE PASSENGERS. THE TEMPERATURE WAS MODERATE. VEHICLE HAS APPROX 6000 MILES.

67. In addition to NHTSA complaints, there are multiple blogs and websites, such as bimmerfest.com and bimmerforum.com, where consumers have complained about experiencing an exploding or shattering Defective Sunroof in one of the Class Vehicles. Upon information and belief, Defendants monitor these websites, because the commenters are often their most loyal customers.

68. There are also multiple reports of BMW sunroofs/moonroofs exploding in other countries where Defendants' vehicles are sold. For example, Transport Canada, the regulatory body which performs NHTSA's role in Canada, has received 32 reports of exploding sunroofs in BMWs since 2000, including in 3 Series, 1 Series, and X5 models.⁴¹ Similarly, there are complaints from owners in various foreign countries, including Canada, the United Kingdom, and South Africa on internet forums, as described in the below excerpts:

- “So there I was today driving along an A road doing about 60 mph. Not going under a bridge, no people about and nothing flying up from any other car when BANG heard a huge explosion from my car and then loud wind sounds in my cabin. My sunroof on my 3 series M sport had exploded leaving a large hole in the middle of it and shattered glass around it.” Comment from ilovefpl, from the United Kingdom, on Jan. 7, 2018.⁴²
- “While driving along the freeway at about 100km/hr I heard a loud explosion (like a gunshot). At first was not what it was so pulled over only to find that my sunroof glass had literally exploded. Upon close inspection, it could be noticed that the glass had erupted from the inside out (like a

⁴¹ See Erica Alini, *Exploding sunroofs: Complaints are soaring – here are the car brands and models involved*, Global News (Oct. 24, 2017, 6:00 AM) <https://globalnews.ca/news/3816319/exploding-sunroofs-car-models-brands-transport-canada/>

⁴² Available at <http://www.bimmerfest.com/forums/showthread.php?t=1204945> (last visited May 1, 2018).

volcano).” Comment from Margee Chetty, from South Africa, on Mar. 23, 2016.⁴³

- “So a few weeks ago I took the car out of town for a weekend trip and on my way back just a few seconds after exiting onto the highway, I heard a loud bang, something like a gunshot, and the next thing we know was a bunch of shattered glass showered all over the interior of the car. In absolute shock and having no idea what just happened, I pulled the car to the side, looked up and saw a big hole in my sunroof. Went outside of the car and took a look at the hole and it looked something ‘exploded’ from the inside coz the glass was bending outwards.” Comment from ilikedbmw, from Canada, on Apr. 13, 2011.⁴⁴
- “I have a 2007 328 and I was driving down the highway and my sunroof exploded. Luckily I had the sun protector pulled closed or else I would have been covered in glass. once [sic] I got home I googled Bmw [sic] exploding sunroofs and was horrified to see pages of complaints about this very problem. This morning I went to my dealer and at first the service rep said he had seen this problem before and it would be covered by warranty. Later in the afternoon he phoned to say BMW Canada had decided not to warrant it and I was on my own.” Comment from BMW4SALE, from Canada, on Mar. 5, 2008.⁴⁵

V. FURTHER ALLEGATIONS

69. Defendants failed to inform Class Vehicle owners and lessees prior to purchase or lease of the Class Vehicles or during the express warranty period that the Defective Sunroofs were defective and may explode or shatter. Defendants misrepresented by affirmative conduct and/or by omission and/or by fraudulent concealment the existence of the defect in the Defective Sunroofs in the Class Vehicles.

⁴³ Available at <http://www.bimmerfest.com/forums/showthread.php?t=707492> (last visited May 1, 2018).

⁴⁴ Available at <http://www.e90post.com/forums/showthread.php?t=515758> (last visited May 1, 2018).

⁴⁵ Available at <https://www.bimmerforums.com/forum/showthread.php?952162> (last visited May 1, 2018).

70. Defendants also failed to inform Class Vehicle owners and lessees at the time of purchase or lease or during the express warranty period that the Defective Sunroofs in their Class Vehicles had been inadequately tested prior to the sale or lease of the Class Vehicles.

71. By as early as 2002, Defendants knew that the Class Vehicles contained Defective Sunroofs that could explode or shatter. Despite this knowledge, Defendants continued to sell Class Vehicles with Defective Sunroofs.

72. On information and belief, certain Class members were informed by Defendants that they would not repair or replace the Defective Sunroofs free of charge as promised in the applicable warranties.

73. Defendants have refused to fully reimburse or compensate Class members for vehicle repair expenses or provide a suitable substitute or replacement vehicles.

74. Despite actual and constructive knowledge of defects in the Defective Sunroofs, Defendants breached the applicable express warranties by failing to cure Class Vehicle defects within the express warranty period free of charge.

75. Through no fault of their own, Plaintiffs and members of the Classes had no knowledge of the defect in the Defective Sunroofs prior to purchasing or leasing the Class Vehicles or during the applicable express warranty periods.

76. Defendants' misrepresentations and fraudulent statements were received by Plaintiffs and members of the Classes prior to and at the point of their Class Vehicle purchase or lease, including misrepresentations and omissions in advertising, the owner's manual and the New Vehicle Limited Warranty pamphlet. These representations and omissions created a reasonable belief that the Class Vehicles did not contain a defect in the Defective Sunroofs, and that Defendants would repair or replace any defect in Class Vehicles under the applicable warranties.

77. Defendants fraudulently omitted material facts concerning Class Vehicles, including that the defect existed in the Defective Sunroofs, in order to deceive Plaintiffs and members of the Classes and sell or lease additional Class Vehicles. Defendants knew or should have known that the defect was material to Plaintiffs and Class members.

78. Had Defendants informed Plaintiffs and members of the Classes of the defect in the Defective Sunroofs prior to sale or lease of the Class Vehicles, Plaintiffs and members of the Classes would not have purchased or leased their respective Class Vehicles or would have paid substantially less. Had Defendants informed Plaintiffs and members of the Classes of the defect in the Defective Sunroofs during the warranty period, Plaintiffs and members of the Classes would have had the Defective Sunroofs replaced free of charge under their applicable warranties.

79. As a proximate and direct result of Defendants' unfair and deceptive acts and practices, Plaintiffs and members of the Classes purchased, leased, own or owned Class Vehicles with Defective Sunroofs and have suffered actual damages and/or injury in fact, including, *inter alia*: (1) out-of-pocket monies for diagnosis, repair and/or replacement of the Defective Sunroofs; (2) the difference in value between the Class Vehicles promised and warranted, and the Class Vehicles containing the Defective Sunroofs; (3) time lost associated with the repair or replacement of the Defective Sunroofs and/or expenses related to obtaining alternative transportation during the repair or replacement of the Defective Sunroofs; (4) future repair or replacement of the Defective Sunroofs; and/or (5) the diminished resale value of the Class Vehicles containing the Defective Sunroofs.

VI. TOLLING OF THE STATUTE OF LIMITATIONS

80. Any applicable statute of limitations has been tolled by Defendants' knowing and active concealment of the defect in the Defective Sunroofs and the misrepresentations and omissions alleged herein. Through no fault or lack of diligence, Plaintiffs and members of the

Classes were deceived regarding the defect in the Defective Sunroofs and could not reasonably discover the latent nature of the defect.

81. Plaintiffs and members of the Classes could not reasonably discover Defendants' deception with respect to the defect in the Defective Sunroofs in the Class Vehicles prior to experiencing an exploding or shattering Defective Sunroof. As alleged herein, the existence of the Defective Sunroofs and corresponding safety risk were material to Plaintiffs and members of the Classes at all relevant times. Within the time period of any applicable statutes of limitations, Plaintiffs and members of the Classes could not have discovered through the exercise of reasonable diligence that Defendants were concealing the defect in the Defective Sunroofs.

82. Plaintiffs and members of the Classes did not discover and did not know of any facts that would have caused a reasonable person to suspect that Defendants were concealing a latent defect and/or that the Class Vehicles contained Defective Sunroofs prone to exploding or shattering and an associated safety risk.

83. At all times, Defendants are and were under a continuous duty to disclose to Plaintiffs and members of the Classes the true standard, quality and grade of the Class and to disclose the defect in the Defective Sunroofs and potential safety risk associated with the exploding or shattering of the Defective Sunroofs.

84. Defendants knowingly, actively and affirmatively concealed the facts alleged herein including the defect in the Defective Sunroofs. Plaintiffs and members of the Classes reasonably relied on Defendants' knowing, active and affirmative concealment.

85. Defendants fraudulently attributed the exploding or shattering Defective Sunroofs to other factors and/or exculpating conditions for which Defendants had no responsibility when,

in reality, the Defective Sunroofs were exploding or shattering due to defects in design, manufacture, materials, and/or workmanship.

86. For these reasons, all applicable statutes of limitation have been tolled based on the discovery rule and Defendants' fraudulent concealment and Defendants are estopped from relying on any statutes of limitations in defense of this action.

VII. CLASS ACTION ALLEGATIONS

87. Plaintiffs bring this proposed action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2) and/or (b)(3) on behalf of themselves and all members of the proposed Class and Sub-Classes defined as follows:

Nationwide Class: All persons or entities in the United States that purchased, leased, own or owned a Class Vehicle (the "Nationwide Class" or "Class");

Illinois Sub-Class: All persons or entities that purchased or leased a Class Vehicle in the State of Illinois and all persons or entities in the State of Illinois that purchased, leased, own, or owned a Class Vehicle (the "Illinois Sub-Class");

Louisiana Sub-Class: All persons or entities that purchased or leased a Class Vehicle in the State of Louisiana and all persons or entities in the State of Louisiana that purchased, leased, own, or owned a Class Vehicle (the "Louisiana Sub-Class");

Pennsylvania Sub-Class: All persons or entities that purchased or leased a Class Vehicle in the Commonwealth of Pennsylvania and all persons or entities in the Commonwealth of Pennsylvania that purchased, leased, own, or owned a Class Vehicle (the "Pennsylvania Sub-Class");

South Carolina Sub-Class: All persons or entities that purchased or leased a Class Vehicle in the State of South Carolina and all persons or entities in the State of South Carolina that purchased, leased, own, or owned a Class Vehicle (the "South Carolina Sub-Class").

88. Excluded from the Class and Sub-Classes are Defendants and their parents, subsidiaries and corporate affiliates, officers, directors, employees, assigns, and successors, the court, court staff, Defendants' counsel, and all respective immediate family members of the excluded entities described above. Also excluded from the Class and Sub-Classes are any and all

claims involving personal injury. Plaintiffs reserve the right to revise the definition of the Class and Sub-Classes based upon subsequently discovered information and reserves the right to establish additional Sub-Classes where appropriate. The Class and Sub-Classes are collectively referred to herein as the “Classes.”

89. The Classes are so numerous that individual joinder of all potential members is impracticable. Plaintiffs believe that there are at least thousands of proposed members of the Classes throughout the United States.

90. Common questions of law and fact exist as to all members of the Classes and predominate over any issues solely affecting individual members of the Classes. The common and predominating questions of law and fact include, but are not limited to:

- (a) Whether the Defective Sunroofs installed in the Class Vehicles are prone to exploding or shattering;
- (b) Whether the Defective Sunroofs installed in the Class Vehicles contain a design defect and/or a defect in material, manufacturing and/or workmanship;
- (c) Whether the Defective Sunroofs installed in the Class Vehicles present a safety risk;
- (d) Whether Defendants knew or should have known that the Defective Sunroofs installed in the Class Vehicles are defective and/or prone to exploding or shattering and/or present a safety risk;
- (e) Whether Defendants had a duty to disclose that the Defective Sunroofs installed in the Class Vehicles are defective and/or prone to exploding or shattering and/or present a safety risk;

- (f) Whether Defendants breached their duty to disclose that the Defective Sunroofs installed in the Class Vehicles are defective and/or prone to exploding or shattering and/or present a safety risk;
- (g) Whether Defendants intentionally and knowingly falsely misrepresented, concealed, suppressed and/or omitted material facts including the fact that the Defective Sunroofs installed in the Class Vehicles are defective and/or prone to exploding or shattering and/or present a safety risk;
- (h) Whether Defendants negligently or falsely misrepresented or omitted material facts including the fact that the Defective Sunroofs installed in the Class Vehicles are defective and/or prone to exploding or shattering and/or present a safety risk;
- (i) Whether Defendants made material misrepresentations and/or omissions concerning the standard, quality or grade of the Class Vehicles and the defect in the Defective Sunroofs;
- (j) Whether Defendants breached their express warranties in that Class Vehicles were defective with respect to manufacture, workmanship and/or materials;
- (k) Whether Defendants breached their implied warranties in that Class Vehicles were defective with respect to design, manufacture, workmanship, and/or materials;
- (l) Whether Defendants violated the MMWA, 15 U.S.C. § 2301 *et seq.*;
- (m) Whether members of the Classes would have had the Defective Sunroofs repaired or replaced if Defendants had disclosed, prior to the expiration of

the warranty periods, that the Defective Sunroofs were defective and/or prone to premature exploding or shattering;

- (n) Whether Defendants actively concealed or omitted material facts from Plaintiffs and members of the Classes in order to, *inter alia*, sell more Class Vehicles and/or transfer the costs associated with repair or replacement of the Defective Sunroofs to Plaintiffs and the Classes;
- (o) Whether Defendants committed unfair and deceptive business act practices by failing to inform owners and lessees of Class Vehicles prior to purchase and/or lease and/or during the express warranty period that the Defective Sunroofs were defective and prone to exploding or shattering, and/or that this defect posed a significant safety risk;
- (p) Whether damages, restitution, equitable, injunctive, compulsory, or other relief is warranted; and
- (q) Whether the court should establish a constructive trust funded by the benefits conferred upon the Defendants by their wrongful and unlawful conduct.

91. Plaintiffs' claims are typical of the claims of the Classes Plaintiffs seek to represent. As alleged herein, Plaintiffs and the Classes sustained damages arising out of the same illegal actions and conduct by Defendants.

92. Plaintiffs are willing and prepared to serve the Class and Sub-Classes in a representative capacity with all of the obligations and duties material thereto. Plaintiffs will fairly and adequately protect the interests of the Class and Sub-Classes and have no interests adverse to or in conflict with the interests of the other members of the Classes.

93. Plaintiffs' interests are co-extensive with and are not antagonistic to those of absent members within the Classes. Plaintiffs will undertake to represent and protect the interests of absent members within the Classes and will vigorously prosecute this action.

94. Plaintiffs have engaged the services of the undersigned counsel. Counsel is experienced in complex litigation, will adequately prosecute this action, and will assert and protect the rights of, and otherwise represent, Plaintiffs and absent members of the Classes.

95. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Plaintiffs know of no difficulty to be encountered in the management of this litigation that would preclude its maintenance as a class action.

96. Class action status is warranted under Rule 23(b)(3) because questions of law or fact common to the members of the Classes predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

97. The Classes may also be certified under Rule 23(b)(2) because Defendants have acted on grounds generally applicable to the Classes, thereby making it appropriate to award final injunctive relief or corresponding declaratory relief with respect to the Classes.

98. The interest of members within the Classes in individually controlling the prosecution of separate actions is theoretical and not practical. The Classes have a high degree of similarity and are cohesive, and Plaintiffs anticipate no difficulty in the management of this matter as a class action.

VIII. CLAIMS FOR RELIEF

A. Claims Brought on Behalf of the Nationwide Class

NATIONWIDE CLASS COUNT I

**VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT
(15 U.S.C. § 2301, *ET SEQ.*)**

99. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

100. Plaintiffs bring this count on behalf of themselves and the members of the Nationwide Class or, alternatively, on behalf of the Sub-Classes.

101. Plaintiffs satisfy the MMWA jurisdictional requirement because they allege diversity jurisdiction under CAFA, 28 U.S.C. § 1332(d)(2).

102. Plaintiffs and members of the Classes are “consumers” within the meaning of the MMWA, 15 U.S.C. § 2301(3).

103. Defendants are “supplier[s]” and “warrantor[s]” within the meaning of the MMWA, 15 U.S.C. § 2301(4)-(5).

104. The Class Vehicles are “consumer products” within the meaning of the MMWA, 15 U.S.C. § 2301(1).

105. The MMWA provides a cause of action for any consumer who is damaged by the failure of a warrantor to comply with a written or implied warranty. *See* 15 U.S.C. § 2310(d)(1).

106. Defendants provided Plaintiffs and members of the Classes with one or more express warranties, which are covered under 15 U.S.C. § 2301(6). In connection with the purchase or lease of each of the Class Vehicles, Defendants provide warranty coverage for the Class Vehicles under one or more manufacturer’s warranties. For illustrative purposes, Defendants currently provide a New Vehicle Limited Warranty which includes coverage for defects in materials or workmanship to the first retail purchaser and each subsequent purchaser for 4 years or 50,000 miles, whichever occurs first. Under warranties provided to members of the Classes, Defendants promised to repair or replace covered, defective parts arising out of defects in materials

and/or workmanship, including the Defective Sunroofs, at no cost to owners and lessees of the Class Vehicles. However, on information and belief, Defendants have concealed the defect in the Defective Sunroofs by, *inter alia*, blaming the damage on rocks or other foreign matter, and refusing to provide warranty coverage within or outside of the applicable warranty periods.

107. Plaintiffs and members of the Classes experienced the defect in the Defective Sunroofs within the warranty periods but Defendants failed to inform Plaintiffs and members of the Classes of the existence of the Defective Sunroofs and associated safety risk, and failed to provide a suitable repair or replacement of the Defective Sunroofs free of charge within a reasonable time.

108. Any attempt by Defendants to disclaim or limit their express or implied warranties is unconscionable and unenforceable here. Specifically, Defendants' warranty limitations are unenforceable because they knowingly sold or leased a defective product without informing consumers about the defect. The time limits contained in Defendants' warranty periods were also unconscionable and inadequate to protect Plaintiffs and members of the Classes. Among other things, Plaintiffs and members of the Classes did not determine these time limitations, the terms of which unreasonably favored Defendants. A gross disparity in bargaining power existed between Defendants and members of the Classes, and Defendants knew or should have known that the Class Vehicles were defective at the time of sale or lease.

109. The Class Vehicles' implied warranties are covered under 15 U.S.C. § 2301(7).

110. Defendants breached these warranties by misrepresenting the standard, quality or grade of the Class Vehicles and failing to disclose and fraudulently concealing the existence of the defect in the Defective Sunroofs. Without limitation, the Class Vehicles share a common defect in

design, material, manufacturing and/or workmanship that is prone to exploding or shattering and fails to operate as represented by Defendants.

111. Affording Defendants a reasonable opportunity to cure their breach of warranties would be unnecessary and futile. At the time of sale or lease of each Class Vehicle and all relevant times thereafter, Defendants knew of the material misrepresentations and omissions concerning the standard, quality or grade of the Class Vehicles and the existence of the defect in the Defective Sunroofs, but failed to repair or replace the Defective Sunroofs and/or disclose the defect in the Defective Sunroofs. Under the circumstances, the remedies available under any informal settlement procedure would be inadequate and any requirement that Plaintiffs resort to an informal dispute resolution procedure and/or afford Defendants a reasonable opportunity to cure their breach of warranties is excused and thereby deemed satisfied.

112. Plaintiffs and members of the Classes would suffer economic hardship if they returned their Class Vehicles, but did not receive the return of all payments made by them to Defendants. Thus, Plaintiffs and members of the Classes have not re-accepted their Class Vehicles by retaining them.

113. The amount in controversy of Plaintiffs' individual claims meets or exceeds the sum of \$25. The amount in controversy of this action exceeds the sum of \$50,000, exclusive of interest and costs, computed on the basis of all claims to be determined in this lawsuit.

114. Plaintiffs, individually and on behalf of the Classes, seek all damages permitted by law, including diminution in the value of the Class Vehicles, in an amount to be proven at trial.

B. Claims Brought on Behalf of the Illinois Sub-Class

ILLINOIS COUNT II

FRAUD

115. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

116. Plaintiff Loughrey brings this count on behalf of herself and the members of the Illinois Sub-Class.

117. Defendants intentionally and knowingly falsely misrepresented, concealed, suppressed and/or omitted material facts including the standard, quality or grade of the Class Vehicles and the fact that the Defective Sunroofs installed in Class Vehicles are defective and prone to exploding or shattering, exposing drivers, occupants and members of the public to a safety risk. Defendants intended that Plaintiffs and members of the Classes rely on Defendants' misrepresentations and omissions. As a direct result of Defendants' fraudulent conduct, members of the Illinois Sub-Class have suffered actual damages.

118. As set forth above, BMW concealed and/or suppressed material facts concerning the safety, quality, functionality and reliability of the Class Vehicles by concealing that the Defective Sunroofs are defective and expose drivers and their passengers to the safety risk associated with a sudden explosion and/or shattering sunroofs.

119. BMW was aware of the Defective Sunroofs and that they exposed drivers and their passengers to the safety risk associated with a sudden explosion and/or shattering sunroof.

120. BMW made representations to the public about safety, quality, functionality, and reliability of Class Vehicles.

121. BMW had a duty to disclose any information relating to the safety, quality, functionality and reliability of Class Vehicles because they consistently marketed the Class Vehicles as safe. Once BMW made representations to the public about safety, quality, functionality, and reliability, BMW was under a duty to disclose these omitted facts, because where

one does speak one must speak the whole truth and not conceal any facts which materially qualify those facts stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud.

122. BMW failed to disclose the material fact that Class Vehicles incorporate Defective Sunroofs that are defective and expose drivers and their passengers to the safety risk of sudden explosion and/or shattering of the Defective Sunroofs, including the risk of unexpected explosion of the sunroof, falling glass, cuts and contusions related to the sudden failure of a Defective Sunroof and the risk of accident and additional injury when the sunroofs exploded while operating a Class Vehicle.

123. BMW had a duty to disclose these omitted facts because BMW was aware of the Defective Sunroofs, and had exclusive and/or superior knowledge of material facts that were only accessible to BMW. BMW knew these omitted facts were not known to or reasonably discoverable by Plaintiff Loughrey or members of the Illinois Sub-Class. These omitted facts were material because they directly impact the safety, quality, functionality and reliability of Class Vehicles.

124. Whether the Class Vehicles' Defective Sunroofs function properly; whether the Defective Sunroofs would remain intact; whether the Defective Sunroofs could explode or shatter while the Class Vehicles were being driven; whether Class Vehicles could have been equipped with sunroofs that did not explode or shatter are material concerns.

125. BMW has exclusive knowledge of the defects that render Class Vehicles more dangerous and unreliable than similar vehicles. BMW actively concealed and/or suppressed these material facts, in whole or in part, with the intent to induce Plaintiff Loughrey and members of the Illinois Sub-Class to purchase or lease Class Vehicles at a higher price for the Class Vehicles, which did not match the Class Vehicles' true value.

126. Plaintiff Loughrey and members of the Illinois Sub-Class were unaware of these omitted material facts and justifiably relied on BMW's representations to the public about safety, quality, functionality, and reliability

127. BMW has not taken any action to inform Plaintiff Loughrey and members of the Illinois Sub-Class about the Defective Sunroofs and the resulting safety risks.

128. BMW still has not made full and adequate disclosure and continues to defraud Plaintiff Loughrey and members of the Illinois Sub-Class.

129. BMW was in exclusive control of the material facts and such facts were not known to the public, Plaintiff Loughrey and members of the Illinois Sub-Class.

130. As a result of Defendants' failure to disclose to members of the Classes the material fact that the Defective Sunroofs installed in Class Vehicles are defective and prone to exploding or shattering, owners and lessees of Class Vehicles are required to spend hundreds or thousands of dollars to repair or replace the Defective Sunroofs and/or other vehicle parts damaged during the exploding or shattering of the Defective Sunroofs, or sell their vehicles at a substantial loss. The fact that the Defective Sunroofs installed in the Class Vehicles are defective and prone to exploding or shattering is material because no reasonable consumer expects that he or she will have to spend hundreds or thousands of dollars for diagnosis, repair or replacement the Defective Sunroofs and because Plaintiffs and members of the Classes had a reasonable expectation that the Class Vehicles would not suffer from exploding or shattering Defective Sunroofs that would present a safety risk.

131. The fact that the Defective Sunroofs installed in the Class Vehicles are defective and prone to exploding or shattering is also material because the sunroofs present a safety risk and place drivers and occupants at risk of serious injury or death. When the Defective Sunroofs explode

or shatter, drivers and occupants may be sprayed with glass and injured. Drivers and occupants of the Class Vehicles are also at risk for collisions caused by driver distraction as a result of an exploding or shattering Defective Sunroof, and the general public is also at risk for being involved in an accident with a Class Vehicle.

132. Plaintiff Loughrey and members of the Illinois Sub-Class would not have purchased the Class Vehicles but for Defendants' omissions and concealment of material facts regarding the nature and quality of the Class Vehicles and existence of the defect in the Defective Sunroofs, would have paid less for the Class Vehicles, or would have had the Defective Sunroofs replaced during the applicable warranty periods.

133. BMW's acts were done maliciously, oppressively, deliberately, and with intent to defraud in order to enrich BMW, and in reckless disregard of Plaintiff Loughrey and members of the Illinois Sub-Class's rights and well-being. BMW's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

134. Plaintiffs and members of the Classes reasonably relied upon Defendants' knowing, affirmative and active false representations, concealment and omissions. As a direct and proximate result of Defendants' false representations, omissions and active concealment of material facts regarding the defect in the Defective Sunroofs, Plaintiffs and members of the Classes have suffered actual damages in an amount to be determined at trial.

ILLINOIS COUNT III

BREACH OF EXPRESS WARRANTY (810 ILL. COMP. STAT. §§ 5/2-313 AND 5/2A-210)

135. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

136. Plaintiff Loughrey brings this count on behalf of herself and the members of the Illinois Sub-Class.

137. Defendants are and were at all relevant times “merchants” with respect to the Class Vehicles under 810 ILL. COMP. STAT. §§ 5/2-104(1) and 5/2A(103(3), and “sellers” of the Class Vehicles under § 5/2-103(1)(d).

138. With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under 810 ILL. COMP. STAT. § 5/2A-103(1)(p).

139. The Class Vehicles are and were at all relevant times “goods” within the meaning of 810 ILL. COMP. STAT. §§ 5/2-105(1) and 5/2A-103(1)(h).

140. In connection with the purchase of all Class Vehicles, Defendants provided Plaintiff Loughrey and the Illinois Sub-Class with a written warranty covering defects in materials and workmanship of the Class Vehicles for four years or 50,000 miles, as detailed above. In addition, Defendants’ various oral and written representations regarding the Class Vehicles’ durability, reliability, safety, and performance constituted express warranties to Plaintiff Loughrey and the Illinois Sub-Class.

141. Defendants’ warranties formed a basis of the bargain that was reached when Plaintiff Loughrey and the Illinois Sub-Class members purchased or leased their Class Vehicles.

142. The defect in the Defective Sunroofs existed in the Class Vehicles at the time of sale or lease and within the warranty periods but Plaintiff Loughrey and Illinois Sub-Class members had no knowledge of the existence of the defect, which was known and concealed by Defendants. Despite the applicable warranties, Defendants failed to inform Plaintiff Loughrey and members of the Illinois Sub-Class that the Class Vehicles contained the defect in the Defective Sunroofs during the warranty periods in order to wrongfully transfer the costs of repair or

replacement of the Defective Sunroofs to Plaintiff Loughrey and members of the Illinois Sub-Class.

143. Because of the defect in the Defective Sunroofs, Class Vehicles are not safe and reliable and owners and lessees of these vehicles have lost confidence in the ability of Class Vehicles to perform the function of safe reliable transportation.

144. Plaintiff Loughrey and members of the Illinois Sub-Class could not have reasonably discovered the defect in the Defective Sunroofs prior to the Defective Sunroofs exploding or shattering.

145. Defendants breached the express warranty promising to repair and correct a manufacturing defect or defects in materials or workmanship of any parts they supplied.

146. Defendants further breached their express warranties by selling Class Vehicles that were defective with respect to materials, workmanship, and manufacture when Defendants knew the Defective Sunroofs were defective and had an associated safety risk. Class Vehicles were not of merchantable quality and were unfit for the ordinary purposes for which passenger vehicles are used because of materials, workmanship, and manufacture defects which cause exploding or shattering Defective Sunroofs which do not perform as warranted.

147. Specifically, on information and belief, Defendants breached their express warranties (including the implied covenant of good faith and fair dealing) by: (1) knowingly providing Plaintiff Loughrey and the Illinois Sub-Class with Class Vehicles containing defects in material that were never disclosed to Plaintiff and the Illinois Sub-Class, (2) failing to repair or replace the defective Class Vehicles at no cost within the four-year warranty period, (3) ignoring, delaying responses to, and denying warranty claims in bad faith, and (4) supplying products and materials that failed to conform to the representations made by Defendants.

148. Plaintiff Loughrey and the Illinois Sub-Class have given Defendants a reasonable opportunity to cure its breaches of express warranty or, alternatively, were not required to do so because such an opportunity would be unnecessary and futile given that the repairs or replacements offered by Defendants can neither cure the defect in the Class Vehicles nor resolve the incidental and consequential damages flowing therefrom.

149. Thus, Defendants' written warranty fails of its essential purpose and the recovery of the Illinois Sub-Class is not limited to its remedies.

150. Defendants were provided notice of the defect in the Defective Sunroofs by numerous consumer complaints made to their authorized dealers nationwide, complaints to NHTSA, and through their own testing. Affording Defendants a reasonable opportunity to cure their breach of written warranties would be unnecessary and futile here because Defendants have known of and concealed the Defective Sunroofs and, on information and belief, have refused to repair or replace the Defective Sunroofs for Class members free of charge within or outside of the warranty periods despite the defect's existence at the time of sale or lease of the Class Vehicles, and within the applicable warranty periods.

151. Any attempt by Defendants to disclaim or limit recovery to the terms of the express warranties is unconscionable and unenforceable here. Specifically, Defendants' warranty limitation is unenforceable because they knowingly sold or leased a defective product without informing consumers about the defect. The time limits contained in Defendants' warranty periods were also unconscionable and inadequate to protect Plaintiff Loughrey and members of the Illinois Sub-Class. Among other things, Plaintiff Loughrey and members of the Illinois Sub-Class did not determine these time limitations, the terms of which unreasonably favored Defendants. A gross disparity in bargaining power existed between Defendants and members of the Illinois Sub-Class,

and Defendants knew or should have known that the Class Vehicles were defective at the time of sale or lease and that the Defective Sunroofs are prone to exploding or shattering.

152. Further, the limited warranty promising to repair and/or correct a manufacturing defect fails in its essential purpose because the contractual remedy is insufficient to make Plaintiff Loughrey and the other members of the Illinois Sub-Class whole because, on information and belief, Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

153. Defendants knew that the Class Vehicles were inherently defective and did not conform to their warranties and Plaintiff Loughrey and members of the Illinois Sub-Class were induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

154. Plaintiff Loughrey and members of the Illinois Sub-Class have been excused from performance of any warranty obligations as a result of Defendants' conduct described herein.

155. As a direct and proximate result of Defendants' breach of express warranties, Plaintiff Loughrey and members of the Illinois Sub-Class have been damaged in an amount to be determined at trial.

156. Finally, because of Defendants' breach of express warranty as set forth herein Plaintiff Loughrey and members of the Illinois Sub-Class assert, as additional and/or alternative remedies, the revocation of acceptance of the goods and the return to Plaintiff Loughrey and members of the Illinois Sub-Class of the purchase or lease price of all Class Vehicles currently owned or leased, and for such other incidental and consequential damages as allowed.

157. On May 1, 2018, counsel for Plaintiff Loughrey sent a letter complying with 810 ILL. COMP. STAT. § 5/2-607(3). Because Defendants failed to remedy its unlawful conduct within

the requisite time period, Plaintiff Loughrey seeks all damages and relief to which Plaintiff Loughrey and the Illinois Sub-Class are entitled.

ILLINOIS COUNT IV

BREACH OF IMPLIED WARRANTIES (810 ILL. COMP. STAT. §§ 5/2-314, 5/2-315, AND 5/2A-212)

158. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

159. Plaintiff Loughrey brings this count on behalf of herself and the members of the Illinois Sub-Class.

160. Defendants are and were at all relevant times “merchants” with respect to the Class Vehicles under 810 ILL. COMP. STAT. §§ 5/2-104(1) and 5/2A-103(3), and “sellers” of the Class Vehicles under § 5/2-103(1)(d).

161. With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under 810 ILL. COMP. STAT. § 5/2A-103(1)(p).

162. The Class Vehicles are and were at all relevant times “goods” within the meaning of 810 ILL. COMP. STAT. § 5/2-105(1) and 5/2A-103(1)(h).

163. A warranty that the Class Vehicles were in merchantable condition and fit for their ordinary purpose is implied by law pursuant to 810 ILL. COMP. STAT. § 5/2-314 and 5/2A-212.

164. In addition, a warranty that the Class Vehicles were fit for their particular purpose is implied by law pursuant to 810 ILL. COMP. STAT. § 5/2-315. Defendants knew at the time of sale of the Class Vehicles that Plaintiff Loughrey and the Illinois Sub-Class intended to use the vehicles in a manner requiring a particular standard of performance and durability, and that Plaintiff Loughrey and the Illinois Sub-Class were relying on Defendants’ skill and judgment to furnish suitable products for this particular purpose.

165. The Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose of providing safe and reliable transportation. The Class Vehicles contain an inherent defect in the Defective Sunroofs (at the time of sale or lease and thereafter) and present an undisclosed safety risk to drivers and occupants. Thus, Defendants breached their implied warranty of merchantability.

166. Defendants were provided notice of the issues raised in this count and this Complaint as detailed above.

167. Defendants cannot disclaim their implied warranties as they knowingly sold or leased a defective product.

168. Defendants were provided notice of the defect in the Defective Sunroofs by numerous consumer complaints made to their authorized dealers nationwide, complaints to NHTSA, and through their own testing. Affording Defendants a reasonable opportunity to cure their breach of implied warranties would be unnecessary and futile here because Defendants have known of and concealed the defect in the Defective Sunroofs and, on information and belief, have refused to repair or replace the Defective Sunroofs free of charge within or outside of the warranty periods despite the defect's existence at the time of sale or lease of the Class Vehicles.

169. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiff Loughrey and members of the Illinois Sub-Class have been damaged in an amount to be proven at trial.

170. Any attempt by Defendants to disclaim or limit the implied warranty of merchantability vis-à-vis consumers is unconscionable and unenforceable here. Specifically, Defendants' warranty limitation is unenforceable because they knowingly sold or leased a defective product without informing consumers about the defect. The time limits contained in

Defendants' warranty periods were also unconscionable and inadequate to protect Plaintiff Loughrey and members of the Illinois Sub-Class. Among other things, Plaintiff Loughrey and members of the Illinois Sub-Class did not determine these time limitations, the terms of which unreasonably favored Defendants. A gross disparity in bargaining power existed between Defendants and members of the Illinois Sub-Class, and Defendants knew or should have known that the Class Vehicles were defective at the time of sale or lease and that the Defective Sunroofs were defective and posed a safety risk during the applicable warranty periods.

171. Further, as manufacturers of consumer goods, Defendants are precluded from excluding or modifying an implied warranty of merchantability or limiting consumer remedies for breach of this warranty.

172. Plaintiff Loughrey and members of the Illinois Sub-Class have complied with all obligations under the warranty, or otherwise have been excused from performance of said obligations as a result of Defendants' conduct described herein.

173. The Class Vehicles are not safe and reliable and owners and lessees of these vehicles have lost confidence in the ability of Class Vehicles to perform the function of safe reliable transportation without the likelihood of unanticipated sudden exploding or shattering of the Defective Sunroofs. Defendants are estopped by their conduct, as alleged herein, from disclaiming any and all implied warranties with respect to the Defective Sunroofs in Class Vehicles.

174. The applicable statute of limitations for the implied warranty claim has been tolled by the discovery rule, fraudulent concealment and the terms of the express warranty.

175. On May 1, 2018, counsel for Plaintiff Loughrey sent a letter complying with 810 ILL. COMP. STAT. § 5/2-607(3). Because Defendants failed to remedy its unlawful conduct within

the requisite time period, Plaintiff Loughrey seeks all damages and relief to which Plaintiff Loughrey and the Illinois Sub-Class are entitled.

ILLINOIS COUNT V

**VIOLATIONS OF ILLINOIS CONSUMER FRAUD AND
DECEPTIVE BUSINESS PRACTICES ACT
(815 ILL. COMP. STAT. § 505/1, *ET SEQ.*)**

176. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

177. Plaintiff Loughrey brings this count on behalf of herself and the members of the Illinois Sub-Class.

178. Defendants are “persons” within the context of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILL. COMP. STAT. § 505/1, *et seq.* (hereinafter “Illinois CFA”), specifically 815 ILL. COMP. STAT. § 505/1(c).

179. Plaintiff Loughrey and members of the Illinois Sub-Class are “consumers” within the meaning of 815 ILL. COMP. STAT. § 505/1(e).

180. The Illinois CFA prohibits “unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact . . . in the conduct of trade or commerce . . . whether any person has in fact been misled, deceived or damaged thereby.” 815 ILL. COMP. STAT. § 505/2.

181. In violation of the Illinois CFA, Defendants engaged in misleading, false, or deceptive practices by misrepresenting the standard, quality or grade of the Class Vehicles which

were sold or leased with the latent defect and failed to disclose the defect in the Defective Sunroofs and corresponding safety risk.

182. Defendants engaged in deceptive business practices prohibited by the Illinois CFA by willfully failing to disclose and actively concealing the defectively designed Defective Sunroof discussed herein and otherwise engaging in activities with a tendency or capacity to deceive. Defendants also engaged in unlawful trade practices by employing deception, deceptive acts or practices, fraud, misrepresentations, or concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression, or omission, in connection with the sale of the Class Vehicles.

183. At the time Plaintiff Loughrey purchased her Class Vehicles, Defendants knew, or should have known, that the Defective Sunroofs in the Class Vehicles could explode or shatter showering glass on the driver and occupants. Further, Defendants knew, or should have known, that such explosion could distract the driver and cause the Class Vehicles to become involved in accidents, putting vehicle operators, passengers, and other motorists at risk for injury.

184. Defendants knowingly concealed, suppressed and/or omitted the existence of the defect in the Defective Sunroofs and safety risk in the Class Vehicles at the time of sale or lease and at all relevant times thereafter. Defendants failed to inform Plaintiff Loughrey of the Defective Sunroof in her Class Vehicles at the time of purchase or thereafter and Plaintiff Loughrey had no independent knowledge that the Class Vehicles incorporate Defective Sunroofs.

185. Defendants intended that Plaintiff Loughrey and members of the Illinois Sub-Class would, in the course of their decision to expend monies in purchasing, leasing and/or repairing Class Vehicles, reasonably rely upon misrepresentations, misleading characterizations and

material omissions concerning the quality of Class Vehicles with respect to materials, workmanship, design, and/or manufacture.

186. Defendants' misrepresentations and fraudulent omissions were material to Plaintiff Loughrey and members of the Illinois Sub-Class. When Plaintiff Loughrey and members of the Illinois Sub-Class purchased or leased their Class Vehicles or within the applicable warranty periods, they reasonably relied on the reasonable expectation that the Class Vehicles' Defective Sunroofs would not explode or shatter unexpectedly, would not require repair or replacement, and/or would not pose an unavoidable safety risk.

187. Had Defendants disclosed that the Defective Sunroofs were prone to exploding or shattering and/or an unavoidable safety risk, Plaintiff Loughrey and members of the Illinois Sub-Class would not have purchased or leased the Class Vehicles, would have paid less for their vehicles, or would have had the Defective Sunroofs replaced free of charge within the applicable warranty periods. Further, had Defendants disclosed that the Defective Sunroofs in the Class Vehicles would not last beyond the warranty periods without need for repair or replacement, Plaintiff Loughrey and members of the Illinois Sub-Class would have demanded repair or replacement during the warranty periods at no cost to Plaintiff Loughrey members of the Illinois Sub-Class—as provided for in Defendants' warranties.

188. Defendants fraudulently concealed the existence of the defect in the Defective Sunroofs and safety risk in the Class Vehicles within the express warranty period.

189. Defendants violated the Illinois CFA by failing to inform Class Vehicle owners and lessees prior to purchase or lease and/or during the warranty period that the Defective Sunroofs were defectively designed and/or manufactured.

190. Defendants violated the Illinois CFA by failing to inform Class Vehicle owners and lessees prior to purchase or lease and/or during the warranty period that Class Vehicles contained the Defective Sunroofs.

191. Defendants committed unfair and deceptive trade practices as described in this complaint. Defendants repeatedly violated the Illinois CFA through a continuous course of conduct, which included deceptive acts, omissions of material fact and misrepresentations concerning inter alia, the safety risk posed by the defect and the monetary cost of repair due to the Defective Sunroofs in Class Vehicles owned by Plaintiff Loughrey and members of the Illinois Sub-Class.

192. As a proximate and direct result of Defendants' unfair and deceptive trade practices in violation of the Illinois CFA, Plaintiff Loughrey and members of the Illinois Sub-Class have suffered and continue to suffer harm by the threat of sudden and unexpected exploding or shattering of the Defective Sunroofs and/or actual damages in the amount of the cost to replace the Defective Sunroofs and other vehicle parts damaged by the explosion, damages for time lost associated with repair or replacement of the Defective Sunroofs, expenses incurred to obtain alternative transportation during the repair or replacement of the Defective Sunroofs, future cost of repair or replacement of the Defective Sunroofs, and damages to be determined at trial. Plaintiff Loughrey and members of the Illinois Sub-Class have also suffered the ascertainable loss of the diminished value of their vehicles.

193. The conduct of Defendants offends public policy as established by statutes and common law; is immoral, unethical, oppressive and/or unscrupulous and caused unavoidable and substantial injury to Class Vehicle owners and lessees (who were unable to have reasonably avoided the injury due to no fault of their own) without any countervailing benefits to consumers.

194. As a direct and proximate result of Defendants' violations of the Illinois CFA, Plaintiff Loughrey and the Illinois Sub-Class have suffered injury-in-fact and/or actual damages by the threat of sudden and unexpected exploding or shattering of the Defective Sunroofs and/or actual damages in the amount of the cost to replace the Defective Sunroofs and other vehicle parts damaged by the explosion, damages for time lost associated with repair or replacement of the Defective Sunroofs, expenses associated with obtaining alternative transportation during the repair or replacement of the Defective Sunroofs, and damages to be determined at trial. Plaintiff Loughrey and members of the Illinois Sub-Class have also suffered the ascertainable loss of the diminished value of their vehicles.

195. Pursuant to 815 ILL. COMP. STAT. § 505/10a(a), Plaintiff Loughrey and the Illinois Sub-Class seek monetary relief against Defendants in the amount of actual damages, as well as punitive damages because Defendants acted with fraud and/or malice and/or was grossly negligent.

196. Plaintiff Loughrey and the Illinois Sub-Class also seek an order enjoining Defendants' unfair and/or deceptive acts or practices, punitive damages, and attorneys' fees, and any other just and proper relief available under 815 ILL. COMP. STAT. § 505/1 *et seq.*

C. Claims Brought on Behalf of the Louisiana Sub-Class

LOUISIANA COUNT VI

**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY/
WARRANTY AGAINST REDHIBITORY DEFECTS
(LA. CIV. CODE ANN. ART. 2520, 2524)**

197. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

198. Plaintiff Trosclair brings this count on behalf of himself and the members of the Louisiana Sub-Class.

199. Defendants are and were at all relevant times a “seller” with respect to motor vehicle sales under LA. CIV. CODE ANN. art. 2520, 2524.

200. A warranty that the Class Vehicles were in merchantable condition and fit for the ordinary purpose for which vehicles are used is implied by law pursuant to LA. CIV. CODE ANN. art. 2520, 2524.

201. The Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose of providing safe and reliable transportation. The Class Vehicles contain an inherent defect in the Defective Sunroofs (at the time of sale or lease and thereafter) and present an undisclosed safety risk to drivers and occupants. Thus, Defendants breached their implied warranty of merchantability.

202. Defendants were provided notice of the issues raised in this count and this Complaint as detailed above.

203. Defendants cannot disclaim their implied warranties as they knowingly sold or leased a defective product.

204. Defendants were provided notice of the defect in the Defective Sunroofs by numerous consumer complaints made to their authorized dealers nationwide, complaints to NHTSA, and through their own testing. Affording Defendants a reasonable opportunity to cure their breach of implied warranties would be unnecessary and futile here because Defendants have known of and concealed the defect in the Defective Sunroofs and, on information and belief, have refused to repair or replace the Defective Sunroofs free of charge within or outside of the warranty periods despite the defect’s existence at the time of sale or lease of the Class Vehicles.

205. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiff Trosclair and members of the Louisiana Sub-Class have been damaged in an amount to be proven at trial.

206. Any attempt by Defendants to disclaim or limit the implied warranty of merchantability vis-à-vis consumers is unconscionable and unenforceable here. Specifically, Defendants' warranty limitation is unenforceable because they knowingly sold or leased a defective product without informing consumers about the defect. The time limits contained in Defendants' warranty periods were also unconscionable and inadequate to protect Plaintiff Trosclair and members of the Louisiana Sub-Class. Among other things, Plaintiff Trosclair and members of the Louisiana Sub-Class did not determine these time limitations, the terms of which unreasonably favored Defendants. A gross disparity in bargaining power existed between Defendants and members of the Louisiana Sub-Class, and Defendants knew or should have known that the Class Vehicles were defective at the time of sale or lease and that the Defective Sunroofs were defective and posed a safety risk during the applicable warranty periods.

207. Further, as manufacturers of consumer goods, Defendants are precluded from excluding or modifying an implied warranty of merchantability or limiting consumer remedies for breach of this warranty.

208. Plaintiff Trosclair and members of the Louisiana Sub-Class have complied with all obligations under the warranty, or otherwise have been excused from performance of said obligations as a result of Defendants' conduct described herein.

209. The Class Vehicles are not safe and reliable and owners and lessees of these vehicles have lost confidence in the ability of Class Vehicles to perform the function of safe reliable transportation without the likelihood of unanticipated sudden exploding or shattering of

the Defective Sunroofs. Defendants are estopped by their conduct, as alleged herein, from disclaiming any and all implied warranties with respect to the Defective Sunroofs in Class Vehicles.

210. The applicable period of prescription for the implied warranty claim has been tolled by the discovery rule, fraudulent concealment and the terms of the express warranty.

211. Pursuant to LA. CIV. CODE ANN. arts. 2531 and 2545, Plaintiff Trosclair and the Louisiana Sub-Class seek to recover the purchase price with interest from the time it was paid; reasonable expenses occasioned by the sales; reasonable attorneys' fees; and any other just and proper relief available.

LOUISIANA COUNT VII

VIOLATION OF THE LOUISIANA PRODUCT LIABILITY ACT (LA. R.S. 9:2800.51, *ET SEQ.*)

212. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

213. Plaintiff Trosclair brings this count on behalf of himself and the members of the Louisiana Sub-Class.

214. Defendants are "manufacturers" within the meaning of LA. R.S. 9:2800.53(1).

215. Plaintiff Trosclair and the Louisiana Sub-Class are "claimants" within the meaning of LA. R.S. 9:2800.53(4).

216. Defendants placed the Class Vehicles into trade or commerce, which are "products" within the meaning of LA. R.S. 9:2800.53(3).

217. The LPLA makes manufacturers liable for the damages caused by their products which are "unreasonably dangerous" in one of four ways: 1) in construction or composition; 2)

design; 3) inadequate warning; and 4) nonconformity to express warranty. LA. R.S. 9:2800.55-58.

218. Defendants manufactured, sold and distributed the Class Vehicles including the Defective Sunroofs, which are unreasonably dangerous because the Defective Sunroofs in the Class Vehicles could explode or shatter showering glass on the driver and occupants. Such explosions could distract the driver and cause the Class Vehicles to become involved in accidents, putting vehicle operators, passengers, and other motorists at risk for injury. Plaintiff Trosclair and the Louisiana Sub-Class used the Class Vehicles in a reasonably foreseeable manner, by using the vehicles to transport themselves.

219. The Defective Sunroofs are unreasonably dangerous in construction or composition because the spontaneous shattering does not meet performance standards for sunroofs in any vehicle and deviates in a material way from the manufacturer's specifications. The Defective Sunroofs explode or shatter showering glass on the driver and occupants. Such explosions distract the driver and can cause the Class Vehicles to become involved in accidents, putting vehicle operators, passengers, and other motorists at risk for injury. The performance standards for sunroofs do not include the risk that they will spontaneously shatter and Defendants' specifications for the Class Vehicles do not include such a risk.

220. The Defective Sunroofs are unreasonably dangerous in design because they fail to perform their function safely when used as intended by ordinary customers in a reasonably foreseeable manner. When driving the Class Vehicles or when the vehicles are parked, Plaintiff Trosclair and members of the Louisiana Sub-Class are exposed to spontaneously shattering glass which showers them with dangerous glass shards and distracts them from operating the vehicles safely. The risk of serious injury from the Defective Sunroofs greatly exceeds any benefit from

having a sunroof in the vehicles and there exist safer alternative methods and designs for the sunroofs in Class Vehicles.

221. The Defective Sunroofs are unreasonably dangerous due to Defendants' failure to give adequate warnings to Plaintiff Trosclair and the Louisiana Sub-Class about the defect. At the time Plaintiff Trosclair and the Louisiana Sub-Class purchased their Class Vehicles, Defendants knew, or should have known, that the Defective Sunroofs in the Class Vehicles could explode or shatter showering glass on the driver and occupants. Further, Defendants knew, or should have known, that such explosion could distract the driver and cause the Class Vehicles to become involved in accidents, putting vehicle operators, passengers, and other motorists at risk for injury.

222. Defendants knowingly concealed, suppressed and/or omitted the existence of the defect in the Defective Sunroofs and safety risk in the Class Vehicles at the time of sale or lease and at all relevant times thereafter. Defendants failed to inform Plaintiff Trosclair of the Defective Sunroof in his Class Vehicles at the time of purchase or thereafter and Plaintiff Trosclair had no independent knowledge that the Class Vehicles incorporate Defective Sunroofs.

223. Had Defendants disclosed that the Defective Sunroofs were prone to exploding or shattering and/or an unavoidable safety risk, Plaintiff Trosclair and members of the Louisiana Sub-Class would not have purchased or leased the Class Vehicles, would have paid less for their vehicles, or would have had the Defective Sunroofs replaced free of charge within the applicable warranty periods.

224. The Defective Sunroofs are also unreasonably dangerous because they do not conform to Defendants' express warranties that their product is safe and that they will stand behind their engineering, covering any defects with their New Vehicle Limited Warranty. These express warranties induced Plaintiff Trosclair and members of the Louisiana Sub-Class to purchase their

Class Vehicles, exposing them to the Defective Sunroofs. These express warranties were false, because the Class Vehicles have Defective Sunroofs which exposed Plaintiff Trosclair and members of the Louisiana Sub-Class to spontaneously shattering glass which showers them with dangerous glass shards and distracts them from operating the vehicles safely.

225. As a proximate and direct result of Defendants' conduct by placing the Defective Sunroofs in the Class Vehicles, Plaintiff Trosclair and members of the Louisiana Sub-Class have suffered and continue to suffer harm by the threat of sudden and unexpected exploding or shattering of the Defective Sunroofs and/or actual damages in the amount of the cost to replace the Defective Sunroofs and other vehicle parts damaged by the explosion, damages for time lost associated with repair or replacement of the Defective Sunroofs, expenses incurred to obtain alternative transportation during the repair or replacement of the Defective Sunroofs, future cost of repair or replacement of the Defective Sunroofs, and damages to be determined at trial. Plaintiff Trosclair and members of the Louisiana Sub-Class have also suffered the ascertainable loss of the diminished value of their vehicles.

226. The conduct of Defendants caused unavoidable and substantial injury to Class Vehicle owners and lessees (who were unable to have reasonably avoided the injury due to no fault of their own) without any countervailing benefits to consumers.

227. The applicable period of prescription for the Louisiana LPA has been tolled by the discovery rule, fraudulent concealment, and the terms of the express warranty.

228. Pursuant to LA. CIV. CODE ANN. art. 2315, Plaintiff Trosclair and the Louisiana Sub-Class seek to recover compensatory damages for past and future harms in an amount to be determined at trial; and any other just and proper relief available.

D. Claims Brought on Behalf of the Pennsylvania Sub-Class

PENNSYLVANIA COUNT VIII

FRAUD

229. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

230. Plaintiff Rothrock brings this count on behalf of himself and the members of the Pennsylvania Sub-Class.

231. Defendants intentionally and knowingly falsely misrepresented, concealed, suppressed and/or omitted material facts including the standard, quality or grade of the Class Vehicles and the fact that the Defective Sunroofs installed in Class Vehicles are defective and prone to exploding or shattering, exposing drivers, occupants and members of the public to a safety risk. Defendants intended that Plaintiffs and members of the Classes rely on Defendants' misrepresentations and omissions. As a direct result of Defendants' fraudulent conduct, members of the Pennsylvania Sub-Class have suffered actual damages.

232. As set forth above, BMW concealed and/or suppressed material facts concerning the safety, quality, functionality and reliability of the Class Vehicles by concealing that the Defective Sunroofs are defective and expose drivers and their passengers to the safety risk associated with a sudden explosion and/or shattering sunroofs.

233. BMW was aware of the Defective Sunroofs and that they exposed drivers and their passengers to the safety risk associated with a sudden explosion and/or shattering sunroof.

234. BMW made representations to the public about safety, quality, functionality, and reliability of Class Vehicles.

235. BMW owed Plaintiff Rothrock and members of the Pennsylvania Sub-Class a duty of care not to make false statements regarding the safety, quality, functionality and reliability of Class Vehicles.

236. BMW had a duty to disclose any information relating to the safety, quality, functionality and reliability of Class Vehicles because they consistently marketed the Class Vehicles as safe. Once BMW made representations to the public about safety, quality, functionality, and reliability, BMW was under a duty to disclose these omitted facts, because where one does speak one must speak the whole truth and not conceal any facts which materially qualify those facts stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud.

237. BMW failed to disclose the material fact that Class Vehicles incorporate Defective Sunroofs that are defective and expose drivers and their passengers to the safety risk of sudden explosion and/or shattering of the Defective Sunroofs, including the risk of unexpected explosion of the Defective Sunroof, falling glass, cuts and contusions related to the sudden failure of a Defective Sunroof and the risk of accident and additional injury when the sunroofs exploded while operating a Class Vehicle.

238. BMW had a duty to disclose these omitted facts because BMW was aware of the Defective Sunroofs, and had exclusive and/or superior knowledge of material facts that were only accessible to BMW. BMW knew these omitted facts were not known to or reasonably discoverable by Plaintiff Rothrock and members of the Pennsylvania Sub-Class. These omitted facts were material because they directly impact the safety, quality, functionality and reliability of Class Vehicles.

239. Whether the Class Vehicles' Defective Sunroofs function properly; whether the Defective Sunroofs would remain intact; whether the Defective Sunroofs could explode or shatter while the Class Vehicles were being driven; whether Class Vehicles could have been equipped with sunroofs that did not explode or shatter are material concerns.

240. BMW has exclusive knowledge of the defects that render Class Vehicles more dangerous and unreliable than similar vehicles. BMW actively concealed and/or suppressed these material facts, in whole or in part, with the intent to induce Plaintiff Rothrock and members of the Pennsylvania Sub-Class to purchase or lease Class Vehicles at a higher price for the Class Vehicles, which did not match the Class Vehicles' true value.

241. BMW still has not made full and adequate disclosure and continues to defraud Plaintiff Rothrock and members of the Pennsylvania Sub-Class.

242. Plaintiff Rothrock and members of the Pennsylvania Sub-Class were unaware of these omitted material facts and justifiably relied on BMW's representations to the public about safety, quality, functionality, and reliability and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiff Rothrock and members of the Pennsylvania Sub-Class's actions were justified.

243. BMW was in exclusive control of the material facts and such facts were not known to the public, Plaintiff Rothrock and members of the Pennsylvania Sub-Class.

244. As a result of Defendants' failure to disclose to members of the Classes the material fact that the Defective Sunroofs installed in Class Vehicles are defective and prone to exploding or shattering, owners and lessees of Class Vehicles are required to spend hundreds or thousands of dollars to repair or replace the Defective Sunroofs and/or other vehicle parts damaged during the exploding or shattering of the Defective Sunroofs, or sell their vehicles at a substantial loss.

The fact that the Defective Sunroofs installed in the Class Vehicles are defective and prone to exploding or shattering is material because no reasonable consumer expects that he or she will have to spend hundreds or thousands of dollars for diagnosis, repair or replacement the Defective Sunroofs and because Plaintiffs and members of the Classes had a reasonable expectation that the Class Vehicles would not suffer from exploding or shattering Defective Sunroofs that would present a safety risk.

245. The fact that the Defective Sunroofs installed in the Class Vehicles are defective and prone to exploding or shattering is also material because the sunroofs present a safety risk and place drivers and occupants at risk of serious injury or death. When the Defective Sunroofs explode or shatter, drivers and occupants may be sprayed with glass and injured. Drivers and occupants of the Class Vehicles are also at risk for collisions caused by driver distraction as a result of an exploding or shattering Defective Sunroof, and the general public is also at risk for being involved in an accident with a Class Vehicle.

246. Plaintiff Rothrock and members of the Pennsylvania Sub-Class would not have purchased the Class Vehicles but for Defendants' omissions and concealment of material facts regarding the nature and quality of the Class Vehicles and existence of the defect in the Defective Sunroofs, would have paid less for the Class Vehicles, or would have had the Defective Sunroofs replaced during the applicable warranty periods.

247. BMW's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff Rothrock and members of the Pennsylvania Sub-Class's rights and well-being to enrich BMW. BMW's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

248. Plaintiffs and members of the Classes reasonably relied upon Defendants' knowing, affirmative and active false representations, concealment and omissions. As a direct and proximate result of Defendants' false representations, omissions and active concealment of material facts regarding the defect in the Defective Sunroofs, Plaintiffs and members of the Classes have suffered actual damages in an amount to be determined at trial.

PENNSYLVANIA COUNT IX

**BREACH OF EXPRESS WARRANTY
(13 PA. CONS. STAT. §§ 2313 AND 2A210)**

249. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

250. Plaintiff Rothrock brings this count on behalf of himself and the members of the Pennsylvania Sub-Class.

251. Defendants are and were at all relevant times "merchants" with respect to the Class Vehicles under 13 PA. CONS. STAT. §§ 2104 and 2A103(a), and "sellers" of the Class Vehicles under 13 PA. CONS. STAT. § 2103(a).

252. With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under 13 PA. CONS. STAT. § 2A103(a).

253. The Class Vehicles are and were at all relevant times "goods" within the meaning of 13 PA. CONS. STAT. §§ 2105(a) and 2A103(a).

254. In connection with the purchase of all Class Vehicles, Defendants provided Plaintiff Rothrock and the Pennsylvania Sub-Class with a written warranty covering defects in materials and workmanship of the Class Vehicles for four years or 50,000 miles, as detailed above. In addition, Defendants' various oral and written representations regarding the Class Vehicles'

durability, reliability, safety, and performance constituted express warranties to Plaintiff Rothrock and the Pennsylvania Sub-Class.

255. Defendants' warranties formed a basis of the bargain that was reached when Plaintiff Rothrock and the Pennsylvania Sub-Class members purchased or leased their Class Vehicles.

256. The defect in the Defective Sunroofs existed in the Class Vehicles at the time of sale or lease and within the warranty periods but Plaintiff Rothrock and Pennsylvania Sub-Class members had no knowledge of the existence of the defect, which was known and concealed by Defendants. Despite the applicable warranties, Defendants failed to inform Plaintiff Rothrock and members of the Pennsylvania Sub-Class that the Class Vehicles contained the defect in the Defective Sunroofs during the warranty periods in order to wrongfully transfer the costs of repair or replacement of the Defective Sunroofs to Plaintiff Rothrock and members of the Pennsylvania Sub-Class.

257. Because of the defect in the Defective Sunroofs, Class Vehicles are not safe and reliable and owners and lessees of these vehicles have lost confidence in the ability of Class Vehicles to perform the function of safe reliable transportation.

258. Plaintiff Rothrock and members of the Pennsylvania Sub-Class could not have reasonably discovered the defect in the Defective Sunroofs prior to the Defective Sunroofs exploding or shattering.

259. Defendants breached the express warranty promising to repair and correct a manufacturing defect or defects in materials or workmanship of any parts they supplied.

260. Defendants further breached their express warranties by selling Class Vehicles that were defective with respect to materials, workmanship, and manufacture when Defendants knew

the Defective Sunroofs were defective and had an associated safety risk. Class Vehicles were not of merchantable quality and were unfit for the ordinary purposes for which passenger vehicles are used because of materials, workmanship, and manufacture defects which cause exploding or shattering Defective Sunroofs which do not perform as warranted.

261. Specifically, on information and belief, Defendants breached their express warranties (including the implied covenant of good faith and fair dealing) by: (1) knowingly providing Plaintiff Rothrock and the Pennsylvania Sub-Class with Class Vehicles containing defects in material that were never disclosed to Plaintiff Rothrock and the Pennsylvania Sub-Class, (2) failing to repair or replace the defective Class Vehicles at no cost within the four-year warranty period, (3) ignoring, delaying responses to, and denying warranty claims in bad faith, and (4) supplying products and materials that failed to conform to the representations made by Defendants.

262. Plaintiff Rothrock and the Pennsylvania Sub-Class have given Defendants a reasonable opportunity to cure its breaches of express warranty or, alternatively, were not required to do so because such an opportunity would be unnecessary and futile given that the repairs or replacements offered by Defendants can neither cure the defect in the Class Vehicles nor resolve the incidental and consequential damages flowing therefrom.

263. Thus, Defendants' written warranty fails of its essential purpose and the recovery of Plaintiff Rothrock and the Pennsylvania Sub-Class is not limited to its remedies.

264. Defendants were provided notice of the defect in the Defective Sunroofs by numerous consumer complaints made to their authorized dealers nationwide, complaints to NHTSA, and through their own testing. Affording Defendants a reasonable opportunity to cure their breach of written warranties would be unnecessary and futile here because Defendants have known of and concealed the Defective Sunroofs and, on information and belief, have refused to

repair or replace the Defective Sunroofs for Class members free of charge within or outside of the warranty periods despite the defect's existence at the time of sale or lease of the Class Vehicles, and within the applicable warranty periods.

265. Any attempt by Defendants to disclaim or limit recovery to the terms of the express warranties is unconscionable and unenforceable here. Specifically, Defendants' warranty limitation is unenforceable because they knowingly sold or leased a defective product without informing consumers about the defect. The time limits contained in Defendants' warranty periods were also unconscionable and inadequate to protect Plaintiff Rothrock and members of the Pennsylvania Sub-Class. Among other things, Plaintiff Rothrock and the members of the Pennsylvania Sub-Class did not determine these time limitations, the terms of which unreasonably favored Defendants. A gross disparity in bargaining power existed between Defendants and members of the Pennsylvania Sub-Class, and Defendants knew or should have known that the Class Vehicles were defective at the time of sale or lease and that the Defective Sunroofs are prone to exploding or shattering.

266. Further, the limited warranty promising to repair and/or correct a manufacturing defect fails in its essential purpose because the contractual remedy is insufficient to make Plaintiff Rothrock and the other members of the Pennsylvania Sub-Class whole because, on information and belief, Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

267. Defendants knew that the Class Vehicles were inherently defective and did not conform to their warranties and Plaintiff Rothrock and members of the Pennsylvania Sub-Class were induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

268. Plaintiff Rothrock and members of the Pennsylvania Sub-Class have been excused from performance of any warranty obligations as a result of Defendants' conduct described herein.

269. As a direct and proximate result of Defendants' breach of express warranties, Plaintiff Rothrock and members of the Pennsylvania Sub-Class have been damaged in an amount to be determined at trial.

270. Finally, because of Defendants' breach of express warranty as set forth herein Plaintiff Rothrock and members of the Pennsylvania Sub-Class assert, as additional and/or alternative remedies, the revocation of acceptance of the goods and the return to Plaintiff Rothrock and members of the Pennsylvania Sub-Class of the purchase or lease price of all Class Vehicles currently owned or leased, and for such other incidental and consequential damages as allowed.

PENNSYLVANIA COUNT X

BREACH OF IMPLIED WARRANTIES (13 PA. CONS. STAT. §§ 2314, 2315, AND 2A212)

271. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

272. Plaintiff Rothrock brings this count on behalf of himself and the members of the Pennsylvania Sub-Class.

273. Defendants are and were at all relevant times "merchants" with respect to the Class Vehicles under 13 PA. CONS. STAT. §§ 2104 and 2A103(a), and "sellers" of the Class Vehicles under 13 PA. CONS. STAT. § 2103(a).

274. With respect to leases, Defendants are and were at all relevant times "lessors" of motor vehicles under 13 PA. CONS. STAT. § 2A103(a).

275. The Class Vehicles are and were at all relevant times "goods" within the meaning of 13 PA. CONS. STAT. §§ 2105(a) and 2A103(a).

276. A warranty that the Class Vehicles were in merchantable condition and fit for their ordinary purpose is implied by law pursuant to 13 PA. CONS. STAT. §§ 2314 and 2A212.

277. In addition, a warranty that the Class Vehicles were fit for their particular purpose is implied by law pursuant to 13 PA. CONS. STAT. § 2315. Defendants knew at the time of sale of the Class Vehicles that Plaintiff Rothrock and the Pennsylvania Sub-Class intended to use the vehicles in a manner requiring a particular standard of performance and durability, and that Plaintiff Rothrock and the Pennsylvania Sub-Class were relying on Defendants' skill and judgment to furnish suitable products for this particular purpose.

278. The Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose of providing safe and reliable transportation. The Class Vehicles contain an inherent defect in the Defective Sunroofs (at the time of sale or lease and thereafter) and present an undisclosed safety risk to drivers and occupants. Thus, Defendants breached their implied warranty of merchantability.

279. Defendants were provided notice of the issues raised in this count and this Complaint as detailed above.

280. Defendants cannot disclaim their implied warranties as they knowingly sold or leased a defective product.

281. Defendants were provided notice of the defect in the Defective Sunroofs by numerous consumer complaints made to their authorized dealers nationwide, complaints to NHTSA, and through their own testing. Affording Defendants a reasonable opportunity to cure their breach of implied warranties would be unnecessary and futile here because Defendants have known of and concealed the defect in the Defective Sunroofs and, on information and belief, have

refused to repair or replace the Defective Sunroofs free of charge within or outside of the warranty periods despite the defect's existence at the time of sale or lease of the Class Vehicles.

282. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiff Rothrock and members of the Pennsylvania Sub-Class have been damaged in an amount to be proven at trial.

283. Any attempt by Defendants to disclaim or limit the implied warranty of merchantability vis-à-vis consumers is unconscionable and unenforceable here. Specifically, Defendants' warranty limitation is unenforceable because they knowingly sold or leased a defective product without informing consumers about the defect. The time limits contained in Defendants' warranty periods were also unconscionable and inadequate to protect Plaintiff Rothrock and members of the Pennsylvania Sub-Class. Among other things, Plaintiff Rothrock and members of the Pennsylvania Sub-Class did not determine these time limitations, the terms of which unreasonably favored Defendants. A gross disparity in bargaining power existed between Defendants and members of the Pennsylvania Sub-Class, and Defendants knew or should have known that the Class Vehicles were defective at the time of sale or lease and that the Defective Sunroofs were defective and posed a safety risk during the applicable warranty periods.

284. Further, as manufacturers of consumer goods, Defendants are precluded from excluding or modifying an implied warranty of merchantability or limiting consumer remedies for breach of this warranty.

285. Plaintiff Rothrock and members of the Pennsylvania Sub-Class have complied with all obligations under the warranty, or otherwise have been excused from performance of said obligations as a result of Defendants' conduct described herein.

286. The Class Vehicles are not safe and reliable and owners and lessees of these vehicles have lost confidence in the ability of Class Vehicles to perform the function of safe reliable transportation without the likelihood of unanticipated sudden exploding or shattering of the Defective Sunroofs. Defendants are estopped by their conduct, as alleged herein, from disclaiming any and all implied warranties with respect to the Defective Sunroofs in Class Vehicles.

287. The applicable statute of limitations for the implied warranty claim has been tolled by the discovery rule, fraudulent concealment and the terms of the express warranty.

PENNSYLVANIA COUNT XI

VIOLATIONS OF THE PENNSYLVANIA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW (73 PA. CONS. STAT. § 201-1, *ET SEQ.*)

288. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

289. Plaintiff Rothrock asserts this count on behalf of himself and the members of the Pennsylvania Sub-Class.

290. Plaintiff Rothrock and members of the Pennsylvania Sub-Class are persons within the context of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 PA. CONS. STAT. § 201-1, *et seq.* (hereinafter “Pennsylvania UTPCPL”), specifically § 201-2(2).

291. Defendants are persons within the context of Pennsylvania UTPCPL, § 201-2(2).

292. Defendants are engaged in trade and commerce within the context of Pennsylvania UTPCPL, § 201-2(3).

293. Plaintiff Rothrock and members of the Pennsylvania Sub-Class purchased and/or leased Class Vehicles for personal, family or household use.

294. The Pennsylvania UTPCPL prohibits “unfair or deceptive acts or practices in the conduct of any trade or commerce” 73 P.S. § 201-3.

295. As alleged herein, Defendants committed unfair and deceptive acts in the course of trade and commerce as described in this complaint in violation of Pennsylvania UTPCPL, § 201-2(4)(v), (vii), (ix) and (xxi), *inter alia*.

296. Defendants violated Pennsylvania UTPCPL, § 201-2(4)(v) and (vii) by representing that the Class Vehicles have characteristics or benefits that they do not have and that the Class Vehicles “are of a particular standard, quality or grade” when they are of another.

297. Defendants advertised the Class Vehicles with intent not to sell them as advertised in violation of Pennsylvania UTPCPL, § 201-2(4)(ix).

298. Defendants engaged in fraudulent and/or deceptive conduct which creates a likelihood of confusion or of misunderstanding in violation of Pennsylvania UTPCPL, § 201-2(4)(xxi).

299. In violation of the Pennsylvania UTPCPL, Defendants engaged in deception, fraud, false pretense, false premise, misrepresentation, knowing concealment, suppression, and/or omission of material facts suppression and omission of material facts concerning the Defective Sunroof in the Class Vehicles in connection with the sale and/or advertisement of Class Vehicles to Plaintiff Rothrock and members of the Pennsylvania Sub-Class. Further, Defendants misrepresented the standard, quality or grade of the Class Vehicles which were sold or leased with the latent defect and failed to disclose the defect in the Defective Sunroofs and corresponding safety risk in violation of the Pennsylvania UTPCPL.

300. At the time Plaintiff Rothrock purchased his Class Vehicles, Defendants knew, or should have known, that the Defective Sunroofs in the Class Vehicles could explode or shatter

showering glass on the driver and occupants. Further, Defendants knew, or should have known, that such explosion could distract the driver and cause the Class Vehicles to become involved in accidents, putting vehicle operators, passengers, and other motorists at risk for injury.

301. Defendants knowingly concealed, suppressed and/or omitted the existence of the defect in the Defective Sunroofs and safety risk in the Class Vehicles at the time of sale or lease and at all relevant times thereafter. Defendants failed to inform Plaintiff Rothrock of the Defective Sunroof in her Class Vehicles at the time of purchase or thereafter and Plaintiff Rothrock had no independent knowledge that the Class Vehicles incorporate Defective Sunroofs.

302. Defendants intended that Plaintiff Rothrock and members of the Pennsylvania Sub-Class would, in the course of their decision to expend monies in purchasing, leasing and/or repairing Class Vehicles, reasonably rely upon misrepresentations, misleading characterizations and material omissions concerning the quality of Class Vehicles with respect to materials, workmanship, design, and/or manufacture.

303. Defendants' misrepresentations and fraudulent omissions were material to Plaintiff Rothrock and members of the Pennsylvania Sub-Class. When Plaintiff Rothrock and members of the Pennsylvania Sub-Class purchased or leased their Class Vehicles or within the applicable warranty periods, they reasonably relied on the reasonable expectation that the Class Vehicles' Defective Sunroofs would not explode or shatter unexpectedly, would not require repair or replacement, and/or would not pose an unavoidable safety risk.

304. Had Defendants disclosed that the Defective Sunroofs were prone to exploding or shattering and/or an unavoidable safety risk, Plaintiff Rothrock and members of the Pennsylvania Sub-Class would not have purchased or leased the Class Vehicles, would have paid less for their vehicles, or would have had the Defective Sunroofs replaced free of charge within the applicable

warranty periods. Further, had Defendants disclosed that the Defective Sunroofs in the Class Vehicles would not last beyond the warranty periods without need for repair or replacement, Plaintiff Rothrock and members of the Pennsylvania Sub-Class would have demanded repair or replacement during the warranty periods at no cost to Plaintiff Rothrock members of the Pennsylvania Sub-Class—as provided for in Defendants’ warranties.

305. Defendants fraudulently concealed the existence of the defect in the Defective Sunroofs and safety risk in the Class Vehicles within the express warranty period.

306. Defendants violated the Pennsylvania UTPCPL by failing to inform Class Vehicle owners and lessees prior to purchase or lease and/or during the warranty period that the Defective Sunroofs were defectively designed and/or manufactured.

307. Defendants violated the Pennsylvania UTPCPL by failing to inform Class Vehicle owners and lessees prior to purchase or lease and/or during the warranty period that Class Vehicles contained the Defective Sunroofs.

308. Defendants committed unfair and deceptive trade practices as described in this complaint. Defendants repeatedly violated the Pennsylvania UTPCPL through a continuous course of conduct, which included deceptive acts, omissions of material fact and misrepresentations concerning *inter alia*, the safety risk posed by the defect and the monetary cost of repair due to the Defective Sunroofs in Class Vehicles owned by Plaintiff Rothrock and members of the Pennsylvania Sub-Class.

309. As a proximate and direct result of Defendants’ unfair and deceptive trade practices in violation of the Pennsylvania UTPCPL, Plaintiff Rothrock and members of the Pennsylvania Sub-Class have suffered and continue to suffer harm by the threat of sudden and unexpected exploding or shattering of the Defective Sunroofs and/or actual damages in the amount of the cost

to replace the Defective Sunroofs and other vehicle parts damaged by the explosion, damages for time lost associated with repair or replacement of the Defective Sunroofs, expenses incurred to obtain alternative transportation during the repair or replacement of the Defective Sunroofs, future cost of repair or replacement of the Defective Sunroofs, and damages to be determined at trial. Plaintiff Rothrock and members of the Pennsylvania Sub-Class have also suffered the ascertainable loss of the diminished value of their vehicles.

310. The conduct of Defendants offends public policy as established by statutes and common law; is immoral, unethical, oppressive and/or unscrupulous and caused unavoidable and substantial injury to Class Vehicle owners and lessees (who were unable to have reasonably avoided the injury due to no fault of their own) without any countervailing benefits to consumers.

311. Pursuant to 73 PA. CONS. STAT. § 201-9.2(a), Plaintiff Rothrock and members of the Pennsylvania Sub-Class are entitled to restitution, disgorgement, statutory, treble and actual monetary damages as permitted by law, including interest, costs, and attorneys' fees. Plaintiff Rothrock and members of the Pennsylvania Sub-Class are also entitled to injunctive relief including a declaratory judgment and an appropriate court order prohibiting Defendants from engaging in further deceptive acts and practices described in this complaint.

E. Claims Brought on Behalf of the South Carolina Sub-Class

SOUTH CAROLINA COUNT XII

FRAUD

312. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

313. Plaintiff Finch brings this count on behalf of herself and the members of the South Carolina Sub-Class.

314. Defendants intentionally and knowingly falsely misrepresented, concealed, suppressed and/or omitted material facts including the standard, quality or grade of the Class Vehicles and the fact that the Defective Sunroofs installed in Class Vehicles are defective and prone to exploding or shattering, exposing drivers, occupants and members of the public to a safety risk. Defendants intended that Plaintiffs and members of the Classes rely on Defendants' misrepresentations and omissions. As a direct result of Defendants' fraudulent conduct, members of the South Carolina Sub-Class have suffered actual damages.

315. As set forth above, BMW concealed and/or suppressed material facts concerning the safety, quality, functionality and reliability of the Class Vehicles by concealing that the Defective Sunroofs are defective and expose drivers and their passengers to the safety risk associated with a sudden explosion and/or shattering sunroofs.

316. BMW was aware of the Defective Sunroofs and that they exposed drivers and their passengers to the safety risk associated with a sudden explosion and/or shattering sunroof.

317. BMW made representations to the public about safety, quality, functionality, and reliability of Class Vehicles.

318. BMW had a duty to disclose any information relating to the safety, quality, functionality and reliability of Class Vehicles because they consistently marketed the Class Vehicles as safe. Once BMW made representations to the public about safety, quality, functionality, and reliability, BMW was under a duty to disclose these omitted facts, because where one does speak one must speak the whole truth and not conceal any facts which materially qualify those facts stated. One who volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud.

319. BMW failed to disclose the material fact that Class Vehicles incorporate Defective Sunroofs that are defective and expose drivers and their passengers to the safety risk of sudden explosion and/or shattering of the Defective Sunroofs, including the risk of unexpected explosion of the Defective Sunroof falling glass, cuts and contusions related to the sudden failure of a Defective Sunroof and the risk of accident and additional injury when the sunroofs exploded while operating a Class Vehicle.

320. BMW had a duty to disclose these omitted facts because BMW was aware of the Defective Sunroofs, and had exclusive and/or superior knowledge of material facts that were only accessible to BMW. BMW knew these omitted facts were not known to or reasonably discoverable by Plaintiff Finch and the South Carolina Sub-Class. These omitted facts were material because they directly impact the safety, quality, functionality and reliability of Class Vehicles.

321. Plaintiff Finch and members of the South Carolina Sub-Class could not have discovered the Defective Sunroofs.

322. Whether the Class Vehicles' Defective Sunroofs function properly; whether the Defective Sunroofs would remain intact; whether the Defective Sunroofs could explode or shatter while the Class Vehicles were being driven; whether Class Vehicles could have been equipped with sunroofs that did not explode or shatter are material concerns.

323. BMW has exclusive knowledge of the defects that render Class Vehicles more dangerous and unreliable than similar vehicles. BMW actively concealed and/or suppressed these material facts, in whole or in part, with the intent to induce Plaintiff Finch and members of the South Carolina Sub-Class to purchase or lease Class Vehicles at a higher price for the Class Vehicles, which did not match the Class Vehicles' true value.

324. BMW still has not made full and adequate disclosure and continues to defraud Plaintiff Finch and members of the South Carolina Sub-Class.

325. Plaintiff Finch and members of the South Carolina Sub-Class were unaware of these omitted material facts and justifiably relied on BMW's representations to the public about safety, quality, functionality, and reliability and would not have acted as they did if they had known of the concealed and/or suppressed facts. Plaintiff Finch and members of the South Carolina Sub-Class's actions were justified.

326. BMW was in exclusive control of the material facts and such facts were not known to the public, Plaintiff Finch and members of the South Carolina Sub-Class.

327. As a result of Defendants' failure to disclose to members of the Classes the material fact that the Defective Sunroofs installed in Class Vehicles are defective and prone to exploding or shattering, owners and lessees of Class Vehicles are required to spend hundreds or thousands of dollars to repair or replace the Defective Sunroofs and/or other vehicle parts damaged during the exploding or shattering of the Defective Sunroofs, or sell their vehicles at a substantial loss. The fact that the Defective Sunroofs installed in the Class Vehicles are defective and prone to exploding or shattering is material because no reasonable consumer expects that he or she will have to spend hundreds or thousands of dollars for diagnosis, repair or replacement the Defective Sunroofs and because Plaintiffs and members of the Classes had a reasonable expectation that the Class Vehicles would not suffer from exploding or shattering Defective Sunroofs that would present a safety risk.

328. The fact that the Defective Sunroofs installed in the Class Vehicles are defective and prone to exploding or shattering is also material because the sunroofs present a safety risk and place drivers and occupants at risk of serious injury or death. When the Defective Sunroofs explode

or shatter, drivers and occupants may be sprayed with glass and injured. Drivers and occupants of the Class Vehicles are also at risk for collisions caused by driver distraction as a result of an exploding or shattering Defective Sunroof, and the general public is also at risk for being involved in an accident with a Class Vehicle.

329. Plaintiff Finch and members of the South Carolina Sub-Class would not have purchased the Class Vehicles but for Defendants' omissions and concealment of material facts regarding the nature and quality of the Class Vehicles and existence of the defect in the Defective Sunroofs, would have paid less for the Class Vehicles, or would have had the Defective Sunroofs replaced during the applicable warranty periods.

330. BMW's acts were done maliciously, oppressively, deliberately, with intent to defraud, and in reckless disregard of Plaintiff Finch and members of the South Carolina Sub-Class's rights and well-being to enrich BMW. BMW's conduct warrants an assessment of punitive damages in an amount sufficient to deter such conduct in the future, which amount is to be determined according to proof.

331. Plaintiffs and members of the Classes reasonably relied upon Defendants' knowing, affirmative and active false representations, concealment and omissions. As a direct and proximate result of Defendants' false representations, omissions and active concealment of material facts regarding the defect in the Defective Sunroofs, Plaintiffs and members of the Classes have suffered actual damages in an amount to be determined at trial.

SOUTH CAROLINA COUNT XIII

BREACH OF EXPRESS WARRANTY (S.C. CODE ANN. §§ 36-2-313 AND 36-2A-210)

332. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

333. Plaintiff Finch brings this count on behalf of herself and the members of the South Carolina Sub-Class.

334. Defendants are and were at all relevant times “merchants” with respect to the Class Vehicles under S.C. CODE ANN. §§ 36-2-104(1) and 36-2A-103(1)(t), and “sellers” of the Class Vehicles under S.C. CODE ANN. § 36-2-103(1)(d).

335. With respect to leases, Defendants are and were at all relevant times “lessors” of motor vehicles under S.C. CODE ANN. § 36-2A-103(1)(p).

336. The Class Vehicles are and were at all relevant times “goods” within the meaning of S.C. CODE ANN. §§ 36-2-105(1) 36-2A-103(1)(h).

337. In connection with the purchase of all Class Vehicles, Defendants provided Plaintiff Finch and the South Carolina Sub-Class with a written warranty covering defects in materials and workmanship of the Class Vehicles for four years or 50,000 miles, as detailed above. In addition, Defendants’ various oral and written representations regarding the Class Vehicles’ durability, reliability, safety, and performance constituted express warranties to the South Carolina Sub-Class.

338. Defendants’ warranties formed a basis of the bargain that was reached when Plaintiff Finch and the South Carolina Sub-Class members purchased or leased their Class Vehicles.

339. The defect in the Defective Sunroofs existed in the Class Vehicles at the time of sale or lease and within the warranty periods but Plaintiff Finch and South Carolina Sub-Class members had no knowledge of the existence of the defect, which was known and concealed by Defendants. Despite the applicable warranties, Defendants failed to inform Plaintiff Finch and members of the South Carolina Sub-Class that the Class Vehicles contained the defect in the Defective Sunroofs during the warranty periods in order to wrongfully transfer the costs of repair

or replacement of the Defective Sunroofs to Plaintiff Finch and members of the South Carolina Sub-Class.

340. Because of the defect in the Defective Sunroofs, Class Vehicles are not safe and reliable and owners and lessees of these vehicles have lost confidence in the ability of Class Vehicles to perform the function of safe reliable transportation.

341. Plaintiff Finch and members of the South Carolina Sub-Class could not have reasonably discovered the defect in the Defective Sunroofs prior to the Defective Sunroofs exploding or shattering.

342. Defendants breached the express warranty promising to repair and correct a manufacturing defect or defects in materials or workmanship of any parts they supplied.

343. Defendants further breached their express warranties by selling Class Vehicles that were defective with respect to materials, workmanship, and manufacture when Defendants knew the Defective Sunroofs were defective and had an associated safety risk. Class Vehicles were not of merchantable quality and were unfit for the ordinary purposes for which passenger vehicles are used because of materials, workmanship, and manufacture defects which cause exploding or shattering Defective Sunroofs which do not perform as warranted.

344. Specifically, on information and belief, Defendants breached their express warranties (including the implied covenant of good faith and fair dealing) by: (1) knowingly providing Plaintiff Finch and the South Carolina Sub-Class with Class Vehicles containing defects in material that were never disclosed to Plaintiff Finch and the South Carolina Sub-Class, (2) failing to repair or replace the defective Class Vehicles at no cost within the four-year warranty period, (3) ignoring, delaying responses to, and denying warranty claims in bad faith, and (4) supplying products and materials that failed to conform to the representations made by Defendants.

345. Plaintiff Finch and the South Carolina Sub-Class have given Defendants a reasonable opportunity to cure its breaches of express warranty or, alternatively, were not required to do so because such an opportunity would be unnecessary and futile given that the repairs or replacements offered by Defendants can neither cure the defect in the Class Vehicles nor resolve the incidental and consequential damages flowing therefrom.

346. Thus, Defendants' written warranty fails of its essential purpose and the recovery of the South Carolina Sub-Class is not limited to its remedies.

347. Defendants were provided notice of the defect in the Defective Sunroofs by numerous consumer complaints made to their authorized dealers nationwide, complaints to NHTSA, and through their own testing. Affording Defendants a reasonable opportunity to cure their breach of written warranties would be unnecessary and futile here because Defendants have known of and concealed the Defective Sunroofs and, on information and belief, have refused to repair or replace the Defective Sunroofs for Class members free of charge within or outside of the warranty periods despite the defect's existence at the time of sale or lease of the Class Vehicles, and within the applicable warranty periods.

348. Any attempt by Defendants to disclaim or limit recovery to the terms of the express warranties is unconscionable and unenforceable here. Specifically, Defendants' warranty limitation is unenforceable because they knowingly sold or leased a defective product without informing consumers about the defect. The time limits contained in Defendants' warranty periods were also unconscionable and inadequate to protect Plaintiff Finch and members of the South Carolina Sub-Class. Among other things, Plaintiff Finch and members of the South Carolina Sub-Class did not determine these time limitations, the terms of which unreasonably favored Defendants. A gross disparity in bargaining power existed between Defendants and members of

the South Carolina Sub-Class, and Defendants knew or should have known that the Class Vehicles were defective at the time of sale or lease and that the Defective Sunroofs are prone to exploding or shattering.

349. Further, the limited warranty promising to repair and/or correct a manufacturing defect fails in its essential purpose because the contractual remedy is insufficient to make Plaintiff Finch and the other members of the South Carolina Sub-Class whole because, on information and belief, Defendants have failed and/or have refused to adequately provide the promised remedies within a reasonable time.

350. Defendants knew that the Class Vehicles were inherently defective and did not conform to their warranties and Plaintiff Finch and members of the South Carolina Sub-Class were induced to purchase or lease the Class Vehicles under false and/or fraudulent pretenses.

351. Plaintiff Finch and members of the South Carolina Sub-Class have been excused from performance of any warranty obligations as a result of Defendants' conduct described herein.

352. As a direct and proximate result of Defendants' breach of express warranties, Plaintiff Finch and members of the South Carolina Sub-Class have been damaged in an amount to be determined at trial.

353. Finally, because of Defendants' breach of express warranty as set forth herein Plaintiff Finch and members of the South Carolina Sub-Class assert, as additional and/or alternative remedies, the revocation of acceptance of the goods and the return to Plaintiff Finch and members of the South Carolina Sub-Class of the purchase or lease price of all Class Vehicles currently owned or leased, and for such other incidental and consequential damages as allowed.

SOUTH CAROLINA COUNT XIV

BREACH OF IMPLIED WARRANTIES
(S.C. CODE ANN. §§ 36-2-314, 36-2-315, AND 36-2A-212)

354. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

355. Plaintiff Finch brings this count on behalf of herself and the members of the South Carolina Sub-Class.

356. Defendants are and were at all relevant times “merchants” with respect to the Class Vehicles under S.C. CODE ANN. §§ 36-2-104(1) and 36-2A-103(1)(t), and “sellers” of the Class Vehicles under S.C. CODE ANN. § 36-2-103(1)(d).

357. With respect to leases, the Defendants are and were at all relevant times “lessors” of motor vehicles under S.C. Code § 36-2A-103(1)(p).

358. The Class Vehicles are and were at all relevant times “goods” within the meaning of S.C. CODE ANN. §§ 36-2-105(1) 36-2A-103(1)(h).

359. A warranty that the Class Vehicles were in merchantable condition and fit for their ordinary purpose is implied by law pursuant to S.C. CODE ANN. §§ 36-2-314 and 36-2A-212.

360. In addition, a warranty that the Class Vehicles were fit for their particular purpose is implied by law pursuant to S.C. CODE ANN. § 36-2-315. Defendants knew at the time of sale of the Class Vehicles that Plaintiff Finch and the South Carolina Sub-Class intended to use the vehicles in a manner requiring a particular standard of performance and durability, and that the South Carolina Sub-Class was relying on Defendants’ skill and judgment to furnish suitable products for this particular purpose.

361. The Class Vehicles, when sold or leased and at all times thereafter, were not in merchantable condition and are not fit for the ordinary purpose of providing safe and reliable transportation. The Class Vehicles contain an inherent defect in the Defective Sunroofs (at the time

of sale or lease and thereafter) and present an undisclosed safety risk to drivers and occupants. Thus, Defendants breached their implied warranty of merchantability.

362. Defendants were provided notice of the issues raised in this count and this Complaint as detailed above.

363. Defendants cannot disclaim their implied warranties as they knowingly sold or leased a defective product.

364. Defendants were provided notice of the defect in the Defective Sunroofs by numerous consumer complaints made to their authorized dealers nationwide, complaints to NHTSA, and through their own testing. Affording Defendants a reasonable opportunity to cure their breach of implied warranties would be unnecessary and futile here because Defendants have known of and concealed the defect in the Defective Sunroofs and, on information and belief, have refused to repair or replace the Defective Sunroofs free of charge within or outside of the warranty periods despite the defect's existence at the time of sale or lease of the Class Vehicles.

365. As a direct and proximate result of Defendants' breach of the implied warranty of merchantability, Plaintiff Finch and members of the South Carolina Sub-Class have been damaged in an amount to be proven at trial.

366. Any attempt by Defendants to disclaim or limit the implied warranty of merchantability vis-à-vis consumers is unconscionable and unenforceable here. Specifically, Defendants' warranty limitation is unenforceable because they knowingly sold or leased a defective product without informing consumers about the defect. The time limits contained in Defendants' warranty periods were also unconscionable and inadequate to protect Plaintiff Finch and members of the South Carolina Sub-Class. Among other things, Plaintiff Finch and members of the South Carolina Sub-Class did not determine these time limitations, the terms of which

unreasonably favored Defendants. A gross disparity in bargaining power existed between Defendants and members of the South Carolina Sub-Class, and Defendants knew or should have known that the Class Vehicles were defective at the time of sale or lease and that the Defective Sunroofs were defective and posed a safety risk during the applicable warranty periods.

367. Further, as manufacturers of consumer goods, Defendants are precluded from excluding or modifying an implied warranty of merchantability or limiting consumer remedies for breach of this warranty.

368. Plaintiff Finch and members of the South Carolina Sub-Class have complied with all obligations under the warranty, or otherwise have been excused from performance of said obligations as a result of Defendants' conduct described herein.

369. The Class Vehicles are not safe and reliable and owners and lessees of these vehicles have lost confidence in the ability of Class Vehicles to perform the function of safe reliable transportation without the likelihood of unanticipated sudden exploding or shattering of the Defective Sunroofs. Defendants are estopped by their conduct, as alleged herein, from disclaiming any and all implied warranties with respect to the Defective Sunroofs in Class Vehicles.

370. The applicable statute of limitations for the implied warranty claim has been tolled by the discovery rule, fraudulent concealment and the terms of the express warranty.

SOUTH CAROLINA COUNT XV

VIOLATION OF THE SOUTH CAROLINA REGULATION OF MANUFACTURERS, DISTRIBUTORS AND DEALERS ACT (S.C. CODE ANN. § 56-15-10, *ET SEQ.*)

371. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

372. Plaintiff Finch asserts this count on behalf of herself and the members of the South Carolina Sub-Class.

373. Defendants are “manufacturers,” “dealers,” and “distributors” within the meaning of the South Carolina Manufacturers, Distributors and Dealers Act (the “Dealers Act”), S.C. CODE ANN. § 56-15-10, *et seq.*

374. Defendants committed unfair or deceptive acts or practices that violated the Dealers Act by engaging in actions which were arbitrary, in bad faith, unconscionable, and which caused damage to Plaintiff Finch, the South Carolina Sub-Class, and the public.

375. Defendants’ bad faith and unconscionable actions include, but are not limited to: 1) representing that Class Vehicles have characteristics, uses, benefits, and qualities which they do not have, (2) representing that Class Vehicles are of a particular standard, quality, and grade when they are not, (3) advertising Class Vehicles with the intent not to sell them as advertised, (4) representing that a transaction involving Class Vehicles confers or involves rights, remedies, and obligations which it does not, and (5) representing that the subject of a transaction involving Class Vehicles has been supplied in accordance with a previous representation when it has not.

376. In violation of the Dealers Act, Defendants engaged in deception, fraud, false pretense, false premise, misrepresentation, knowing concealment, suppression, and/or omission of material facts suppression and omission of material facts concerning the Defective Sunroof in the Class Vehicles in connection with the sale and/or advertisement of Class Vehicles to Plaintiff Finch and members of the South Carolina Sub-Class.

377. Pursuant to S.C. CODE ANN. § 56-15-110(2), Plaintiff Finch brings this action on behalf of herself and the members of the South Carolina Sub-Class, as the action is one of common

or general interest to many persons and the parties are too numerous to bring them all before the court.

378. Plaintiff Finch and the South Carolina Sub-Class are entitled to double their actual damages, the cost of the suit, attorney's fees pursuant to S.C. CODE ANN. § 56-15-110. Plaintiff also seeks injunctive relief under S.C. CODE ANN. § 56-15-110. Plaintiff also seeks treble damages because Defendants acted maliciously.

IX. PRAYER FOR RELIEF

THEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, respectfully request that this Court enter judgment against Defendants and in favor of Plaintiffs and the Class and Sub-Classes, and award the following relief:

- A. An order certifying this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, declaring Plaintiffs as the representatives of the Class and Sub-Classes, and Plaintiffs' counsel as counsel for the Class and Sub-Classes;
- B. An order awarding declaratory relief and enjoining Defendants from continuing the unlawful, deceptive, fraudulent, harmful, and unfair business conduct and practices alleged herein;
- C. Injunctive and equitable relief in the form of a comprehensive program to repair or replace the Defective Sunroofs in all Class Vehicles, and/or buyback all Class Vehicles, and to fully reimburse and make whole all members of the Classes for all costs and economic losses;
- D. A declaration that Defendants are financially responsible for all Class notice and the administration of Class relief;

- E. An order awarding costs, restitution, disgorgement, punitive damages, treble damages and exemplary damages under applicable law, and compensatory damages for economic loss and out-of-pocket costs in an amount to be determined at trial;
- F. An order awarding any applicable statutory and civil penalties;
- G. A declaration that Defendants are required to engage in corrective advertising;
- H. An order requiring Defendants to pay both pre- and post-judgment interest on any amounts awarded;
- I. An award of costs, expenses and attorneys' fees as permitted by law; and
- J. Such other or further relief as the Court may deem appropriate, just, and equitable.

X. DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of any and all issues in this action so triable of right.

DATED: July 27, 2018

Respectfully submitted,

/s/ James E. Cecchi

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*Attorneys for Plaintiffs and the proposed
Classes*

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of July, 2018, a true and correct copy of the foregoing document was electronically filed with the Clerk of the Court, is available for viewing and downloading from the ECF system, and will be served by operation of the Court's electronic filing system (CM/ECF) upon all counsel of record.

/s/ James E. Cecchi
James E. Cecchi

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

Courtney Loughrey, Tony Trosclair, Ronald Rothrock, and Kara Finch

(b) County of Residence of First Listed Plaintiff Edwards
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Carella, Byrne Cecchi, Olstein Brody & Agnello, P.C.
5 Becker Farm Road, Roseland, NJ 07068
(973) 994-1700

DEFENDANTS

Bayerische Motoren Werke Aktiengesellschaft, and BMW Of North America, LLC

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

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 | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

Click here for: Nature of Suit Code Descriptions.

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|---|--|---|--|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 IIIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education | PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 |

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 - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

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. sec. 1332(d)

Brief description of cause:

This is a claim arising from exploding sunroofs.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE William H. Walls

DOCKET NUMBER 2:17-cv-13544-WHW-CLW

DATE 07/27/2018 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE