



# Legal Document

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California Central District Court  
Case No. 2:14-cv-02363  
**Trish Herremans v. BMW of North America, LLC**

Document 66



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10 Attorneys for Plaintiff  
11 TRISH HERREMANS, individually, and on behalf  
of a class of similarly situated individuals

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION  
14

15 TRISH HERREMANS, individually, and  
16 on behalf of a class of similarly situated  
individuals,

17 Plaintiff,

18 v.

19 BMW OF NORTH AMERICA, LLC,

20 Defendant.  
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23  
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) NO. CV 14-2363-GW(PJWx)

) Assigned for All Purposes to  
the Honorable George H. Wu

) Courtroom 10

) Date Action Filed: March 27, 2014

) **ORDER GRANTING  
PRELIMINARY APPROVAL OF  
CLASS SETTLEMENT**  
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The parties to this litigation have entered into a Settlement Agreement dated in  
November of 2015 (“Agreement”), which if approved, would resolve this action on a  
class basis. Plaintiff has filed a Motion for Preliminary Approval of the settlement

1 set forth in the Agreement, which Defendant BMW of North America, LLC  
2 (“BMW” or “Defendant”) supports. The Court has read and considered the Motion  
3 for Preliminary Approval, the parties’ memoranda in support, the supplemental  
4 papers submitted in support thereof, the Agreement, the declaration of Stephen M.  
5 Harris, and the supplemental declaration of Stephen M. Harris and all exhibits  
6 thereto, and finds there is a sufficient basis for granting preliminary approval of the  
7 Settlement, directing that notice be disseminated to the Class, and setting a hearing at  
8 which the Court will consider whether to grant final approval of the Settlement.

9 The Court now GRANTS the motion for preliminary approval and makes the  
10 following findings and orders:

11 1. All defined terms used in this Order have the same meanings as set forth  
12 in the Agreement.

13 2. The Court preliminarily certifies, for settlement purposes only, the  
14 following Settlement Class (the “Class”) pursuant to Rule 23(b)(3) of the Federal  
15 Rules of Civil Procedure:

16 Class: All persons throughout the United States who currently own or  
17 lease or who previously owned or leased a Class Vehicle, which include MINI R55,  
18 R56, R57, R58, R59, and R60 vehicles, made for sale and/or lease in the U.S.  
19 market, with a production date between October 2006 through November 2012 and  
20 that were sold or leased to a Class Member who registered and operated the vehicle  
21 in the United States or Puerto Rico:

22 3. Excluded from the Class are:

23 MINI [BMW], its related entities, parent companies, subsidiaries and  
24 affiliates, and their respective officers, directors, and employees; (2) insurers of the  
25 Class Vehicles; (3) all persons and/or entities claiming to be subrogated to the rights  
26 of Class Members; (4) issuers or providers of extended vehicle warranties or  
27 extended service contracts; (5) individuals and/or entities who validly and timely opt-  
28 out of the Settlement; (6) consumers or businesses that have purchased Class

1 Vehicles previously deemed a total loss (i.e. salvage) (subject to verification through  
2 Carfax or other means); (7) current and former owners of a Class Vehicle who  
3 previously have released their claims against MINI with respect to the issues raised  
4 in the Litigation; (8) United States and Puerto Rico residents who have purchased  
5 Class Vehicles in the United States but have since transported the vehicle outside the  
6 United States for permanent use abroad; (9) any current or former owner or lessee of  
7 a Class Vehicle that has received or obtained a goodwill or warranty replacement of  
8 a Water Pump (unless the consumer had to pay or share in some portion of the cost  
9 of a goodwill replacement); (10) any judge to whom this matter is assigned, and his  
10 or her immediate family (spouse, domestic partner, or children); (11) individual or  
11 entities that have purchased and/or leased Class Vehicles as “fleet” vehicles (i.e.  
12 rentals or company vehicles); and (12) Class Vehicles that were involved in  
13 accidents that resulted in damage and subsequent need to replace a Water Pump.

14 4. For purposes of simplicity in this Order, hereafter members of the  
15 Class will collectively be referred to simply as the “Class”, “Class Member(s)” or the  
16 “Settlement Class.”

17 5. The Court appoints plaintiff Trish Herremans to serve as Class  
18 Representative.

19 6. The Court appoints Stephen M. Harris of the law offices of Stephen M.  
20 Harris, P.C., and Robert L. Starr of the Law Offices of Robert L. Starr, APC, to serve  
21 as Class Counsel.

22 7. The Court finds that, for the purpose of settlement only, the  
23 requirements of Rule 23 of the Federal Rules of Civil Procedure are met by the  
24 Settlement Class. Joinder of all Class Members, consisting of the owners and lessees  
25 of all Class Vehicles distributed by BMW in the United States or Puerto Rico in a  
26 single proceeding would be impractical, if not impossible, because of their numbers  
27 and dispersion. Common issues exist among Class Members and predominate over  
28 questions affecting only individual Class Members. Plaintiff’s claims are typical of

1 those of the Class, as Plaintiff does own or lease or has owned or leased a Class  
2 Vehicle which experienced or may experience a mechanical water pump failure.  
3 Plaintiff and her counsel will fairly and adequately protect the interests of the Class;  
4 Plaintiff has no interests antagonistic to those of the Class, and has retained counsel  
5 experienced and competent to prosecute this matter on behalf of the Class. Finally, a  
6 class settlement is superior to other available methods for a fair and efficient  
7 resolution of the controversy.

8       8. The certification of the Class for settlement purposes shall be without  
9 force or effect if: (a) the Court does not give final approval to the Settlement or does  
10 not enter judgment substantially as contemplated in the Agreement; or (b) the  
11 Court's approval of the Settlement and/or entry of a final approval order and  
12 judgment are reversed or substantially modified on appeal. The Settlement Class  
13 shall then be deemed decertified and Defendant shall retain all of its rights to oppose  
14 certification of this action.

15       9. The Court preliminarily approves the parties' proposed Settlement,  
16 finding that the terms of the Settlement are fair, reasonable, and adequate at this  
17 point to warrant dissemination of notice to Class Members so that they can evaluate  
18 the terms themselves, and to warrant the setting of a hearing to consider final  
19 approval of the Settlement. The Court finds that the settlement contains no obvious  
20 deficiencies and that the parties entered into the Agreement in good faith, following  
21 arms-length negotiation between their respective counsel.

22       10. The Court hereby approves the form and procedures for disseminating  
23 the settlement Notice to the Class Members as set forth in the Agreement. The Court  
24 finds that the Notice to be given constitutes the best notice practicable under the  
25 circumstances, and constitutes valid, due, and sufficient notice to Class Members in  
26 full compliance with the requirements of applicable law, including the Due Process  
27 Clause of the United States Constitution.

28       11. BMW shall arrange for the printing and mailing (via U.S. Mail) of the

1 class Notice to all Settlement Class members who are identified as current or former  
2 registered owners or lessees according to the procedures set forth in the Agreement.  
3 The notice procedures described in the Agreement are hereby approved.

4 12. Such class Notice shall be mailed by the Settlement Administrator with  
5 the Claim Form, in the form attached as exhibits 1 and 2 to the Supplemental Brief of  
6 Plaintiff Trish Herremans and Defendant BMW of North America, LLC in Support  
7 of Preliminary Approval of Class Settlement [Dkt. 63] (“Supplemental Brief”), and  
8 pursuant to the procedures described in the Agreement. The Settlement  
9 Administrator will maintain a website that contains information about the settlement  
10 and copies of related documents, including the Class Notice and Claim Form, and  
11 contact data of Class Counsel. The Settlement Administrator will also set up a toll-  
12 free phone number available to Class Members who have questions about the claims  
13 process or need additional information, and this information will include the contact  
14 data of Class Counsel. No later than 120 days after entry of the Preliminary  
15 Approval Order, or no later than July 23, 2016, the Settlement Administrator shall (a)  
16 cause individual notice, substantially in the form attached to the Supplemental Brief  
17 as Exhibit 1, along with a Claim Form, substantially in the form attached to the  
18 Supplemental Brief as Exhibit 2, to be mailed to each such identified Class Member  
19 in a single mailing (i.e. when all Class Member contact information is available).

20 13. As set forth in the Agreement, BMW shall bear all costs and expenses in  
21 connection with providing notice to the Class and administering the Settlement,  
22 including, but not limited to, all fees, costs, and expenses of the Settlement  
23 Administrator to be selected by the parties.

24 14. By letter dated December 18, 2015 and pursuant to the requirements of  
25 28 U.S.C. § 1715(b), BMW NA served upon the appropriate State official of each  
26 State in which a Class Member resides and the appropriate Federal official, a notice  
27 of the proposed Settlement consisting of:

28 (a) the original complaint and all amended complaints in this Action;

- 1 (b) notice of the Fairness Hearing described below;
- 2 (c) Plaintiff's Notice of Motion and Motion for Preliminary Approval  
3 of Class Action Settlement; and
- 4 (d) The Declaration of Stephen M. Harris in Support of Motion for  
5 Preliminary Approval of Class Settlement and exhibits 1 through 6 attached thereto.;
- 6 (e) A reasonable estimate of the proportionate share of the class  
7 members residing in each state

8 A copy of the BMW NA's notice pursuant to 28 U.S.C. § 1715(b) (without  
9 exhibits) was attached to the Supplemental Declaration of Stephen M. Harris  
10 ("Supplemental Harris Declaration").

11 15. The Court finds, based on the Supplemental Harris Declaration, that  
12 there is no separate side agreement between the parties and/or their counsel, Fed. R.  
13 Civ. P. 23(e) (3) and 28 U.S.C. § 1715(b) (5), other than the fee division agreement  
14 referred to in that declaration.

15 16. A hearing on entry of Final Approval of the Class Action Settlement and  
16 the award of fees and expenses to Class Counsel, and incentive payment to the Class  
17 Representative, as well as with respect to entry of judgment (the "Fairness Hearing")  
18 shall be held on November 28, 2016 at 8:30 a.m., in Courtroom 10 of the above-  
19 entitled Court, located at 312 North Spring Street, Los Angeles, California, 90012-  
20 4701. At the Fairness Hearing, the Court will consider: (a) whether the Action  
21 should be finally certified for class action settlement purposes; (b) whether the  
22 Settlement should be approved as fair, reasonable, and adequate for the class;  
23 (c) whether a judgment granting approval of the Settlement should be entered; and  
24 (d) whether Class Counsel's application for attorneys' fees and expenses and an  
25 incentive award for the named Plaintiff should be granted.

26 17. Any Class Member shall have the right to present a Claim pursuant to  
27 the terms of the Settlement, and, to do so, shall post-mark, email or transmit by  
28 facsimile the Claim Form to the Claims Administrator no later than October 10,

1 2016.

2 18. Any Class Member shall have the right to opt out of the Class and the  
3 settlement by sending a written request for exclusion from the Class to the  
4 address(es) listed in the Class Notice, postmarked no later than 45 days after mailing  
5 of the Class notice, that is, no later than August 26, 2016. To be effective, the  
6 request for exclusion (or opt-out request) must: (a) state the Class Member's full  
7 name and current address, the model year and make of the Class Vehicle, the  
8 approximate date of purchase or lease of the Class Vehicle, the Vehicle Identification  
9 Number ("VIN") and (b) clearly set forth his/her/its desire to be excluded from the  
10 Settlement and from the Settlement Class. Any Settlement Class member who  
11 submits a timely and valid request for exclusion will not be entitled to participate in  
12 the Settlement and cannot object to the Settlement. Any Settlement Class member  
13 who does not submit a timely and valid exclusion request shall be subject to and  
14 bound by the Settlement and every order or judgment entered concerning the  
15 Settlement.

16 19. Any Settlement Class member who intends to object to final approval of  
17 the Settlement or the Fee Application must, on or before 45 days after mailing of the  
18 Class Notice, or no later than August 26, 2016, serve such objection to the Claims  
19 Administrator at the addresses provided in the Class Notice. Any objection to the  
20 Settlement must include the following information concerning the objector: (i) full  
21 name, address and telephone number; (ii) documentation sufficient to establish  
22 membership in the class, (iii) a statement of the objection(s) asserted, including the  
23 factual and legal grounds for each such objection; (iv) and copies of any documents  
24 the objector wishes to submit in support of his or her position. If the objector intends  
25 to appear at the Fairness Hearing, the objecting Class Member must serve upon all  
26 counsel designated in the Class Notice, and file with the court a Notice of Intention  
27 to Appear at the Fairness Hearing ("Notice of Intention to Appear"). The Notice of  
28 Intention to Appear shall be served and filed no later than 45 days after the mailing

1 of the Class Notice, or no later than August 26, 2016. The Notice of Intention to  
2 Appear must: (i) furnish all exhibits, papers, or other evidence the Class Member  
3 and/or his/her/their attorney intends to offer in support of the objection.

4 20. Any Class Member who does not provide an Objection and/or Notice of  
5 Intention to Appear in complete accordance with the deadlines and other  
6 requirements set forth herein and in the Class Notice will be deemed to have waived  
7 any objections to the Settlement and shall be barred from speaking or otherwise  
8 presenting any views at the Fairness Hearing or from pursuing any appeals, subject  
9 to approval of the Court.

10 21. The Claims Administrator shall provide to BMW and Class Counsel no  
11 later than October 24, 2016, a list of all conditionally approved Claims.

12 22. Counsel for the respective parties shall file memoranda, declarations, or  
13 other statements and/or materials in support of the request for final approval of the  
14 parties' Settlement, no later than 28 days prior to the Final Approval hearing (i.e., by  
15 October 31, 2016).

16 23. Class Counsel shall file an application for an award of attorneys' fees  
17 and costs not to exceed \$692,500 and for an incentive award not to exceed \$2,500.00  
18 ("Fee Application") no later than 28 days prior to the Final Approval hearing (i.e., by  
19 October 31, 2016).

20 24. Counsel for the parties shall promptly furnish to each other any and all  
21 objections, written requests for exclusion or any related documents that come into  
22 their possession.

23 25. The last day for counsel to file correspondence and any other documents  
24 received from opt-outs and objectors shall be 10 days prior to the Final Approval  
25 hearing (i.e., by November 18, 2016). Counsel for the parties shall file and serve any  
26 Reply to the Objections no later than November 14, 2016.

27 26. This Order shall become null and void, and shall be without prejudice to  
28 the rights of the Parties, all of whom shall be restored to their respective positions

1 existing immediately before this Court entered this Order, if (i) the proposed  
2 Settlement is not finally approved by the Court, or does not become final, pursuant to  
3 the terms of the Agreement; or (ii) the proposed Settlement is terminated in  
4 accordance with the Agreement or does not become effective as required by the  
5 terms of the Agreement for any other reason. In such event, the proposed Settlement  
6 shall become null and void and be of no further force and effect, and neither the  
7 Agreement nor the Court's orders, including this Order shall be used or referred to  
8 for any purpose whatsoever.

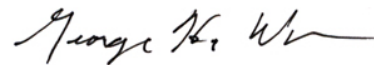
9       27. The Court reserves the right to approve the Agreement with such  
10 modifications as may be agreed by the Parties and without requiring further notice to  
11 Class Members.

12       28. The Court reserves the right to continue the date of the Fairness Hearing  
13 and related deadlines. In that event, the revised hearing date and/or deadlines shall be  
14 posted on the website maintained by the Settlement Administrator, and the parties  
15 shall not be required to re-send or re-publish the notices.

16       29. All further proceedings in this litigation (including, but not limited to,  
17 any existing discovery obligations) are ordered stayed until final approval of the  
18 Settlement or termination of the Agreement, whichever occurs earlier, except for  
19 those matters necessary to obtain and/or effectuate final approval of the settlement.

20       **IT IS HEREBY ORDERED.**

21  
22 Dated: March 18, 2016



23       \_\_\_\_\_  
24       GEORGE H. WU, U.S. District Judge

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