

JS-6

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

ERIC BACCA, an individual, and on
behalf of all others similarly situated,

Plaintiff,

v.

BMW OF NORTH AMERICA, LLC.,

Defendants.

CASE NO. CV 06-06753 DDP (AJWx)

Honorable Dean D. Pregerson

**ORDER OF DISMISSAL AND
FINAL JUDGMENT**

This matter came before the Court for hearing pursuant to the Order Granting Preliminary Approval Of Class Settlement dated March 2, 2009 ("Preliminary Approval Order"), and on application of the parties for final approval of the parties' Settlement Agreement dated December 19, 2008 ("Agreement"). Due and adequate notice having been given of the settlement set forth in the Agreement ("Settlement") as required in the Preliminary Approval Order, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All defined terms used in this Judgment have the same meanings as set forth in the Agreement.
2. The prior preliminary certification of the Class is hereby made final for purposes of the Settlement. The Class is defined as:

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1 All United States residents who (i) currently own or lease a Class Vehicle, or (ii)
2 formerly owned or leased a Class Vehicle and incurred an out-of-pocket expense relating
3 to the repair of his/her vehicle's sub-frame due to the Sub-Frame Condition.

4 Class Vehicles are BMW E46 Vehicles distributed by BMW NA in the United
5 States. The BMW E46 Vehicle consists of all 1999-2006 Model Year 3 Series vehicles
6 and does not include the Z3 model vehicle (E36) or Z4 model vehicle (E85). Sub-Frame
7 Condition refers to a fracture or fractures on the rear-axle supports for the sub-frame of
8 the Class Vehicles.

9 Excluded from the Class are:

- 10 (1) BMW NA, its subsidiaries and affiliates, officers, directors, and employees;
- 11 (2) Insurers of Class Vehicles;
- 12 (3) All entities claiming to be subrogated to the rights of Class Members;
- 13 (4) Issuers of extended vehicle warranties;
- 14 (5) Individuals who validly opt out of the settlement;
- 15 (6) Any judge to whom this matter is assigned, and his or her immediate family;
- 16 (7) Any current or former owner or lessee of a Class Vehicle whose Class
17 Vehicle was modified for racing, whether sanctioned or not;
- 18 (8) Any current or former owner or lessee of a Class Vehicle that has been
19 modified with suspension parts and/or wheels of a different size; and
- 20 (9) Any current or former owner or lessee of a Class Vehicle that has released
21 his/her claims against BMW NA related to the Sub-Frame Condition.

22 3. The Court hereby reaffirms its previous findings and conclusions, as set
23 forth in the Preliminary Approval Order, that the Settlement Class meets all the
24 requirements for certification pursuant to Rule 23 of the Federal Rules of Civil
25 Procedure.

26 4. The Court finds and concludes that notice has been given to all Class
27 Members known and reasonably identifiable was the best notice practicable under the
28 circumstances and fully satisfied due process and the requirements of Rule 23 of the

1 Federal Rules of Civil Procedure. The Court further finds that notice has been given to
2 the appropriate federal and state officials pursuant to 28 U.S.C. § 1715.

3 5. The Court approves the Settlement and finds that the Settlement is, in all
4 respects, fair, reasonable, and adequate for the Class.

5 6. The Court hereby dismisses this action against BMW NA with prejudice as
6 to all Class Members and without costs, except as otherwise provided in the Agreement.

7 7. Upon the Effective Date, the Plaintiff and each Class Member shall be
8 deemed to have, and by operation of this Judgment shall have, released, waived, and
9 discharged the Released Claims against the Released Persons and shall have expressly
10 waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and
11 benefits of California Civil Code section 1542 and the provisions, rights, and benefits
12 conferred by any law of the United States, any law of any State or the District of
13 Columbia, or any principle of common law that is similar, comparable, or equivalent to
14 California Civil Code section 1542, which states, "A general release does not extend to
15 claims which the creditor does not know or suspect to exist in his or her favor at the time
16 of executing the release, which if known by him or her must have materially affected his
17 or her settlement with the debtor."

18 8. Upon the Effective Date of the Settlement, the Released Persons shall be
19 deemed to have, and by operation of this Judgment shall have, released, waived, and
20 discharged all claims against the Representative Plaintiff and Class Counsel, and shall
21 have expressly waived and relinquished, to the fullest extent permitted by law, the
22 provisions, rights, and benefits of California Civil Code section 1542 and the provisions,
23 rights, and benefits conferred by any law of the United States, any law of any State or the
24 District of Columbia, or any principle of common law that is similar, comparable, or
25 equivalent to California Civil Code section 1542, which states, "A general release does
26 not extend to claims which the creditor does not know or suspect to exist in his or her
27 favor at the time of executing the release, which if known by him or her must have
28 materially affected his or her settlement with the debtor."

1 9. Consideration by the Court of Class Counsel's application for attorneys' fees
2 and expenses and for an incentive award to the Plaintiff shall be addressed by the Court
3 separately from the Court's consideration of the fairness, reasonableness, and adequacy
4 of the Settlement, and any order or proceedings relating to the application, or any appeal
5 from any order relating thereto or reversal or modification thereof, shall not disturb or
6 affect this Judgment or affect or delay the finality of this Judgment.

7 10. Attached to this Judgment as Exhibit A is a list setting forth the name of
8 each person who timely submitted a request for exclusion from the Class in compliance
9 with the procedures set forth in the Preliminary Approval Order. The persons so
10 identified shall be neither entitled to benefits from the Settlement nor bound by this
11 Judgment. All Class Members who have not submitted such a timely exclusion request
12 shall be bound by this Judgment.

13 11. The Court has reviewed and considered the objections of Howard Bloom,
14 Madelyn O. Davis, Elizabeth Ortiz, and William E. Muno to the Settlement and hereby
15 overrules them as follows:

- 16 a. The objections of Howard Bloom and Madelyn O. Davis are overruled
17 because neither individual is a member of the settlement class under the
18 terms of the Settlement and thus neither objector has standing to make an
19 objection to the Settlement.
- 20 b. The objections of Elizabeth Ortiz and William E. Muno are overruled
21 because neither objector has carried his or her burden of demonstrating that
22 the Settlement is not fair, reasonable, or adequate. The concerns of these
23 objectors do not appear to be shared by the settlement class, do not reflect
24 concerns that warrant denial of settlement benefits to the remaining class
25 members, and do not articulate any sound legal or factual reason why the
26 Settlement should not receive final approval.


27 12. Neither the Agreement nor the Settlement nor this Judgment, nor any act
28 performed or document executed pursuant to or in furtherance of the Agreement,

1 Settlement, or Judgment is or may be deemed to be or may be used as an admission or
2 evidence of the validity of any Released Claims, or of any wrongdoing or liability of
3 BMW NA; or is or may be deemed to be or may be used as an admission of, or evidence
4 of, any fault, omission, wrongdoing or liability of BMW NA in any civil, criminal, or
5 administrative proceeding in any court, administrative agency or other tribunal. BMW
6 NA may file the Agreement and/or the Judgment in any action that may be brought
7 against it in order to support any defense or counterclaim, including without limitation
8 those based on principles of res judicata, collateral estoppel, release, good faith
9 settlement, judgment bar or reduction, or any other theory of claim preclusion, issue
10 preclusion, or similar defense or counterclaim.

11 13. Without affecting the finality of this Judgment in any way, this Court hereby
12 retains continuing jurisdiction over (a) implementation of the Settlement; (b) further
13 proceedings, if necessary, on applications for attorneys' fees, expenses, and costs in
14 connection with the Action and the Settlement; and (c) the Parties and the Class Members
15 for the purpose of construing, enforcing, and administering the Agreement and this
16 Judgment.

17 14. If the Settlement does not become effective in accordance with the terms of
18 the Agreement, then this Judgment shall be rendered null and void to the extent provided
19 by and in accordance with the Agreement and shall be vacated and, in such event, all
20 orders entered and releases delivered in connection herewith shall be null and void to the
21 extent provided by and in accordance with the Agreement.

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24 Dated: August 10, 2009


The Honorable Dean D. Pregerson
United States District Judge

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

ERIC BACCA, an individual, and on
behalf of all others similarly situated,

Plaintiff,

v.

BMW OF NORTH AMERICA, LLC.,

Defendants.

CASE NO. CV 06-06753 DDP (AJWx)

Honorable Dean D. Pregerson

**ORDER GRANTING PLAINTIFF'S
APPLICATION FOR AN AWARD
OF ATTORNEY FEES,
REIMBURSEMENT OF
EXPENSES, AND INCENTIVE
AWARD TO THE CLASS
REPRESENTATIVE**

The Court has granted final approval of the proposed class action settlement resolving the above action. Pursuant to Rule 23(h) of the Federal Rules of Civil Procedure, the law firms of Girard Gibbs LLP and Wasserman, Comden & Casselman, L.L.P., appointed by this Court as Class Counsel upon preliminary approval of the Settlement, have applied for a total award of \$1,122,500 for attorneys' fees and reimbursement of expenses and an incentive award of \$2,500 for the Class Representative Plaintiff. Plaintiff's counsel's fee application is made pursuant to the Settlement Agreement reached with BMW and under California Civil Code section 1780(e) of the California Consumers Legal Remedies Act ("CLRA"), one of the claims in

1 this lawsuit, and the private attorney general doctrine, codified at California Code of
2 Civil Procedure section 1021.5. The Court, having considered all papers submitted and
3 oral argument presented, hereby finds and orders as follows:

4 1) The Court finds that Plaintiff is a prevailing plaintiff under Section 1780(e)
5 and is entitled to an award of attorneys' fees and costs. The Court also finds that Plaintiff
6 meets the requirements set forth in Section 1021.5 for an award of attorneys' fees.
7 Plaintiff's lawsuit resulted in the enforcement of important public rights affecting the
8 public's interest, including those underlying California's consumer protection statutes,
9 while at the same time conferring significant benefits, both pecuniary and non-pecuniary,
10 on a large class of persons. Further, the financial burden of private enforcement is such
11 as to make it appropriate to award attorneys' fees under Section 1021.5. The necessity of
12 pursuing this lawsuit placed a burden on Plaintiff out of proportion to his individual stake
13 in the matter.

14 2) Pursuant to the declarations of Eric H. Gibbs and Melissa M. Harnett and
15 supporting exhibits attached thereto, Class Counsel has spent approximately 1,501 hours
16 in prosecuting this action. Based on Class Counsel's hourly rates, as presented in their
17 declarations, Class Counsel's attorney's fees are \$743,412.01. The Court finds that these
18 fees are reasonable under the facts and procedural posture of this case.

19 3) In light of the favorable settlement benefits Class Counsel obtained for the
20 settlement class, as set forth in the detail in the Settlement Agreement, and based on the
21 positive responses of class members to the settlement, the Court finds that a multiplier of
22 1.48 as requested by Class Counsel is reasonable and appropriate. Thus, the Court
23 hereby awards attorney's fees of \$1,122,500 to Class Counsel.

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1 4) The Court also finds that an incentive award of \$2,500 for the Class
2 Representative Plaintiff is appropriate for his efforts in bringing and prosecuting this
3 action and for devoting time and effort to keeping himself informed of the litigation.

4 **IT IS SO ORDERED.**

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8 Dated: August 10, 2009


The Honorable Dean D. Pregerson
United States District Judge