

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

MARK SPANIER and MARISSA
WEERESINGHE, Individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

BAYERISCHE MOTOREN WERKE
AKTIENGESELLSCHAFT, *et al.*

Defendants.

Case No. 2:20-cv-15081-CCC-AME

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Stipulation”), dated April 1, 2022, in the above-captioned Action¹ is entered into among Lead Plaintiff Mark Spanier and Named Plaintiff Marissa Weeresinghe (together, “Plaintiffs”) on behalf of themselves and each of the Settlement Class Members, and Defendants Bayerische Motoren Werke Aktiengesellschaft (“BMW AG”) and BMW of North America LLC (“BMW NA”) (together, “Defendants”), by and through their respective counsel of record in this Action. The Stipulation is intended to fully, finally, and forever resolve, discharge, and settle with prejudice the Action and the Released Claims, subject to the approval of the United States District Court for the District of New Jersey (the “Court”), and the terms and conditions set forth in this Stipulation.

I. THE LITIGATION

This is a putative class action alleging claims under the federal securities laws. For

¹ All capitalized terms not otherwise defined shall have the meaning ascribed to them in Section II.B herein.

purposes of this Settlement only, the Settlement Class is defined in Section II.B herein, and the Parties intend that the provisions herein concerning certification of the Settlement Class shall have no effect whatsoever in the event that the Settlement does not become Final.

A. Procedural History of the Litigation

This Action began on October 27, 2020, when Mark Spanier filed a putative securities fraud class action complaint in this Court against BMW AG, BMW (US) Holding Corp. (“BMW US”), Norbert Reithofer, Oliver Zipse, Nicolas Peter, Harald Krüger, Bernhard Kuhnt, and Ludwig Willisch alleging claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”). Dkt. No. 1.

On December 28, 2020, Mark Spanier moved the Court for appointment as Lead Plaintiff pursuant to the Exchange Act and the Private Securities Reform Litigation Act of 1995 (“PLSRA”). Dkt. No. 11. In the same motion, Mark Spanier also sought approval of his selection of counsel, The Rosen Law Firm, P.A., as Lead Counsel. *Id.*

On July 22, 2021, the Court appointed Mark Spanier as Lead Plaintiff and The Rosen Law Firm, P.A. as Lead Counsel. Dkt. No. 20.

On September 24, 2021, Mark Spanier and Named Plaintiff Marissa Weeresinghe filed the Amended Class Action Complaint (“Complaint”). Dkt. No. 30. The Complaint alleged claims under Section 10(b) and 20(a) of the Exchange Act against BMW AG, BMW NA, Norbert Reithofer, Karl-Ludwig Kley, Oliver Zipse, Nicolas Peter, Harald Krüger, Bernhard Kuhnt, and Ludwig Willisch.²

On November 30, 2021, Plaintiffs voluntarily dismissed Norbert Reithofer, Karl-Ludwig Kley, Oliver Zipse, Nicholas Peter, Harald Krüger, Bernhard Kuhnt, and Ludwig Willisch

² The Complaint dropped BMW US as a defendant.

(collectively, the “Voluntarily Dismissed Individual Defendants”) from the Action, Dkt. No. 37, which the Court so-ordered on December 1, 2021, Dkt. No. 38.

B. Settlement Negotiations

In November of 2021, the Parties began settlement discussions. On February 1, 2022, the Parties entered into a Memorandum of Understanding setting forth the terms of an agreement in principle to resolve the Action for \$1.75 million in return for a release of all Settlement Class Claims against Defendants, Voluntarily Dismissed Defendants or other Released Parties, as further detailed below (the “MOU”). On February 3, 2022, the Parties filed a Notice of Settlement to inform the Court of the Parties’ agreement in principle, and requested that all deadlines and proceedings be stayed pending the execution of the Parties’ settlement agreement. Dkt. No. 42.

C. Plaintiffs’ Assessment of the Claims and Benefits of Settlement

While Plaintiffs believe that the claims asserted in the Complaint have merit, Plaintiffs and Lead Counsel recognize the substantial risk that the Complaint may not survive Defendants’ motion to dismiss, in which scenario Plaintiffs and the putative class would receive nothing. Even if Plaintiffs were to prevail against Defendants’ motion to dismiss, Plaintiffs and Lead Counsel are mindful of inherent problems of proof, possible defenses to the violations asserted in the litigation, and possible limitations on damages. Plaintiffs and Lead Counsel, based upon their thorough evaluation, believe that the settlement set forth in the Stipulation is in the best interests of the Settlement Class Members and that it confers substantial benefits upon Settlement Class Members. Plaintiffs and Lead Counsel shall use their best efforts to obtain final Court approval of the Settlement.

D. Defendants' Denials of Wrongdoing and Liability

Defendants and the Voluntarily Dismissed Individual Defendants have denied and continue to deny each and all of the claims asserted in the Action; that they have committed any violations of law or breaches of duty to Plaintiffs, BMW AG shareholders, ADR holders, F share holders, or anyone else, or aided and abetted the same; and that any investment losses sustained by Plaintiffs and the Settlement Class were caused by Defendants' alleged misconduct.

Defendants and the Voluntarily Dismissed Individual Defendants believe that the Action is without merit and they make no admission of liability or any form of wrongdoing whatsoever by entering into this Settlement.

The Stipulation and the Settlement, whether or not consummated, and whether or not approved by the Court, and any discussions, negotiations, acts performed, proceedings, communications, drafts, documents or agreements relating to the MOU, Stipulation, or the Settlement and any matters arising in connection with them, shall not be offered or received against or to the prejudice of any Defendant, Voluntarily Dismissed Defendant or any other Released Parties (as defined in ¶ 1.28) for any purpose other than in an action to enforce the terms of the Stipulation, and in particular do not constitute, and shall not be described as, construed as or otherwise offered or received against any Defendant, Voluntarily Dismissed Defendant or any other Released Parties as evidence of (or deemed to be evidence of) any admission, concession, or presumption by any of the Defendants, Voluntarily Dismissed Defendants or other Released Parties with respect to (i) the truth of any allegation in any complaint or amended complaint filed in this Action; (ii) the validity of any claim that has been or could have been asserted in this Action or in any litigation or proceeding in any forum; (iii) the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation or proceeding in any forum; or (iv) any deception, liability, damages,

negligence, fault or wrongdoing whatsoever, of any kind or by any Defendant, Voluntarily Dismissed Defendant or other Released Parties whatsoever.

Defendants are entering into this Stipulation solely to eliminate the burden, expense and uncertainty of further litigation. Defendants have determined that it is desirable and beneficial to them that the Action be settled in the manner and upon the terms and conditions set forth in the Stipulation.

II. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT

A. Introduction

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among Plaintiffs (individually and on behalf of all Settlement Class Members), and each of them, and Defendants, and each of them, by and through their respective undersigned counsel or attorneys of record, that, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the Parties from the Settlement set forth herein, the Action and the Released Claims shall be finally and fully compromised, settled and released, and the Action shall be dismissed with prejudice, as to all Parties, upon and subject to the terms and conditions of this Stipulation.

B. Definitions

As used in this Stipulation and its Exhibits, the following terms shall have the meanings specified below. Terms used in the singular shall be deemed to include the plural and vice versa:

1.0 “Action” means the case captioned *Spanier v. Bayerische Motoren Werke Aktiengesellschaft, et al.*, Civ. No. 2:20-cv-15081-CCC-AME, pending in the United States District Court for the District of New Jersey, and including any and all complaints filed in this Action.

1.1 “Authorized Claimant” means a Settlement Class Member who submits a timely and valid Proof of Claim Form in accordance with the requirements established by the Court and whose claim for recovery has been allowed pursuant to the terms of this Stipulation.

1.2 “Claimant” means a Settlement Class Member who submits a Proof of Claim in such form and manner, and within such time, as the Court shall prescribe.

1.3 “Claims Administrator” means Strategic Claims Services, the firm retained by Lead Counsel to administer the Settlement, including sending a mailed Notice to Settlement Class Members in the form of Exhibit A-4 hereto, or emailing Notice to Settlement Class Members, arranging for publication of Notice in the form of Exhibit A-3 hereto, processing claims, and performing such other administrative functions as are required under this Stipulation.

1.4 “Class Period” means the period from November 3, 2015 to September 24, 2020, both dates inclusive.

1.5 “Court” means the United States District Court for the District of New Jersey.

1.6 “Defendant Claims” means any and all claims, demands, rights, causes of action, and liabilities, whether based in law or equity, arising under federal, state, local, statutory, or common law or any other law, rule, or regulation including both known and unknown claims, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims against Defendants, including under Rule 11 of the Federal Rules of Civil Procedure, or for any other fees or cost shifting, except for claims relating to the enforcement of this Stipulation or the Settlement. Nothing in this paragraph shall affect any claims, demands, rights, or causes of action and liabilities: (a) between or among Defendants; or (b) between Defendants and their insurers.

1.7 “Defendants” means BMW AG and BMW NA.

1.8 “Defendants’ Counsel” means Skadden, Arps, Slate, Meagher & Flom LLP and Wilmer Cutler Pickering Hale and Dorr LLP.

1.9 “Effective Date” means the first date by which all of the events and conditions specified in ¶ 8.0 of the Stipulation have occurred and/or been met.

1.10 “Escrow Account” means an interest-bearing escrow account established by the Escrow Agent. The Escrow Account shall be managed by the Escrow Agent, subject to the Court’s supervisory authority, for the benefit of Plaintiffs and the Settlement Class in accordance with the terms of the Stipulation and any order of the Court.

1.11 “Escrow Agent” means Strategic Claims Services or its appointed agents. The Escrow Agent shall perform the duties as set forth in this Stipulation and any order of the Court.

1.12 “Fee and Expense Application” shall have the definition as set forth herein in § II.H., *infra*.

1.13 “Fee and Expense Award” shall have the definition as set forth herein in § II.H., *infra*.

1.14 “Final,” with respect to this Settlement, has the meaning as set forth in paragraph 8(d) hereto.

1.15 “Judgment” means the Order and Final Judgment to be entered by the Court approving the Settlement, certifying the Settlement Class for settlement purposes only, approving the release of the Released Claims, and dismissing the Action with prejudice and without costs to any party, substantially in the form attached hereto as Exhibit B or in similar form adopted by the Court.

1.16 “Lead Counsel” means The Rosen Law Firm, P.A.

1.17 “Net Settlement Fund” means the Settlement Fund less any Taxes and Tax Expenses, any Fee and Expense Award to Lead Counsel, any compensatory award to Plaintiffs approved by the Court, and Notice & Administration Costs.

1.18 “Notice” means collectively, the Notice of Pendency and Proposed Settlement of Class Action (“Long Notice”), the Summary Notice of Pendency and Proposed Class Action Settlement (“Summary Notice”), and the Postcard Notice, which are to be made available to Settlement Class Members substantially in the forms attached hereto as Exhibits A-1, A-3, and A-4 on the Claims Administrator’s website and/or mailed or emailed to Settlement Class Members.

1.19 “Notice & Administration Costs” means the costs and expenses reasonably and actually incurred by, and the reasonable fees charged by, the Claims Administrator in connection with notice dissemination and claims administration upon presentation of customary invoices therefor, which invoices have been approved by Lead Counsel, including, without limitation: the cost of identifying and locating members of the Settlement Class; mailing Postcard Notice and publishing the Summary Notice (such amounts shall include, without limitation, the actual costs of publication in national newswires, printing and mailing the Postcard Notice, and reimbursement to nominee owners for forwarding notice to their beneficial owners), soliciting claims from Settlement Class Members, assisting with the filing of claims, processing Proof of Claim and Release Forms, administering and distributing the Net Settlement Fund to Authorized Claimants, and paying escrow fees and costs, if any.

1.20 “Parties” means Plaintiffs, on behalf of themselves and the Settlement Class Members, and Defendants.

1.21 “Person” means an individual, corporation, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and for each of them their respective heirs, successors-in-interest, or assigns.

1.22 “Plan of Allocation” means a plan or formula for allocating the Net Settlement Fund to Authorized Claimants, to be designed by Lead Counsel in its sole discretion, subject to the approval of the Court. Any Plan of Allocation is not part of this Stipulation and none of the Released Parties shall have any responsibility or liability with respect thereto.

1.23 “Postcard Notice” means the postcard notice to be sent to Settlement Class Members substantially in the form attached hereto as Exhibit A-4, and which shall contain information relating to, among other things, how to access the Long Notice and Stipulation and to file a Proof of Claim.

1.24 “Preliminary Approval Order” means an order by the Court substantially in the form of Exhibit A hereto that will, *inter alia*, (1) grant preliminary approval of the Settlement; (2) certify the Settlement Class for settlement purposes only; (3) authorize dissemination of notice to the Settlement Class substantially in the form of Exhibits A-1, A-3, and A-4 hereto, along with provision of a Proof of Claim and Release Form substantially in the form of Exhibit A-2; and (4) schedule the Settlement Fairness Hearing.

1.25 “Proof of Claim” means the Proof of Claim and Release Form to be submitted by Claimants, substantially in the form attached as Exhibit A-2.

1.26 “Released Claims” means the Settlement Class Claims and the Defendant Claims.

1.27 “Released Parties” means Defendants, the Voluntarily Dismissed Individual Defendants, and each of their respective former, present or future parents, subsidiaries,

predecessors, successors, divisions, joint ventures and general or limited partnerships, and each of their respective current or former officers, directors, trustees, partners, contractors, auditors, principals, agents, managing agents, employees, attorneys, accountants, investment bankers, underwriters, insurers, or reinsurers in their capacities as such, as well as each of the immediate family members, heirs, executors, personal or legal representatives, estates, beneficiaries, predecessors, successors and assigns of the Voluntarily Dismissed Individual Defendants and other individuals referred to in this paragraph.

1.28 “Releases” means the release of Released Claims against Released Parties pursuant to ¶¶ 5.0–5.2.

1.29 “Settlement” means the settlement contemplated by this Stipulation.

1.30 “Settlement Amount” means the Settlement consideration for a full and complete settlement of all Released Claims being paid by Defendants or Defendants’ insurance carrier(s) in the amount of one million seven hundred and fifty thousand dollars (\$1,750,000.00).³

1.31 “Settlement Class” means, for purposes of this Settlement only, all persons or entities that purchased or otherwise acquired BMW AG American Depositary Receipts (ADRs) or BMW AG F shares publicly traded over-the-counter between November 3, 2015, and September 24, 2020, both dates inclusive, and excludes Defendants, the present and former officers and directors of Defendants and any subsidiaries thereof, and the immediate family members, legal representatives, heirs, successors, or assigns of such excluded persons and any entity in which any such excluded person has or had a controlling interest during the Class Period. Also excluded from the Settlement Class are all putative members of the Settlement Class who: (a) exclude themselves by filing a valid and timely request for exclusion, or

³ All dollar amounts are in U.S. dollars.

(b) suffered no compensable damages as determined by the Plan of Allocation to be filed with the Court.

1.32 “Settlement Class Claims” means any and all claims, suits, actions, appeals, causes of action, damages (including, without limitation, compensatory, punitive, exemplary, rescissory, direct, consequential, or special damages, and restitution and disgorgement), demands, rights, debts, penalties, costs, expenses, fees, injunctive relief, attorneys’ fees, expert or consulting fees, prejudgment interest, indemnities, duties, liabilities, losses, or obligations of every nature and description whatsoever, known or Unknown, whether or not concealed or hidden, fixed or contingent, direct or indirect, anticipated or unanticipated, whether legal, contractual, rescissory, statutory, or equitable in nature, arising under federal, state, local, statutory, or common law, or any other law, rule, or regulation of any jurisdiction, including, but not limited to, the United States or Germany, that have been or could have been asserted in any forum by the Settlement Class Members, or the successors or assigns of any of them, in any capacity, against the Released Parties, arising out of, based upon or related in any way to the purchase, acquisition, sale, or ownership of BMW AG ADRs or BMW AG F shares during the Settlement Class Period, including without limitation any claims related to the allegations, transactions, facts, events, matters, occurrences, acts, representations, or omissions involved, set forth, referred to, or that have been or could have been asserted in the Action, except for any claims relating to the enforcement of this Stipulation or the Settlement. Nothing in this paragraph shall affect any claims, demands, rights, or causes of action and liabilities: (a) between or among Defendants or Voluntarily Dismissed Individual Defendants; or (b) between Defendants and their insurers.

1.33 “Settlement Class Member” means any Person who falls within the definition of the Settlement Class.

1.34 “Settlement Distribution Order” means the Order approving the Claims Administrators’ administrative determinations concerning the acceptance and rejection of the claims submitted by potential Settlement Class Members; approving of any fees and expenses not previously applied for, including the fees and expenses of the Claims Administrator; and directing the distribution of the Net Settlement Fund to Authorized Claimants.

1.35 “Settlement Fairness Hearing” means a hearing to be held by the Court to determine whether the proposed Settlement of the Action on the terms and conditions provided for in this Stipulation is fair, reasonable, and adequate to the Settlement Class and should be approved by the Court; to determine whether a Judgment as provided in the Stipulation should be entered; to determine whether the proposed Plan of Allocation should be approved; to determine any amount of fees, costs and expenses that should be awarded to Lead Counsel for their efforts and any compensatory awards that should be awarded to Plaintiffs service to the Settlement Class; to hear any objections by Settlement Class Members to the Stipulation, Plan of Allocation, or any award of fees and expenses to Lead Counsel or compensatory award to Plaintiffs; and to consider such other matters as the Court may deem appropriate.

1.36 “Settlement Fund” means the Settlement Amount before any of the expenditures authorized herein, the payment of which will reduce it as described in the Net Settlement Fund definition, *supra*.

1.37 “Summary Notice” means the Summary Notice of Pendency and Proposed Settlement of Class Action to be published on a national business newswire, substantially in the form attached as Exhibit A-3.

1.38 “Taxes” and “Tax Expenses” means: (i) all federal, state, and/or local taxes, fees, levies, duties, tariffs, imposts, and other charges of any kind imposed by any governmental authority arising with respect to any income earned by the Settlement Fund, together with any interest, penalties, or additions to tax imposed with respect to them; and (ii) the reasonable and necessary costs and expenses incurred in connection with the implementation of ¶ 2.8 of the Stipulation, including, without limitation, the reasonable and necessary costs and expenses of tax attorneys and accountants.

1.39 “Unknown Claims” or “Unknown” in reference to Released Claims means and includes (i) any and all Settlement Class Claims that Plaintiffs or any Settlement Class Member do not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties which, if known by him, her or it, might have affected his, her or its decision(s) with respect to the Settlement, or might have affected his, her or its decision not to object to this Settlement or seek exclusion from the Class; and (ii) any and all Defendant Claims that any Defendant or Released Party does not know or suspect to exist in his, her, or its favor, which if known by him, her, or it might have affected his, her, or its decision(s) with respect to the Settlement. With respect to the Released Claims, the Parties stipulate and agree that upon the Effective Date, Plaintiffs and Defendants shall expressly waive, and each Settlement Class Member and Released Party shall be deemed to have waived, and by operation of the Judgment shall have expressly waived any and all provisions, rights and benefits conferred by California Civil Code § 1542, or any law of any state or territory of the United States or principle of common law, that is similar, comparable, or equivalent to California Civil Code § 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of

executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Plaintiffs, Defendants and Settlement Class Members may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but Plaintiffs shall expressly, fully, finally, and forever settle and release, and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released, and the Released Parties shall expressly, fully, finally, and forever settle and release any and all Released Claims, in each case known or Unknown, suspected or unsuspected, contingent or non-contingent, disclosed or undisclosed, matured or unmatured, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Parties acknowledge, and the Settlement Class Members and the Released Parties by operation of the Judgment shall be deemed to have acknowledged, that the foregoing waiver and inclusion of “Unknown Claims” in the definition of Settlement Class Claims and Defendant Claims was separately bargained for and is a material element of the Settlement of which these releases are a part.

C. The Settlement

a. Settlement Amount

2.0 In consideration of the full and final settlement of the Settlement Class Claims, Defendants shall cause to be paid an initial payment toward the Settlement Amount in the sum of one hundred twenty five thousand dollars (\$125,000) by wire transfer or check into the Escrow

Account within fifteen (15) business days after the later of (i) the entry of the Preliminary Approval Order, as defined in ¶ 1.25; and (ii) provision to Defendants of all information necessary to effectuate a transfer of funds, including the bank name and ABA routing number, account name and number, and a signed W-9 reflecting the taxpayer identification number for the Settlement Fund. Defendants shall cause to be paid the remainder of the Settlement Amount of one million six hundred twenty-five thousand dollars (\$1,625,000) by wire transfer or check into the Escrow Account at least five (5) business days before the Settlement Fairness Hearing. The interest from the Escrow Account will accrue to the benefit of the Settlement Class if the Court approves the Settlement. If for any reason the Effective Date does not occur, the Settlement Amount and interest thereon will be returned to Defendants, less any amount used to provide notice of the Settlement to the Settlement Class up to \$125,000.

2.1 Defendants' sole financial obligation to Plaintiffs, the Settlement Class Members and Lead Counsel under this Stipulation shall be as set forth in § 2.0, and under no circumstances shall Defendants have any obligation to make any other or greater payment to them for any purpose pursuant to the Settlement. All payments made to Authorized Claimants pursuant to the Plan of Allocation as approved by the Court, the Fee and Expense Award by the Court to Lead Counsel, and any compensatory award to Plaintiffs as awarded by the Court, and all administrative and other approved expenses of the Settlement, including Taxes and Tax Expenses, shall be paid from the Settlement Fund.

b. The Escrow Agent

2.2 At the written direction of Lead Counsel, the Settlement Fund shall be invested exclusively in instruments or accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a

U.S. Treasury Fund or a bank account that is either (a) fully insured by the Federal Deposit Insurance Corporation or (b) secured by instruments backed by the full faith and credit of the United States Government. At Lead Counsel's direction, the Escrow Agent shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. Defendants, Defendants' Counsel, and the Released Parties shall not bear any responsibility for or liability related to the investment of the Settlement Fund by the Escrow Agent.

c. Handling and Disbursement of Funds by the Escrow Agent

2.3 Subject to further order and/or direction as may be made by the Court, the Escrow Agent is authorized to execute such transactions on behalf of the Settlement Class as are consistent with the terms of this Stipulation. The Escrow Agent shall not disburse the Settlement Fund except as provided in this Stipulation, by an order of the Court, or with the written agreement of Defendants' Counsel and Lead Counsel. Defendants, Defendants' Counsel, and the Released Parties have no responsibility for, interest in, or liability whatsoever with respect to the actions of the Escrow Agent, or any transaction executed by the Escrow Agent. The Escrow Agent, through the Settlement Fund, shall indemnify and hold each of the Defendants, Defendants' Counsel and the Released Parties harmless for any transaction executed by the Escrow Agent.

2.4 No monies will be disbursed from the Settlement Fund until after the Effective Date except as provided in ¶¶ 2.6–2.7 regarding Notice & Administration Costs, ¶ 2.8 regarding Taxes, and ¶ 7.1 regarding Attorneys' Fees and Expenses.

2.5 All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such

time as such funds shall be distributed or returned to the parties who deposited such funds pursuant to this Stipulation and/or further order of the Court. Upon the Effective Date and thereafter, there shall be no reversion whatsoever of any of the Settlement Amount to any of the Released Parties.

d. Notice & Administration Costs

2.6 At any time after entry of the Preliminary Approval Order, Lead Counsel may, without further approval from the Court or Defendants, pay from the Escrow Account actual, reasonable, and necessary Notice and Administration Costs up to one hundred twenty-five thousand dollars (\$125,000) prior to the Effective Date. After the Effective Date, additional amounts may be transferred from the Settlement Fund for Lead Counsel to pay any additional, actual, reasonable, and necessary additional Notice and Administration Costs without further order of the Court.

2.7 Plaintiffs and Lead Counsel, Defendants and Defendants' Counsel, and the Released Parties shall not bear any liability for Notice and Administration Costs.

e. Taxes

2.8 The following provisions shall govern the treatment of Taxes and Tax Expenses:

(a) The Escrow Agent will, to the extent possible, agree to treat the Settlement Fund as a "qualified settlement fund" within the meaning of Treasury Regulation § 1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this ¶ 2.8, including the "relation-back election" (as defined in Treasury Regulation § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary

documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(b) The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treasury Regulation § 1.468B-2(k)). Such returns (as well as the election described in ¶ 2.8(a)) shall be consistent with this ¶ 2.8 and in all events shall reflect that all Taxes (including any estimated Taxes, interest or penalties on the income earned) shall be paid out of the Settlement Fund.

(c) All Taxes and Tax Expenses relating to the income earned by the Settlement Fund shall be paid out of the Settlement Fund.

(d) Taxes and Tax Expenses shall be treated as and considered to be a cost of administration of the Settlement and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court but shall not be considered or treated as part of the Notice & Administration Costs.

(e) Defendants, Defendants' Counsel, Released Parties, Plaintiffs, Settlement Class Members, and Lead Counsel shall have no liability or responsibility for Taxes and Tax Expenses. The Escrow Agent shall indemnify and hold each of the Defendants, Defendants' Counsel, Released Parties, Plaintiffs, the Settlement Class Members, and Lead Counsel harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification).

(f) The Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay expenses relating to the establishment of adequate reserves for any Taxes and Tax Expenses (as

well as any amounts that may be required to be withheld under Treasury Regulation § 1.468B-2(l)(2)). Neither Defendants, Defendants' Counsel, Released Parties, Plaintiffs, the Settlement Class Members nor Lead Counsel are responsible therefor, nor shall they have any liability with respect thereto.

(g) The Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this ¶ 2.8.

f. Termination of Settlement

2.9 Defendants shall, acting collectively, have the right to terminate the Settlement and this Stipulation, notwithstanding preliminary approval that may be provided by the Court, by providing written notice of their election to do so to Lead Counsel within ten (10) business days of: (a) a decision by the Court declining to enter the Preliminary Approval Order in any material respect; (b) a decision by the Court refusing to approve this Stipulation in any material respect or any material part thereof; (c) a decision by the Court declining to enter the Judgment in any material respect; or (d) the date upon which the Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court. Any decision with respect to any Plan of Allocation, Fee and Expense Award to Lead Counsel, or compensatory award to Plaintiffs shall not be considered material to this Stipulation and shall not be grounds for termination.

2.10 Plaintiffs shall have the right to terminate the Settlement and this Stipulation, notwithstanding preliminary approval that may be provided by the Court, by providing written notice of their election to do so to Defendants' Counsel within ten (10) business days of: (a) a decision by the Court declining to enter the Preliminary Approval Order in any material respect; (b) a decision by the Court refusing to approve this Stipulation in any material respect or any

material part thereof; (c) a decision by the Court declining to enter the Judgment in any material respect; or (d) the date upon which the Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court. Any decision with respect to any Plan of Allocation, Fee and Expense Award, or compensatory award shall not be considered material to this Stipulation and shall not be grounds for termination.

2.11 If the Settlement Amount is not paid into the Escrow Account in accordance with ¶ 2.0 of this Stipulation, then Plaintiffs, on behalf of the Settlement Class, and not Defendants, shall have the right to: (a) terminate the Settlement; or (b) apply to the Court to enforce the terms of the Settlement and this Stipulation, but only if (i) Lead Counsel has first notified Defendants' Counsel in writing of Plaintiffs' intent to terminate or pursue a judgment pursuant to this paragraph, and (ii) the entire Settlement Amount is not deposited in the Escrow Account within ten (10) business days after Lead Counsel has provided such written notice.

2.12 If, before the Settlement Fairness Hearing, any persons who otherwise would be Settlement Class Members have timely filed for exclusion from the Settlement Class in accordance with the provisions of the Preliminary Approval Order and the notice given pursuant thereto, and such persons in the aggregate have purchased a number of ADRs and/or F Shares during the Class Period in an amount greater than the sum specified in a separate Supplemental Agreement between the Parties, the Defendants, acting collectively and in their sole discretion, shall have the option to terminate the Settlement and this Stipulation in accordance with the procedures set forth in the Supplemental Agreement. The Supplemental Agreement shall not be filed with the Court and its terms shall not be disclosed in any other manner (other than the statements herein and in the Notice, to the extent necessary, or as otherwise provided in the Supplemental Agreement) unless and until the Court otherwise directs or a dispute arises among

the Parties concerning its interpretation or application. If submission of the Supplemental Agreement is required for resolution of a dispute or is otherwise ordered by the Court, the Parties will undertake to have the Supplemental Agreement submitted to the Court in camera or filed under seal.

2.13 If (i) Defendants exercise their right to terminate the Settlement as provided in this Stipulation; or (ii) Plaintiffs exercise their right to terminate this Settlement as provided in this Stipulation, then:

(a) The Settlement and the relevant portions of this Stipulation shall be canceled and terminated without prejudice, and this Stipulation shall be null and void and shall have no further force or effect (except for ¶¶ 2.9, 2.10, 2.11, 2.12, 8.2, 8.3, 8.4, 9.0, 9.16, 9.19);

(b) The Settlement Amount including any interest accrued thereon, less expenses actually incurred or due and owing for the Notice & Administration Costs pursuant to ¶ 2.6 above, shall be refunded by check or wire transfer within fifteen (15) calendar days in accordance with the instructions to be provided by Defendants' Counsel; and

(c) The Parties shall revert to their respective positions in the Action prior to the execution of the MOU, the execution of the Stipulation, and the entry of any orders pursuant to the Stipulation.

D. Class Certification

3.0 For the sole purpose of this Settlement, the Parties hereby stipulate, agree, and consent to: (i) certification of the Action as a class action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3); (b) appointment of Plaintiffs as class representatives; and (c) appointment of Lead Counsel as class counsel pursuant to Fed. R. Civ. P. 23(g). Following execution of this Stipulation, Plaintiffs, with consent of Defendants, shall apply to the Court for entry of the Preliminary Approval Order substantially in the form attached as Exhibit A hereto, which will

certify the Action to proceed as a class action for settlement purposes only. The certification of the Settlement Class shall be binding only with respect to the Settlement and only if the Judgment becomes Final.

3.1 The Parties' agreement as to certification of the Action is solely for purposes of effectuating a settlement and for no other purpose. Defendants retain all of their objections, arguments, and defenses with respect to class certification, and reserve all rights to contest class certification, if the Settlement set forth in this Stipulation does not receive the Court's final approval, if the Court's approval is reversed or vacated on appeal, if this Stipulation is terminated as provided herein, or if the Settlement set forth in this Settlement Agreement otherwise fails to become effective. The Parties acknowledge that there has been no stipulation to any classes or certification of any classes for any purpose other than effectuating the Settlement, and that if the Settlement set forth in this Stipulation does not receive the Court's final approval, if the Court's approval is reversed or vacated on appeal, if this Stipulation is terminated as provided herein, or if the Settlement set forth in this Stipulation otherwise fails to become effective, this agreement as to certification of the Action becomes null and void ab initio, and this Stipulation or any other settlement-related statement may not be cited regarding class certification, or in support of an argument for certifying a class for any purpose related to this or any other proceeding.

E. Preliminary Approval Order

4.0 Promptly after execution of this Stipulation, Lead Counsel shall submit this Stipulation together with its Exhibits to the Court and shall request entry of a Preliminary Approval Order.

4.1 The Notice shall describe the Settlement; the proposed Plan of Allocation; the requests for a Fee and Expense Award for Lead Counsel, and a compensatory award to Plaintiffs;

the date of the Settlement Fairness Hearing; Settlement Class Members' rights to opt out, object, or otherwise be heard with regard to these matters; and Settlement Class Members' opportunity to file claims upon the Settlement Fund. The Stipulation, Notice, Proof of Claim and Release Form, and all papers submitted in support thereof shall be posted on a website to be maintained by the Claims Administrator.

4.2 Within ten (10) business days after the Court enters a Preliminary Approval Order, Defendants shall assist the Claims Administrator in obtaining, from BMW AG's transfer agent, at no cost to Plaintiffs or Lead Counsel, records of ownership, to the extent available, to identify Settlement Class Members.

F. Releases

5.0 The obligations incurred pursuant to this Stipulation shall be in full and final settlement of the Action as to Defendants, the Released Parties, and any and all Released Claims.

5.1 Upon the Effective Date of this Settlement, Plaintiffs and all Settlement Class Members (whether or not they submit a Proof of Claim or share in the Settlement Fund) on behalf of themselves, anyone claiming through or on behalf of any of them, their personal representatives, heirs, executors, administrators, successors and assigns, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged each and every one of the Settlement Class Claims, and shall be deemed by this Settlement to, and shall be forever barred and enjoined from commencing, instituting, assisting, prosecuting, or continuing to prosecute any action or other proceeding in any court of law or equity, arbitration tribunal, administrative forum, or any other forum, asserting any of the Settlement Class Claims.

5.2 Upon the Effective Date of this Settlement, and as a material condition of the dismissal with prejudice of the Action, Defendants, on behalf of themselves, their personal

representatives, heirs, executors, administrators, successors, and assigns; any of their current or former officers and directors; and all of the Released Parties shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged each and every one of the Defendant Claims, and shall be deemed by this Settlement to, and shall be forever enjoined from prosecuting each and every one of the Defendant Claims.

G. Administration and Calculation of Claims, Plan of Allocation, and Distribution of the Settlement Fund

6.0 The Claims Administrator shall administer and calculate the claims submitted by Settlement Class Members and shall oversee distribution of the Net Settlement Fund to Authorized Claimants. The distribution checks will be drawn upon the Net Settlement Fund.

6.1 The Released Parties, Defendants and Defendants' Counsel shall have no involvement in reviewing or challenging claims and shall have no responsibility or liability for the allocation of the Settlement Fund among the Settlement Class Members or the allocation of any Fee and Expense Award to Lead Counsel or compensatory award to Plaintiffs. Any such awards shall be paid solely by the Settlement Fund.

6.2 The Settlement Fund shall be applied as follows: to pay Taxes and Tax Expenses; to pay Notice and Administration Costs; to pay a Fee and Expense Award to Lead Counsel to the extent allowed by the Court; to pay a compensatory award to Plaintiffs to the extent allowed by the Court; and, upon court approval, to distribute the Net Settlement Fund to the Authorized Claimants as allowed by this Stipulation, the Plan of Allocation or the Court.

6.3 After the Effective Date, Lead Counsel, on behalf of Plaintiffs, shall apply to the Court, on notice to Defendants, for the Settlement Distribution Order. The Settlement Fund shall be distributed to the Authorized Claimants, pursuant to the Settlement Distribution Order, only after the Effective Date and after (a) all claims have been processed, (b) all matters with respect

to the Fee and Expense Application, the Fee and Expense Award, and any Settlement administration costs and expenses have been resolved by the Court and such resolution is Final; and (c) all costs of the Settlement administration have been paid. The Net Settlement Fund shall be distributed to Authorized Claimants subject to and in accordance with the following:

(i) Each Settlement Class Member claiming to be an Authorized Claimant shall be required to submit to the Claims Administrator a completed Proof of Claim, substantially in the form of Exhibit A-2 hereto, supported by such documents as are designated therein, including proof of the transactions claimed and the losses incurred thereon, or such other documents or proof as the Claims Administrator, in its discretion, may deem acceptable. Copies of all requests for exclusion received shall be sent to Defendants' Counsel and to Lead Counsel within a reasonable time of receipt by the Claims Administrator and in no case later than three (3) calendar days after the deadline for submitting requests for exclusion. Copies of all written retractions of requests for exclusion received shall be sent to Defendants' Counsel and to Lead Counsel within a reasonable time of receipt by the Claims Administrator and in any event not less than three (3) calendar days prior to the Settlement Fairness Hearing.

(ii) Except as otherwise ordered by the Court, all Settlement Class Members who fail to timely submit a Proof of Claim and Release Form, or who file a Proof of Claim that is rejected, shall be forever barred from receiving any payments pursuant to this Stipulation and Settlement, but will in all other respects be subject to and bound by the provisions of this Stipulation, the Releases, and the Judgment and will be barred and enjoined from bringing any action against the Released Parties concerning the Released Claims. Notwithstanding the foregoing, Lead Counsel shall have the discretion to accept late-submitted claims for processing by the Claims Administrator but shall not incur any liability for declining to do so.

6.4 Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the Claimant's claim, and the claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to that Claimant's status as a Settlement Class Member and the validity of the amount of the Claimant's claim. No discovery shall be allowed of the Claimants, whether on the merits of the Action or Settlement or otherwise, in conjunction with the processing of the Proofs of Claim.

6.5 Payment pursuant to this Stipulation shall be deemed final and conclusive against all Claimants. No Person shall have any claim against Plaintiffs, Lead Counsel, Defendants, Defendants' Counsel, the Released Parties, the Claims Administrator, the Escrow Agent or any other agent designated by Lead Counsel based on distribution determinations or claim rejections made substantially in accordance with this Stipulation and the Settlement contained therein, the Plan of Allocation, or further orders of the Court.

6.6 The Net Settlement Fund shall be distributed to the Authorized Claimants substantially in accordance with a Plan of Allocation designed by Lead Counsel, to be described in the Notice, and approved by the Court. However, if there is any balance remaining in the Net Settlement Fund after six (6) months from the date of distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), the Claims Administrator under the supervision of Lead Counsel shall, if feasible, reallocate such balance among Authorized Claimants in an equitable and economic fashion. Thereafter, any balance that still remains in the Net Settlement Fund shall be donated to such not-for-profit as the Court may direct and approve.

6.7 This is not a claims-made settlement. If all conditions of the Stipulation are satisfied and the Settlement becomes Final, no portion of the Settlement Fund will be returned to the Released Parties.

6.8 Defendants, Defendants' Counsel, and the Released Parties shall have no responsibility for, interest in, or liability whatsoever with respect to: (i) any act, omission or determination of Lead Counsel, the Escrow Agent or the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the administration, management, investment, allocation or distribution of the Settlement Fund; (iii) the Plan of Allocation; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of, the Settlement Fund; (vi) the payment or withholding of any Taxes and Tax Expenses or (vii) any failure of Notice or failure to identify Settlement Class Members, or any losses incurred in connection therewith. No Person shall have any claim of any kind against Defendants, Defendants' Counsel, or any other Released Parties with respect to the matters set forth in ¶¶ 6.1-6.8 herein.

6.9 It is understood and agreed by the Parties that any proposed Plan of Allocation of the Net Settlement Fund including, but not limited to, any adjustments to an Authorized Claimant's claim set forth therein, is not a part of this Stipulation and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in this Stipulation, and any order or proceedings relating to the Plan of Allocation shall not operate to terminate or cancel this Stipulation or affect the finality of the Court's Judgment approving this Stipulation and the Settlement set forth therein, or any other orders entered pursuant to this Stipulation.

H. Attorneys' Fees and Expenses

7.0 Lead Counsel may submit an application or applications (the "Fee and Expense Application") for payments to Lead Counsel from the Settlement Fund for: (a) an award of attorneys' fees; plus (b) reimbursement of actual costs and expenses, including without limitation the fees and expenses of experts, consultants, and investigators incurred in connection with prosecuting the Action. Lead Counsel reserves the right to make additional applications for fees and expenses incurred, if necessary.

7.1 Any award of attorneys' fees, costs, and expenses approved by the Court ("Fee and Expense Award") shall be payable to Lead Counsel, solely from the Settlement Fund within three (3) business days after the entry of the Court's order awarding such fees and expenses, notwithstanding any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to the joint and several obligation of all counsel who receive any award of attorneys' fees and costs to refund such award to the Settlement Fund, plus interest earned thereon if, as a result of any appeal and/or further proceedings on remand or successful collateral attack, the award is lowered or the Settlement is disapproved by a final order. Defendants and the Releasing Parties shall have no responsibility for any payment of attorneys' fees, costs and/or expenses to Lead Counsel, Plaintiffs, or any other counsel or Person who receives payment from the Settlement Fund.

7.2 If the Fee and Expense Award is reduced or reversed on appeal, Lead Counsel shall be jointly and severally obligated to repay all such attorneys' fees and expenses awarded and shall make all necessary refunds and repayments into the Settlement Fund no later than thirty (30) calendar days after Lead Counsel's receipt from the Court of notice of any order that reverses or reduces any award of attorneys' fees or expenses, which shall be distributed by the Escrow Agent to the Settlement Class pursuant to the manner directed in the Final order.

7.3 The Fee and Expense Application is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in this Stipulation. Any order or proceedings relating to the Fee and Expense Application, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to modify, terminate or cancel this Stipulation, or affect or delay the finality of the Judgment approving this Stipulation and the Settlement of the Action.

I. Effect of Disapproval, Cancellation or Termination

8.0 The Effective Date of the Stipulation means three (3) business days after all of the following conditions have been met and occurred:

- (a) The Court has entered the Preliminary Approval Order;
- (b) The Settlement Amount has been deposited into the Escrow Account;
- (c) Defendants have not exercised their option to terminate the Stipulation pursuant to the Supplemental Agreement; and
- (d) Entry by the Court of the Judgment, which has become Final, which is when the last of the following with respect to the Judgment approving the Stipulation shall occur: (i) the expiration of the time to file any motion to alter or amend the Judgment under Federal Rule of Civil Procedure 59(e) without any such motion having been filed; (ii) the expiration of the time to appeal from the Judgment without any such appeal having been filed; and (iii) if a motion to alter or amend is filed or if an appeal is filed, immediately after the determination of that motion or appeal so that the Judgment is no longer subject to any further judicial review or appeal whatsoever, whether by reason of affirmance by a court of last resort, lapse of time, voluntary dismissal of appeal, or otherwise, and in such a manner as to permit the consummation of the Settlement substantially in accordance with the terms and conditions of this Stipulation. For purposes of this paragraph, an "appeal" shall include any petition for a writ of *certiorari* or other

writ that may be filed in connection with the approval or disapproval of this Settlement, but shall not include any appeal which concerns only the issue of Plaintiffs' counsel's attorneys' fees and expenses, payments to Plaintiffs for their expenses, the Plan of Allocation of the Settlement Fund or the procedures for determining Authorized Claimants' recognized claims.

8.1 Upon the occurrence of the Effective Date, any and all interest or right of Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished, except as set forth in this Stipulation. The Settlement Fund shall be distributed in accordance with ¶ 6.3 hereof. If all of the conditions specified in ¶ 8.0 herein are not met, then this Stipulation shall be canceled and terminated subject to ¶ 8.2 herein, unless Lead Counsel and Defendants' Counsel mutually agree in writing to proceed with the Settlement.

8.2 Unless otherwise ordered by the Court, in the event the Stipulation is terminated, or is canceled, or fails to become effective for any reason, no later than ten (10) business days after written notification of such event is sent by Defendants' Counsel or Lead Counsel to the Escrow Agent, subject to the terms of ¶¶ 2.9 or 2.10 hereof, the Settlement Amount (including accrued interest), less any expenses and any costs which have either been properly disbursed pursuant to ¶ 2.6 hereof, or are determined to be chargeable to the Settlement Fund or the notice and administration of the Settlement pursuant to ¶ 2.6 hereof, shall be refunded by the Escrow Agent to the appropriate sources of the funds in proportion to their contribution to the Settlement Fund, plus accrued interest attributable to that amount, by check or wire transfer pursuant to written instructions from Defendants' Counsel.

8.3 In the event this Settlement is terminated as provided in ¶¶ 2.9 or 2.10, then the terms and provisions of the Stipulation, with the exception of ¶¶ 2.9, 2.10, 2.11, 2.12, 8.2, 8.3, 8.4, 9.0, 9.16 or 9.19 hereof, shall have no further force and effect and shall not be used in this

Action or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*. No order of the Court or modification or reversal on appeal of any order of the Court concerning the Plan of Allocation or the amount of any attorneys' fees, costs, expenses and interest awarded by the Court to Lead Counsel shall constitute grounds for cancellation or termination of the Stipulation.

8.4 In the event this Settlement is terminated as provided in ¶¶ 2.9 or 2.10, Plaintiffs, Settlement Class Members, Lead Counsel, the Claims Administrator, and the Escrow Agent shall not have any obligation to repay any Notice and Administration Costs actually and properly disbursed from the Settlement Fund. In addition, any expenses already incurred and properly chargeable to Notice and Administration Costs pursuant to this Stipulation at the time of such termination or cancellation, but which have not been paid, shall be paid by the Escrow Agent in accordance with the terms of the Stipulation before the balance is refunded in accordance with ¶ 8.2.

J. Miscellaneous Provisions

9.0 This Stipulation, whether or not consummated, and any proceedings taken pursuant to it, shall not be deemed to be, and may not be, argued to be offered or received:

(a) Against any of the Defendants or Voluntarily Dismissed Individual Defendants as evidence of, or construed as evidence of, any presumption, concession, or admission by any of the Defendants or Voluntarily Dismissed Individual Defendants with respect to the truth of any fact alleged by Plaintiffs in this Action or the validity of any claim that has been or could have been asserted against any of the Defendants in this Action, or the deficiency of any defense that has been or could have been asserted in the Action, or of any wrongdoing or liability by any of the Defendants or Voluntarily Dismissed Individual Defendants.

(b) Against any of the Defendants or Voluntarily Dismissed Individual Defendants as evidence of, or construed as evidence of, any presumption, concession, or admission of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by any of the Defendants or Voluntarily Dismissed Individual Defendants.

(c) Against any of the Defendants, Voluntarily Dismissed Individual Defendants, Plaintiffs, or any Settlement Class Member as evidence of, or construed as evidence of any presumption, concession, or admission by any of the Defendants, Voluntarily Dismissed Individual Defendants, Plaintiffs, or any Settlement Class Member with respect to any liability, negligence, fault, or wrongdoing as against any of the Defendants, Voluntarily Dismissed Individual Defendants, Plaintiffs, or any Settlement Class Member in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation, provided, however, that if this Stipulation is approved by the Court, Defendants, Voluntarily Dismissed Individual Defendants, Plaintiffs, and any Settlement Class Member may refer to it to effectuate the liability protection granted them hereunder;

(d) Against any of the Defendants or Voluntarily Dismissed Individual Defendants as evidence of, or construed as evidence of, any presumption, concession, or admission by any of them that the Settlement Amount represents the amount which could or would have been received after trial of the Action;

(e) Against Plaintiffs or any Settlement Class Member as evidence of, or construed as evidence of, any presumption, concession, or admission by Plaintiffs or any Settlement Class Member that any of their claims are without merit, or that any defenses asserted by Defendants

have any merit, or that damages recoverable in the Action would not have exceeded the Settlement Fund;

(f) Against Plaintiffs or any Settlement Class Member or Lead Counsel as evidence of, or construed as evidence of, any infirmity of the claims alleged by Plaintiffs in the Complaint or the Action or of any lack of merit to the claims or the Action or of any bad faith, dilatory motive, or inadequate prosecution of the claims or the Action; and

(g) As evidence of, or construed as evidence of, any presumption, concession, or admission that class certification is appropriate in this Action, except for purposes of this Settlement. Defendants, the Voluntarily Dismissed Individual Defendants and/or other Released Parties may file this Stipulation and/or the Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar, offset or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

9.1 The Parties intend the Settlement to be a final and complete resolution of all disputes which have been asserted, could have been asserted, or could be asserted by Plaintiffs or the Settlement Class Members against Defendants, Defendants' Counsel and all Released Parties concerning the Settlement Class Claims and against Plaintiff and Settlement Class Members and their counsel Defendants concerning the Defendant Claims. Accordingly, the Parties agree not to assert in any forum that the litigation was brought by Plaintiffs or defended by the Defendants or Voluntarily Dismissed Individual Defendants in bad faith or without a reasonable basis. The Parties, and each of them, shall not assert or pursue any action, claim or rights that any party hereto violated any provision of Fed. R. Civ. P. 11 or otherwise seek reimbursement or shifting of attorneys' fees or other costs associated with this litigation. The Parties, and each of them, and

their respective counsel agree that the Action was resolved in good faith, following arm's length bargaining, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

9.2 The Parties (a) acknowledge that it is their intent to consummate this agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Stipulation and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Stipulation. Subject to their fiduciary and legal obligations to their clients, Lead Counsel and Defendants' Counsel agree to cooperate with one another in seeking Court approval of the Preliminary Approval Order, the Stipulation, and the Settlement, and to use reasonable best efforts to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Settlement.

9.3 Neither Plaintiffs, Settlement Class Members, nor Defendants shall be bound by the Stipulation if the Court modifies material terms thereof, provided, however, that it shall not be a basis for Settlement Class Members to terminate the Settlement if the Court modifies any proposed Plan of Distribution or criteria for allocation of the Net Settlement Fund amongst Settlement Class Members or if the Plan of Distribution is modified on appeal. Nor shall it be a basis to terminate the Stipulation if the Court disapproves of or modifies the terms of this Stipulation with respect to the distribution of the Net Settlement Fund. Nor shall it be a basis to terminate the Stipulation if the Court denies, in whole or in part, Lead Counsel's Fee and Expense Application.

9.4 The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the

purpose of entering orders providing the Fee and Expense Award to Lead Counsel and enforcing the terms of this Stipulation.

9.5 The headings used herein are used for the purpose of convenience only and are not meant to have legal effect.

9.6 All of the Exhibits to this Stipulation are material and integral parts hereof and are fully incorporated herein by this reference. Notwithstanding the foregoing, in the event of a conflict or inconsistency between the terms of this Stipulation and the terms of any Exhibit attached hereto, the terms of this Stipulation shall prevail.

9.7 This Stipulation may be amended or modified only by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

9.8 This Stipulation, the Exhibits attached hereto, and the Supplemental Agreement (as described in ¶ 2.12, *supra*) constitute the entire agreement among the parties hereto and no representations, warranties, or inducements have been made to any party concerning this Stipulation, its Exhibits, or the Supplemental Agreement other than the representations, warranties and covenants contained and memorialized in such documents.

9.9 Each counsel or other Person executing this Stipulation, any of its Exhibits, or any related settlement documents on behalf of any party hereto hereby warrants and represents that such Person has the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

9.10 This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Signatures sent by facsimile or email shall be deemed originals.

9.11 This Stipulation shall be binding upon, and inure to the benefit of, the successors, heirs, and assigns of the Parties.

9.12 The Court shall retain jurisdiction with respect to enforcement of the terms of this Stipulation, and all parties hereto submit to the jurisdiction of the Court for purposes of enforcing the Settlement embodied in this Stipulation.

9.13 This Stipulation and the Exhibits hereto shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of New Jersey and the rights and obligations of the parties to this Stipulation shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of New Jersey without giving effect to that State's choice of law principles.

9.14 This Stipulation is deemed to have been prepared by Lead Counsel and Defendants' Counsel, as a result of arm's length negotiations among the Parties. Whereas all Parties have contributed substantially and materially to the preparation of this Stipulation, it shall not be construed more strictly against one party than another.

9.15 Whenever this Stipulation requires or contemplates that a Party shall or may give notice to the other, notice shall be in writing and shall be deemed to have been duly given upon receipt of overnight courier, emailed PDF, or similar-format electronic document. Notice shall be provided as follows:

If to Plaintiffs or Lead Counsel,
then to:

Laurence M. Rosen
Yu Shi
THE ROSEN LAW FIRM, P.A.
One Gateway Center, Suite 2600
Newark, NJ 07102
Email: lrosen@rosenlegal.com
yshi@rosenlegal.com

If to Defendants or Defendants'
Counsel, then to:

Jay B. Kasner
SKADDEN, ARPS, SLATE, MEAGHER & FLOM
LLP
One Manhattan West
New York, NY 10001
Email: jay.kasner@skadden.com

-and-

Michael G. Bongiorno
WILMER CUTLER PICKERING HALE AND
DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
Email: michael.bongiorno@wilmerhale.com

9.16 All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Stipulation or by order of the Court, the day of the act, event, or default from which the designated period of time begins to run shall not be included.

9.17 The Parties reserve the right, subject to the Court's approval, to make any reasonable extensions of time that might be necessary to carry out any of the provisions of this Stipulation.

9.18 Pending approval of the Court of the Stipulation and its Exhibits, other than by agreement of the Parties, all proceedings in this Action shall be stayed and Plaintiffs and all Settlement Class Members shall be barred and enjoined from prosecuting any of the Settlement Class Claims against any of the Released Parties. Defendants and the Voluntarily Dismissed Individual Defendants may seek to prevent or to stay any other action(s) or claims that assert any Settlement Class Claims.

9.19 Other than as set forth in the Stipulation and the MOU, the Parties agree that there will be no public announcements regarding the Settlement until Defendants have announced or

disclosed it. Once disclosure is made by Defendants, the Parties agree that, other than disclosures required by law, there will be no public announcements regarding the Settlement except (i) to the effect that the Parties have reached a mutually acceptable resolution on the terms set forth herein or (ii) as required for purposes of Notice, Court approval or otherwise to effectuate the Settlement.

9.20 Defendants shall provide notice under the provisions of the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, as appropriate, at their own expense, and may engage the Claims Administrator for that purpose.

9.21 Nothing in this Stipulation, or the negotiations relating thereto, is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including, without limitation, the attorney-client privilege, the work product doctrine, or the joint defense or common interest doctrine.

IN WITNESS WHEREOF, the Parties hereto have caused this agreement to be executed, by their duly authorized attorneys, as of April 1, 2022.



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Newark, NJ 07102
Counsel for Plaintiffs and the Settlement Class



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7 World Trade Center
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New York, NY 10007
Counsel for Defendant BMW NA

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

MARK SPANIER and MARISSA
WEERESINGHE, Individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

BAYERISCHE MOTOREN WERKE
AKTIENGESELLSCHAFT, *et al.*

Defendants.

Case No. 2:20-cv-15081-CCC-AME

CLASS ACTION

**[PROPOSED] ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

WHEREAS, Lead Plaintiff Mark Spanier and Named Plaintiff Marissa Weeresinghe (“Plaintiffs”) and Defendants Bayerische Motoren Werke Aktiengesellschaft (“BMW AG”) and BMW of North America LLC (“BMW NA”) (BMW AG and BMW NA are collectively the “Defendants”), through their respective counsel of record relating to the above-captioned litigation, have entered into the Stipulation of Settlement, dated April 1, 2022 (the “Stipulation”), which is subject to review under Rule 23 of the Federal Rules of Civil Procedure and which, together with the exhibits annexed thereto, sets forth the terms and conditions for the proposed settlement and dismissal of the class action pending before the Court captioned *Spanier v. Bayerische Motoren Werke Aktiengesellschaft, et al.*, Case No. 2:20-cv-15081-CCC-AME (the “Action”); and the Court having read and considered the Stipulation and the exhibits thereto and submissions made relating thereto, and finding that substantial and sufficient grounds exist for entering this Order; and the Parties having consented to the entry of this Order;

EXHIBIT A

NOW, THEREFORE, IT IS HEREBY ORDERED, this ____ day of _____, 2022, that:

1. Capitalized terms used herein have the meanings defined in the Stipulation.
2. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and for the purposes of the Settlement only, the Action is hereby preliminarily certified as a class action on behalf of all persons or entities that purchased or otherwise acquired BMW AG American Depositary Receipts (ADRs) or BMW AG F shares publicly traded over-the-counter between November 3, 2015, and September 24, 2020, both dates inclusive, and excludes Defendants, the present and former officers and directors of Defendants and any subsidiaries thereof, and the immediate family members, legal representatives, heirs, successors, or assigns of such excluded persons and any entity in which any such excluded person has or had a controlling interest during the Class Period. Also excluded from the Settlement Class are all putative members of the Settlement Class who: (a) exclude themselves by filing a valid and timely request for exclusion, or (b) suffered no compensable damages as determined by the Plan of Allocation to be filed with the Court.
3. This Court finds, preliminarily and for purposes of this Settlement only, that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of Settlement Class Members is so numerous that joinder of all Settlement Class Members is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of Plaintiffs are typical of the claims of the Settlement Class they seek to represent; (d) Plaintiffs fairly and adequately represent the interests of the Settlement Class; (e) questions of law and fact common to the Settlement Class predominate over any questions affecting only individual Settlement Class

Members; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the Action.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, preliminarily and for the purposes of this Settlement only, Plaintiffs are certified as the class representatives on behalf of the Settlement Class (“Class Representatives”) and Lead Counsel, The Rosen Law Firm, P.A., previously selected by Lead Plaintiff and appointed by the Court, is hereby appointed as Lead Counsel for the Settlement Class (“Lead Counsel”).

5. The Court finds that (a) the Stipulation resulted from good faith, arm’s length negotiations, and (b) the Stipulation is sufficiently fair, reasonable and adequate to the Settlement Class Members to warrant providing notice of the Settlement to Settlement Class Members and holding a Settlement Fairness Hearing.

6. The Court hereby preliminarily approves the Settlement, subject to further consideration at the Settlement Fairness Hearing pursuant to Federal Rule of Civil Procedure 23(e), which is hereby scheduled to be held before the Court on _____, 202__ at ____:____.m. for the following purposes:

(a) to determine finally whether the applicable prerequisites for class action treatment under Federal Rules of Civil Procedure 23(a) and (b) are satisfied;

(b) to determine finally whether the Settlement is fair, reasonable, and adequate, and should be approved by the Court;

(c) to determine finally whether the Order and Final Judgment as provided under the Stipulation should be entered, dismissing the Action on the merits and with prejudice, and to determine whether the release by the Releasing Parties of the Released Claims against the Released Parties, as set forth in the Stipulation, should be ordered, along with a permanent

EXHIBIT A

injunction barring efforts to prosecute or attempt to prosecute any Released Claims extinguished by the release against any of the Released Parties, as also set forth in the Stipulation;

(d) to determine finally whether the proposed Plan of Allocation for the distribution of the Net Settlement Fund is fair and reasonable and should be approved by the Court;

(e) to consider the application of Lead Counsel for an award of attorneys' fees and expenses and a Compensatory Award to the Class Representatives;

(f) to consider Settlement Class Members' objections to the Settlement, if any, whether submitted previously in writing or presented orally at the Settlement Fairness Hearing by Settlement Class Members (or by counsel on their behalf), provided that they gave proper notice that they intend to appear at the Settlement Fairness Hearing; and

(g) to rule upon such other matters as the Court may deem appropriate.

7. The Court reserves the right to approve the Settlement with or without modification and with or without further notice to the Settlement Class and may adjourn the Settlement Fairness Hearing without further notice to the Settlement Class. The Court reserves the right to hold the Settlement Fairness Hearing telephonically or by other virtual means. The Court reserves the right to enter the Judgment approving the Stipulation regardless of whether it has approved the Plan of Allocation, Lead Counsel's request for an award of attorneys' fees and expenses and Plaintiffs' request for payment for their representation of the Settlement Class.

8. The Court approves the form, substance and requirements of (a) the Long Notice, (b) the Postcard Notice, (c) the Summary Notice, and (c) the Proof of Claim, all of which are exhibits to the Stipulation.

EXHIBIT A

9. Lead Counsel have the authority to enter into the Settlement on behalf of the Settlement Class and have the authority to act on behalf of the Settlement Class with respect to all acts or consents required by or that may be given pursuant to the Stipulation or such other acts that are reasonably necessary to consummate the Settlement.

10. For settlement purposes only, Strategic Claims Services is appointed and approved as the Claims Administrator to supervise and administer the notice procedure as well as the processing of claims.

11. Defendants shall cause to be paid an initial payment toward the Settlement Amount in the sum of one hundred twenty-five thousand dollars (\$125,000) by wire transfer or check into an interest-bearing escrow account (the “Escrow Account”) within fifteen (15) business days after the later of (i) entry of this order, and (ii) receipt of complete wire and transfer information and instructions. Defendants shall cause to be paid the remainder of the Settlement Amount of one million six hundred twenty-five thousand dollars (\$1,625,000) by wire transfer or check into the Escrow Account at least five (5) business days before the Settlement Fairness Hearing.

12. At any time after entry of this Order, Lead Counsel may, without further approval from the Court or Defendants, pay from the Escrow Account actual, reasonable, and necessary Notice and Administration Costs up to one hundred twenty-five thousand dollars (\$125,000) prior to the Effective Date. After the Effective Date, additional amounts may be transferred from the Settlement Fund for Lead Counsel to pay any additional, actual, reasonable, and necessary additional Notice and Administration Costs without further order of the Court.

13. No later than ten (10) Business Days after entry of this Order, Defendants shall assist the Claims Administrator in obtaining, from BMW AG’s transfer agent, at no cost to

EXHIBIT A

Plaintiffs or Lead Counsel, records of ownership, to the extent available, to identify Settlement Class Members. This information will be kept confidential and not used for any purpose other than to provide the notice contemplated by this Order.

14. Lead Counsel, through the Claims Administrator, shall cause the Stipulation and its exhibits, this Order, a copy of the Notice, and the Proof of Claim and Release Form to be posted on the Claims Administrator's website within twenty-eight (28) calendar days after entry of this Order.

15. Lead Counsel, through the Claims Administrator, shall cause the Summary Notice to be published once over a national newswire service within twenty-eight (28) calendar days of entry of this Order. Lead Counsel shall, at least seven (7) calendar days before the Settlement Fairness Hearing, serve upon counsel for Defendants and file with the Court proof of publication of the Summary Notice.

16. Lead Counsel, through the Claims Administrator, shall cause the Postcard Notice, the Summary Notice, or links to the Notice and Proof of Claim and Release Form, substantially in the forms annexed to the Stipulation, (i) to be mailed, where disseminating the Postcard Notice, by first class mail, postage prepaid, within twenty-eight (28) calendar days of entry of this Order, to all Settlement Class Members who can be identified with reasonable effort by Lead Counsel, through the Claims Administrator; or (ii) to be emailed, where disseminating the Summary Notice or links to the Notice and Proof of Claim and Release Form, within twenty-eight (28) calendar days of the entry of this Order, to all Settlement Class Members for whom email addresses may be obtained with reasonable effort, through the Claims Administrator.

17. Lead Counsel, through the Claims Administrator, shall make all reasonable efforts to give notice to nominees or custodians who held BMW AG ADRs and F shares as record

EXHIBIT A

owners but not as beneficial owners. Such nominees or custodians shall, within ten (10) calendar days of receipt of the notice, either: (i) request copies of the Postcard Notice sufficient to send the Postcard Notice to all beneficial owners for whom they are nominee or custodian, and within ten (10) calendar days after receipt thereof send copies to such beneficial owners; (ii) request an electronic copy of the Summary Notice and either email the Summary Notice in electronic format or links to the Notice and Proof of Claim and Release Form to each beneficial owner for whom they are nominee or custodian within ten (10) calendar days after receipt thereof; or (iii) provide the Claims Administrator with lists of the names, last known addresses and email addresses (to the extent known) of such beneficial owners, in which event the Claims Administrator shall promptly deliver the Summary Notice or a link to the Notice and Proof of Claim and Release Form, if email addresses are available, or Postcard Notice to such beneficial owners, if last known addresses are provided. If the Claims Administrator receives an email address, it will send a Summary Notice or link to the Notice and Proof of Claim and Release Form electronically. Nominees or custodians who elect to email notice or send the Postcard Notice to their beneficial owners shall send a written certification to the Claims Administrator confirming that the mailing has been made as directed. Copies of the Postcard Notice shall be made available to any nominee or custodian requesting same for the purpose of distribution to beneficial owners. The Claims Administrator shall, if requested, reimburse nominees or custodians out of the Settlement Fund solely for their reasonable out-of-pocket expenses incurred in providing notice to beneficial owners, which expenses would not have been incurred except for the providing of names and addresses, in amounts up to: (i) \$0.05 per name, mailing address and email address (to the extent available) provided to Claims Administrator; (ii) \$0.05 per email for emailing notice; or (iii) \$0.05 per postcard, plus postage at the pre-sort rate used by the

EXHIBIT A

Claims Administrator, for mailing the Postcard Notice, subject to further order of this Court with respect to any dispute concerning such reimbursement.

18. Lead Counsel shall, at least seven (7) calendar days before the Settlement Fairness Hearing, serve upon counsel for Defendants and file with the Court proof of the mailing and emailing of Notice, as required by this Order.

19. The forms and methods set forth herein of notifying the Settlement Class Members of the Settlement and its terms and conditions meet the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and Section 21D(a)(7) of the Exchange Act, 15 U.S.C. 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995; constitute the best notice practicable under the circumstances; and constitute due and sufficient notice to all persons and entities entitled thereto. No Settlement Class Member will be relieved from the terms and conditions of the Settlement, including the releases provided for therein, based upon the contention or proof that such Settlement Class Member failed to receive actual or adequate notice.

20. In order to be entitled to participate in recovery from the Net Settlement Fund after the Effective Date, each Settlement Class Member shall take the following action and be subject to the following conditions:

(a) A properly completed and executed Proof of Claim and Release Form must be submitted to the Claims Administrator, at the Post Office Box indicated in the Notice, postmarked no later than _____, 202_ (twenty-one (21) calendar days prior to the Settlement Fairness Hearing). Such deadline may be further extended by Order of the Court. Each Proof of Claim and Release Form shall be deemed to have been submitted when legibly postmarked (if properly addressed and mailed by first class mail) provided such Proof of Claim

EXHIBIT A

and Release Form is actually received before the filing of a motion for an Order of the Court approving distribution of the Net Settlement Fund. Any Proof of Claim and Release Form submitted in any other manner shall be deemed to have been submitted when it was actually received by the Claims Administrator at the address designated in the Notice.

(b) The Proof of Claim and Release Form submitted by each Settlement Class Member must satisfy the following conditions: (i) it must be properly completed, signed and submitted in a timely manner in accordance with the provisions of the preceding subparagraph; (ii) it must be accompanied by adequate supporting documentation for the transactions reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation as is deemed adequate by the Claims Administrator or Lead Counsel; (iii) if the person executing the Proof of Claim and Release Form is acting in a representative capacity, a certification of his current authority to act on behalf of the Settlement Class Member must be provided with the Proof of Claim and Release Form; and (iv) the Proof of Claim and Release Form must be complete and contain no material deletions or modifications of any of the printed matter contained therein and must be signed under penalty of perjury.

(c) Once the Claims Administrator has considered a timely submitted Proof of Claim and Release Form, it shall determine whether such claim is valid, deficient or rejected. For each claim determined to be either deficient or rejected, the Claims Administrator shall send a deficiency letter or rejection letter as appropriate, describing the basis on which the claim was so determined. Persons who timely submit a Proof of Claim and Release Form that is deficient or otherwise rejected shall be afforded a reasonable time (at least ten (10) calendar days) to cure

EXHIBIT A

such deficiency if it shall appear that such deficiency may be cured. If any Claimant whose claim has been rejected in whole or in part wishes to contest such rejection, the Claimant must, within ten (10) calendar days after the date of mailing of the notice, serve upon the Claims Administrator a notice and statement of reasons indicating the Claimant's ground for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If an issue concerning a claim cannot be otherwise resolved, Lead Counsel shall thereafter present the request for review to the Court.

(d) As part of the Proof of Claim and Release Form, each Settlement Class Member shall submit to the jurisdiction of the Court with respect to the claim submitted, and shall, upon the Effective Date, release all claims as provided in the Stipulation.

21. All Settlement Class Members who do not submit valid and timely Proof of Claim and Release Forms will be forever barred from receiving any payments from the Net Settlement Fund, but will in all other respects be subject to and bound by the provisions of the Stipulation and the Order and Final Judgment, if entered.

22. Settlement Class Members shall be bound by all determinations and judgments in this Action whether favorable or unfavorable, unless such Persons request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. A Settlement Class Member wishing to make such request for exclusion shall mail it, in written form, by first class mail, postage prepaid, or otherwise deliver it, so that it is received no later than _____, 2022 (twenty-one (21) calendar days prior to the Settlement Fairness Hearing) (the "Exclusion Deadline"), to the addresses listed in the Notice. In order to be valid, such request for exclusion (A) must clearly indicate the name and address and phone number and e-mail contact information (if any) of the Person seeking exclusion, and state that the sender specifically

EXHIBIT A

“requests to be excluded from the Settlement Class in *Spanier v. Bayerische Motoren Werke Aktiengesellschaft, et al.*, Case No. 2:20-cv-15081-CCC-AME (D.N.J.). In order to be valid, such request for exclusion must be submitted with documentary proof (i) of each purchase or acquisition and, if applicable, sale transaction of BMW AG ADRs or F shares during the Class Period and (ii) demonstrating the Person’s status as a beneficial owner of BMW AG ADRs or F shares. Any such request for exclusion must be signed and submitted by the beneficial owner under penalty of perjury. The request for exclusion shall not be effective unless it provides the required information, is legible, and is made within the time stated above, or the exclusion is otherwise accepted by the Court. Lead Counsel may contact any Person filing a request for exclusion, or their attorney if one is designated, to discuss the exclusion.

23. The Claims Administrator shall provide all requests for exclusion and supporting documentation submitted therewith (including untimely requests and revocations of requests) to counsel for the Parties promptly as received, and in no case later than the Exclusion Deadline or upon the receipt thereof (if later than the Exclusion Deadline). Settlement Class Members will not include any Person who delivers a valid and timely request for exclusion.

24. Any Person that submits a request for exclusion may thereafter submit to the Claims Administrator a written revocation of that request for exclusion, provided that it is received no later than two (2) Business Days before the Settlement Fairness Hearing, in which event that Person will be included among Settlement Class Members.

25. All Persons who submit valid, timely and unrevoked request for exclusions will be forever barred from receiving any payments from the Net Settlement Fund.

26. The Court will consider comments and/or objections to the Settlement, the Plan of Allocation, or the Fee and Expense Application, provided, however, that no putative member of

EXHIBIT A

the Settlement Class or other Person shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement or, if approved, the Order and Final Judgment, or any other order relating thereto, unless that Person has served copies of any objections, papers and briefs to each of the following counsel at least twenty-one (21) calendar days prior to the Settlement Fairness Hearing:

LEAD COUNSEL:

Laurence M. Rosen
THE ROSEN LAW FIRM, P.A.
One Gateway Center
Suite 2600
Newark, NJ 07102

COUNSEL FOR DEFENDANTS:

Jay B. Kasner
Skadden, Arps, Slate, Meagher & Flom LLP
One Manhattan West
New York, NY 10001

-and-

Michael G. Bongiorno
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007

and that Person has (at least twenty-one (21) calendar days prior to the Settlement Fairness Hearing date) filed said objections, papers and briefs, showing due proof of service upon counsel identified above, with the Clerk of the Court, U.S. District Court, District of New Jersey, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, NJ 07101. To be valid, any such objection must contain (1) the Settlement Class Member's name, address, and telephone number; (2) a list of all purchases and sales of BMW AG ADRs and F shares during the Class Period in order to show membership in the Settlement Class; (3) all grounds for the objection, including any legal support known to the putative member of the Settlement Class and/or his, her,

EXHIBIT A

or its counsel; (4) the name, address and telephone number of all counsel who represent the Settlement Class Member, including former or current counsel who may be entitled to compensation in connection with the objection; and (5) the number of times the Settlement Class Member and/or his, her, or its counsel has filed an objection to a class action settlement in the last five years, the nature of each such objection in each case, the jurisdiction in each case, and the name of the issuer of the security or seller of the product or service at issue in each case.

Attendance at the Settlement Fairness Hearing is not necessary, but Persons wishing to be heard orally in opposition to the approval of the Stipulation, the Plan of Allocation, and/or the Fee and Expense Application are required to indicate in their written objection (or in a separate writing that is submitted in accordance with the deadline and after instruction pertinent to the submission of a written objection) that they intend to appear at the Settlement Fairness Hearing and identify any witnesses they may call to testify or exhibits they intend to introduce into evidence at the Settlement Fairness Hearing. Settlement Class Members do not need to appear at the Settlement Fairness Hearing or take any other action to indicate their approval.

27. Any Settlement Class Member who does not object in the manner prescribed above shall be deemed to have waived all such objections and shall forever be foreclosed from making any objection to the fairness, adequacy or reasonableness of the Settlement, the Order and Final Judgment to be entered approving the Settlement, the Plan of Allocation, and/or the Fee and Expense Application, unless otherwise ordered by the Court; shall be bound by all the terms and provisions of the Stipulation and by all proceedings, orders and judgments in the Action; and shall also be foreclosed from appealing from any judgment or order entered in this Action.

EXHIBIT A

28. The Court reserves the right to adjourn the Settlement Fairness Hearing without any further notice other than entry of an Order on the Court's docket, and to approve the Settlement without further notice to the Settlement Class.

29. All papers in support of the Settlement, the Plan of Allocation and/or the Fee and Expense Application shall be filed and served no later than twenty-eight (28) calendar days before the Settlement Fairness Hearing.

30. Any submissions filed in response to any objections or in further support of the Settlement, the Plan of Allocation and/or the Fee and Expense Application shall be filed no later than seven (7) calendar days prior to the Settlement Fairness Hearing.

31. Defendants shall have no responsibility for, or liability with respect to, the Plan of Allocation or any application for attorneys' fees and interest, or expenses or payments to the Class Representatives submitted by Lead Counsel, and such matters will be considered separately from the fairness, reasonableness, and adequacy of the Settlement.

32. Pending final determination of whether the Settlement should be approved, all Releasing Parties shall be enjoined from commencing, prosecuting, or attempting to prosecute any Released Claims against any Released Party in any court or tribunal or proceeding. Unless and until the Stipulation is cancelled and terminated pursuant to the Stipulation, all proceedings in the Action, other than such proceedings as may be necessary to carry out the terms and conditions of the Stipulation, are hereby stayed and suspended until further order of the Court.

33. All funds held by the Escrow Agent shall be deemed and considered to be in the custody of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed or returned pursuant to the Stipulation and Plan of Allocation and/or further order(s) of the Court.

EXHIBIT A

34. Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Defendants of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing or any kind and shall not be construed as, or deemed to be evidence of or an admission or concession that Class Representatives or any Settlement Class Members or putative members of the Settlement Class have suffered any damages, harm, or loss. Further, neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, nor this Order shall be construed as an admission or concession by the Class Representatives of the validity of any factual or legal defense or of the infirmity of any of the claims or facts alleged in this Action.

35. In the event the Settlement is not consummated in accordance with the terms of the Stipulation, then the Stipulation and this Order (including any amendment(s) thereof, and except as expressly provided in the Stipulation or by order of the Court) shall be null and void, of no further force or effect, and without prejudice to any Party, and may not be introduced as evidence or used in any action or proceeding by any Person against the Parties, and each Party shall be restored to his, her or its respective litigation positions as they existed prior to February 1, 2022, pursuant to the terms of the Stipulation.

36. The Court reserves the right to alter the time or the date of the Settlement Fairness Hearing without further notice to Settlement Class Members, provided that the time or the date of the Settlement Fairness Hearing shall not be set at a time or date earlier than the time and date set forth in ¶ 6 above. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of, or relating to, the Stipulation, including by way of illustration and not limitation, any dispute concerning any Proof of Claim and Release Form submitted and any

EXHIBIT A

future requests by one or more of the Parties that the Order and Final Judgment, the releases and/or the permanent injunction set forth in the Stipulation be enforced.

Dated: _____, 2022

HON. CLAIRE C. CECCHI
UNITED STATES DISTRICT JUDGE

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

MARK SPANIER and MARISSA
WEERESINGHE, Individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

BAYERISCHE MOTOREN WERKE
AKTIENGESELLSCHAFT, *et al.*

Defendants.

Case No. 2:20-cv-15081-CCC-AME

CLASS ACTION

NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION

If you purchased the American Depositary Receipts (“ADRs”) or F shares of Bayerische Motoren Werke Aktiengesellschaft (“BMW AG” or the “Company”) publicly traded over-the-counter (OTC) during the period from November 3, 2015 through September 24, 2020, both dates inclusive (“Class Period”), you could get a payment from a class action settlement (the “Settlement”)¹.

Under law, a federal court has authorized this Notice. This is not attorney advertising.

- If approved by the Court, the Settlement will provide one million seven hundred fifty thousand dollars (\$1,750,000) (the “Settlement Fund”) gross, plus interest as it accrues, minus attorneys’ fees, costs, administrative expenses, and net of any taxes on interest, to pay claims of investors who purchased BMW AG ADRs and F shares publicly traded over-the-counter (OTC) during the Class Period.
- The Settlement represents an estimated average recovery of \$0.07 per share for the approximately 24.4 million BMW AG ADRs and F shares damaged during the Class Period. This is not an estimate of the actual recovery per ADR or F share you should expect. Your actual recovery, if any, will depend on the aggregate losses of all Settlement Class Members, the date(s) you purchased and sold BMW AG ADRs or F shares, the purchase and sales prices, and the total number and amount of claims filed.

¹ The ticker symbol for ADRs is BMWYY and the ticker symbols for F shares are BAMXF and BYMOF.

EXHIBIT A-1

- Lead Counsel will ask the Court to award attorneys’ fees in an amount not to exceed 1/3 (one-third) of the Settlement Fund (\$583,333.33), reimbursement of no more than \$25,000 in litigation expenses, and a total case contribution award to Plaintiffs not to exceed \$7,000 total. Collectively, the attorneys’ fees and expenses and Plaintiffs’ award are estimated to average \$0.02 per BMW AG ADR and F share damaged during the Class Period. If approved by the Court, these amounts will be paid from the Settlement Amount.
- The average approximate recovery, after deduction of attorneys’ fees, litigation expenses, and Plaintiffs’ awards approved by the Court, is \$0.05 per BMW AG ADR and F share damaged during the Class Period. This estimate is based on the assumptions set forth in the preceding paragraphs. This is not an estimate of the actual recovery per ADR or F share you should expect. Your actual recovery, if any, will depend on the aggregate losses of all Settlement Class Members, the date(s) you purchased and sold BMW ADRs or F shares, the purchase and sales prices, and the total number and amount of claims filed.
- The Settlement resolves the Action concerning whether Defendants materially misrepresented BMW’s U.S. retail sales volume. Defendants have denied and continue to deny each, any and all allegations of wrongdoing, fault, liability or damage whatsoever. Defendants have also denied, among other things, the allegations that Plaintiffs or the Settlement Class have suffered damages or that Plaintiffs or the Settlement Class were harmed by the conduct alleged in the Action. Defendants continue to believe the claims asserted against them in the Action are without merit.
- Your legal rights will be affected whether you act or do not act. If you do not act, you may permanently forfeit your right to recover on this claim. Therefore, you should read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
Submit a Claim Form	Fill out the attached Proof of Claim and Release Form and submit it no later than _____. This is the only way to get a payment.
Exclude Yourself from the Class	Submit a request for exclusion no later than _____. This is the only way you can ever be part of any other lawsuit against the Defendants or the other Released Parties relating to the legal claims in this case. If you exclude yourself, you will receive no payment and cannot object or speak at the hearing.
Object	Write to the Court no later than _____ about why you do not like the Settlement. You can still submit a Proof of Claim and Release Form. If the Court approves the Settlement, you will be bound by it.

Go to the Hearing	Ask to speak in Court about the fairness of the Settlement at the hearing on _____. You can still submit a Proof of Claim and Release. If the Court approves the Settlement, you will be bound by it.
Do Nothing	Get no payment AND give up your right to bring your own individual action relating to the claims asserted in the Action.

INQUIRIES

Please do not contact the Court regarding this Notice. All inquiries concerning this Notice, the Proof of Claim and Release Form, or the Settlement should be directed to:

BMW AG Securities Litigation c/o Strategic Claims Services P.O. Box 230 600 N. Jackson St., Ste. 205 Media, PA 19063 Tel.: (866) 274-4004 Fax: (610) 565-7985 info@strategicclaims.net	or	Laurence Rosen, Esq. THE ROSEN LAW FIRM, P.A. One Gateway Center Suite 2600 Newark, NJ 07102 Tel: (973) 313-1887 Fax: (973) 833-0399 info@rosenlegal.com
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DEFINITIONS

All capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation of Settlement, dated April 1, 2022 (the “Settlement Stipulation”).

COMMON QUESTIONS AND ANSWERS CONCERNING THE SETTLEMENT

1. Why did I get this Notice?

You or someone in your family may have purchased BMW AG ADRs or F shares during the period from November 3, 2015 through September 24, 2020, inclusive.

2. What is this lawsuit about?

The case is known as *Spanier v. Bayerische Motoren Werke Aktiengesellschaft, et al.*, 2:20-cv-15081-CCC-AME (the “Action”). The Court in charge of the case is the United States District Court for the District of New Jersey.

The Action involves allegations that Defendants made materially false statements and failed to disclose material facts to the public. Specifically, the Complaint alleges that throughout the Class Period, Defendants engaged in several undisclosed practices that had

the effect of inflating BMW's U.S. retail sales volume. Defendants have denied and continue to deny each, any and all allegations of wrongdoing, fault, liability or damage whatsoever asserted in the Action. The Settlement shall in no event be construed as, or deemed to be evidence of, liability, fault, wrongdoing, injury or damages, or of any wrongful conduct, acts or omissions on the part of any of the Released Parties, or of any infirmity of any defense, or of any damages to Plaintiffs or any other Settlement Class Member.

3. Why is this a class action?

In a class action, one or more persons and/or entities, called plaintiffs, sue on behalf of all persons and/or entities who have similar claims. All of these persons and/or entities are referred to collectively as a class, and these individual persons and/or entities are known as class members. One court resolves all of the issues for all class members, except for those class members who exclude themselves from the class.

4. Why is there a Settlement?

Plaintiffs and Defendants do not agree regarding the merits of Plaintiffs' allegations or the average amount of damages per ADR or F share, if any, that would be recoverable if Plaintiffs were to prevail at trial on each claim. The issues on which Plaintiffs and Defendants disagree include: (1) whether Defendants made any allegedly misleading statements or omissions; (2) whether Defendants acted knowingly or were grossly reckless in making the alleged misrepresentations; (3) whether the alleged misrepresentations caused any loss in the value of BMW AG ADRs and F shares; and (4) the amount of alleged damages, if any, that could be recovered at trial.

This matter has not gone to trial and the Court has not decided in favor of either Plaintiffs or Defendants. Instead, Plaintiffs and Defendants have agreed to settle the case. Plaintiffs and Lead Counsel believe the Settlement is best for all Settlement Class Members because of the risks associated with continued litigation and the nature of the defenses raised by Defendants. Among the reasons that Plaintiffs and Lead Counsel believe the Settlement is fair is the fact that there is uncertainty about whether they will be able to show that the alleged misstatements and omissions were material, that the alleged misstatements and omissions actually caused the Settlement Class any damages and the amount of damages, if any.

5. How do I know if I am part of the Settlement?

The Settlement Class consists of all persons and entities who purchased BMW AG ADRs or F shares from November 3, 2015 through September 24, 2020, both dates inclusive, subject to the exclusions in Question 6 below.

6. Are there exceptions to being included?

Yes. Excluded from the Settlement Class are Defendants, the present and former officers and directors of Defendants and any subsidiaries thereof, and the immediate family members, legal representatives, heirs, successors, or assigns of such excluded persons and any entity in which any such excluded person has or had a controlling interest during the

Class Period. You are also excluded from recovering any portion of the Settlement Fund if you have a net profit in purchases and sales of BMW AG ADRs or F shares or otherwise suffered no compensable damages during the Class Period. You may choose to be excluded from the Settlement Class by filing a valid and timely request for exclusion as described below in the response to Question 11.

7. I am still not sure whether I am included.

If you are still not sure whether you are included in the Settlement Class, you can ask for free help. For more information, you can contact the Claims Administrator, Strategic Claims Services, by phone at (866) 274-4004, by email at info@strategicclaims.net, or by facsimile at (610) 565-7985; visit the website www.strategicclaims.net/BMW/; or fill out and return the Proof of Claim and Release Form described in Question 9, to see if you qualify.

8. What does the Settlement provide?

a. What is the Settlement Fund?

The proposed Settlement provides for Defendants and/or their insurers to pay one million seven hundred fifty thousand dollars (\$1,750,000) into a settlement fund (the “Settlement Fund”). The Settlement is subject to Court approval. Also, subject to the Court’s approval, a portion of the Settlement Fund will be used to pay attorneys’ fees with interest and reasonable litigation expenses to Lead Counsel, and any award to Plaintiffs. A portion of the Settlement Fund also will be used to pay taxes due on interest earned by the Settlement Fund, if necessary, and the costs of the claims administration, including the costs of printing and mailing and/or emailing notices and the costs of publishing notices. After the foregoing deductions from the Settlement Fund have been made, the amount remaining (the “Net Settlement Fund”) will be distributed to Settlement Class Members who submit timely, valid claims, according to the Plan of Allocation to be approved by the Court.

b. What can you expect to receive under the proposed Settlement?

Your share of the Net Settlement Fund will or may depend on: (i) the number of claims filed by all Settlement Class Members; (ii) the dates you purchased and sold BMW AG ADRs and F shares; (iii) the prices of your purchases and sales; (iv) the amount of administrative costs, including the costs of notice; and (v) the amount awarded by the Court to Lead Counsel for attorneys’ fees, costs, and expenses and award to Plaintiffs.

The Net Settlement Fund will be distributed to Settlement Class Members who submit a Proof of Claim and Release Form and whose claims for recovery are allowed by the Claims Administrator pursuant to the terms of the Settlement Stipulation or by order of the Court under the below Plan of Allocation (“Authorized Claimants”), which reflects Plaintiffs’ contention that because of the alleged misrepresentations made by Defendants, the price of BMW AG ADRs and F shares were artificially inflated during the Class Period, and that certain subsequent disclosures caused reductions in the inflated price of BMW AG ADRs and F shares. Defendants have denied and continue to deny these allegations and

any and all allegations of wrongdoing, fault, liability or damage whatsoever asserted in the Action.

PROPOSED PLAN OF ALLOCATION OF THE NET SETTLEMENT FUND

The Plan of Allocation is a matter separate and apart from the proposed Settlement, and any decision by the Court concerning the Plan of Allocation shall not affect the validity or finality of the proposed Settlement. The Court may approve the Plan of Allocation with or without modifications agreed to among the Parties, or another plan of allocation, without further notice to Class Members. Any orders regarding a modification of the Plan of Allocation will be posted to the Claims Administrator's website, www.strategicclaims.net/BMW/

The Claims Administrator shall determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's Recognized Loss. **Please Note:** The Recognized Loss formula, set forth below, is not intended to be an estimate of the amount of what a Settlement Class Member might have been able to recover after a trial, nor is it an estimate of the amount that will be paid to Authorized Claimants pursuant to the Settlement. The Recognized Loss formula is the basis upon which the Net Settlement Fund will be proportionately allocated to the Authorized Claimants. To the extent there are sufficient funds in the Net Settlement Fund, each Authorized Claimant will receive an amount equal to the Authorized Claimant's Recognized Loss and subject to the provisions in the preceding paragraph. If, however, the amount in the Net Settlement Fund is not sufficient to permit payment of the total Recognized Loss of each Authorized Claimant, then each Authorized Claimant shall be paid the percentage of the Net Settlement Fund that each Authorized Claimant's Recognized Loss bears to the total Recognized Losses of all Authorized Claimants and subject to the provisions in the preceding paragraph (*i.e.*, "*pro rata* share"). No distribution will be made on a claim where the potential distribution amount is less than ten dollars (\$10.00) in cash.

If any funds remain in the Net Settlement Fund by reason of uncashed checks, or otherwise, after the Claims Administrator has made reasonable and diligent efforts to have Authorized Claimants who are entitled to participate in the distribution of the Net Settlement Fund cash their distribution checks, then any balance remaining in the Net Settlement Fund six (6) months after the initial distribution of such funds shall be used: (i) first, to pay any amounts mistakenly omitted from the initial distribution to Authorized Claimants; (ii) second, to pay any additional Notice and Administration Costs incurred in administering the Settlement; and (iii) finally, to make a second distribution to Authorized Claimants who cashed their checks from the initial distribution and who would receive at least \$10.00 from such second distribution, after payment of the estimated costs or fees to be incurred in administering the Net Settlement Fund and in making this second distribution, if such second distribution is economically feasible. If six (6) months after such second distribution, if undertaken, or if such second distribution is not undertaken, any funds shall remain in the Net Settlement Fund after the Claims Administrator has made reasonable and diligent efforts to have Authorized Claimants who are entitled to participate in this Settlement cash their checks, any funds remaining in the Net Settlement Fund shall be donated to a non-profit charitable organization(s) selected by Lead Counsel.

THE BASIS FOR CALCULATING YOUR RECOGNIZED LOSS:

- (I) **Recognized Loss for the Company’s ADRs (Symbol: BMWYY) Purchased in Domestic Transactions During the Class Period will be calculated as follows:**
- (A) For ADRs purchased during the Class Period and sold during the Class Period, the Recognized Loss per share will be the *lesser* of: (1) the inflation per share upon purchase (as set forth in Inflation Table A below) less the inflation per share upon sale (as set forth in Inflation Table A below); or (2) the purchase price per share minus the sales price per share.
- (B) For ADRs purchased during the Class Period and sold during the period September 25, 2020 through December 23, 2020, inclusive, the Recognized Loss will be the *lesser* of: (1) the inflation per share upon purchase (as set forth in Inflation Table A below); or (2) the difference between the purchase price per share and the average closing ADR price as of date of sale provided in Table B below.
- (C) For ADRs purchased during the Class Period and retained as of the close of trading on December 23, 2020, the Recognized Loss will be the *lesser* of: (1) the inflation per share upon purchase (as set forth in Inflation Table A below); or (2) the purchase price per share minus the 90-day lookback price of \$26.91² per share.

INFLATION TABLE A	
ADRs (BMWYY) Purchased During the Class Period	
<u>Period</u>	<u>Inflation</u>
November 3, 2015 to December 20, 2019, inclusive	\$.86 per share
December 21, 2019 to September 24, 2020 inclusive	\$.59 per share

² Pursuant to Section 21(D)(e)(1) of the Private Securities Litigation Reform Act of 1995, “in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated.” \$26.91 per share was the mean (average) daily closing trading price of the Company’s BMWYY ADRs during the 90-day period beginning on September 25, 2020 through and including on December 23, 2020.

EXHIBIT A-1

Table B					
		<u>Average</u>			Average
<u>Date</u>	<u>Closing Price</u>	Closing Price		<u>Date</u>	<u>Closing Price</u>
9/25/2020	\$23.07	\$23.07		11/10/2020	\$27.34
9/28/2020	\$24.02	\$23.55		11/11/2020	\$27.60
9/29/2020	\$24.15	\$23.75		11/12/2020	\$27.52
9/30/2020	\$24.22	\$23.86		11/13/2020	\$27.91
10/1/2020	\$24.45	\$23.98		11/16/2020	\$28.73
10/2/2020	\$24.39	\$24.05		11/17/2020	\$28.82
10/5/2020	\$25.20	\$24.21		11/18/2020	\$28.90
10/6/2020	\$25.10	\$24.33		11/19/2020	\$29.36
10/7/2020	\$25.78	\$24.49		11/20/2020	\$29.21
10/8/2020	\$25.77	\$24.62		11/23/2020	\$29.27
10/9/2020	\$25.48	\$24.69		11/24/2020	\$30.41
10/12/2020	\$25.64	\$24.77		11/25/2020	\$29.95
10/13/2020	\$25.10	\$24.80		11/27/2020	\$29.07
10/14/2020	\$24.95	\$24.81		11/30/2020	\$28.99
10/15/2020	\$24.24	\$24.77		12/1/2020	\$30.03
10/16/2020	\$24.65	\$24.76		12/2/2020	\$29.98
10/19/2020	\$24.68	\$24.76		12/3/2020	\$29.90
10/20/2020	\$25.18	\$24.78		12/4/2020	\$30.22
10/21/2020	\$25.16	\$24.80		12/7/2020	\$29.75
10/22/2020	\$25.20	\$24.82		12/8/2020	\$29.50
10/23/2020	\$25.26	\$24.84		12/9/2020	\$29.41
10/26/2020	\$24.84	\$24.84		12/10/2020	\$28.91
10/27/2020	\$24.06	\$24.81		12/11/2020	\$28.56
10/28/2020	\$22.52	\$24.71		12/14/2020	\$29.05
10/29/2020	\$22.78	\$24.64		12/15/2020	\$30.04
10/30/2020	\$22.83	\$24.57		12/16/2020	\$30.31
11/2/2020	\$23.13	\$24.51		12/17/2020	\$30.25
11/3/2020	\$24.34	\$24.51		12/18/2020	\$30.34
11/4/2020	\$24.20	\$24.50		12/21/2020	\$29.75
11/5/2020	\$25.33	\$24.52		12/22/2020	\$29.24
11/6/2020	\$25.27	\$24.55		12/23/2020	\$29.88
11/9/2020	\$26.36	\$24.60			

(II) Recognized Loss for the Company's F Shares (Symbol: BAMXF) Purchased in Domestic Transactions During the Class Period will be calculated as follows:

- (A) For F shares (BAMXF) purchased during the Class Period and sold during the Class Period, the Recognized Loss per share will be the *lesser* of: (1) the inflation per share upon purchase (as set forth in Inflation Table C below) less

EXHIBIT A-1

the inflation per share upon sale (as set forth in Inflation Table C below); or (2) the purchase price per share minus the sales price per share.

- (B) For F shares (BAMXF) purchased during the Class Period and sold during the period September 25, 2020 through December 23, 2020, inclusive, the Recognized Loss will be the *lesser* of: (1) the inflation per share upon purchase (as set forth in Inflation Table C below); or (2) the difference between the purchase price per share and the average closing price per share as of date of sale provided in Table D below.
- (C) For F shares (BAMXF) purchased during the Class Period and retained as of the close of trading on December 23, 2020, the Recognized Loss will be the *lesser* of: (1) the inflation per share upon purchase (as set forth in Inflation Table C below); or (2) the purchase price per share minus the 90-day lookback price of \$80.59 per share.

INFLATION TABLE C	
F Shares (BAMXF) Purchased During the Class Period	
Period	Inflation
November 3, 2015 to December 20, 2019, inclusive	\$4.02 per share
December 21, 2019 to September 24, 2020 inclusive	\$2.73 per share

EXHIBIT A-1

Table D						
		Average				Average
Date	Closing Price	Closing Price		Date	Closing Price	Closing Price
9/25/2020	\$68.91	\$68.91		11/10/2020	\$81.81	\$73.86
9/28/2020	\$70.91	\$69.91		11/11/2020	\$82.27	\$74.11
9/29/2020	\$70.91	\$70.24		11/12/2020	\$82.36	\$74.34
9/30/2020	\$72.93	\$70.92		11/13/2020	\$83.52	\$74.60
10/1/2020	\$73.60	\$71.45		11/16/2020	\$85.95	\$74.91
10/2/2020	\$73.60	\$71.81		11/17/2020	\$86.48	\$75.21
10/5/2020	\$75.44	\$72.33		11/18/2020	\$87.49	\$75.52
10/6/2020	\$76.50	\$72.85		11/19/2020	\$87.89	\$75.83
10/7/2020	\$77.50	\$73.37		11/20/2020	\$86.90	\$76.10
10/8/2020	\$77.45	\$73.78		11/23/2020	\$86.80	\$76.36
10/9/2020	\$76.20	\$74.00		11/24/2020	\$90.30	\$76.68
10/12/2020	\$76.20	\$74.18		11/25/2020	\$90.40	\$76.99
10/13/2020	\$75.42	\$74.27		11/27/2020	\$90.40	\$77.29
10/14/2020	\$74.90	\$74.32		11/30/2020	\$87.45	\$77.51
10/15/2020	\$71.77	\$74.15		12/1/2020	\$89.79	\$77.77
10/16/2020	\$74.50	\$74.17		12/2/2020	\$90.28	\$78.03
10/19/2020	\$75.10	\$74.23		12/3/2020	\$90.03	\$78.28
10/20/2020	\$75.10	\$74.27		12/4/2020	\$90.03	\$78.51
10/21/2020	\$75.25	\$74.33		12/7/2020	\$90.03	\$78.74
10/22/2020	\$76.50	\$74.43		12/8/2020	\$88.42	\$78.93
10/23/2020	\$75.68	\$74.49		12/9/2020	\$88.42	\$79.11
10/26/2020	\$74.02	\$74.47		12/10/2020	\$86.74	\$79.25
10/27/2020	\$72.11	\$74.37		12/11/2020	\$84.74	\$79.35
10/28/2020	\$67.78	\$74.09		12/14/2020	\$87.98	\$79.50
10/29/2020	\$67.24	\$73.82		12/15/2020	\$89.75	\$79.68
10/30/2020	\$68.00	\$73.60		12/16/2020	\$91.00	\$79.88
11/2/2020	\$69.44	\$73.44		12/17/2020	\$90.39	\$80.05
11/3/2020	\$69.44	\$73.30		12/18/2020	\$89.98	\$80.22
11/4/2020	\$73.28	\$73.30		12/21/2020	\$89.53	\$80.37
11/5/2020	\$73.28	\$73.30		12/22/2020	\$87.14	\$80.48
11/6/2020	\$75.58	\$73.37		12/23/2020	\$87.14	\$80.59
11/9/2020	\$81.05	\$73.61				

(III) Recognized Loss for the Company's F Shares (Symbol: BYMOF) Purchased in Domestic Transactions During the Class Period will be calculated as follows:

- (A) For F shares (BYMOF) sold on or before December 20, 2019, the Recognized Loss is \$0.
- (B) For F shares (BYMOF) sold during the period December 21, 2019 through

EXHIBIT A-1

September 24, 2020, inclusive, the Recognized Loss will be the *lesser* of: (1) \$3.20 per share or (2) the purchase price per share minus the sales price per share.

- (C) For F shares (BYMOF) sold during the period September 25, 2020 through December 23, 2020, inclusive, the Recognized Loss will be the *lesser* of: (1) \$3.20 per share or (2) the difference between the purchase price per share and the average closing price per share as of date of sale provided in Table E below.
- (D) For F shares (BYMOF) purchased during the Class Period and retained as of the close of trading on December 23, 2020, the Recognized Loss will be the *lesser* of: (1) \$3.20 per share; or (2) the purchase price per share minus the 90-day lookback price of \$58.61 per share.

EXHIBIT A-1

Table E					
		Average			Average
Date	Closing Price	Closing Price	Date	Closing Price	Closing Price
9/25/2020	\$55.00	\$55.00	11/10/2020	\$61.00	\$56.43
9/28/2020	\$55.00	\$55.00	11/11/2020	\$61.00	\$56.57
9/29/2020	\$55.00	\$55.00	11/12/2020	\$61.00	\$56.69
9/30/2020	\$55.00	\$55.00	11/13/2020	\$61.00	\$56.81
10/1/2020	\$55.00	\$55.00	11/16/2020	\$61.00	\$56.93
10/2/2020	\$55.00	\$55.00	11/17/2020	\$61.00	\$57.03
10/5/2020	\$57.00	\$55.29	11/18/2020	\$61.00	\$57.13
10/6/2020	\$57.00	\$55.50	11/19/2020	\$61.00	\$57.23
10/7/2020	\$57.00	\$55.67	11/20/2020	\$61.00	\$57.32
10/8/2020	\$57.00	\$55.80	11/23/2020	\$61.00	\$57.41
10/9/2020	\$57.00	\$55.91	11/24/2020	\$61.00	\$57.49
10/12/2020	\$57.00	\$56.00	11/25/2020	\$61.00	\$57.57
10/13/2020	\$57.66	\$56.13	11/27/2020	\$61.00	\$57.65
10/14/2020	\$57.66	\$56.24	11/30/2020	\$61.00	\$57.72
10/15/2020	\$57.66	\$56.33	12/1/2020	\$61.00	\$57.79
10/16/2020	\$57.66	\$56.42	12/2/2020	\$61.00	\$57.86
10/19/2020	\$57.66	\$56.49	12/3/2020	\$61.00	\$57.92
10/20/2020	\$57.66	\$56.55	12/4/2020	\$61.00	\$57.99
10/21/2020	\$57.66	\$56.61	12/7/2020	\$61.00	\$58.04
10/22/2020	\$57.66	\$56.66	12/8/2020	\$61.00	\$58.10
10/23/2020	\$57.66	\$56.71	12/9/2020	\$61.00	\$58.16
10/26/2020	\$57.66	\$56.75	12/10/2020	\$61.00	\$58.21
10/27/2020	\$57.66	\$56.79	12/11/2020	\$61.00	\$58.26
10/28/2020	\$55.00	\$56.72	12/14/2020	\$61.00	\$58.31
10/29/2020	\$55.00	\$56.65	12/15/2020	\$61.00	\$58.36
10/30/2020	\$55.00	\$56.59	12/16/2020	\$61.00	\$58.40
11/2/2020	\$55.00	\$56.53	12/17/2020	\$61.00	\$58.45
11/3/2020	\$55.00	\$56.47	12/18/2020	\$61.00	\$58.49
11/4/2020	\$55.00	\$56.42	12/21/2020	\$61.00	\$58.53
11/5/2020	\$55.00	\$56.38	12/22/2020	\$61.00	\$58.57
11/6/2020	\$55.00	\$56.33	12/23/2020	\$61.00	\$58.61
11/9/2020	\$55.00	\$56.29			

For purposes of calculating your Recognized Loss, the date of purchase or sale is the “contract” or “trade” date and not the “settlement” or “payment” date. The receipt or grant by gift, inheritance or operation of law of the Company shares shall not be deemed a purchase, acquisition or sale of shares for the calculation of an Authorized Claimant’s Recognized Loss. The covering purchase of a short sale is not an eligible purchase.

EXHIBIT A-1

For purposes of calculating your Recognized Loss, all purchases and sales shall be matched on a First In First Out (“FIFO”) basis in chronological order. Therefore, on the Proof of Claim enclosed with this Notice, you must provide all your purchases of the Company shares during the period November 3, 2015 through and including December 23, 2020. The Company’s ADRs and F shares purchased and sold during the Class Period must have been sold at a loss and after an alleged corrective disclosure to qualify as a Recognized Loss. Trading gains, if any, will have a Recognized Loss of \$0.

Payment pursuant to the Plan of Allocation approved by the Court shall be conclusive against all Authorized Claimants. No person shall have any claim against Defendants, Defendants’ Counsel, Lead Plaintiffs, Lead Counsel or the Settlement Administrator or other agent designated by Lead Counsel based on the distributions made substantially in accordance with the Stipulation and the Settlement contained therein, the Plan of Allocation, or further orders of the Court. Each claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the claimant’s Claim Form. All persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the claims submitted in connection with the Settlement, or otherwise involved in the administration or taxation of the Settlement Fund or the Net Cash Settlement Amount shall be released and discharged from any and all claims arising out of such involvement, and all Settlement Class Members, whether or not they are to receive payment from the Net Cash Settlement Amount, will be barred from making any further claim against the Net Settlement Fund beyond the amount allocated to them as provided in any distribution orders entered by the Court.

9. How can I get a payment?

To qualify for a payment, you must send in a form entitled “Proof of Claim and Release Form.” This Proof of Claim and Release Form is attached to this Notice. You may also obtain a Proof of Claim and Release Form at www.strategicclaims.net/BMW. Read the instructions carefully, fill out the form, and sign it in the location indicated. The Proof of Claim and Release Form may be completed in two ways: (1) by completing and submitting it electronically at www.strategicclaims.net/BMW by **11:59 p.m. EST on _____, 2022**; or (2) by mailing the claim form together with all documentation requested in the form, **postmarked no later than _____, 2022**, to:

BMW AG Securities Litigation
c/o Strategic Claims Services
P.O. Box 230
600 N. Jackson St., Ste. 205
Media, PA 19063
Fax: (610) 565-7985
info@strategicclaims.net

The Claims Administrator will process your claim and determine whether you are an Authorized Claimant.

10. What am I giving up to get a payment or stay in the Class?

Unless you exclude yourself from the Settlement Class by the _____, 2022 deadline, you will remain a member of the Settlement Class, receive your share of the Net Settlement Fund if you are an Authorized Claimant and submitted a valid Proof of Claim and Release Form, and will be bound by the release of claims against the Defendants and other Released Parties if the Settlement is approved. That means you and all other Settlement Class Members and each of their respective parent entities, associates, affiliates, subsidiaries, predecessors, successors, assigns, attorneys, immediate family members, heirs, representatives, administrators, executors, devisees, legatees, and estates will release (agreeing never to sue, continue to sue, or be part of any other lawsuit) as against the Defendants and other Released Parties any and all claims which arise out of, are based upon or relate in any way to the purchase or acquisition of BMW AG ADRs or F shares during the Class Period. It means that all of the Court's orders will apply to you and legally bind you. That means you will accept a share of the Net Settlement Fund as sole compensation for any losses you suffered in the purchase, acquisition, sale or ownership of BMW AG ADRs or F shares during the Settlement Class. The specific terms of the release are included in the Settlement Stipulation.

11. How do I get out of the Settlement?

If you do not want to receive a payment from this Settlement, and you want to keep any right you may have to sue or continue to sue the Defendants or other Released Parties on your own, at your own expense, about the claims being released in this Settlement, then you must take steps to exclude yourself from the Settlement. To exclude yourself from the Settlement, you must mail a letter that (A) clearly indicates your name, address, phone number and e-mail contact information (if any) and states that you “request to be excluded from the Settlement Class in *Spanier v. Bayerische Motoren Werke Aktiengesellschaft, et al.*, 2:20-cv-15081-CCC-AME (D.N.J.)” and (B) states the number of shares of publicly-traded BMW AG ADRs or F shares that you (i) owned as of the opening of trading on November 3, 2015 and (ii) purchased and/or sold during the Class Period (*i.e.*, from November 3, 2015 through September 24, 2020, inclusive), as well as the dates, number of ADRs or F shares, and prices of each such purchase and sale. In order to be valid, such request for exclusion must be submitted with documentary proof: (i) of each purchase and, if applicable, sale transaction of BMW AG ADRs or F shares during the Class Period; and (ii) demonstrating your status as a beneficial owner of the BMW AG ADR or F share. Any such request for exclusion must be signed and submitted by you, as the beneficial owner, under penalty of perjury. You must mail your exclusion request, to be **received no later than _____, 2022**, to the Claims Administrator at the following address:

BMW AG Securities Litigation
c/o Strategic Claims Services
P.O. Box 230
600 N. Jackson St., Ste. 205
Media, PA 19063

You cannot exclude yourself by telephone or by e-mail.

If you properly exclude yourself, you will *not* receive a payment from the Net Settlement Fund, you cannot object to the Settlement, and you will not be legally bound by the judgment in this case.

12. If I do not exclude myself, can I sue Defendants or the other Released Parties for the same thing later?

No. Unless you followed the procedure outlined in the Notice to exclude yourself, you give up any right to sue the Defendants or the Released Parties for the claims being released in this Settlement. If you have a pending lawsuit related to any Released Claims, speak to your lawyer in that case immediately, since you must exclude yourself from this Settlement Class to continue your own lawsuit.

13. Do I have a lawyer in this case?

The Court appointed The Rosen Law Firm, P.A. as Lead Counsel to represent you and the other Settlement Class Members. If you want to be represented by your own lawyer, you may hire one at your own expense. Contact information for The Rosen Law Firm, P.A. is provided below.

14. How will the lawyers be paid?

Lead Counsel have expended considerable time litigating this Action on a contingent fee basis and have paid for the expenses of the case themselves. They have not been paid attorneys' fees or reimbursed for their expenses in advance of this Settlement. Lead Counsel have done so with the expectation that, if they are successful in recovering money for the Settlement Class, they will receive attorneys' fees and be reimbursed for their litigation expenses from the Settlement Fund, as is customary in this type of litigation. Lead Counsel will not receive attorneys' fees or be reimbursed for their litigation expenses except from the Settlement Fund. Therefore, Lead Counsel will apply to the Court for an award of attorneys' fees in an amount not to exceed one-third (\$583,333.33) of the Settlement Fund plus interest, reimbursement of litigation expenses of no more than \$25,000, and an award to Plaintiffs not to exceed \$7,000 total. The Court may award less than these amounts. Any amounts awarded by the Court will come out of the Settlement Fund.

15. How do I tell the Court that I do not like the Settlement?

You can tell the Court you do not agree with the Settlement, any part of the Settlement, and/or to Lead Counsel's motion for attorneys' fees and expenses and application for an award to Plaintiffs, and/or that you think the Court should not approve the Settlement, by mailing a letter stating that you object to the Settlement in the matter of *Spanier v. Bayerische Motoren Werke Aktiengesellschaft, et al.*, 2:20-cv-15081-CCC-AME (D.N.J.). Be sure to include: (1) your name, address, and telephone number; (2) a list of all purchases and sales of BMW AG ADRs and F shares during the Class Period; (3) all grounds for the objection, including any legal support known to you or your counsel; (4) the name, address

EXHIBIT A-1

and telephone number of all counsel, if any, who represent you, including your former or current counsel; and (5) the number of times you and/or your counsel has filed an objection to a class action settlement in the last five years, the nature of each such objection in each case, the jurisdiction in each case, and the name of the issuer of the security or seller of the product or service at issue in each case. Attendance at the Settlement Hearing is not necessary. Objectors wishing to be heard orally at the Settlement Hearing are required to indicate in their written objection (or in a separate writing that is submitted in accordance with the deadline and after instruction pertinent to the submission of a written objection) that they intend to appear at the Settlement Hearing and identify any witnesses they may call to testify or exhibits they intend to introduce into evidence at the Settlement Hearing. Be sure to serve copies of any objections, papers and briefs to **each** of the addresses listed below, to be **received no later than** _____, **2022**:

Clerk of the Court United States District Court District of New Jersey Martin Luther King Building & U.S. Courthouse 50 Walnut Street Newark, NJ 07101	Laurence Rosen The Rosen Law Firm, P.A. One Gateway Center Suite 2600 Newark, NJ 07102 <i>Lead Counsel</i>	Jay B. Kasner Skadden, Arps, Slate, Meagher & Flom LLP One Manhattan West New York, NY 10001 Michael G. Bongiorno Wilmer Cutler Pickering Hale and Dorr LLP 7 World Trade Center 250 Greenwich Street New York, NY 10007 <i>Counsel for Defendants</i>
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16. What is the difference between objecting and requesting exclusion?

Objecting is simply telling the Court you do not like something about the Settlement or some portion thereof. You can object only if you stay in the Settlement Class. Requesting exclusion is telling the Court you do not want to be part of the Settlement Class and Settlement. If you exclude yourself, you cannot object to the Settlement because it no longer concerns you. If you stay in the Settlement Class and object, but your objection is overruled, you will not be allowed a second opportunity to exclude yourself.

17. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Settlement Hearing on _____, **202**, at **__:**__ **.m.**, at the U.S. District Court, District of New Jersey, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, NJ 07101. The Court reserves the right to reschedule the hearing date, hold the Settlement Hearing telephonically or by other virtual means.

18. Do I have to come to the hearing?

No. Lead Counsel will answer any questions the Court may have. However, you are welcome to attend at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mail your written objection on time, the Court will consider it.

19. What happens if I do nothing at all?

If you do nothing, you will not receive a payment from the Settlement. However, unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants or the Released Parties about the Released Claims (as defined in the Settlement Stipulation) ever again.

SPECIAL NOTICE TO BROKERS AND OTHER NOMINEES

If, during the Class Period, you purchased, otherwise acquired, or sold BMW AG ADRs or F shares for the beneficial interest of a person or organization other than yourself, the Court has directed that, **WITHIN TEN (10) CALENDAR DAYS OF YOUR RECEIPT OF NOTICE**, you either (a) provide to the Claims Administrator the name, email address, and last known address of each person or organization for whom or which you purchased BMW AG ADRs or F shares during such time period; (b) request an electronic copy of the Summary Notice and, within ten (10) days after receiving the Summary Notice, email the Summary Notice or email links to the Notice and Proof of Claim and Release Form to the email address of each beneficial purchaser/owner of BMW AG ADRs or F shares; or (c) request additional copies of the Postcard Notice, which will be provided to you free of charge, and within ten (10) days of receipt, mail the Postcard Notice directly to the beneficial purchaser/owners of the BMW AG ADRs or F shares. If you choose to follow alternative procedures (b) or (c), the Court has directed that, upon such mailing, you send a statement to the Claims Administrator confirming that the mailing was made as directed. You are entitled to reimbursement from the Settlement Fund of your reasonable out-of-pocket expenses actually incurred in connection with the foregoing, up to \$0.05 per name, address and email address provided to the Claims Administrator; up to a maximum of \$0.05 per Postcard Notice mailed by you, plus postage at the pre-sort rate used by the Claims Administrator; or \$0.05 per notice sent by email. Those expenses will be paid upon request and submission of appropriate supporting documentation. All communications regarding the foregoing should be addressed to the Claims Administrator at the address listed on page 3 above.

DATED:

BY ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT
OF NEW JERSEY

PROOF OF CLAIM AND RELEASE FORM

Deadline for Submission: _____

IF YOU PURCHASED THE PUBLICLY-TRADED AMERICAN DEPOSITARY RECEIPTS (“ADRs”) OR F SHARES OF BMW AG (“BMW” OR THE “COMPANY”) FROM NOVEMBER 3, 2015 TO SEPTEMBER 24, 2020, BOTH DATES INCLUSIVE (“CLASS PERIOD”), YOU ARE A “SETTLEMENT CLASS MEMBER” AND YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT PROCEEDS.

IF YOU ARE A SETTLEMENT CLASS MEMBER, YOU MUST COMPLETE AND SUBMIT THIS PROOF OF CLAIM AND RELEASE FORM (“PROOF OF CLAIM AND RELEASE FORM”) IN ORDER TO BE ELIGIBLE FOR ANY SETTLEMENT BENEFITS. YOU CAN COMPLETE AND SUBMIT THE ELECTRONIC VERSION OF THIS PROOF OF CLAIM AND RELEASE FORM BY 11:59 P.M. EST ON _____, 2022 AT WWW.STRATEGICCLAIMS.NET/BMW.

IF YOU DO NOT COMPLETE AND SUBMIT AN ELECTRONIC VERSION OF THIS PROOF OF CLAIM AND RELEASE FORM, YOU MUST COMPLETE AND SIGN THIS PROOF OF CLAIM AND RELEASE FORM AND MAIL IT BY FIRST CLASS MAIL, POSTMARKED NO LATER THAN _____, 2022 TO THE CLAIMS ADMINISTRATOR, STRATEGIC CLAIMS SERVICES, AT THE FOLLOWING ADDRESS:

BMW AG Securities Litigation
c/o Strategic Claims Services
600 N. Jackson St., Ste. 205
P.O. Box 230
Media, PA 19063
Fax: (610) 565-7985
info@strategicclaims.net

YOUR FAILURE TO SUBMIT YOUR CLAIM BY _____, 2022 WILL SUBJECT YOUR CLAIM TO REJECTION AND PRECLUDE YOU FROM RECEIVING ANY MONEY IN CONNECTION WITH THE SETTLEMENT OF THIS ACTION. DO NOT MAIL OR DELIVER YOUR CLAIM TO THE COURT OR TO ANY OF THE PARTIES OR THEIR COUNSEL, AS ANY SUCH CLAIM WILL BE DEEMED NOT TO HAVE BEEN SUBMITTED. SUBMIT YOUR CLAIM ONLY TO THE CLAIMS ADMINISTRATOR. IF YOU ARE A SETTLEMENT CLASS MEMBER AND DO NOT SUBMIT A PROPER PROOF OF CLAIM AND RELEASE FORM, YOU WILL NOT SHARE IN THE SETTLEMENT, BUT YOU NEVERTHELESS WILL BE BOUND BY THE ORDER AND FINAL JUDGMENT OF THE COURT UNLESS YOU EXCLUDE YOURSELF.

SUBMISSION OF A PROOF OF CLAIM AND RELEASE FORM DOES NOT ASSURE THAT YOU WILL SHARE IN THE PROCEEDS OF THE SETTLEMENT.

CLAIMANT'S STATEMENT

1. I (we) purchased BMW AG ADRs or F shares during the Class Period. (Do not submit this Proof of Claim and Release Form if you did not purchase BMW AG ADRs or F shares during the Class Period.)
2. By submitting this Proof of Claim and Release Form, I (we) state that I (we) believe in good faith that I am (we are) a Settlement Class Member(s) as defined above and in the Notice of Pendency and Proposed Settlement of Class Action (the "Notice"), or am (are) acting for such person(s); that I am (we are) not a Defendant in the Action or anyone excluded from the Settlement Class; that I (we) have read and understand the Notice; that I (we) believe that I am (we are) entitled to receive a share of the Net Settlement Fund, as defined in the Notice; that I (we) elect to participate in the proposed Settlement described in the Notice; and that I (we) have not filed a request for exclusion. (If you are acting in a representative capacity on behalf of a Settlement Class Member [e.g., as an executor, administrator, trustee, or other representative], you must submit evidence of your current authority to act on behalf of that Settlement Class Member. Such evidence would include, for example, letters testamentary, letters of administration, or a copy of the trust documents.)
3. I (we) consent to the jurisdiction of the Court with respect to all questions concerning the validity of this Proof of Claim and Release Form. I (we) understand and agree that my (our) claim may be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to my (our) status as a Settlement Class Member(s) and the validity and amount of my (our) claim. No discovery shall be allowed on the merits of the Action or Settlement in connection with processing of the Proof of Claim and Release Form.
4. I (we) have set forth where requested below all relevant information with respect to each purchase of BMW AG ADR and F share, and each sale, if any, of such securities. I (we) agree to furnish additional information to the Claims Administrator to support this claim if requested to do so.
5. I (we) have enclosed photocopies of the stockbroker's confirmation slips, stockbroker's statements, or other documents evidencing each purchase and sale of BMW AG ADRs or F shares listed below in support of my (our) claim. (IF ANY SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN A COPY OR EQUIVALENT DOCUMENTS FROM YOUR BROKER OR TAX ADVISOR BECAUSE THESE DOCUMENTS ARE NECESSARY TO PROVE AND PROCESS YOUR CLAIM.)
6. I (we) understand that the information contained in this Proof of Claim and Release Form is subject to such verification as the Claims Administrator may request or as the Court may direct, and I (we) agree to cooperate in any such verification. (The information requested herein is designed to provide the minimum amount of information necessary to process most simple claims. The Claims Administrator may request additional information as required to efficiently and reliably calculate your Recognized Loss. In some cases, the Claims Administrator may condition acceptance of the claim based upon the production of additional information, including, where applicable, information concerning transactions in any derivatives securities such as options.)
7. Upon the occurrence of the Court's approval of the Settlement, as detailed in the Notice, I (we) agree and acknowledge that my (our) signature(s) hereto shall effect and constitute a full and complete release, remise and discharge by me (us) and my (our) heirs, joint tenants, tenants in common, beneficiaries, executors, administrators, predecessors, successors, attorneys, insurers and assigns (or, if I am (we are) submitting this Proof of Claim and Release Form on behalf of a corporation, a partnership, estate or one or more other persons, by it, him, her or them, and by its, his, her or their heirs, executors, administrators, predecessors, successors, and assigns) of each of the "Released Parties" of all "Released Claims," as those terms are defined in the Stipulation of Settlement, dated April 1, 2022 (the "Settlement Stipulation").
8. Upon the occurrence of the Court's approval of the Settlement, as detailed in the Notice, I (we) agree and acknowledge that my (our) signature(s) hereto shall effect and constitute a covenant by me (us) and my (our)

EXHIBIT A-2

heirs, joint tenants, tenants in common, beneficiaries, executors, administrators, predecessors, successors, attorneys, insurers and assigns (or, if I am (we are) submitting this Proof of Claim and Release Form on behalf of a corporation, a partnership, estate or one or more other persons, by it, him, her or them, and by its, his, her or their heirs, executors, administrators, predecessors, successors, and assigns) to permanently refrain from prosecuting or attempting to prosecute any Settlement Class Claims against any of the Released Parties.

9. "Released Parties" has the meaning laid out in the Settlement Stipulation.
10. "Settlement Class Claims" has the meaning laid out in the Settlement Stipulation.
11. "Unknown Claims" has the meaning laid out in the Settlement Stipulation.
12. I (We) acknowledge that the inclusion of "Unknown Claims" in the definition of claims released pursuant to the Settlement Stipulation was separately bargained for and is a material element of the Settlement of which this release is a part.
13. NOTICE REGARDING INSTITUTIONAL FILERS: Representatives with the authority to file on behalf of (a) accounts of multiple Persons and/or (b) institutional accounts with large numbers of transactions ("Representative Filers") must submit information regarding their clients' transactions in the approved electronic spreadsheet format, which is available by request to the Claims Administrator at efile@strategicclaims.net or by visiting the website www.strategicclaims.net/institutional-filers/. One spreadsheet may contain the information for multiple Persons and institutional accounts who constitute distinct legal entities ("Legal Entities"), but all Representative Filers MUST also submit a manually signed Proof of Claim and Release Form, as well as proof of authority to file (see Item 2 of the Claimant's Statement) along with the electronic spreadsheet. The transactions and holdings in the Company's ADRs and F shares should be reported in the electronic file so that each resulting Claim corresponds to a single Legal Entity, regardless of the number of individually managed accounts the Legal Entity has, as only one Claim will be processed per Legal Entity (e.g. a Representative Filer reporting the transactions for a fund with multiple sub-accounts should report one total holding at the start of the Settlement Class Period, one total holding at the end of the Settlement Class Period, and a single set of transactions that includes all transactions made by the Legal Entity across their sub-accounts; this would constitute and be processed a single Claim). The Claims Administrator reserves the right to combine a Legal Entity's accounts into a single Claim prior to processing in the event that a Legal Entity's accounts are divided across multiple Claims when submitted by a Representative Filer. The Claims Administrator also reserves the right to request additional documentary proof regarding a Legal Entity's transactions and holdings in the Company's ADRs and F shares to prove and accurately process the Proof of Claim and Release Form.
14. NOTICE REGARDING ONLINE FILING: Claimants who are not Representative Filers may submit their claims online using the electronic version of the Proof of Claim and Release Form hosted at www.strategicclaims.net. If you are not acting as a Representative Filer, you do not need to contact the Claims Administrator prior to filing; you will receive an automated e-mail confirming receipt once your Proof of Claim and Release Form has been submitted. If you are unsure if you should submit your claim as a Representative Filer, please contact the Claims Administrator at info@strategicclaims.net or (866) 274-4004. If you are not a Representative Filer, but your claim contains a large number of transactions, the Claims Administrator may request that you also submit an electronic spreadsheet showing your transactions to accompany your Proof of Claim and Release Form.

I. CLAIMANT INFORMATION

Beneficial Owner Name		
Address		
City	State	ZIP
Foreign Province	Foreign Country	
Day Phone	Evening Phone	
Email		
Social Security Number (for individuals):	OR	Taxpayer Identification Number (for estates, trusts, corporations, etc.):

II. SCHEDULE OF TRANSACTIONS IN BMW AG ADRS AND F SHARES

Beginning Holdings:

A. State the total number of shares of BMW AG ADR and F share held at the close of trading on November 2, 2015 (*must be documented*). If none, write “zero” or “0.”

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Purchases/Acquisitions:

B. Separately list each and every purchase or acquisition of BMW AG ADRs and F shares from November 3, 2015 through December 23, 2020, both dates inclusive, and provide the following information (*must be documented*):

Trade Date (List Chronologically) (Month/Day/Year)	Number of Shares Purchased	Price per Share	Total Cost (Excluding Commissions, Taxes, and Fees)

Sales:

C. Separately list each and every sale of BMW AG ADRs and F shares from November 3, 2015 through December 23, 2020, both dates inclusive, and provide the following information (*must be documented*):

EXHIBIT A-2

Trade Date (List Chronologically) (Month/Day/Year)	Number of Shares Sold	Price per Share	Amount Received (Excluding Commissions, Taxes, and Fees)

Ending Holdings:

D. State the total number of shares of BMW AG ADRs and F shares held at the close of trading on December 23, 2020 (*must be documented*).

If additional space is needed, attach separate, numbered sheets, giving all required information, substantially in the same format, and print your name and Social Security or Taxpayer Identification number at the top of each sheet.

III. SUBSTITUTE FORM W-9

Request for Taxpayer Identification Number:

Enter taxpayer identification number below for the Beneficial Owner(s). For most individuals, this is your Social Security Number. The Internal Revenue Service (“I.R.S.”) requires such taxpayer identification number. If you fail to provide this information, your claim may be rejected.

Social Security Number (for individuals)	or	Taxpayer Identification Number (for estates, trusts, corporations, etc.)

IV. CERTIFICATION

I (We) submit this Proof of Claim and Release Form under the terms of the Settlement Stipulation described in the Notice. I (We) also submit to the jurisdiction of the United States District Court for the Southern District of New York with respect to my (our) claim as a Settlement Class Member(s) and for purposes of enforcing the release and covenant not to sue set forth herein. I (We) further acknowledge that I am (we are) bound by and subject to the terms of any judgment that may be entered in this Action. I (We) have not submitted any other claim covering the same purchases or sales of BMW AG ADRs and F shares during the Class Period and know of no other Person having done so on my (our) behalf.

I (We) certify that I am (we are) NOT subject to backup withholding under the provisions of Section 3406 (a)(1)(c) of the Internal Revenue Code because: (a) I am (We are) exempt from backup withholding; or (b) I (We) have not been notified by the I.R.S. that I am (we are) subject to backup withholding as a result of a failure to report all interest or dividends; or (c) the I.R.S. has notified me (us) that I am (we are) no longer subject to backup withholding.

NOTE: If you have been notified by the I.R.S. that you are subject to backup withholding, please strike out the language that you are not subject to backup withholding in the certification above.

EXHIBIT A-2

UNDER THE PENALTIES OF PERJURY UNDER THE LAWS OF THE UNITED STATES, I (WE) CERTIFY THAT ALL OF THE INFORMATION I (WE) PROVIDED ON THIS PROOF OF CLAIM AND RELEASE FORM IS TRUE, CORRECT AND COMPLETE.

Signature of Claimant (If this claim is being made on behalf of Joint Claimants, then each must sign):

(Signature)

(Signature)

(Capacity of person(s) signing, e.g. beneficial purchaser(s), executor, administrator, trustee, etc.)

Check here if proof of authority to file is enclosed.
(See Item 2 under Claimant's Statement)

Date: _____

THIS PROOF OF CLAIM AND RELEASE FORM MUST BE POSTMARKED NO LATER THAN _____, 2022 AND MUST BE MAILED TO:

BMW AG Securities Litigation
c/o Strategic Claims Services
600 N. Jackson St., Ste. 205
P.O. Box 230
Media, PA 19063
Fax: (610) 565-7985
info@strategicclaims.net

A Proof of Claim and Release Form received by the Claims Administrator shall be deemed to have been submitted when posted, if mailed by _____, 2022 and if a postmark is indicated on the envelope and it is mailed first class and addressed in accordance with the above instructions. In all other cases, a Proof of Claim and Release Form shall be deemed to have been submitted when actually received by the Claims Administrator.

You should be aware that it will take a significant amount of time to process fully all of the Proof of Claim and Release Forms and to administer the Settlement. This work will be completed as promptly as time permits, given the need to investigate and tabulate each Proof of Claim and Release Form. Please notify the Claims Administrator of any change of address.

REMINDER CHECKLIST

- Please be sure to sign this Proof of Claim and Release Form on page _____. If this Proof of Claim and Release Form is submitted on behalf of joint claimants, then each claimant must sign.
- Please remember to attach supporting documents. Do NOT send any stock certificates. Keep copies of everything you submit.
- Do NOT use highlighter on the Proof of Claim and Release Form or any supporting documents.
- If you desire an acknowledgment of receipt of your claim form, please send it Certified Mail, Return Receipt Requested, or its equivalent.
- If you move or change your address, telephone number or email address, please submit the new information to the Claims Administrator, as well as any other information that will assist us in contacting you. NOTE: Failure to submit updated information to the Claims Administrator may result in the Claims Administrator's inability to contact you regarding issues with your claim or deliver payment to you.

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

MARK SPANIER and MARISSA
WEERESINGHE, Individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

BAYERISCHE MOTOREN WERKE
AKTIENGESELLSCHAFT, *et al.*

Defendants.

Case No. 2:20-cv-15081-CCC-AME

CLASS ACTION

**SUMMARY NOTICE OF PENDENCY AND
PROPOSED CLASS ACTION SETTLEMENT**

TO: ALL PERSONS WHO PURCHASED PUBLICLY-TRADED AMERICAN DEPOSITARY RECEIPTS (ADRs) OR F SHARES OF BMW AG FROM NOVEMBER 3, 2015 THROUGH SEPTEMBER 24, 2020, INCLUSIVE.

YOU ARE HEREBY NOTIFIED, pursuant to an Order of the United States District Court for the District of New Jersey, that a hearing will be held on _____, 202_, at __:__ .m. before the Honorable Claire C. Cecchi, United States District Judge of the District of New Jersey, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Courtroom 5B, Newark, New Jersey, 07101 for the purpose of determining: (1) whether the proposed Settlement of the claims in the above-captioned Action for consideration including the sum of \$1,750,000 should be approved by the Court as fair, reasonable, and adequate; (2) whether the proposed plan to distribute the Settlement proceeds is fair, reasonable, and adequate; (3) whether the application of Lead Counsel for an award of attorneys' fees of up to 1/3 (one-third) plus interest of the Settlement Amount, reimbursement of expenses of not more than \$25,000 and a service payment of no more

EXHIBIT A-3

than \$7,000 in total to Plaintiffs, should be approved; and (4) whether this Action should be dismissed with prejudice as set forth in the Stipulation of Settlement, dated April 1, 2022 (the “Settlement Stipulation”). The Court reserves the right to reschedule the hearing date or hold the hearing telephonically or by other virtual means.

If you purchased BMW AG ADRs or F shares during the period from November 3, 2015 through September 24, 2020, both dates inclusive, your rights may be affected by this Settlement, including the release and extinguishment of claims you may possess relating to your ownership interest in BMW AG ADRs or F shares. If you have not received a detailed Notice of Pendency and Proposed Settlement of Class Action (“Notice”) and a copy of the Proof of Claim and Release Form, you may obtain copies by writing to or calling the Claims Administrator: BMW AG Securities Litigation, c/o Strategic Claims Services, P.O. Box 230, 600 N. Jackson St., Ste. 205, Media, PA 19063; (Toll-Free) (866) 274-4004; (Fax) (610) 565-7985; info@strategicclaims.net. You can also download copies of the Notice and submit your Proof of Claim and Release Form online at www.strategicclaims.net/BMW. If you are a member of the Settlement Class, in order to share in the distribution of the Net Settlement Fund, you must submit a Proof of Claim and Release Form electronically or postmarked no later than _____, 2022 to the Claims Administrator, establishing that you are entitled to recovery. Unless you submit a written exclusion request, you will be bound by any judgment rendered in the Action whether or not you make a claim.

If you desire to be excluded from the Settlement Class, you must submit to the Claims Administrator a request for exclusion so that it is received no later than _____, 2022, in the manner and form explained in the Notice. All members of the Settlement Class who have not

EXHIBIT A-3

requested exclusion from the Settlement Class will be bound by any judgment entered in the Action pursuant to the Settlement Stipulation.

Any objection to the Settlement, Plan of Allocation, or Lead Counsel’s request for an award of attorneys’ fees and reimbursement of expenses and award to Plaintiffs must be in the manner and form explained in the detailed Notice and received no later than _____, 2022, by each of the following:

<p>Clerk of the Court United States District Court District of New Jersey Martin Luther King Building & U.S. Courthouse 50 Walnut Street Newark, NJ 07101</p>	<p>Laurence Rosen The Rosen Law Firm, P.A. One Gateway Center Suite 2600 Newark, NJ 07102</p> <p><i>Lead Counsel</i></p>	<p>Jay B. Kasner Skadden, Arps, Slate, Meagher & Flom LLP One Manhattan West New York, NY 10001</p> <p>Michael G. Bongiorno Wilmer Cutler Pickering Hale and Dorr LLP 7 World Trade Center 250 Greenwich Street New York, NY 10007</p> <p><i>Counsel for Defendants</i></p>
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If you have any questions about the Settlement, you may call or write to Lead Counsel:

Laurence Rosen, Esq.
 THE ROSEN LAW FIRM, P.A.
 One Gateway Center
 Suite 2600
 Newark, NJ 07102
 info@rosenlegal.com

PLEASE DO NOT CONTACT THE COURT OR THE CLERK’S OFFICE REGARDING THIS NOTICE.

DATED: BY ORDER OF THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF NEW JERSEY

**Court-Ordered Legal Notice
Forwarding Service Requested**

*A federal court authorized this
notice. This is not a solicitation
from a lawyer.*

*You may be entitled to a payment.
This notice may affect your legal
rights.*

Please read it carefully.

BMW AG Securities Litigation
c/o Strategic Claims Services
P.O. Box 230
600 N. Jackson St.
Suite 205
Media, PA 19063

[NAME 1]

[NAME 2]

[NAME 3]

[ADDRESS 1]

[ADDRESS 2]

PRESORTED
FIRST-CLASS
MAIL U.S.
POSTAGE PAID

THIS CARD PROVIDES ONLY LIMITED INFORMATION ABOUT THE SETTLEMENT.

PLEASE VISIT WWW.STRATEGICCLAIMS.NET/BMW/ OR CALL 1-866-274-4004 FOR MORE INFORMATION.

The United States District Court for the District of New Jersey (the “Court”) has preliminarily approved a proposed Settlement of claims against Bayerische Motoren Werke AG (“BMW AG”) and BMW of North America LLC. The proposed Settlement would resolve a class action lawsuit alleging that, in violation of the federal securities laws, Defendants made material misrepresentations to the public about BMW AG’s business, causing damage to Settlement Class Members. Defendants deny any wrongdoing.

You received this notice because you may have purchased BMW AG’s American Depositary Receipts (“ADRs”) or F shares between November 3, 2015 and September 24, 2020, both dates inclusive. The Settlement dismisses and releases claims against Defendants and creates a fund consisting of \$1,750,000, less attorneys’ fees and expenses, which will be divided among Settlement Class Members who timely submit valid Proof of Claim and Release Forms (“Proof of Claim”). For a full description of the Settlement and your rights and to make a claim, please view the Stipulation of Settlement and obtain a copy of the Notice of Pendency and Proposed Settlement of Class Action (“Notice”) and Proof of Claim by visiting the website: www.strategicclaims.net/BMW/. You may also request copies of the Notice and Proof of Claim from the Claims Administrator by: (1) mail: BMW AG Securities Litigation, c/o Strategic Claims Services, P.O. Box 230, 600 N. Jackson St, Ste. 205, Media, PA 19063; (2) toll-free phone: (866) 274-4004; (3) fax: (610) 565-7985; or (4) email: info@strategicclaims.net.

To qualify for payment, you must submit a Proof of Claim, which can be found on the website www.strategicclaims.net/BMW/. PROOFS OF CLAIM ARE DUE BY _____, 2022 TO: BMW AG SECURITIES LITIGATION, C/O STRATEGIC CLAIMS SERVICES, P.O. BOX 230, 600 N. JACKSON ST, STE 205, MEDIA, PA 19063 or submitted electronically at www.strategicclaims.net/BMW/. If you do not want to be legally bound by the Settlement, you must exclude yourself by _____, 2022. If you exclude yourself, you cannot get money from this Settlement. If you stay in the Settlement, you may object to it by _____, 2022. The Notice explains how to exclude yourself or to object.

The Court will hold a hearing in this case on _____, 2022 at ____:____.m. at the Court, 50 Walnut Street, Courtroom 5B, Newark, NJ, 07101, to consider whether to approve the Settlement, the Plan of Allocation, and a request by Lead Counsel for up to 1/3 (one-third) of the Settlement Fund in attorneys’ fees, plus up to \$25,000 in expenses, and total Award to Plaintiffs of no more than \$7,000 for litigating the case and negotiating the Settlement. You may, but do not have to, attend the hearing and ask to be heard by the Court. The Court reserves the right to hold the Settlement Hearing telephonically or by other virtual means.

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

MARK SPANIER and MARISSA
WEERESINGHE, Individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

BAYERISCHE MOTOREN WERKE
AKTIENGESELLSCHAFT, *et al.*

Defendants.

Case No. 2:20-cv-15081-CCC-AME

CLASS ACTION

[PROPOSED] ORDER AND FINAL JUDGMENT

On the ____ day of _____, 20____, a hearing having been held before this Court to determine whether the terms and conditions of the Stipulation of Settlement dated April 1, 2022 (the “Stipulation”) are fair, reasonable and adequate for the settlement of all claims asserted by the Settlement Class against Defendants; and

The Court having considered all matters submitted to it at the hearing and otherwise; and

It appearing that the Notice substantially in the form approved by the Court in the Court’s Order Preliminarily Approving Settlement and Providing For Notice (“Preliminary Approval Order”) was provided to all reasonably identifiable Settlement Class Members and posted to the website of the Claims Administrator; and

It appearing that the Summary Notice substantially in the form approved by the Court in the Preliminary Approval Order was published in accordance with that Order and the specifications of the Court;

EXHIBIT B

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. All capitalized terms used herein have the same meanings as set forth and defined in the Stipulation.

2. The Court has jurisdiction over the subject matter of the Action, Plaintiffs, all Settlement Class Members and Defendants.

3. For purposes of this Settlement, this is a class action on behalf of all persons or entities that purchased or otherwise acquired BMW AG American Depositary Receipts (ADRs) or BMW AG F shares publicly traded over-the-counter between November 3, 2015, and September 24, 2020, both dates inclusive, and excludes Defendants, the present and former officers and directors of Defendants and any subsidiaries thereof, and the immediate family members, legal representatives, heirs, successors, or assigns of such excluded persons and any entity in which any such excluded person has or had a controlling interest during the Class Period. Also excluded from the Settlement Class are all putative members of the Settlement Class who: (a) exclude themselves by filing a valid and timely request for exclusion, or (b) suffered no compensable damages as determined by the Plan of Allocation to be filed with the Court.

4. The Court hereby finds that the forms and methods of notifying the Settlement Class of the Settlement and its terms and conditions meet the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and Section 21D(a)(7) of the Exchange Act, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995; constitute the best notice practicable under the circumstances; and constitute due and sufficient notice to all persons and entities entitled thereto of these proceedings and the matters set forth herein. No Settlement Class Member is relieved from the terms of the Settlement, including the releases

EXHIBIT B

provided for therein, based upon the contention or proof that such Settlement Class Member failed to receive actual or adequate notice. A full opportunity has been offered to the Settlement Class Members to object to the proposed Settlement and to participate in the hearing thereon. The Court further finds that the notice provisions of the Class Action Fairness Act, 28 U.S.C. § 1715, were fully discharged. Thus, it is hereby determined that all members of the Settlement Class are bound by this Order and Final Judgment.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court finds that the Stipulation and Settlement are, in all respects, fair, reasonable, and adequate and in the best interests of the Settlement Class and each of the Settlement Class Members. This Court further finds the Settlement set forth in the Stipulation is the result of arm's-length negotiations between experienced counsel representing the interests of Plaintiffs, Settlement Class Members, and Defendants. Accordingly, the Settlement embodied in the Stipulation is hereby finally approved in all respects, and shall be consummated in accordance with its terms and provisions. The Parties are hereby directed to perform the terms of the Stipulation.

6. The Action and the Amended Class Action Complaint (Dkt. No. 30) ("Complaint") are hereby dismissed with prejudice. The Parties shall bear their own costs and expenses, except as and to the extent provided in the Stipulation and herein.

7. In accordance with the terms of the Stipulation, the Settlement Class Members, or the successors or assigns of any of them, in any capacity (the "Releasing Parties"), hereby forever release, relinquish, and discharge the Released Parties from any and all Settlement Class Claims. The Releasing Parties, and anyone acting or purporting to act for any of them, are hereby permanently barred and enjoined from asserting, commencing, prosecuting, instituting, assisting, instigating, or in any way participating in the commencement or prosecution of any action or

EXHIBIT B

other proceeding, in any forum, asserting any Settlement Class Claims, either directly, representatively, derivatively, or in any other capacity, against any of the Released Parties.

8. In accordance with the terms of the Stipulation, each of the Defendants, on behalf of themselves, and, as applicable, their heirs, executors, predecessors, successors and assigns, hereby forever releases, relinquishes, and discharges any and all Defendant Claims which arise out of, concern or relate to the institution, prosecution, settlement, or dismissal of the Action against Plaintiffs, any of the Settlement Class Members, and Lead Counsel.

9. The Parties may file the Stipulation and/or this Order and Final Judgment in any proceedings that may be necessary to consummate or enforce the Stipulation, the Settlement, or this Order and Final Judgment.

10. In accordance with 15 U.S.C. § 78u-4(f)(7) and any other applicable law or regulation, any and all claims which are brought by any Person or entity against Defendants (a) for contribution or indemnification arising out of any Released Claim, or (b) where the damage to the claimant is measured by reference to the claimant's liability to Plaintiffs or the Settlement Class, are hereby permanently barred and discharged. Any such claims brought by Defendants against any Person or entity (other than Persons or entities whose liability to Plaintiffs or the Settlement Class is extinguished by this Order and Final Judgment) are likewise permanently barred and discharged, provided, however, that nothing in this Order and Final Judgment shall apply to bar or otherwise affect any claim for insurance coverage by any Defendant.

11. The Court finds that all parties and their counsel have complied with each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all proceedings herein.

12. Neither this Order and Final Judgment, the Stipulation, nor any of the negotiations, documents or proceedings connected with them shall be:

EXHIBIT B

(a) referred to or used against Defendants or against Plaintiffs or the Settlement Class as evidence of wrongdoing by anyone;

(b) construed against Defendants or against Plaintiffs or the Settlement Class as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial;

(c) construed as, or received in evidence as, an admission, concession or presumption against the Settlement Class or any of them, that any of their claims are without merit or that damages recoverable under the Complaint would not have exceeded the Settlement Fund; or

(d) used or construed as an admission of any fault, liability or wrongdoing by any person or entity, or offered or received in evidence as an admission, concession, presumption or inference against any of the Defendants in any proceeding other than such proceedings as may be necessary to consummate or enforce the Stipulation.

13. Exclusive jurisdiction is hereby retained over Defendants and the Settlement Class Members for all matters relating to the Action, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Order and Final Judgment, and including any application for fees and expenses incurred in connection with administering and distributing the settlement proceeds to the Settlement Class Members.

14. Without further order of the Court, Defendants and Plaintiffs may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

15. There is no just reason for delay in the entry of this Order and Final Judgment and immediate entry by the Clerk of the Court is directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

EXHIBIT B

16. The finality of this Order and Final Judgment shall not be affected, in any manner, by rulings that the Court may make with respect to the proposed Plan of Allocation or on Lead Counsel's application for an award of attorneys' fees and expenses and/or case contribution awards to Plaintiffs.

17. In the event that the Settlement does not become final and effective in accordance with the terms and conditions set forth in the Stipulation, then this Order and Final Judgment shall be rendered null and void and be vacated. The terms and conditions of the Stipulation shall govern any termination or the effect of any termination thereof.

Dated: _____, 20__

HONORABLE CLAIRE C. CECCHI
UNITED STATES DISTRICT JUDGE