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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

BY _____

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BRAD AARONS individually, and on behalf of
7 other members of the public similarly situated

8 UNITED STATES DISTRICT COURT
9
10 CENTRAL DISTRICT OF CALIFORNIA

11 BRAD AARONS, individually, and on
12 behalf of other members of the general
13 public similarly situated,

14 Plaintiff,

15 vs.

17 BMW of NORTH AMERICA, LLC, a
18 New Jersey Limited Liability Company,

19 Defendant.

Case Number: 2:11-cv-07667-PSG-CW

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- (1) Violation of the Consumers Legal Remedies Act (Cal. Civ. Code §§ 1750 *et seq.*)
- (2) Violation of Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200 *et seq.*); and
- (3) Fraud

Jury Trial Demanded

1 Plaintiff BRAD AARONS (“Plaintiff”), individually and on behalf of all other
2 members of the public similarly situated, alleges as follows:

3 1. This is a consumer class action concerning a failure to disclose the fact that
4 Continuously Variable Automatic Transmissions installed in 2002 through 2006 Mini
5 Cooper Coupe models and 2005 through 2008 Mini Cooper Convertible models (“First
6 Generation MINIs”), designed, manufactured, imported, distributed, marketed, and
7 maintained in the United States by Defendant BMW of North America, LLC (“BMW
8 Group” or “Defendant”), were prone to premature failure and could not reasonably be
9 repaired. BMW Group’s failure to disclose this material fact presents a safety concern,
10 and has caused consumers to suffer significant monetary damages.

11 INTRODUCTION

12 2. First Generation MINIs were introduced in the United States in 2002 with
13 great fanfare and public attention. BMW Group presented the Mini Cooper as a stylish,
14 high performance, yet affordable vehicle that was priced at less than \$20,000. BMW
15 Group’s marketing strategy for First Generation MINIs was to launch a new class of high-
16 end vehicles. At the time of the launch, Jack Pitney, general manager of BMW Group’s
17 MINI division in the U.S., explained to the Wall Street Journal, “[w]e’re creating a new
18 segment’ of premium small vehicles.”¹

19 3. BMW Group employed “unconventional tactics”² to drive sales for this
20 newly proclaimed “premium small car segment.”³ Consistent with the concept of creating
21 a premium, but small vehicle, BMW Group’s advertisements for First Generation MINIs
22

23 ¹ See “BMW ‘Mini’ Campaign: Odd to the Max,” Karen Lundegaard, Wall Street Journal at B5 (March
24 1, 2002) (emphasis added).

25 ² See “‘Let’s Motor’ Mini Cooper Campaign Gets In Gear,” Jean Halliday, Advertising Age, June 19,
26 2002, available at <http://adage.com/article/news/motor-mini-cooper-campaign-gear/34818/> (last visited,
August 25, 2011).

27 ³ See “MINI Establishes Premium Standard in the Small Car Segment,” BMW Group Press Release,
28 October 18, 2002, available at <http://www.bmwboard.com/news/view.asp?linkid=310> (last visited,
August 25, 2011).

1 emphasized their design and performance features. Among other things, BMW Group
2 purchased the margins of magazine pages, and placed advertisements with a First
3 Generation MINI driving around the edges of the editorial text to highlight MINI's
4 "cornering" abilities.⁴ Additionally, to showcase MINI's good looks and fashionable
5 styling, BMW Group made a first ever advertising purchase of the *Playboy Magazine*
6 Centerfold space, and placed a picture of a First Generation MINI in the foldout pages, as
7 photographed by a *Playboy Magazine* staff photographer.⁵ Ultimately, Advertising Age, a
8 leading marketing industry trade publication, awarded the First Generation MINI 2002
9 launch campaign one of its "Best Awards."⁶

10 4. BMW Group's aggressive marketing tactics were successful, and consumers
11 and automotive enthusiasts alike bought into the hype. J.D. Power and Associates
12 awarded First Generation MINIs the 2002 "APEAL" award, based on a survey of owner's
13 *perceptions* of the vehicle's "design, layout, content and performance during the first 90
14 days of ownership."⁷ In its "First Drive Review," *Car and Driver Magazine* said that
15 although the First Generation MINIs were priced in competition with the VW Golf, Ford
16 Focus and Honda Civic, the car is "fun to drive and feels of high quality enough to wear
17 the BMW badge."⁸ Similarly, a Forbes.com review stated, "the Mini Cooper does
18 everything a sports sedan should do . . . and at an unheard-of base price of \$16,850."⁹

19
20 ⁴ See "MINI USA Launch Exceeds Expectations – Jack Pitney Credits Innovative Marketing,
21 Enthusiastic Dealers On Road to Success," BMW Group Press Release, May 7, 2003, available at
22 <http://www.bmwboard.com/news/view.asp?linkid=351> (last visited, August 25, 2011).

23 ⁵ See *id.*

24 ⁶ See "The Ad Age Best Awards report 2003," Advertising Age at S-6, May 26, 2003, available at
25 <http://adage.com/images/random/best2003.pdf> (last visited, August 25, 2011).

26 ⁷ See "MINI Cooper ranked most appealing," BMW Group Press Release, October 10, 2002, available at
27 <http://www.bmwboard.com/news/view.asp?linkid=308> (last visited, August 25, 2011).

28 ⁸ See "Mini Cooper – First Drive Review. Der Mini," Daniel Pund, *Car and Driver*, August 2001,
available at http://www.caranddriver.com/reviews/car/01q3/mini_cooper-first_drive_review (last visited,
August 25, 2011).

⁹ See "Test Drives 2002 Mini Cooper," Michael Frank, *Forbes.com*, available at
<http://www.forbes.com/2002/03/18/0318test.html> (last visited, August 25, 2011).

1 Apparently, a low cost, high performance vehicle with good looks had been created—
2 BMW Group was convincing people that a “premium small car segment” could exist.

3 5. As a result, would be buyers lined up to get their hands on First Generation
4 MINIs. BMW Group, however, under-budgeted production and could not keep up with
5 the demand it created.¹⁰ Buyers waited months to a year for delivery, so BMW Group
6 was under pressure to increase production.¹¹ By this time, the high demand was not
7 surprising, because, as Forbes.com said “there’s just no competition for that kind of deal
8 anywhere else on the planet.”¹²

9 6. There’s a saying that if something sounds too good to be true, it probably is.
10 Plaintiff is informed and believes, and based thereon, alleges that after the dust settled
11 from BMW Group’s marketing fervor, owners of First Generation MINIs found that they
12 had been duped because their vehicles did not stand the test of time. It turns out BMW
13 Group was able offer such a fantastic deal because First Generation MINIs’ beauty was
14 only skin deep. Plaintiff is informed and believes, and based thereon, alleges that in their
15 haste to create a new “premium small car” market, BMW Group sacrificed quality to meet
16 demand and keep the sales price low, and as a result, First Generation MINIs were quickly
17 churned out with substandard parts and shoddy workmanship. BMW Group refuses to
18 take responsibility for these actions, and instead, prefers that its customers be left to clean
19 up the mess it created.

20 7. This case concerns BMW Group’s failure to disclose a material problem and
21 safety issues concerning Continuously Variable Transmissions (“CVTs”) installed in First
22 Generation MINIs. The CVTs are prone to sudden premature failure, before the end of
23 the useful life of the vehicle, and well before consumers reasonably expect any such
24 failure to occur. Plaintiff is informed and believes, and based thereon, alleges that a

25 _____
26 ¹⁰ See fn. 3, *supra*, Dr. Michael Ganal, Member of the Board of BMW AG, stated, “the originally
planned annual sales target of 100,000 units has been passed after just nine months.”

27 ¹¹ See fn. 2, *supra*.

28 ¹² See fn. 9, *supra*.

1 vehicle's automatic transmission is intended and reasonably expected to last for at least
2 ten years, if not more, without the need for repair or replacement. Nevertheless, Plaintiff
3 is informed and believes, and based thereon, alleges that BMW Group installed defective
4 CVTs in First Generation MINIs, knowing that they were prone to premature failure.

5 8. As a result of BMW Group's failure to disclose the fact that CVTs installed
6 in First Generation MINIs were prone to unavoidable premature failure, consumers are
7 required to spend approximately \$6,000 to \$9,000 (one-third to one-half of the original
8 purchase price) to repair or replace their CVTs, or sell their vehicle without repair for a
9 substantial loss. The fact that the CVTs installed in First Generation MINIs were prone to
10 premature failure is material because no reasonable consumer expects that they will have
11 to spend approximately one-half to one-third of the cost of a vehicle for repairs in the
12 early years of vehicle ownership.

13 9. Additionally, the fact that CVTs installed in First Generation MINIs were
14 prone to sudden premature failure is material to consumers because it presents a safety
15 issue and places the driver and passengers at risk of serious harm. When CVTs fail, they
16 do so without warning, resulting in a complete loss of power to the drive wheels. When
17 CVTs fail while a vehicle is moving, occupants of the vehicle are exposed to rear end
18 collisions and other accidents caused by the driver's inability to maintain an appropriate
19 speed. Accordingly, the fact that the CVTs installed in First Generation MINIs were
20 prone to premature failure also is material because there is no safe alternative way for
21 First Generation MINI owners to use their vehicles to avoid the risk of potential harm.

22 10. Plaintiff and members of the Class (as defined below) would not have bought
23 First Generation MINIs had they known that the CVTs installed in the vehicles were
24 prone to unavoidable dangerous premature failure. When Plaintiff and members of the
25 Class purchased First Generation MINIs, they relied on their reasonable expectation that
26 First Generation MINIs did not pose an unavoidable safety risk. Indeed, the safety of the
27 vehicle is particularly material given the small size of the vehicles. Furthermore, had
28 BMW Group timely disclosed to consumers the material fact that CVTs installed in First

1 Generation MINIs were prone to premature failure, First Generation MINI owners would
2 have required BMW Group to replace their CVTs before the warranty expired. BMW
3 Group neither disclosed material facts to consumers at the time of purchase, nor anytime
4 thereafter.

5 11. Plaintiff is informed and believes, and based thereon, alleges that BMW
6 Group has been aware that CVTs installed in First Generation MINIs were prone to
7 premature failure, yet the company not only refused to disclose the problem, BMW Group
8 actively denied knowledge of it, and instead, undertook affirmative efforts to conceal the
9 failures through, among other things, a series of Technical Service Bulletins issued to
10 repair facilities. BMW Group concealed the fact that CVTs installed in First Generation
11 MINIs were prone to premature failure so that the warranty period on First Generation
12 MINIs will expire before owners become aware of the problem. Through this practice,
13 BMW Group unlawfully transfers the cost of replacement from itself to the vehicle's
14 owner.

15 12. As a result of its failure to disclose the material fact that CVTs installed in
16 First Generation MINIs were prone to premature failure, BMW Group has recklessly
17 placed the safety of the owners and occupants of First Generation MINIs at risk, and
18 caused owners of those vehicles to suffer damages. Plaintiff seeks, on behalf of himself
19 and the Class (as defined below) injunctive relief, restitution, damages, and other
20 appropriate relief.

21 **JURISDICTION AND VENUE**

22 13. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332(d)(2). The
23 matter in controversy, exclusive of interest and costs, exceeds the sum or value of
24 \$5,000,000 and is a class action in which members of the Class (as defined below) are
25 citizens of states different from Defendant. Further, greater than two-thirds of the Class
26 Members reside in states other than the states in which Defendant are citizens. In
27 addition, under 28 U.S.C. § 1367, this Court may exercise supplemental jurisdiction over
28 the state law claims because all of the claims are derived from a common nucleus of

1 operative facts and are such that plaintiffs ordinarily would expect to try them in one
2 judicial proceeding.

3 14. Venue lies within this judicial district under 28 U.S.C. § 1391(a) and (c)
4 because BMW Group has sufficient contacts with this District to subject it to personal
5 jurisdiction in this District, and a substantial part of the events and omissions giving rise
6 to the claims asserted in this Complaint occurred within this District.

7 **PARTIES**

8 15. Plaintiff Brad Aarons, an individual, is a citizen of California.

9 16. Defendant BMW of North America, LLC is a New Jersey limited liability
10 company with its principal place of business located at 300 Chestnut Ridge Road,
11 Woodcliff Lake, New Jersey 07677, and doing business in the State of California.
12 Plaintiff is informed and believes, and on that basis, alleges that BMW of North America,
13 LLC is responsible for the importation, distribution, marketing and sale of all 2002
14 through 2006 Mini Cooper Coupe models and 2005 through 2008 Mini Cooper
15 Convertible models in the United States and California.

16 17. Whenever, in this Complaint, reference is made to any act, deed, or conduct
17 of BMW Group, the allegation means that BMW Group engaged in the act, deed, or
18 conduct by or through one or more of its officers, directors, agents, employees or
19 representatives who was actively engaged in the management, direction, control or
20 transaction of the ordinary business and affairs of BMW Group.

21 **FACTUAL BACKGROUND**

22 18. BMW Group designed, manufactured, imported, distributed, and marketed
23 First Generation MINIs in the United States, including California. BMW Group also
24 provides maintenance services for First Generation MINIs through its nationwide network
25 of authorized dealers and service providers.

26 19. First Generation MINIs are equipped with CVTs that fail prematurely,
27 without warning, and well before the end of the useful life of the vehicles. As a result of
28 the failure, CVTs becomes completely inoperable and must be replaced. Consequently,

1 First Generation MINI owners are required to incur substantial costs to replace their
2 CVTs, or sell their vehicles for a substantially reduced price, causing them to suffer a
3 monetary damages of approximately \$6,000 to \$9,000. Additionally, because the CVT
4 fails without warning, it poses a safety concern that is not reasonably avoidable for
5 occupants of the vehicles who are placed at risk being struck by other vehicles in traffic.

6 20. Plaintiff is informed and believes, and based thereon, alleges that reasonable
7 alternative designs exist for automatic transmissions, and that BMW Group was aware of
8 these reasonable design alternatives.

9 21. Hundreds of First Generation MINI owners have reported such complaints,
10 and BMW Group is well aware of the problem and safety risks. Plaintiff is informed and
11 believes, and based thereon, alleges that these complaints have been made to BMW Group
12 directly, including through the company's network of dealerships, and to BMW Group's
13 customer service agents. Additionally, the National Highway Transportation and Safety
14 Administration ("NHTSA") has documented approximately 100 complaints concerning
15 this issue. BMW Group refuses offer any remedy, or even publicly acknowledge the
16 problem. Instead, BMW Group took steps to actively conceal the defect from consumers.

17 **Technical Service Bulletins**

18 22. The CVTs installed in First Generation MINIs were plagued with problems
19 from the beginning. BMW Group was well aware of the issues all along, but the company
20 kept it a secret, failing to disclose the problem, even as it continued to sell vehicles
21 equipped with CVTs prone to premature failure. Among other things, BMW Group's
22 knowledge of the CVT problems is evidenced through series of Technical Service
23 Bulletins ("TSBs") issued by the company not long after First Generation MINIs were on
24 the road.

25 23. Plaintiff is informed and believes, and on that basis, alleges that not long
26 after First Generation MINIs were first offered for sale in 2002, BMW Group began
27 receiving reports of premature CVT failures, and by late 2002, such a significant amount
28 of failures had amassed that the company's engineers had to begin looking for a solution.

1 In December 2002, BMW Group issued one of the first of several TSBs concerning this
2 issue. In this TSB (ref. no. SI M 24 01 02), BMW Group noted, “the CVT transmission
3 may fail prematurely.” Nevertheless, Plaintiff is informed and believes, and on that basis,
4 alleges that rather than disclose the problem, BMW Group attempted to resolve the issue
5 by replacing the transmission oil.

6 24. Plaintiff is informed and believes, and on that basis, alleges that as a result of
7 the high rate of premature CVT failures, on or about late 2002, BMW Group’s engineers
8 were researching the CVT failures in an attempt to develop a way to avoid replacing the
9 CVT transmissions.

10 25. Plaintiff is informed and believes, and on that basis, alleges that as a result of
11 BMW Group’s engineering research, that began on or about late 2002, as discussed
12 above, in November 2004, only approximately two years after First Generation MINIs
13 were initially offered for sale, BMW Group issued another TSB. This TSB (ref. no. SI
14 M24 01 04) reveals BMW Group’s awareness and active concealment concerning
15 premature CVT failures, as early as late 2002. Through this TSB, BMW Group stated
16 that it was issuing special tools and repair instructions for an input shaft seal to avoid
17 replacing CVT transmissions. Additionally, in this TSB, BMW Group noted that
18 “[r]eplacement of CVT transmissions are no longer necessary when the input shaft seal is
19 leaking transmission fluid.” In other words, well before this TSB was issued, BMW
20 Group not only knew that CVTs were experiencing significant failures, it also knew that
21 CVTs were being replaced. Therefore, within less than approximately a year after the
22 first few MINIs were sold, BMW Group was aware that CVT failures had become
23 prevalent. As a result, BMW Group had to design, manufacture, and distribute special
24 tools to stem the tide of CVT transmissions that required replacement. The special tool
25 sets were issued through two separate TSBs (ref. nos. SI M04 06 04, and SI M04 04 04).

26 26. The TSBs issued by BMW Group in November 2004 apparently failed to
27 resolve the CVT failures because, approximately one and a half years later, BMW Group
28 issued yet another TSB concerning the CVT (ref. no. SI M04 01 06). Through TSB

1 number SI M04 01 06, BMW Group distributed an additional set of tools designed to
2 service the CVT input shaft bearings for the purpose of repairing a “howling noise from
3 the transmission.”

4 27. Despite BMW Group’s efforts to conceal the issue, customer complaints and
5 CVT failures continued. Accordingly, Plaintiff is informed and believes, and based
6 thereon, alleges that BMW Group issued another TSB (ref. no. SI M24 02 06) to give
7 guidance to dealerships on how to respond to the problem. Rather than openly disclose
8 the material failures concerning the CVT, however, according to TSB number SI M24 02
9 06, if a First Generation MINI was experiencing “a howling type of noise coming from
10 the CVT transmission,” BMW Group expressly instructed its dealerships as follows:
11 “[o]n a **customer complaint basis only**, replace the main CVT ball bearing together with
12 the flange bolts, cover & oil pump O-rings and the plate spring.” (See TSB ref. no. SI
13 M24 02 06, emphasis in original.) Thus, not only did BMW Group fail to disclose the
14 material failure to consumers who bought First Generation MINIs, the company
15 intentionally designed a plan to conceal the truth from First Generation MINI owners,
16 making it less likely that they could have the CVT replaced before the warranty expired.

17 28. Finally, BMW’s knowledge of the CVT failures is demonstrated by its
18 issuance of TSB number SI M24 01 03, which instructed mechanics to determine whether
19 a CVT suffered from “internal transmission failure.” Nevertheless, BMW Group’s
20 knowledge that the CVT was prone to premature failure and required replacement, BMW
21 Group concealed this material fact from consumers.

1 **NHTSA Complaints**

2 29. Notwithstanding the TSBs, BMW Group also is aware of the fact that CVTs
3 installed in First Generation MINIs are prone to premature failure because of the
4 numerous complaints concerning the issue that have been made to the NHTSA.
5 Nevertheless, even in the face of these complaints, BMW Group continues to deny that
6 there is a problem with the CVTs and refuses to disclose the truth to consumers.

7 30. A small sample of the complaints regarding CVT failures reported to the
8 NHTSA is as follows:

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10 Make : MINI Model : COOPER Year : 2002
11 Manufacturer : BMW OF NORTH AMERICA, LLC
12 Crash : No Fire : No Number of Injuries: 0
13 ODI ID Number : 10000426 Number of Deaths: 0
14 Date of Failure: October 28, 2002
15 VIN : Not Available
16 Component: POWER TRAIN:AUTOMATIC TRANSMISSION

16 Summary:

17 I AM HAVING A PROBLEM WITH MY 2002 MINI COOPER, IT IS EXPERIENCING
18 PROBLEMS WITH THE TRANSMISSION AND IT HAS BEEN IN THE SERVICE DEPARTMENT
19 IN THREE SEPARATE OCCASION TOTALLYING 54 DAYS, THE LAST TIME THAT IT WAS IN
20 THE SERVICE DEPARTMENT IT WAS 40 DAYS. THEY FINALLY SAID THE PROBLEM WAS
21 CORRECTED, BUT IT TOOK THEM THAT LONG TO FIGURE OUT WHAT WAS WRONG. I
22 CALLED THE DEALERSHIP AND TOLD THEM THAT I WANTED TO BE COMPENSATED
23 ONLY FOR THE DAYS THE CAR WAS AT THEIR SHOP, ALSO I INFORMED THEM THAT IF
24 THE MINI HAS TO BE TAKEN TO THE SHOP AGAIN, THAT WILL FORCE ME TO ENFORCE
25 THE LEMON LAW. MELISSA STEFFY, THE GENERAL MANAGER, SAID FOR ME TO SEND
26 HER THE LETTER AND SHE WIL SEE WHAT SHE CAN DO, BUT THAT IT WAS UNLIKELY
27 THAT THEY WOULD COMPENSATE FOR ANYTHING. I DON'T THINK IT'S FAIR BECAUSE I
28 PURCHASED THE CAR TO USE IT, NOT FOR THEM TO HAVE IT IN THE DEALER'S SERVICE
DEPARTMENT. I WOULD APPRECIATE IF YOU COULD ASSIST ME WITH THIS MATTER.
THANKS LEYDA RAMOS FOR EDID BATISTA :

1 Make : MINI Model : COOPER Year : 2002
2 Manufacturer : BMW OF NORTH AMERICA, LLC
3 Crash : No Fire : No Number of Injuries: 0
4 ODI ID Number : 10269497 Number of Deaths: 0
5 Date of Failure: May 13, 2009
6 VIN : WMWRC33412T...
7 Component: POWER TRAIN:AUTOMATIC TRANSMISSION

7 Summary:

8 TRANSMISSION WHINING NOISE EVENTUALLY LEADING TO TRANSMISSION
9 FAILURE. MINI IS AWARE OF THIS PROBLEM WITH CVT TRANSMISSIONS AND REFUSES
10 TO ADMIT FAULT. VERY COMMON PROBLEM OCCURRING IN MOST 2002 VEHICLES
11 WITH ONLY 40,000-60,000 MILES ON THEM. COST IS 7000 TO REPLACE. MINI DOES NOT
12 OFFER REPAIR ON THIS PART. *TR

12 Make : MINI Model : COOPER Year : 2002
13 Manufacturer : BMW OF NORTH AMERICA, LLC
14 Crash : No Fire : No Number of Injuries: 0
15 ODI ID Number : 10211394 Number of Deaths: 0
16 Date of Failure: November 30, 2007
17 VIN : WMWRC33442T...
18 Component: POWER TRAIN:AUTOMATIC TRANSMISSION

18 Summary:

19 I HAVE A 2002 MINI COOPER WITH A CVT AUTOMATIC TRANSMISSION. THE
20 TRANSMISSION HAS FAILED. THE CARE HAS ABOUT 61,000 MILES. THE TRANSMISSION
21 HAS TO BE REPLACED COSTING ME AT LEAST \$6,000. *TR
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1 Make : MINI Model : COOPER Year : 2003
2 Manufacturer : BMW OF NORTH AMERICA, LLC
3 Crash : No Fire : No Number of Injuries: 0
4 ODI ID Number : 10392840 Number of Deaths: 0
5 Date of Failure: November 19, 2010
6 VIN : WMWRC33473T...
7 Component: POWER TRAIN:AUTOMATIC TRANSMISSION

7 Summary:

8 MY 2003 MINI COOPER HAS HAD TOTAL TRANSMISSION FAILURE (CVT
9 TRANSMISSION) AT ONLY 46,129 MILES. FAILURE WAS TOTAL AND SUDDEN AND
10 VEHICLE IS UNDRIVEABLE WITHOUT NEW TRANSMISSION. THE DEALER QUOTED ME A
11 COST OF \$10,055.44 (PARTS \$6,943.28, LABOR \$2,700 + TAX). THIS COST IS MORE THAT THE
12 VEHICLES' CURRENT VALUE. I HAVE BEEN TOLD THAT ONLY A NEW CVT
13 TRANSMISSION CAN REPLACE THE FAULTY ONE, AND EVEN THEN THAT TRANSMISSION
14 MAY AGAIN FAIL AS THEY ARE SUCH TERRIBLE TRANSMISSIONS. THE CAR WILL NOT
15 TAKE ANY OTHER TRANSMISSION OPTION. THE DEALER BASICALLY LAUGHED AND
16 SAID, "I DON'T SUPPOSE YOU HAVE AN EXTRA \$10,000 LAYING AROUND," WHEN HE
17 TOLD ME THE COST OF THE REPAIR. THE DEALER HAS OFFERED NO ASSISTANCE IN
18 LOWERING THE COST, BUT BASICALLY SAID "TOUGH LUCK" AND TAKEN NO
19 RESPONSIBILITY. THE CAR IS USELESS AND UNFIXABLE AT THIS COST. A RECALL
20 SHOULD BE DONE AS CONSUMERS HAVE BEEN SOLD A FAILED TRANSMISSION, AND
21 THE SAFETY OF THIS CAR'S TRANSMISSION IS TOTALLY FAULTY. *TR
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1 Make : MINI Model : COOPER Year : 2003
2 Manufacturer : BMW OF NORTH AMERICA, LLC
3 Crash : No Fire : No Number of Injuries: 0
4 ODI ID Number : 10335358 Number of Deaths: 0
5 Date of Failure: June 7, 2010
6 VIN : WMWRC33403T...
7 Component: POWER TRAIN:AUTOMATIC TRANSMISSION

7 Summary:

8 THE CVT TRANSMISSION ON MY 2003 MINI COOPER HAS FAILED RENDERING THE
9 CAR NOT DRIVABLE. THE TRANSMISSION HAS ALWAYS BEEN QUIRKY, BUT I WAS
10 ASSURED BY THE DEALER THAT IT WAS WORKING PROPERLY. THE TRANSMISSION
11 SLIPS DRASTICALLY AND MAKES A VERY AUDIBLE WHIRRING SOUND. THE ONLY
12 OPTION FOR REPAIR IS A COMPLETE NEW PART INSTALL AT THE DEALER COST OF
13 \$8,800. I HAVE READ HUNDREDS AND HUNDREDS OF IDENTICAL STORIES ABOUT THE
14 CVTS ON MINI COOPERS AS WELL AS THE POWER STEERING PUMP. IT SEEMS FROM
RESEARCH THAT THIS PART COMMONLY FAILS AND REPLACING WITH A DEFECTIVE
PART AT A COST NEAR NINE THOUSAND DOLLARS IS ABSURD AND DISGUSTING. IT IS
COST PROHIBITIVE TO KEEP MY CAR OPERATING AND I FEEL AS THOUGH I HAVE, AS
WELL AS THOUSANDS OF OTHER MINI OWNERS HAVE BEEN SOLD A DEFECTIVE
PRODUCT WORTHY OF RECALL. *TR

15
16 Make : MINI Model : COOPER Year : 2005
17 Manufacturer : BMW OF NORTH AMERICA, LLC
18 Crash : No Fire : No Number of Injuries: 0
19 ODI ID Number : 10262055 Number of Deaths: 0
20 Date of Failure: March 12, 2009
21 VIN : WMWRC335X5T...
22 Component: POWER TRAIN:AUTOMATIC TRANSMISSION

22 Summary:

23 TL*THE CONTACT OWNS A 2005 MINI COOPER. WHILE DRIVING 25 MPH, THE VEHICLE
24 JERKED AND MADE RATTLING AND POPPING SOUNDS. THE VEHICLE SHUT OFF AND THE
25 CONTACT PUSHED IT TO THE SIDE OF THE ROAD. THE KEY COULD NOT BE REMOVED
26 FROM THE IGNITION AND THE VEHICLE HAD TO BE TOWED TO THE DEALER. SHE WAS
INFORMED THAT THE TRANSMISSION FAILED AND WOULD COST \$7,000 TO REPAIR. THE
CONTACT WILL CALL THE MANUFACTURER FOR ASSISTANCE. THE FAILURE MILEAGE
WAS 62,000.

1 Make : MINI Model : COOPER Year : 2002
2 Manufacturer : BMW OF NORTH AMERICA, LLC
3 Crash : No Fire : No Number of Injuries: 0
4 ODI ID Number : 10241197 Number of Deaths: 0
5 Date of Failure: August 3, 2008
6 VIN : WMWRC33472T...
7 Component: POWER TRAIN:AUTOMATIC TRANSMISSION

7 Summary:

8 THE AUTOMATIC TRANSMISSION OF MY 2002 MINI COOPER FAILED WHILE MY
9 FRIEND WAS DRIVING MY CAR. **SHE WAS ON A WINDING COASTAL ROAD AND THE**
10 **CAR DIED ON A BLIND CURVE, PUTTING HER AT GREAT DANGER.** FORTUNATELY
11 NOBODY WAS HURT. THE CAR WAS TOWED TO THE SAN FRANCISCO BMW
12 DEALERSHIP, WHERE I WAS INFORMED I NEEDED A \$8500 "REFURBISHED"
13 TRANSMISSION, AS THE TRANSMISSION IS NOT EVEN MADE ANYMORE. RESEARCH ON
14 LINE SHOWS THAT THIS BECOMING A FREQUENT PROBLEM WITH "FIRST
15 GENERATION" MINIS WITH THE "CVT" AUTOMATIC TRANSMISSION. I DECLINED THE
16 REPAIR AND SOLD THEM THE CARCASS OF MY CAR. **THIS IS A DANGEROUS PROBLEM**
17 **AND BMW/MINI IS NOT ACCEPTING RESPONSIBILITY. *TR**

15 Make : MINI Model : COOPER Year : 2002
16 Manufacturer : BMW OF NORTH AMERICA, LLC
17 Crash : No Fire : No Number of Injuries: 0
18 ODI ID Number : 10237175 Number of Deaths: 0
19 Date of Failure: August 5, 2002
20 VIN : WMWRC33432T...
21 Component: POWER TRAIN:AUTOMATIC TRANSMISSION

21 Summary:

22 I AM THE SECOND OWNER (BOTH OLDER LADIES), OF A 2002 AUTOMATIC MINI
23 COOPER WITH 46,000 MILES. YESTERDAY WHILE DRIVING HOME FROM WORK THE
24 TRANNY FAILED. IT DOWNSHIFTED OR SOMETHING AND THE EP WARNING LIGHT
25 CAME ON, WHICH MEANS **TRANSMISSION FAILURE AND I WAS TWO FEET AWAY**
26 **FROM BEING REAR ENDED! I COULD HAVE BEEN KILLED.** AFTER RESEARCHING ON
27 LINE, I HAVE READ GREAT AMOUNTS OF CONSUMERS WITH THE SAME COMPLAINT. IT
28 IS DANGEROUS AND VERY COSTLY ACCORDING TO THE FIGURES I'VE READ OF
PEOPLE WHOSE HAD THEIRS FIXED OR REPLACED. THESE CARS WITH **THE CVT**
TRANSMISSIONS NEEDS TO BE ANNOUNCED TO THE PUBLIC FOR SAFETY REASONS
ALONE NOT EVEN TO MENTION THE COST! SINCERELY, BONNIE QUINN *TR

1 Make : MINI Model : COOPER Year : 2003
2 Manufacturer : BMW OF NORTH AMERICA, LLC
3 Crash : No Fire : No Number of Injuries: 0
4 ODI ID Number : 10383299 Number of Deaths: 0
5 Date of Failure: February 18, 2011
6 VIN : WMWRC33433T...
7 Component: POWER TRAIN:AUTOMATIC TRANSMISSION

7 Summary:

8 I OWN A 2003 MINI COOPER WITH A CVT AUTOMATIC TRANSMISSION, TRANSMISSION
9 AND FRONT DIFFERENTIAL FILED AT 58000 MILES LUCKY FOR ME I WAS NOT ON THE
10 INTERSTATE OR BUSY TRAFFIC AS A SERIOUS ACCIDENT COULD HAVE OCCURRED.
11 MINI USA ARE TOTALLY AWARE OF THE PROBLEM AND STOPPED PUTTING THIS
12 DEFECTIVE PART IN NEWER MODEL VEHICLES. THEY WILL ALSO NOT STAND BEHIND
13 THEIR PRODUCT AND ARE UNWILLING TO RECTIFY IT. **THERE ARE HUNDREDS OF**
14 **PEOPLE WITH THIS SAME ISSUE CONCERNING THIS TRANSMISSION BUT FOR**
15 **WHATEVER REASON THERE IS STILL NO SAFETY RECALL. I HOPE IT IS NOT GOING**
16 **TO TAKE SOMEONE TO BE KILLED OR SERIOUSLY INJURED BEFORE ANYTHING IS**
17 **DONE.** ALSO THE BUSHINGS ON THE DRIVERS SIDE A FRAME ARE BAD WCH IN MY
18 OPINION IS A SERIOUS FAULT AND COULD BE EXTREMELY DANGEROUS. COST OF
19 REPLACEMENT IS 7,000+ THESE CARS ARE ROLLING DEATH TRAPS IN MY OPINION AND
20 SOMEONE NEEDS TO BE HELD ACCOUNTABLE. *LN

16 Make : MINI Model : COOPER Year : 2004
17 Manufacturer : BMW OF NORTH AMERICA, LLC
18 Crash : No Fire : No Number of Injuries: 0
19 ODI ID Number : 10299826 Number of Deaths: 0
20 Date of Failure: July 10, 2008
21 VIN : WMWRC334X4T...
22 Component: POWER TRAIN:AUTOMATIC TRANSMISSION

22 Summary:

23 MY 2004 MINI COOPERS TRANSMISSION FAILED AT 80K MILES WITH NO WARNING.
24 **LUCKILY I WAS IN A PARKING LOT AND NOT ON THE HIGHWAY, WHERE I COULD**
25 **HAVE BEEN KILLED.** THE COST OF REPLACING THE TRANNY WAS \$7,000. MINI USA WAS
26 USELESS WHEN I PLEADED WITH THEM TO HELP ME. AFTER READING ABOUT ALL OF
27 THE OTHER COMPLAINTS WITH THE CVT TRANS, I CAN'T BELIEVE THERE WAS NO
28 RECALL. I WILL NEVER BUY A MINI AGAIN. I STILL OWE \$11,000 ON THE CAR AND
CANNOT AFFORD ANOTHER. *TR

1 **PLAINTIFF'S CLAIMS AGAINST BMW GROUP**

2 33. Plaintiff Brad Aarons is a resident of Los Angeles, California.

3 34. Plaintiff purchased a new 2003 Mini Cooper Coupe that came equipped with
4 a CVT style automatic transmission from Assael BMW Mini of Monrovia, California in
5 or around April 2003.

6 35. When Plaintiff purchased his First Generation MINI, he relied on a
7 reasonable expectation that the vehicle's automatic transmission was designed to last
8 beyond the warranty period without the need for repair or replacement. And when
9 Plaintiff purchased his First Generation MINI, he also relied on a reasonable expectation
10 that his First Generation MINI did not pose an unavoidable safety risk. Furthermore,
11 given the small size of First Generation MINIs, the safety of the vehicle was particularly
12 material. BMW Group's omissions were material to Plaintiff, and he would not have
13 bought a First Generation MINI had he known that the CVTs installed in his vehicle was
14 prone to unavoidable dangerous premature failure, and that he likely would have to spend
15 approximately one-half to one-third of the cost of a vehicle for repairs in the early years of
16 vehicle ownership.

17 36. In December 2010, with only approximately 65,000 miles on Plaintiff's
18 vehicle, the CVT suffered a complete failure. After taking his vehicle in for repairs and
19 discussing the problem with BMW Group's customer service representatives, Plaintiff
20 was informed that he would be required to purchase a new transmission at a cost of
21 approximately \$7,000 (\$5,500 for a new transmission and an estimated \$1,200 or more for
22 labor to remove the old transmission and install the new one).

23 37. When Plaintiff asked BMW Group's representatives how much his vehicle
24 would be worth as a trade in for a new MINI, he was told that the company did not want
25 his vehicle. Rather than invest approximately \$7,000 into a car with an estimated resale
26 value of \$11,000, as a result of BMW Group's unlawful conduct, Plaintiff was forced to
27 sell the vehicle to a third party for \$3,300, causing him to suffer a substantial economic
28 loss.

1 **STATUTE OF LIMITATIONS**

2 38. Any applicable statutes of limitations have been tolled by BMW Group’s
3 knowing and active concealment, denial, and misleading actions, as alleged herein.
4 Plaintiff and members of the Class defined below were kept ignorant of critical
5 information required for the prosecution of their claims, without any fault or lack of
6 diligence on their part. Plaintiff and members of the Class could not reasonably have
7 discovered the true latent nature of the CVT defect or any of the issues and facts alleged
8 herein.

9 39. BMW Group is under a continuous duty to disclose to Plaintiff and members
10 of the Class the true character, quality, and nature of First Generation MINIs, and to
11 disclose the existence of the material failure of the CVT. BMW Group knowingly,
12 affirmatively, and actively concealed the true character, quality, and nature of the CVT
13 defect. Plaintiff and members of the Class reasonably relied upon BMW Group’s
14 knowing, affirmative, and active concealment. Based on the foregoing, BMW Group is
15 estopped from relying on any statutes of limitation as a defense in this action.

16 40. The causes of action alleged herein did or will only accrue upon discovery of
17 the latent CVT defect, as a result of BMW Group’s fraudulent concealment of the CVT
18 defect. Plaintiff and members of the Class did not discover, and could not have
19 discovered, through the exercise of reasonable diligence, the true nature of the CVT
20 defect.

21 **CLASS ACTION ALLEGATIONS**

22 41. Plaintiff brings this action, on behalf of himself and all others similarly
23 situated, as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

24 42. The class Plaintiff seeks to represent is defined as follows:

25 All residents of California who, at any time before the filing of
26 this Complaint, purchased or leased, a 2002 through 2006 Mini
27 Cooper Coupe or 2005 through 2008 Mini Cooper Convertible
28 in California. Excluded from the Class are BMW Group’s
officers, directors, and employees (the “Class”).

1
2 43. Plaintiff reserves the right to amend the Class definitions if discovery and
3 further investigation reveals that the Class should be expanded or otherwise modified.

4 44. Plaintiff reserves the right to establish subclasses as appropriate.

5 45. This action is brought and properly may be maintained as a class action
6 pursuant to the provisions of Federal Rules of Civil Procedure 23(a)(1)-(4) and 23(b)(1),
7 (b)(2) or (b)(3) and satisfies the requirements thereof.

8 46. Community of Interest: There is a well-defined community of interest
9 among members of the Class, and the disposition of the claims of these members of the
10 Class in a single action will provide substantial benefits to all parties and to the Court.

11 47. Numerosity: While the exact number of members of the Class is unknown to
12 Plaintiff at this time and can only be determined by appropriate discovery, membership in
13 the Class is ascertainable based upon the records maintained by BMW Group. At this
14 time, Plaintiff is informed and believes that the Class includes thousands of members.
15 Therefore, the Class is sufficiently numerous that joinder of all members of the Class in a
16 single action is impracticable under Federal Rule of Civil Procedure Rule 23(a)(1), and
17 the resolution of their claims through the procedure of a class action will be of benefit to
18 the parties and the Court.

19 48. Ascertainability: Names and addresses of members of the Class are available
20 from BMW Group's records. Notice can be provided to the members of the Class through
21 direct mailing, publication, or otherwise using techniques and a form of notice similar to
22 those customarily used in consumer class actions arising under California state law and
23 federal law.

24 49. Typicality: Plaintiff's claims are typical of the claims of the other members
25 of the Class which he seeks to represent under Federal Rule of Civil Procedure 23(a)(3)
26 because Plaintiff and each member of the Class has been subjected to the same deceptive
27 and improper practices and has been damaged in the same manner thereby.

28 50. Adequacy: Plaintiff will fairly and adequately represent and protect the

1 interests of the Class as required by Federal Rule of Civil Procedure Rule 23(a)(4).
2 Plaintiff is an adequate representative of the Class, because he has no interests which are
3 adverse to the interests of the members of the Class. Plaintiff is committed to the
4 vigorous prosecution of this action and, to that end, Plaintiff has retained counsel who are
5 competent and experienced in handling class action litigation on behalf of consumers.

6 51. Superiority: A class action is superior to all other available methods of the
7 fair and efficient adjudication of the claims asserted in this action under Federal Rule of
8 Civil Procedure 23(b)(3) because:

- 9 (a) The expense and burden of individual litigation make it economically
10 unfeasible for members of the Class to seek to redress their “negative
11 value” claims other than through the procedure of a class action.
12 (b) If separate actions were brought by individual members of the Class,
13 the resulting duplicity of lawsuits would cause members to seek to
14 redress their “negative value” claims other than through the procedure
15 of a class action; and
16 (c) Absent a class action, BMW Group likely would retain the benefits of
17 its wrongdoing, and there would be a failure of justice.

18 52. Common questions of law and fact exist as to the members of the Class, as
19 required by Federal Rule of Civil Procedure 23(a)(2), and predominate over any questions
20 which affect individual members of the Class within the meaning of Federal Rule of Civil
21 Procedure 23(b)(3).

22 53. The common questions of fact include, but are not limited to, the following:

- 23 (a) Whether CVTs installed in First Generation MINIs were prone to
24 premature failure;
25 (b) Whether BMW Group knew or should have known that CVTs
26 installed in First Generation MINIs were prone to premature failure;
27 (c) Whether BMW Group had a duty to disclose the the CVTs installed in
28 First Generation MINIs were prone to premature failure;

- 1 (d) Whether BMW Group breached its duty to disclose the the CVTs
2 installed in First Generation MINIs were prone to premature failure;
3 (e) Whether BMW Group's conduct, as alleged herein, was unlawful,
4 unfair, or fraudulent under the California's Unfair Competition Law,
5 California Business & Professions Code sections 17200 *et seq.*;
6 (f) Whether BMW's conduct, as alleged herein, violated California's
7 Consumers Legal Remedies Act, California Civil Code sections 1750
8 *et seq.*;
9 (g) Whether BMW Group was unjustly enriched at the expense of the
10 Class;
11 (h) Whether BMW Group actively concealed material facts from Plaintiff
12 and members of the Class for the purpose of transferring the cost of the
13 CVT failure to consumers; and
14 (i) Whether Plaintiff and members of the Class are entitled to restitution
15 and damages.

16 54. In the alternative, this action is certifiable under the provisions of Federal
17 Rule of Civil Procedure 23(b)(1) and/or 23(b)(2) because:

- 18 (a) The prosecution of separate actions by individual members of the
19 Class would create a risk of inconsistent or varying adjudications with
20 respect to individual members of the Class which would establish
21 incompatible standards of conduct for BMW Group;
22 (b) The prosecution of separate actions by individual members of the
23 Class would create a risk of adjudications as to them which would, as a
24 practical matter, be dispositive of the interests of the other members of
25 the Class not parties to the adjudications, or substantially impair or
26 impede their ability to protect their interests; and
27 (c) BMW Group has acted or refused to act on grounds generally
28 applicable to the Class, thereby making appropriate final injunctive

1 relief or corresponding declaratory relief with respect to the Class as a
2 whole and necessitating that any such relief be extended to members of
3 the Class on a mandatory, class-wide basis.

4 55. Plaintiff is not aware of any difficulty which will be encountered in the
5 management of this litigation which should preclude its maintenance as a class action.

6 **FIRST CAUSE OF ACTION**

7 **Violation of the Consumers Legal Remedies Act**

8 **(Cal. Civil Code § 1750 *et seq.*)**

9 56. Plaintiff hereby incorporates by reference the allegations contained in the
10 preceding paragraphs of this Complaint.

11 57. Plaintiff brings this cause of action against BMW Group on behalf of himself
12 and members of the Class.

13 58. This cause of action is brought under the Consumers Legal Remedies Act,
14 California Civil Code sections 1750 *et seq.* (“CLRA”). Plaintiff and members of the
15 Class are consumers as defined by California Civil Code section 1761(d). First
16 Generation MINIs are goods within the meaning of California Civil Code section 1761(a).

17 59. BMW Group violated and continues to violate the CLRA by engaging in the
18 following practices proscribed by California Civil Code section 1770(a) in transactions
19 with Plaintiff and members of the Class, which were intended to result in, and did result
20 in, the sale of First Generation MINIs:

21 (5) Representing that [First Generation MINIs have]...
22 characteristics...[and] uses...which they do not have....

23 (7) Representing that [First Generation MINIs] are of a
24 particular standard...if they are of another.

25 (9) Advertising goods...with intent not to sell them as
26 advertised.

27 60. BMW Group violated the CRLA by failing to timely disclose to Plaintiff and
28 members of the Class that the CVTs installed in First Generation MINIs were prone to
premature failure.

1 61. BMW Group further violated the CRLA by actively concealing material facts
2 from Plaintiff and members of the Class for the purpose of transferring the cost of the
3 CVT defect to consumers.

4 62. BMW Group also violated the CLRA because its failure to disclose to
5 Plaintiff and members of the Class the material fact that CVTs were prone to premature
6 failure risked the safety of owners and occupants of First Generation MINIs.

7 63. As a result of BMW Group's failure to disclose that CVTs installed in First
8 Generation MINIs were prone to premature failure, Plaintiff and members of the Class
9 were exposed to safety risks, were required to spend approximately \$6,000 to \$9,000
10 (one-third to one-half of the original purchase price) to repair or replace their CVTs, or
11 sell their vehicle without repair for a substantial loss. The fact that the CVTs installed in
12 First Generation MINIs were prone to premature failure is material because no reasonable
13 consumer expects that they will have to spend approximately one-half to one-third of the
14 cost of a vehicle for repairs in the early years of vehicle ownership, and because Plaintiff
15 and members of the Class had a reasonable expectation that the vehicles would not suffer
16 from a premature failure that would present a safety risk, especially given the small size
17 of the vehicles.

18 64. On May 19, 2011, via certified mail, return receipt requested, under Section
19 1782 of the CLRA, Plaintiff's counsel notified BMW Group in writing of the particular
20 violations of Section 1770, and demanded that it rectify the problems associated with the
21 behavior detailed above, which acts and practices are in violation of Section 1770.

22 65. BMW Group failed to adequately respond to Plaintiff's above-described
23 demand, nor did it give notice to all affected consumers under Section 1782. A
24 representative from BMW Group responded via email on June 16, 2011, stating that "[a]
25 team of corporate, market and dealer personnel is currently investigating the service
26 history," and that the company "will soon be in contact with you to address your client's
27 concern." Despite Plaintiff's counsel's repeated attempts to follow up with BMW Group,
28 no substantive response was ever provided. Therefore, under Section 1780(a) of the

1 CLRA, Plaintiff and members of the Class seek actual and punitive damages.

2 66. Under Section 1782(d) of the CLRA, Plaintiff, on behalf of himself and
3 members of the Class, also seeks an order enjoining the act and practices described above,
4 restitution of property, any other relief that the court deems proper.

5 67. BMW Group's conduct is malicious, fraudulent, and wanton, and the
6 company continues to intentionally mislead and withhold material information from
7 consumers. The malicious, fraudulent, and wanton nature of BMW Group's conduct is
8 evidenced by the fact that even after receiving notice of the issues described above from
9 Plaintiff and countless other consumers, BMW Group continues to deny that there is any
10 problem with the CVT installed in First Generation MINIs and refuses to offer Plaintiff
11 and members of the Class any remedy for the damages it has caused.

12 **SECOND CAUSE OF ACTION**

13 **Violation of Unfair Business Practices Act**

14 **(California Business & Professions Code §§ 17200 *et seq.*)**

15 68. Plaintiff hereby incorporates by reference the allegations contained in the
16 preceding paragraphs of this Complaint.

17 69. Plaintiff brings this cause of action on behalf of himself and the members of
18 the Class.

19 70. California Business and Professions Code section 17200 prohibits "any
20 unlawful, unfair or fraudulent business act or practice." For the reasons described above,
21 BMW Group has engaged in unlawful, unfair, and/or fraudulent business acts or practices
22 in violation of California Business and Professions Code section 17200.

23 71. BMW Group's misrepresentations and omissions of material facts, as set
24 forth herein, constitute an "unlawful" practice because they violate California Civil Code
25 sections 1572, 1573, 1709, 1710, 1711, 1770, California Business and Professions Code
26 sections 17200 *et seq.* and the common law.

27 72. BMW Group's misrepresentations and omissions of material facts, as set
28 forth herein, also constitute "unfair" business acts and practices within the meaning of

1 California Business and Professions Code sections 17200 *et seq.*, in that BMW Group's
2 conduct was injurious to consumers, offended public policy, and was unethical and
3 unscrupulous. Plaintiff also asserts a violation of public policy by withholding material
4 facts from consumers. BMW Group's violation of consumer protection and unfair
5 competition laws in California and other states resulted in harm to consumers.

6 73. There were reasonable alternatives available to BMW Group to further BMW
7 Group's legitimate business interests, other than the conduct described herein.

8 74. California Business and Professions Code section 17200 also prohibits any
9 "fraudulent business act or practice."

10 75. BMW Group's misrepresentations and concealment of material facts, as set
11 forth above, were false, misleading, and likely to deceive the public within the meaning of
12 California Business and Professions Code section 17200.

13 76. BMW Group's misrepresentations and concealment were made with
14 knowledge of their effect, and to induce Plaintiff and members of the Class to purchase
15 First Generation MINIs and to discourage them from seeking replacement while the
16 vehicles were under warranty, thereby unlawfully transferring the costs from BMW
17 Group to Plaintiff and members of the Class. Plaintiff and members of the Class
18 justifiable relied on upon BMW Group's knowing, affirmative, and active concealment
19 when they purchased their First Generation MINIs, and when they failed to seek to have
20 their CVT replaced within the warranty period.

21 77. BMW Group's conduct caused and continues to cause injury to Plaintiff
22 members of the Class. Plaintiff and members of the Class have suffered injury in fact and
23 have lost money as a result of BMW Group's conduct.

24 78. As a result of BMW Group's failure to disclose that CVTs installed in First
25 Generation MINIs were prone to premature failure, Plaintiff and members of the Class
26 were exposed to safety risks, were required to spend approximately \$6,000 to \$9,000
27 (one-third to one-half of the original purchase price) to repair or replace their CVTs, or
28 sell their vehicle without repair for a substantial loss. Therefore, the fact that the CVTs

1 installed in First Generation MINIs were prone to premature failure is material because no
2 reasonable consumer expects that they will have to spend approximately one half to one
3 third of the cost of a vehicle for repairs in the early years of vehicle ownership, and
4 because Plaintiff and members of the Class had a reasonable expectation that the vehicles
5 would not suffer from a premature failure that would present a safety risk, especially
6 given the small size of the vehicles.

7 79. Additionally, the fact that CVTs installed in First Generation MINIs were
8 prone to premature failure is material to consumers because it presents a safety issue and
9 places the driver and passengers at risk of serious harm. When CVTs fail, they do so
10 without warning, resulting in a complete loss of power to the drive wheels. When CVTs
11 fail while a vehicle is moving, occupants of the vehicle are exposed to rear end collisions
12 and other accidents caused by the driver's inability to maintain an appropriate speed.

13 80. Accordingly, Plaintiff and members of the Class would not have purchased
14 their First Generation MINIs had it not been for BMW Group's misrepresentations and
15 concealment of material facts.

16 81. BMW Group has thus engaged in unlawful, unfair, and fraudulent business
17 acts entitling Plaintiff and members of the Class to judgment and equitable relief against
18 BMW Group, as set forth in the Prayer for Relief.

19 82. Additionally, under Business and Professions Code section 17203, Plaintiff
20 and members of the Class seek an order requiring BMW Group to immediately cease such
21 acts of unlawful, unfair, and fraudulent business practices and require BMW Group to
22 correct its actions.

23 **THIRD CAUSE OF ACTION**

24 **(Fraud)**

25 83. Plaintiff hereby incorporates by reference the allegations contained in the
26 preceding paragraphs of this Complaint.

27 84. Plaintiff brings this cause of action on behalf of himself and the members of
28 the Class.

1 85. BMW Group concealed and suppressed material facts, namely, the fact that
2 CVTs installed in First Generation MINIs were prone to premature failure, exposing
3 drivers and occupants of First Generation MINIs to safety risks, and members of the Class
4 to suffer monetary damages.

5 86. BMW Group knew its concealment and suppression of materials facts was
6 false and misleading.

7 87. As a result of BMW Group's failure to disclose to members of the Class the
8 material fact that CVTs installed in First Generation MINIs were prone to premature
9 failure, consumers are required to spend approximately \$6,000 to \$9,000 (one-third to
10 one-half of the original purchase price) to repair or replace their CVTs, or sell their
11 vehicle without repair for a substantial loss. Therefore, the fact that the CVTs installed in
12 First Generation MINIs were prone to premature failure is material because no reasonable
13 consumer expects that they will have to spend approximately one-half to one-third of the
14 cost of a vehicle for repairs in the early years of vehicle ownership, and because Plaintiff
15 and members of the Class had a reasonable expectation that the vehicles would not suffer
16 from a premature failure that would present a safety risk, especially given the small size
17 of the vehicles.

18 88. Additionally, the fact that CVTs installed in First Generation MINIs were
19 prone to premature failure is material to consumers because it presents a safety issue and
20 places the driver and passengers at risk of serious harm. When CVTs fail, they do so
21 without warning, resulting in a complete loss of power to the drive wheels. When CVTs
22 fail while a First Generation MINI is moving, occupants of the vehicle are exposed to rear
23 end collisions and other accidents caused by the driver's inability to maintain an
24 appropriate speed. Accordingly, Plaintiff and members of the Class would not have
25 purchased First Generation MINIs but for BMW Group's omissions and concealment of
26 material facts.

27 89. BMW Group made the omissions and concealment of material facts
28 discussed above with knowledge of the effect of concealing of these material facts. BMW

1 Group knew that by misleading consumers, it would sell more First Generation MINIs,
2 and it would discourage consumers from seeking replacement of their CVT within the
3 warranty period, thereby unlawfully transferring the cost of replacement from itself to the
4 vehicle's owner, both of which would result in higher profit margins for the company.

5 90. Plaintiff and members of the Class justifiably relied upon BMW Group's
6 knowing, affirmative, and active concealment. By concealing material information about
7 First Generation MINIs, BMW Group intended to induce Plaintiff and members of the
8 Class into purchasing First Generation MINIs and discourage them from seeking
9 replacement of the CVT within the warranty period.

10 91. BMW Group acted with malice, oppression, or fraud.

11 92. As a direct and proximate result of BMW Group's omissions and active
12 concealment of material facts, Plaintiff and each member of the Class has been damaged
13 in an amount according to proof at trial.

14 **PRAYER FOR RELIEF**

15 Plaintiff, and on behalf of himself and all others similarly situated, requests the
16 Court enter judgment against BMW Group, as follows:

- 17 1. Certifying the Class as requested herein;
- 18 2. Ordering that BMW Group is financially responsible for notifying all
19 members of the Class of the alleged omissions and active concealment of material facts
20 discussed herein;
- 21 3. Awarding Plaintiff and the members of the Class compensatory damages in
22 an amount according to proof at trial;
- 23 4. Awarding restitution and disgorgement of BMW Group's revenues to
24 Plaintiff and members of the Class;
- 25 5. Awarding declaratory and injunctive relief as permitted by law or equity,
26 including enjoining BMW Group from continuing the unlawful practices as set forth
27 herein, and directing BMW Group to identify, with Court supervision, victims of its
28 conduct and pay them restitution and disgorgement of all monies acquired by BMW

1 Group by means of any act or practice declared by this Court to be wrongful;

2 6. Awarding to Plaintiff and the Class punitive damages;

3 7. Ordering BMW Group to engage in corrective advertising;

4 8. Awarding interest on the monies wrongfully obtained from the date of
5 collection through the date of entry of judgment in this action;

6 9. Awarding attorneys' fees, expenses, and recoverable costs reasonably
7 incurred in connection with the commencement and prosecution of this action; and

8 10. For such other and further relief as the Court deems just and proper.

9 Dated: November 10, 2011

BARON & BUDD, P.C.

10
11
12 By: _____

Mark P. Pifko

13 Attorneys for Plaintiff
14 BRAD AARONS, individually, and on
15 behalf of other members of the public
16 similarly situated
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DEMAND FOR JURY TRIAL

Plaintiff requests trial by jury on all issues so triable.

Respectfully submitted,

Dated: November 10, 2011

BARON & BUDD, P.C.

By: 

Mark P. Rifko

Attorneys for Plaintiff
BRAD AARONS, individually, and on
behalf of other members of the public
similarly situated

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