

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

If You Have Ever Owned Or Leased A
2007 through 2013 model year BMW X5 (E70) Vehicle
(Production Date October 1, 2006 through June 30, 2013) with optional Comfort Access System

You May Be Entitled To Benefits Under This Proposed Class Action Settlement.

Please Read This Notice Carefully, As It Affects Your Legal Rights.

The United States District Court for the Northern District of California authorized this notice.

This is not a solicitation from a lawyer.

Under the terms of a proposed class action settlement, you may be entitled to receive benefits, as set forth in this notice, if:

- (1) you currently own or lease, or previously owned or leased, a 2007 through 2013 model year BMW X5 vehicle (production date October 1, 2006 through June 30, 2013) with optional Comfort Access System; and
- (2) experienced a Spontaneous or Unintended Locking (as defined herein) of the Comfort Access System; and
- (3) incurred Out-of-Pocket Costs (as defined herein) as a result of a Spontaneous or Unintended Locking of the Comfort Access System.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
PARTICIPATE IN THE SETTLEMENT	If you agree with the proposed settlement, you need not do anything to remain in the class.
EXCLUDE YOURSELF	You will not be entitled to participate in the settlement if you choose this option. Even if you exclude yourself, please read and review the Owner's Manual Insert provided with this Notice and put it in your Owner's Manual.
OBJECT / COMMENT	Write to the Court about why you do, or do not, like the settlement. You must remain in the class to comment in support of or in opposition to the settlement.
ATTEND THE HEARING	Ask to speak to the Court about the fairness of the settlement.

1. **THE LITIGATION:** Plaintiff Kieva Myers filed this lawsuit in January 2016. The litigation is captioned *Myers v. BMW of North America, LLC*, and is pending in the United States District Court for the Northern District of California (Case No. 16-cv-00412-WHO). The operative Third Amended Complaint alleges the Comfort Access System is defective because the vehicles' doors can be locked from the outside of the car when the key fob is located inside the vehicle. The lawsuit asserts claims against the authorized United States distributor of BMW vehicles, BMW of North America, LLC ("BMW NA") for (1) breach of express warranties, (2) breach of implied warranties, and (3) breach of California state consumer protection statutes (Cal. Civ. Code section 1750 ("CLRA") and Cal. Bus. & Prof. Code section 17200 ("UCL")).
2. **BMW NA'S POSITION:** BMW NA has expressly denied and continues to deny all charges of wrongdoing or liability against it arising out of the allegations and claims asserted in the lawsuit, including that the Class Vehicles or the Comfort Access System are defective. BMW NA maintains that the Comfort Access System functions as designed and that the system's operational parameters are fully disclosed to vehicle owners. BMW NA has vigorously resisted the lawsuit's allegations and claims and has asserted and continues to assert defenses to those claims.
3. **NOTICE:** This notice is designed to inform members of the class of the pendency of this litigation and of the proposed settlement, and to describe your rights and options if you are a member of the class.
4. **SETTLEMENT CLASS:** The District Court has conditionally certified a class that includes all residents of the United States (including Puerto Rico) who currently own or lease, or who previously owned or leased, a "**Class Vehicle.**" Class Vehicles are BMW NA E70 vehicles (2007 through 2013 model year BMW X5 vehicles), made for sale and/or lease in the U.S. market, with a production date between October 1, 2006 through June 30, 2013, equipped with the optional Comfort Access System, and that were sold or leased to a Class Member who registered and operated the vehicle in the United States or Puerto Rico.

The Settlement Class excludes:

- (1) BMW NA, its related entities, parent companies, subsidiaries and affiliates, and their respective officers, directors, and employees;
- (2) insurers of the Class Vehicles;

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- (3) all persons and/or entities claiming to be subrogated to the rights of Class Members;
- (4) issuers or providers of extended vehicle warranties or extended service contracts;
- (5) individuals and/or entities who validly and timely opt-out of the Settlement;
- (6) consumers or businesses that have purchased Class Vehicles previously deemed a total loss (i.e. salvage) (subject to verification through Carfax or other means);
- (7) current and former owners of a Class Vehicle who previously have released their claims against BMW NA with respect to the issues raised in the Litigation;
- (8) United States and Puerto Rico residents who have purchased Class Vehicles in the United States but have since transported the vehicle outside the United States for permanent use abroad;
- (9) any current or former owner or lessee of a Class Vehicle that has received or obtained a goodwill or warranty payment for Out-of-Pocket Cost(s) (unless the consumer had to pay or share in some portion of the Out-of-Pocket Cost, in which case the unreimbursed portion of such cost is not excluded);
- (10) any judge to whom this matter is assigned, and his or her immediate family (spouse, domestic partner, or children);
- (11) individuals or entities that have purchased and/or leased Class Vehicles as “fleet” vehicles (i.e. rentals or company vehicles); and
- (12) Class Vehicles that were involved in accidents that resulted in damage to the Comfort Access System or related components.

To represent the above class for purposes of the settlement, the Court has appointed the named Plaintiff, Kieva Myers, to serve as the class representative, and has appointed the Law Office of Robert L. Starr, A.P.C. (www.starrlaw.com) and the Law Offices of Stephen M. Harris, P.C. (www.smh-legal.com) to act as Class Counsel.

5. **SETTLEMENT BENEFITS.** The following description of the settlement benefits and the defined terms used herein are qualified in their entirety by reference to the Class Action Settlement Agreement and Release, a copy of which is on file with the Court and available at the settlement website (www.ComfortAccessSettlement.com). Kindly refer to the complete Class Action Settlement Agreement and Release for a full description of all settlement terms and conditions. The following definitions apply to the summary below:

- **Out-Of-Pocket Costs.** “Out-Of-Pocket Costs” means Non-Emergency Out-of-Pocket Costs and Emergency Out-of-Pocket Costs collectively.
- **Emergency Out-of-Pocket Costs.** “Emergency Out-of-Pocket Costs” means the following unreimbursed costs incurred by a Class Member as a result of a Spontaneous or Unintended Locking in which a child and/or pet was locked inside a Class Vehicle: (a) costs incurred to repair a broken window (or other damage to a Class Vehicle) directly attributable to efforts to unlock the Class Vehicle immediately following a Spontaneous or Unintended Locking, or (b) if Class Vehicle damage set forth in (a) was paid for by insurance, any insurance deductible paid by the Class Member for vehicle damages described in (a) herein. Emergency Out-of-Pocket Costs are subject to the Maximum Reimbursement Amount. No additional costs are to be reimbursed by BMW NA.
- **Non-Emergency Out-of-Pocket Costs.** “Non-Emergency Out-of-Pocket Costs” means the following unreimbursed costs incurred by a Class Member as a result of a Spontaneous or Unintended Locking of the Comfort Access System where only personal property (rather than a child or pet) were locked inside the car: (a) locksmith or third party lockout service costs that are directly attributable to efforts to unlock the Class Vehicle immediately following a Spontaneous or Unintended Locking, (b) towing costs that are directly attributable to efforts to unlock the Class Vehicle immediately following a Spontaneous or Unintended Locking, and (c) if no loaner or free rental was otherwise provided, reasonable one-day car rental costs (subject to a maximum reimbursement \$50) while the Class Vehicle was under repair due to a Spontaneous or Unintended Locking of the Comfort Access System. Non-Emergency Out-of-Pocket Costs are subject to the Maximum Reimbursement Amount. No additional costs are to be reimbursed by BMW NA.
- **Maximum Reimbursement Amount.** “Maximum Reimbursement Amount” means (a) for Non-Emergency Out-of-Pockets Costs, a maximum reimbursement up to one hundred fifty dollars (\$150), or (b) for Emergency Lockout Out-of-Pocket Costs, a maximum reimbursement up to a combined six hundred fifty dollars (\$650) comprised of \$150 maximum for Non-Emergency Out-of-Pocket Costs and up to \$500 maximum for Emergency Out-of-Pocket Costs.
- **Effective Date.** The “Effective Date” is the date on which the District Court’s approval of the settlement becomes final. Updates on the Effective Date and other deadlines under the settlement will be posted on the settlement website (www.ComfortAccessSettlement.com).
- **Proof of Spontaneous or Unintended Locking.** “Proof of Spontaneous or Unintended Locking” means any of the

following documents that establish a Spontaneous or Unintended Locking complaint in a Class Vehicle: (a) dealership repair orders, (b) police report, or (c) insurance company report. In cases where a customer has documented proof of lockout situation (repair order, police report, or insurance company report), but the documentation submitted does not specify a Spontaneous or Unintended Locking, an attestation under penalty of perjury that the Class Member did not intend to lock the doors using the key fob or the comfort access system and the doors locked anyway can be used. The attestation is in addition to documentation set forth herein and not in lieu of documentation that evidences a lockout situation in the first place.

- **Required Documentation.** “Required Documentation” means (1) a fully-completed Claim Form signed under penalty of perjury, (2) Proof of Spontaneous or Unintended Locking, (3) an invoice that documents an Emergency Out-of-Pocket Cost or Non-Emergency Out-of-Pocket Cost, and (4) cancelled checks, credit card statements or other proof that evidences the Class Member personally paid for an Emergency Out-of-Pocket Cost or Non-Emergency Out-of-Pocket Cost.
- **Owner’s Manual Insert.** “Owner’s Manual Insert” means the document that is included with this Notice for inclusion in your Class Vehicle’s Owners Manual, and that provides additional information and warnings regarding locking of Class Vehicle doors using the Comfort Access System.

SUMMARY OF BENEFITS IF SETTLEMENT IS APPROVED	
REIMBURSEMENT OF OUT-OF-POCKET COSTS INCURRED PRIOR TO THE SETTLEMENT	<p>BMW NA will reimburse Class Members for Emergency Out-of-Pocket Costs or Non-Emergency Out-of-Pocket Costs, as applicable. Reimbursement will be on a claims made basis and will be for the lesser of the actual Out-of-Pocket Cost paid by the Class Member or the applicable Maximum Reimbursement Amount.</p> <p>To obtain reimbursement you must submit a timely Claim and Required Documentation to the Class Administrator before the claims deadline of April 8, 2019. Please see the settlement website at www.ComfortAccessSettlement.com for additional details, terms, and conditions for reimbursement.</p>
OWNER’S MANUAL INSERT PROVIDING FURTHER INSTRUCTIONS ON USE OF THE COMFORT ACCESS SYSTEM	<p>Included with this Class Notice is an Owner’s Manual Insert. This document should be placed inside your vehicle’s Owner’s Manual and provides further instructions on the operational parameters of the Comfort Access System. Read this insert carefully.</p>

6. **ATTORNEYS’ FEES, EXPENSES AND INCENTIVE AWARD:** To date, Class Counsel has not received any payment for their services in prosecuting the case, nor have they been reimbursed for any out-of-pocket costs. If the Court approves the proposed settlement, Class Counsel will apply to the Court for an award of attorneys’ fees and reimbursement for costs not to exceed \$692,000. Class Counsel also will apply to the Court for a service award of \$5,000 to the named Plaintiff Kieva Myers, for her initiative and effort in pursuing this litigation for the benefit of the class. Any award of attorneys’ fees and expenses and any service award will be paid by BMW NA and will not reduce the benefits available to you under the settlement. You are not personally liable for these attorneys’ fees and costs or the service award.
7. **RESULT IF COURT APPROVES SETTLEMENT:** If you fall within the class definition and elect to remain in the class, and the settlement is approved, the Court will enter a judgment dismissing the lawsuit with prejudice, and releasing any and all claims that you may have against BMW NA, Bayerische Motoren Werke Aktiengesellschaft (BMW AG), and BMW Manufacturing Co. (BMW MC), each of these entities’ respective subsidiaries and related entities, and every other person or entity involved in the design, development, supply, manufacture, sale, lease, repair, or distribution of the Class Vehicles, and the foregoing entities’ past and present officers, directors, shareholders, predecessors in interest, successors in interest, and employees, including any claim for violations of federal, state, or other law, whether known or unknown, related to Spontaneous or Inadvertent Locking of the Comfort Access System in the Class Vehicles. The settlement and judgment will not release any claims for personal injury, property damage, or claims for subrogation.
8. **YOUR OPTIONS:** If you are a member of the class, you have the following options:
 - (a) **PARTICIPATE IN THE SETTLEMENT:** If you agree with the proposed Settlement, you need not do anything to remain in the class. You are, however, required to submit a timely Claim for reimbursement if you have Out-of-Pocket Costs that are eligible for reimbursement, or comply with other deadlines as set forth herein and in the Class Action Settlement Agreement and Release. For information on the status of settlement approval and other settlement related information, please visit the settlement website at www.ComfortAccessSettlement.com.

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If you wish to comment in favor of the Settlement, you may send your comment to Class Counsel: Stephen M. Harris, Law Office of Stephen M. Harris, P.C., 6320 Canoga Avenue, Suite 1500, Woodland Hills, CA 91367, Tel: (818) 924-3103, Stephen@smh-legal.com or Law Office of Robert L. Starr, A.P.C., 23901 Calabasas Rd., Ste 2072, Calabasas, CA 91302, Tel: (818) 225-9040, Robert@Starrlaw.com.

- (b) **REQUEST TO BE EXCLUDED:** If you do not want to stay in the Class, then you must send a written notice of your request to exclude yourself from the Class, postmarked no later than February 22, 2019 to the Claims Administrator at the following address:

MYERS SETTLEMENT ADMINISTRATOR - 6025
C/O RUST CONSULTING, INC.
PO BOX 44
MINNEAPOLIS, MN 55440-0044

Your request must be signed by you, include your name, and specifically state that you request to be excluded from the Class in *Myers v. BMW of North America, LLC*. If you validly and timely request exclusion from the class, (1) you will be excluded from the class; (2) you will not be entitled to the settlement benefits; (3) you will not be bound by the terms of the settlement, the judgment dismissing the lawsuit, or the release of claims provided by the settlement; and (4) you will not be entitled to object to the proposed settlement or be heard at the fairness hearing described in Paragraph 9 below.

- (c) **OBJECT TO THE SETTLEMENT:** If you are a member of the class and you do not request to be excluded, you may object to the terms of the settlement or to Class Counsel's request for attorneys' fees and costs. You can ask the Court to deny approval by filing an objection. You can't ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object. You may, *but need not*, enter an appearance through counsel of your choice, but you will be responsible for paying your own attorney.

If you object to the settlement, your objection must be mailed (post-marked) or personally presented to the court by filing, on or before February 22, 2019: (1) The objection must be mailed to or directly filed with the Class Action Clerk of the Court of United States District Court for the Northern District of California, Office of the Clerk, 450 Golden Gate Avenue, San Francisco, CA 94102-3489, or filed in person at any location of the United States District Court for the Northern District of California. The written objection must include (i) a reference to *Myers v. BMW of North America, LLC*, Case No. 16-cv-00412-WHO; (ii) your full name, address and telephone number; (iii) the year, model, and vehicle identification number (VIN) of the Class Vehicle that you own or lease or previously owned or leased; (iv) a written statement of all grounds for the objection accompanied by any legal support for your objection; (v) copies of any papers, briefs, or other documents upon which the objection is based; (vi) a list of all persons who will be called to testify in support of the objection (if any); (vii) a statement of whether you intend to appear at the fairness hearing; and (viii) your signature or if you are represented by counsel, your counsel's signature. You are not required to personally appear at the Final Approval Hearing for your objection to be considered by the Court.

To retain your right to appeal from any provision of the order approving the Settlement as fair, reasonable and adequate, the award of incentive payments, or to the award of reasonable attorneys' fees and expenses paid by BMW NA and awarded to Class Counsel, you must file an objection. If you intend to appear at the fairness hearing through counsel, the objection must also state the identity of all attorneys representing you who will appear at the fairness hearing.

9. **FAIRNESS HEARING:** On March 27, 2019, in Courtroom 2 of the United States Courthouse, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102, the Honorable William H. Orrick, United States District Judge, will hold a fairness hearing for the purpose of deciding (a) whether the settlement should be approved as fair, reasonable, and adequate for the class; (b) whether a judgment granting approval of the settlement and dismissing the lawsuit with prejudice should be entered; and (c) whether Class Counsel's application for attorneys' fees and expenses and incentive award for the named Plaintiff should be granted. The hearing may be postponed, adjourned, or rescheduled by the Court without further notice to the class. You do not need to attend this hearing to remain a member of the class or participate in the settlement.
10. **EXAMINATION OF PAPERS FILED IN THE CASE:** This notice summarizes the proposed settlement. For full details of the matters discussed in this notice, you may wish to review the Class Action Settlement Agreement and Release dated November 7, 2017, a copy of the complaint, and other settlement related documents, on file with the Court, and also

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available at the dedicated website of www.ComfortAccessSettlement.com, by contacting class counsel, Stephen M Harris, Law Office of Stephen M. Harris, P.C., 6320 Canoga Avenue, Suite 1500, Woodland Hills, CA 91367, Tel: (818) 924-3103, Stephen@smh-legal.com, Law Office of Robert L. Starr, A.P.C., 23901 Calabasas Rd., Ste 2072, Calabasas, CA 91302, Tel: (818) 225-9040, Robert@Starrlaw.com, or by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays. Also, all other pleadings and papers filed in the lawsuit are available for inspection and copying during regular business hours at the court house or through PACER, referred to above.

11. **ADDITIONAL INFORMATION:** You can get more information by viewing the settlement website at www.ComfortAccessSettlement.com, or contacting Class Counsel: Stephen M Harris, Law Office of Stephen M. Harris, P.C., 6320 Canoga Avenue, Suite 1500, Woodland Hills, CA 91367, Tel: (818) 924-3103, Stephen@smh-legal.com, Law Office of Robert L. Starr, A.P.C., 23901 Calabasas Rd., Ste 2072, Calabasas, CA 91302, Tel: (818) 225-9040, Robert@Starrlaw.com. Please include the reference *Myers v. BMW of North America, LLC*.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS NOTICE, THE SETTLEMENT OR THE CLAIM PROCESS.

BY ORDER OF THE COURT

Dated: January 8, 2019

Clerk of the Court

