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

_____, Individually and
on behalf of all others similarly situated,

Plaintiff,

v.

BAYERISCHE MOTOREN WERKE
AKTIENGESELLSCHAFT, BMW
(US) HOLDING CORP., OLIVER
ZIPSE, HARALD KRÜGER,
BERNHARD KUHNT, and NICOLAS
PETER,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE FEDERAL
SECURITIES LAWS

JURY TRIAL DEMANDED

Plaintiff _____ (“Plaintiff”), individually and on behalf of all other persons similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants (defined below), alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by

and through his attorneys, which included, among other things, a review of the Defendants' public documents, conference calls and announcements made by Defendants, United States Securities and Exchange Commission ("SEC") filings, wire and press releases published by and regarding Bayerische Motoren Werke Aktiengesellschaft ("BMW" or the "Company"), and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a class action on behalf of persons or entities who purchased or otherwise acquired publicly traded BMW securities from March 21, 2017 through December 23, 2019, inclusive (the "Class Period"). Plaintiff seeks to recover compensable damages caused by Defendants' violations of the federal securities laws under the Securities Exchange Act of 1934 (the "Exchange Act").

JURISDICTION AND VENUE

2. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, and Section 27 of the Exchange Act (15 U.S.C. §78aa).

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)) as the alleged misstatements entered and the subsequent damages took place in this judicial district, and the Company conducts substantial business in this district.

5. In connection with the acts, conduct and other wrongs alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mails, interstate telephone communications and the facilities of the national securities exchange.

PARTIES

6. Plaintiff, as set forth in the accompanying certification, incorporated by reference herein, purchased BMW securities during the Class Period and was economically damaged thereby.

7. Defendant BMW, together with its subsidiaries, purports to develop, manufacture, and sell automobiles and motorcycles, and spare parts and accessories worldwide. BMW is incorporated in Germany and with headquarters in Munich, Germany. The Company's American Depository Receipts ("ADRs") trade over-the-counter on the OTC under the ticker symbol "BMWYY."

8. BMW (US) Holding Corp. ("BMW US"), BMW's wholly-owned U.S. subsidiary, is a corporation doing business in all 50 states and the District of

Columbia and is organized under the laws of the State of New Jersey, with its principal place of business located in 300 Chestnut Ridge Rd, Woodcliff Lake, NJ 07677.

9. Defendant Oliver Zipse (“Zipse”) has served as the Company’s Chairman of the Board of Management and Chief Executive Officer since August 16, 2019.

10. Defendant Harald Krüger (“Krüger”) served as the Company’s CEO from May 13, 2015 until August 16, 2019.

11. Defendant Nicholas Peter (“Peter”) has served as the Company’s Chief Financial Officer (“CEO”) and Member of the Board of Management since January 1, 2017.

12. Defendant Bernhard Kuhnt (“Kuhnt”) has served as BMW US’s CEO since March 1, 2017.

13. Defendants Zipse, Krüger, Peter, and Kuhnt are collectively referred to herein as the “Individual Defendants.”

14. Each of the Individual Defendants:

- (a) directly participated in the management of the Company;
- (b) was directly involved in the day-to-day operations of the Company at the highest levels;
- (c) was privy to confidential proprietary information concerning the Company and its business and operations;

- (d) was directly or indirectly involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein;
- (e) was directly or indirectly involved in the oversight or implementation of the Company's internal controls;
- (f) was aware of or recklessly disregarded the fact that the false and misleading statements were being issued concerning the Company; and/or
- (g) approved or ratified these statements in violation of the federal securities laws.

15. BMW is liable for the acts of the Individual Defendants and its employees under the doctrine of *respondeat superior* and common law principles of agency because all of the wrongful acts complained of herein were carried out within the scope of their employment.

16. The scienter of the Individual Defendants and other employees and agents of the Company is similarly imputed to BMW under *respondeat superior* and agency principles.

17. Defendants BMW and the Individual Defendants are collectively referred to herein as "Defendants."

SUBSTANTIVE ALLEGATIONS
Materially False and Misleading Statements

18. On March 21, 2017, the Company issued a press release containing a web link to its financial results and annual report for the fiscal year ended December 31, 2016 (the “2016 Financials”). The 2016 Financials were signed by Defendants Krüger and Peter. The 2016 A Financials contained signed statements by Defendants Krüger and Peter attesting to the accuracy of financial reporting and a fair review of the development and performance of the business, as well as the attendant opportunities and risks.

19. The 2016 Financials stated that the Company’s revenue generated from the USA was €12,912 million in 2016.

20. On April 3, 2017, the Company issued a press release reporting 31,015 vehicles sold in the U.S. in March 2017, an increase of 3.3% compared with U.S. sales in March 2016.

21. On May 2, 2017, the Company issued a press release reporting 22,624 vehicles sold in the U.S. in April 2017, a decrease of 9.3% compared with U.S. sales in April 2016.

22. On May 4, 2017, the Company issued a press release announcing its financial results for the period ending March 31, 2017. The Company reported sales volume in the United States of 82,169 units between January 1, 2017 and March 31, 2017.

23. On June 1, 2017, the Company issued a press release reporting 25,818 vehicles sold in the U.S. in May 2017, a decrease of 11% compared with U.S. sales in May 2016.
24. On July 3, 2017, the Company issued a press release reporting 28,962 vehicles sold in the U.S. in June 2017, an increase of 0.4% compared with U.S. sales in June 2016.
25. On July 3, 2017, the Company issued a press release reporting 28,962 vehicles sold in the U.S. in June 2017, an increase of 0.4% compared with U.S. sales in June 2016.
26. On August 1, 2017, the Company issued a press release reporting 21,965 vehicles sold in the U.S. in July 2017, a decrease of 14.8% compared with U.S. sales in July 2016.
27. On August 3, 2017, the Company issued a press release announcing its financial results for the period ending June 30, 2017. The Company reported sales volume in the United States of 171,785 units between January 1, 2017 and June 30, 2017.
28. On September 1, 2017, the Company issued a press release reporting 23,553 vehicles sold in the U.S. in August 2017, a decrease of 7.7% compared with U.S. sales in August 2016.
29. On September 1, 2017, the Company issued a press release reporting 23,553

vehicles sold in the U.S. in August 2017, a decrease of 7.7% compared with U.S. sales in August 2016.

30. On October 3, 2017, the Company issued a press release reporting 25,571 vehicles sold in the U.S. in September 2017, an increase of 0.7% compared with U.S. sales in September 2016.

31. On November 2, 2017, the Company issued a press release reporting 23,208 vehicles sold in the U.S. in October 2017, a decrease of 3.4% compared with U.S. sales in October 2016.

32. On November 7, 2018, the Company issued a press release announcing its financial results for the period ending September 30, 2017. The Company reported sales volume in the United States of 255,682 units between January 1, 2017 and September 30, 2017.

33. On December 1, 2017, the Company issued a press release reporting 28,049 vehicles sold in the U.S. in November 2017, an increase of 7.1% compared with U.S. sales in November 2016.

34. On January 3, 2018, the Company issued a press release reporting its December 2017 and Year-End U.S. Sales. The Company reported total sales of 34,253 for December 2017 and 305,685 for full year 2017.

35. On February 1, 2018, the Company issued a press release reporting 19,016 vehicles sold in the U.S. in January 2018, an increase of 5% compared with U.S.

sales in January 2017.

36. On March 1, 2018, the Company issued a press release reporting 23,508 vehicles sold in the U.S. in February 2018, an increase of 4.2% compared with U.S. sales in February 2017.

37. On March 21, 2018, the Company issued a press release containing a web link to its financial results and annual report for the fiscal year ended December 31, 2017 (collectively, the “2017 Financials”). The 2017 Financials were signed by Defendants Krüger and Peter. The 2017 Financials contained signed statements by Defendants Krüger and Peter attesting to the accuracy of financial reporting and a fair review of the development and performance of the business, as well as the attendant opportunities and risks.

38. The 2017 Financials stated that the Company’s revenue generated from the USA was €13,298 million in 2017.

39. On April 3, 2018, the Company issued a press release reporting 31,311 vehicles sold in the U.S. in March 2018, an increase of 1% compared with U.S. sales in March 2017.

40. On April 3, 2018, the Company issued a press release reporting 31,311 vehicles sold in the U.S. in March 2018, an increase of 1% compared with U.S. sales in March 2017.

41. On May 1, 2018, the Company issued a press release reporting 27,213

vehicles sold in the U.S. in April 2018, an increase of 4.2% compared with U.S. sales in April 2017.

42. On May 4, 2018, the Company issued a press release announcing its financial results for the period ending March 31, 2018. The Company reported sales volume in the United States of 84,630 units between January 1, 2018 and March 31, 2018.

43. On June 1, 2018, the Company issued a press release reporting 30,888 vehicles sold in the U.S. in May 2018, an increase of 3.4% compared with U.S. sales in May 2017.

44. On June 1, 2018, the Company issued a press release reporting 30,888 vehicles sold in the U.S. in May 2018, an increase of 3.4% compared with U.S. sales in May 2017.

45. On July 3, 2018, the Company issued a press release reporting 29,407 vehicles sold in the U.S. in July 2018, an increase of 1.5% compared with U.S. sales in July 2017.

46. On August 1, 2018, the Company issued a press release reporting 21,965 vehicles sold in the U.S. in July 2018, an increase of 0.1% compared with U.S. sales in July 2017.

47. On August 2, 2018, the Company issued a press release announcing its financial results for the period ending June 30, 2018. The Company reported sales volume in the United States of 176,570 units between January 1, 2018 and June 30,

2018.

48. On September 4, 2018, the Company issued a press release reporting 23,789 vehicles sold in the U.S. in August 2018, an increase of 1% compared with U.S. sales in August 2017.

49. On October 2, 2018, the Company issued a press release reporting 25,908 vehicles sold in the U.S. in September 2018, an increase of 1.3% compared with U.S. sales in September 2017.

50. On November 1, 2018, the Company issued a press release reporting 23,262 vehicles sold in the U.S. in October 2018, an increase of 0.2% compared with U.S. sales in October 2017.

51. On November 7, 2018, the Company issued a press release announcing its financial results for the period ending September 30, 2018. The Company reported sales volume in the United States of 260,086 units between January 1, 2018 and September 30, 2018.

52. On December 3, 2018, the Company issued a press release reporting 28,330 vehicles sold in the U.S. in November 2018, an increase of 1.0% compared with U.S. sales in November 2017.

53. On January 3, 2019, the Company issued a press release reporting its “December 2018 and Year-End U.S. Sales.” The Company reported total sales of 34,357 for December 2018 and 311,014 for full year 2018. The press release noted

that BMW brand sales increased for the “14th consecutive month.”

54. On February 1, 2019, the Company issued a press release reporting 18,102 vehicles sold in the U.S. in January 2019, a decrease of 4.8% compared with U.S. sales in January 2018.

55. On March 1, 2019, the Company issued a press release reporting 23,558 vehicles sold in the U.S. in February 2019, an increase of 0.2% compared with U.S. sales in February 2018.

56. On March 20, 2019, the Company issued a press release containing a web link to its financial results and annual report for the fiscal year ended December 31, 2018 (collectively, the “2018 Annual Report”). The 2018 Annual Report was signed by Defendants Krüger and Peter. The 2018 Annual Report contained signed statements by Defendants Krüger and Peter attesting to the accuracy of financial reporting and a fair review of the development and performance of the business, as well as the attendant opportunities and risks.

57. The 2018 Annual Report stated that the Company’s revenue generated from the USA was €12,930 million in 2018.

58. On April 2, 2019, the Company issued a press release reporting 32,228 vehicles sold in the U.S. in March 2019, an increase of 2.9% compared with U.S. sales in March 2018.

59. On May 1, 2019, the Company issued a press release reporting 23,816

vehicles sold in the U.S. in April 2019, an increase of 1.4% compared with U.S. sales in April 2018.

60. On May 7, 2019, the Company issued a press release announcing its financial results for the period ending March 31, 2019. The Company reported sales volume in the United States of 83,158 units between January 1, 2019 and March 31, 2019.

61. On June 3, 2019, the Company issued a press release reporting 27,109 vehicles sold in the U.S. in May 2019, an increase of 1.7% compared with U.S. sales in May 2018.

62. On July 2, 2019, the Company issued a press release reporting 31,627 vehicles sold in the U.S. in June 2019, an increase of 7.5% compared with U.S. sales in June 2018.

63. On August 1, 2019, the Company issued a press release reporting 23,015 vehicles sold in the U.S. in July 2019, an increase of 4.7% compared with U.S. sales in July 2018.

64. On August 1, 2019, the Company issued a press release announcing its financial results for the period ending June 30, 2019. The Company reported sales volume in the United States of 174,779 units between January 1, 2019 and June 30, 2019.

65. On September 1, 2019, the Company issued a press release reporting 25,505 vehicles sold in the U.S. in August 2019, an increase of 7.2% compared with U.S.

sales in August 2018.

66. On October 1, 2019, the Company issued a press release reporting 27,467 vehicles sold in the U.S. in September 2019, an increase of 6.0% compared with U.S. sales in September 2018.

67. On November 1, 2019, the Company issued a press release reporting 25,440 vehicles sold in the U.S. in October 2019, an increase of 9.4% compared with U.S. sales in October 2018.

68. On November 6, 2019, the Company issued a press release announcing its financial results for the period ending September 30, 2019. The Company reported sales volume in the United States of 261,278 units between January 1, 2019 and September 30, 2019.

69. On December 3, 2019, the Company issued a press release reporting 31,213 vehicles sold in the U.S. in November 2019, an increase of 10.2% compared with U.S. sales in November 2018.

70. The statements contained in ¶¶18-69 were materially false and/or misleading because they misrepresented and failed to disclose the following adverse facts pertaining to the Company's business, operations and prospects, which were known to Defendants or recklessly disregarded by them. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (1) BMW artificially manipulated sales figures by having dealers register cars as sold when the

cars were still in inventory; (2) as a result, BMW's key operating metrics were inaccurate and misleading; and (3) as a result, Defendants' statements about BMW's business, operations, and prospects were materially false and/or misleading and/or lacked a reasonable basis at all relevant times.

THE TRUTH BEGINS TO EMERGE

71. On December 23, 2019, while the market was open, the *Wall Street Journal* reported that the SEC was probing BMW's sales practices. The *Wall Street Journal's* article stated, in pertinent part:

The Securities and Exchange Commission has opened an investigation into whether German luxury car maker Bayerische Motoren Werke AG manipulated sales figures, according to people familiar with the matter.

The regulator is looking into whether the Munich-based auto maker engaged in a practice known as sales punching in the U.S., the people said. Sale punching occurs when a company boosts sales figures by having dealers register cars as sold when the vehicles actually are still standing on car lots.

BMW acknowledged the investigation, but wouldn't comment on the specifics of the probe.

"We have been contacted by the SEC and will cooperate fully with their investigation," the spokesman told The Wall Street Journal.

The SEC couldn't immediately be reached for comment.

The probe comes as the U.S. officials continue to pursue other car companies suspected of falsifying data and misleading investors.

Fiat Chrysler Automobiles NV in September agreed to pay \$40 million to settle claims by the SEC that the company had for years paid dealers to report exaggerated sales numbers. The company said at the time it

had reviewed and refined its sales reporting procedures and was committed to maintaining strong controls.

Fiat Chrysler also revised monthly sales results going back several years, nullifying a 75-month streak of sales increases. Under those revised methods, the streak ended in September 2013, three years earlier than it previously stated.

This year, Fiat Chrysler joined General Motors Co. GM 2.13% and Ford Motor Co. F 1.29% in ending the practice of reporting monthly U.S. sales numbers. The companies now report their U.S. sales quarterly, while most other major car makers still disclose results each month.

The SEC investigation also follows 2015 indictments against Volkswagen AG VOW 2.48% of Germany on charges of defrauding U.S. consumers and the U.S. government and violating the federal Clean Air Act by rigging diesel-powered vehicles to cheat emissions test. That case was brought by the Justice Department.

Volkswagen pleaded guilty to the charges in 2016 and has faced more than \$30 billion in fines, penalties and compensation fees.

In addition, BMW faces litigation by European authorities on allegations of colluding with rivals to manipulate prices on technology to control emissions.

BMW, which has vowed to fight the case, in April took a \$1.1 billion charge against earnings as a provision for potential fines from the matter.

BMW sold 322,862 vehicles in the U.S. in the first nine months of the year, an increase of 1.7% from a year ago, including its namesake BMW brands and its Mini brand.

BMW also has been under pressure in the U.S. because of the Trump administration's trade war with China, which has hit BMW's SUV exports from its Spartanburg, S.C., factory. BMW has responded by shifting some production from the U.S. to China.

(Emphasis added).

72. On this news, BMW ADRs fell \$1.33 per ADR, or nearly 6.87%, to close at \$18.02 per ADR on December 23, 2020, damaging investors.

73. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's ADRs, Plaintiff and other Class members have suffered significant losses and damages.

PLAINTIFF'S CLASS ACTION ALLEGATIONS

74. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons other than defendants who acquired BMW securities publicly traded on the OTC during the Class Period, and who were damaged thereby (the "Class"). Excluded from the Class are Defendants, the officers and directors of BMW, members of the Individual Defendants' immediate families and their legal representatives, heirs, successors or assigns and any entity in which Officer or Director Defendants have or had a controlling interest.

75. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, BMW securities were actively traded on the OTC. While the exact number of Class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery, Plaintiff believes that there are hundreds, if not thousands of members in the proposed Class.

76. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by defendants' wrongful conduct in violation of federal law that is complained of herein.

77. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

78. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class.

Among the questions of law and fact common to the Class are:

- whether the Exchange Act were violated by Defendants' acts as alleged herein;
- whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the financial condition and business BMW;
- whether Defendants' public statements to the investing public during the Class Period omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;

- whether the Defendants caused BMW to issue false and misleading public filings during the Class Period;
- whether Defendants acted knowingly or recklessly in issuing false and public filings;
- whether the prices of BMW's securities during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

79. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

80. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

- BMW ADRs met the requirements for listing, and were listed and actively traded on the OTC, a highly efficient and automated market;
- As a public issuer, BMW filed periodic public reports;

- BMW regularly communicated with public investors via established market communication mechanisms, including through the regular dissemination of press releases via major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and
- BMW was followed by a number of securities analysts employed by major brokerage firms who wrote reports that were widely distributed and publicly available.

81. Based on the foregoing, the market for BMW securities promptly digested current information regarding BMW from all publicly available sources and reflected such information in the prices of the ADRs, and Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

82. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128 (1972), as Defendants omitted material information in their Class Period statements in violation of a duty to disclose such information as detailed above.

COUNT I

For Violations of Section 10(b) And Rule 10b-5 Promulgated Thereunder Against All Defendants

83. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

84. This Count is asserted against Defendants is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

85. During the Class Period, Defendants, individually and in concert, directly or indirectly, disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

86. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

- employed devices, schemes and artifices to defraud;
- made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

- engaged in acts, practices and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of BMW securities during the Class Period.

87. Defendants acted with scienter in that they knew that the public documents and statements issued or disseminated in the name of BMW were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated, or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the securities laws. These defendants by virtue of their receipt of information reflecting the true facts of BMW, their control over, and/or receipt and/or modification of BMW's allegedly materially misleading statements, and/or their associations with the Company which made them privy to confidential proprietary information concerning BMW, participated in the fraudulent scheme alleged herein.

88. Individual Defendants, who are the senior officers and/or directors of the Company, had actual knowledge of the material omissions and/or the falsity of the material statements set forth above, and intended to deceive Plaintiff and the other members of the Class, or, in the alternative, acted with reckless disregard for the truth when they failed to ascertain and disclose the true facts in the statements made

by them or other BMW personnel to members of the investing public, including Plaintiff and the Class.

89. As a result of the foregoing, the market price of BMW securities was artificially inflated during the Class Period. In ignorance of the falsity of Defendants' statements, Plaintiff and the other members of the Class relied on the statements described above and/or the integrity of the market price of BMW securities during the Class Period in purchasing BMW securities at prices that were artificially inflated as a result of Defendants' false and misleading statements.

90. Had Plaintiff and the other members of the Class been aware that the market price of BMW securities had been artificially and falsely inflated by Defendants' misleading statements and by the material adverse information which Defendants did not disclose, they would not have purchased BMW securities at the artificially inflated prices that they did, or at all.

91. As a result of the wrongful conduct alleged herein, Plaintiff and other members of the Class have suffered damages in an amount to be established at trial.

92. By reason of the foregoing, Defendants have violated Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and are liable to the plaintiff and the other members of the Class for substantial damages which they suffered in connection with their purchase of BMW securities during the Class Period.

COUNT II
Violations of Section 20(a) of the Exchange Act
Against the Individual Defendants

93. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

94. During the Class Period, the Individual Defendants participated in the operation and management of BMW, and conducted and participated, directly and indirectly, in the conduct of BMW's business affairs. Because of their senior positions, they knew the adverse non-public information about BMW's misstatement of revenue and profit and false financial statements.

95. As officers and/or directors of a publicly owned company, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to BMW's financial condition and results of operations, and to correct promptly any public statements issued by BMW which had become materially false or misleading.

96. Because of their positions of control and authority as senior officers, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which BMW disseminated in the marketplace during the Class Period concerning BMW's results of operations. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause BMW to engage in the wrongful acts complained of herein. The Individual Defendants therefore, were "controlling persons" of BMW within the

meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of BMW securities.

97. By reason of the above conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act for the violations committed by BMW.

PRAYER FOR RELIEF

WHEREFORE, plaintiff, on behalf of himself and the Class, prays for judgment and relief as follows:

(a) declaring this action to be a proper class action, designating plaintiff as Lead Plaintiff and certifying plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and designating plaintiff's counsel as Lead Counsel;

(b) awarding damages in favor of plaintiff and the other Class members against all defendants, jointly and severally, together with interest thereon;

awarding plaintiff and the Class reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) awarding plaintiff and other members of the Class such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: January __, 2020

Respectfully submitted,

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