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

SEAN SKURO, on behalf of himself
and all others similarly situated, and on
behalf of the general public,

Plaintiffs,

v.

BMW OF NORTH AMERICA, LLC, a
Delaware limited liability company,
ATX Group, Inc., a Texas corporation,
and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: CV 10-8672-GW(FFMx)

**ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

DATE: March 8, 2012

TIME: 8:30 A.M.

COURTROOM: 10

JUDGE: Hon. George H. Wu

1 On February 23, 2012 and March 8, 2012, the Court, the Honorable George
2 H. Wu presiding, conducted hearings regarding the motion brought by Plaintiff
3 Sean Skuro (“Class Representative”) for Preliminary Approval of Class Action
4 Settlement. The parties appeared by and through their respective counsel of record.

5 After considering the papers and the arguments of counsel, including the
6 amended class notice, the declaration submitted by the proposed settlement
7 administrator Gilardi & Co., LLC, and the Supplemental Declaration of Daniel F.
8 Gaines, and good cause appearing, IT IS HEREBY ORDERED, ADJUDGED
9 AND DECREED THAT:

10 1. For purposes of this Order, the Court adopts and incorporates all
11 definitions set forth in the Settlement Agreement and Release (“Settlement
12 Agreement”) unless a different definition is set forth in this Order.

13 2. The Court finds that the requirements of Rule 23 of the Federal Rules
14 of Civil Procedure and other laws and rules applicable to preliminary settlement
15 approval of class actions have been satisfied, and the Court preliminarily approves
16 the settlement of this Action as memorialized in the Settlement Agreement, which
17 is incorporated herein by this reference, as being fair, just, reasonable and adequate
18 to the settlement Class and its members, subject to further consideration at the Final
19 Fairness and Approval Hearing described below, and thus hereby:

20 (a) conditionally certifies for purposes of implementing the Settlement
21 Agreement only the Class consisting of all individuals who connected to BMW
22 Assist between October 13, 2009 and February 1, 2011 through BMW Assist
23 subscription accounts with California billing addresses, but excluding (1) BMW
24 NA and ATX, their subsidiaries and affiliates, officers, directors, and employees,
25 (2) all persons and/or entities claiming to be subrogated to the rights of Class
26 Members, (3) individuals and/or entities who validly and timely opt-out of the
27 Settlement, (4) Class Members who previously have released their claims against
28 BMW NA or ATX with respect to the issues raised in the Litigation, (5) individuals

1 or entities that have purchased and/or leased Class Vehicles as “fleet” vehicles (*i.e.*
2 authorized BMW Centers, rental companies, or entities that purchased BMW
3 vehicles as company vehicles), and (6) the Judge(s) and/or attorneys to whom the
4 Litigation is or will be assigned;

5 (b) appoints Plaintiff Sean Skuro as the representative of the Class; and

6 (c) appoints Kenneth S. Gaines, Daniel F. Gaines, and Alex P.
7 Katofsky of Gaines & Gaines, APLC as attorneys for the Class for purposes of
8 settlement and finds for the purposes of settlement that these attorneys are qualified
9 to represent the Class.

10 3. A hearing (the “Final Fairness and Approval Hearing”) shall be held
11 on August 27, 2012, at 8:30 a.m. before the Honorable George H. Wu, in
12 Courtroom 10 of the United States District Court for the Central District of
13 California, located at 312 N. Spring Street, Los Angeles, California 90012. At that
14 time, the Court shall determine: (a) whether the proposed settlement of the Action
15 on the terms and conditions provided for in the Settlement Agreement is fair, just,
16 reasonable and adequate and should be finally approved; (b) whether judgment as
17 provided in the Settlement Agreement should be entered herein; and (c) whether to
18 approve Class Counsel’s application for an award of attorneys’ fees and costs and
19 Plaintiff’s application for a service payment. The Court may continue or adjourn
20 the Final Fairness and Approval Hearing without further notice to members of the
21 Class.

22 4. The Court approves, as to form and content, the amended Class Notice
23 attached hereto as Exhibit 1, the Claim Form attached to the Settlement Agreement
24 as Exhibit 2, and the amended Reminder Notice attached hereto as Exhibit 2. The
25 Court finds that distribution of the Class Notice in the manner set forth in this Order
26 and the Settlement Agreement constitutes the best notice practicable under the
27 circumstances, and constitutes valid, due and sufficient notice to all members of the
28 Class, complying fully with the requirements of Rule 23 of the Federal Rules of

1 Civil Procedure, the Constitution of the United States, and any other applicable
2 laws. The Class Notice set forth herein and in the Settlement Agreement provides a
3 means of notice reasonably calculated to apprise the Class Members of the
4 pendency of the action and the proposed settlement, and thereby meets the
5 requirements of Rule 23(c)(2) of the Federal Rules of Civil Procedure, as well as
6 due process under the United States Constitution and any other applicable law, and
7 shall constitute due and sufficient notice to all Class Members entitled thereto.

8 5. The Court approves the selection of Gilardi & Co., LLC to be the
9 Claims Administrator. The Claims Administrator will administer the applicable
10 provisions of the Settlement Agreement, including, but not limited to, distributing
11 and providing the Class Notice, receiving and examining claims, calculating claims
12 against the Non-Reversionary Fund, preparing and issuing all disbursements to
13 Class Members, and accepting and processing Subscription Agreement
14 Addendums.

15 6. No later than sixty (60) days after the date of this Order, the Claims
16 Administrator shall mail the Class Notice to Class Members.

17 7. Any person may request to be excluded from the Class by mailing a
18 letter, by first class mail, return receipt requested, to the Claims Administrator as
19 provided in the Class Notice. Any such request will be timely only if postmarked
20 no later than sixty (60) days after the Class Notice is initially mailed to Class
21 Members

22 8. In order to make a claim from the Non-Reversionary Fund, Class
23 Members must submit a Claim Form to the Claims Administrator, such that it is
24 postmarked or submitted online no later than sixty (60) days after the Class Notice
25 is initially mailed to Class Members.

26 9. In order to obtain a service benefit, Class Members must submit a
27 Subscription Agreement Addendum to the Claims Administrator, such that it is
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1 postmarked or submitted online no later than sixty (60) days after the Class Notice
2 is initially mailed to Class Members.

3 10. Class Counsel shall file a motion for final approval of settlement no
4 later than one hundred thirty-four (134) days after the date of this Order. Any
5 request by Class Counsel for an award of attorneys' fees or reimbursement of
6 expenses, or for a service payment to the Class Representative, shall be filed
7 concurrently, and those requests shall be accompanied by supporting evidence.

8 11. Any Class Members may object to the approval of the Settlement or
9 the award of attorneys' fees and reimbursement of expenses to Class Counsel and
10 the service payment to be paid to the Class Representative. Any such objection will
11 be timely only if filed with the Court and served upon Class Counsel, Defense
12 Counsel, and the Claims Administrator, as provided in the Class Notice and the
13 Settlement Agreement, no later than one hundred forty-eight (148) days after the
14 date of this Order.

15 12. Any Class Member who has filed and served such written objections
16 may, but is not required to, appear himself or herself, or through counsel, at the
17 Final Fairness and Approval Hearing and object to the approval of the Settlement or
18 the award of attorneys' fees and reimbursement of expenses to Class Counsel or the
19 award of a service payment to the Class Representative. No Class Member, or any
20 other person, shall be heard or entitled to contest the approval of the proposed
21 Settlement, the judgment to be entered approving the same, the award of attorneys'
22 fees and reimbursement of expenses to Class Counsel, or the service payment to the
23 Class Representative, unless that Class Member has filed and served written
24 objections in the manner set forth in the Class Notice. The Parties may file any
25 response to the objections submitted by objecting Class Members, if any, no later
26 than ten (10) days after deadline to submit objections.


27 13. Any settlement Class Member who does not make his or her
28 objection(s) in the manner so provided herein and in the Class Notice shall be

1 deemed to have waived such objection(s) and shall forever be foreclosed from
2 making any objection(s) to the fairness or adequacy of the proposed Settlement as
3 incorporated in the Settlement Agreement, the award of attorneys' fees and
4 reimbursement of expenses to counsel, and the service payment to the Class
5 Representative, and the right to appeal any orders that are entered relating thereto,
6 unless otherwise ordered by the Court. Any Class Member who submits an
7 objection which the Court subsequently overrules shall have ten (10) days from the
8 date of entry of the Order overruling the objection to submit a request for exclusion
9 from the settlement.

10 14. The Court reserves the right to adjourn the date of the Final Fairness
11 and Approval Hearing and any adjournment thereof without further notice to the
12 members of the Class, and retains jurisdiction to consider all further applications
13 arising out of or connected with the settlement. The Court may approve the
14 settlement, with such modifications as may be agreed to by the parties to the
15 settlement, if appropriate, without further notice to the Class.

16
17 **IT IS SO ORDERED.**

18
19 Dated: March 12, 2012

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21 _____
22 GEORGE H. WU, U.S. District Judge