

1 THE BICKEL LAW FIRM, INC.
2 Brian J. Bickel, State Bar No. 205646
3 Brian K. Cline, State Bar No. 246747
4 750 B Street, Suite 1950
5 San Diego, California 92101
6 Telephone: (619) 374-4100
7 Facsimile: (619) 231-9040

8 Attorneys for Plaintiff JACKSON CHANG

E-filing

FILED
2011 OCT 31 P 1:08
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

1099
18

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO BRANCH JCS

11 JACKSON CHANG,

CV 11 5287
Case No.

12 Plaintiff,

COMPLAINT FOR VIOLATION OF
THE SONG-BEVERLY CONSUMER
WARRANTY ACT

13 vs.

14 BMW OF NORTH AMERICA, LLC,
15 and DOE 1 through DOE 10 inclusive,

PLAINTIFF DEMANDS TRIAL BY
JURY

16 Defendants,

17 BY FAX

18
19
20 Plaintiff alleges:

21 I.

22 JURISDICTION

23 1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1332.
24 Plaintiff JACKSON CHANG (hereinafter "Plaintiff") is, and at all times mentioned
25 herein was, a competent adult. Plaintiff at all times mentioned herein was a citizen
26 of California.

27 ///

28 ///

1 8. BMW OF NORTH AMERICA, LLC issued an “express warranty” to
2 Plaintiff in which, *inter alia*, BMW OF NORTH AMERICA, LLC undertook to
3 preserve or maintain the utility or performance of the subject vehicle. Said warranty
4 was an integral factor in Plaintiff’s decision to lease the subject vehicle.

5 9. The subject vehicle has suffered from nonconformity(s) to warranty,
6 including, but not limited to, defect(s) which have manifested in global electrical
7 concerns affecting the vehicle components, recurring electrical failure, malfunction
8 of the doors, passenger and driver doors intermittently open while the vehicle is being
9 driven on surface streets and at freeway speeds, multiple other door malfunctions,
10 recurring malfunction of the ignition/key system, recurrent failure of the doors to
11 latch. Said nonconformity(s) have substantially impaired the vehicle’s use, value, or
12 safety to Plaintiff.

13 10. Plaintiff has delivered the vehicle to BMW OF NORTH AMERICA,
14 LLC or its authorized repair facility(s) for repair of said nonconformity(s). BMW OF
15 NORTH AMERICA, LLC or its authorized repair facility(s) have failed to service or
16 repair the subject vehicle to warranty after a reasonable number of attempts.

17 11. The subject vehicle was not fit for the ordinary purposes for which such
18 goods are used and was not of the same quality as those generally acceptable in the
19 trade. BMW OF NORTH AMERICA, LLC breached the implied warranty of
20 merchantability and implied warranty of fitness. Plaintiff is entitled to revoke
21 acceptance of the subject vehicle under the Act.

22 12. BMW OF NORTH AMERICA, LLC has not replaced the vehicle or
23 otherwise made restitution to Plaintiff pursuant to its obligations under the Act.

24 13. Plaintiff is informed and believes and thereupon alleges that BMW OF
25 NORTH AMERICA, LLC’s refusal to replace the vehicle or make restitution to
26 Plaintiff was wilful and not the result of a good faith and reasonable belief that the
27 facts imposing said statutory obligation were absent.

28 ///

1 14. Pursuant to the Act, Plaintiff is entitled to replacement of the vehicle
2 with a new motor vehicle substantially identical to the vehicle replaced and any sales
3 or use tax, license fees, registration fees, and other official fees which the buyer is
4 obligated to pay in connection with replacement, or restitution in an amount equal to
5 the actual price paid or payable by Plaintiff and collateral charges such as sales tax,
6 license fees, registration fees, and other official fees less an amount directly
7 attributable to use by Plaintiff prior to the time Plaintiff first delivered the vehicle for
8 repair.

9 15. Plaintiff is entitled to recover incidental, consequential, and general
10 damages, including, but not limited to, reasonable repair, towing, and rental car costs
11 actually incurred by Plaintiff.

12 16. Plaintiff is entitled to recover a civil penalty up to two times the amount
13 of actual damages for BMW OF NORTH AMERICA, LLC's wilful refusal to comply
14 with its statutory obligations under the Act.

15 17. Plaintiff is entitled to recover a sum equal to the aggregate amount of
16 costs and expenses including attorney's fees based on actual time expended and
17 reasonably incurred in connection with the commencement and prosecution of this
18 action.

19 WHEREFORE, Plaintiff prays judgment against BMW OF NORTH
20 AMERICA, LLC as follows:

21 1. For actual damages, including collateral charges, and incidental,
22 consequential, and general damages. To date, such damages include, but are not
23 limited to finance payments made to date (\$25,619.76), payoff of vehicle loan
24 (\$31,193.04), repair deductible expenses (\$300.00), and, in amounts according to
25 proof, vehicle registration, interest paid and/or accrued, expenses inadvertently
26 omitted herein, and other future expenses reasonably incurred by Plaintiff in
27 connection with this action; and

28 ///

1 2. For a civil penalty up to two times the amount of actual damages
2 (\$114,225.60); and

3 3. For rescission of the contract and restitution of consideration; and

4 4. For interest on said sum from date of rescission to date of judgment
5 herein; and

6 5. For attorney's fees based on actual time expended and reasonably
7 incurred in connection with the commencement and prosecution of this action; and

8 6. For costs of suit incurred in connection with the commencement and
9 prosecution of this action; and

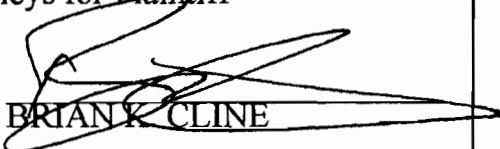
10 7. For such other and further relief as the court deems proper.

11 WHEREFORE, Plaintiff demands trial by jury.

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: October 26, 2011

THE BICKEL LAW FIRM, INC.
Attorneys for Plaintiff

By: 
BRIAN K. CLINE