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6 PEDRO MARTINEZ and  
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7

**FILED**  
MADERA SUPERIOR COURT

MAY 06 2014

Bonnie Thomas CLERK

DEPUTY

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF MADERA

10 PEDRO MARTINEZ and JACINTA  
MARTINEZ,

11 Plaintiffs,

12 vs.

13 BMW OF NORTH AMERICA, LLC;  
14 MADERA UNIFIED SCHOOL DISTRICT;  
and DOES 1 to 100, inclusive,

15 Defendants.  
16

Case No.

**MCV 067584**

**COMPLAINT FOR DAMAGES:**

1. **STRICT PRODUCTS LIABILITY**
2. **NEGLIGENCE-PRODUCTS LIABILITY**
3. **BREACH OF WARRANTIES**
4. **NEGLIGENCE**

**DEMAND FOR JURY TRIAL**

17 COME NOW Plaintiffs, PEDRO MARTINEZ, an individual, and JACINTA MARTINEZ, an  
18 individual, for causes of action against Defendants, BMW OF NORTH AMERICA, LLC, a corporation,  
19 MADERA UNIFIED SCHOOL DISTRICT, a public entity, and DOES 1 through 100, inclusive, who  
20 complain and allege as follows:

21 **GENERAL ALLEGATIONS**

22 On September 11, 2013, Plaintiffs, PEDRO MARTINEZ and JACINTA MARTINEZ' daughter,  
23 Graciela Martinez, became trapped in the family's 1997 BMW 328i and died of heat stroke and  
24 environmental hyperthermia due to vehicle entrapment as a result of a defect in the vehicle. This lawsuit  
25 is being filed on behalf of Plaintiffs, PEDRO MARTINEZ and JACINTA MARTINEZ, who are Graciela  
26 Martinez' parents, against the entities and individuals responsible for causing them harm.

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ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

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2 1. Plaintiff, PEDRO MARTINEZ, at all times herein relevant, is a resident of Madera,  
3 California.

4 2. Plaintiff, JACINTA MARTINEZ, at all times herein relevant, is a resident of Madera,  
5 California.

6 3. Plaintiffs, PEDRO MARTINEZ and JACINTA MARTINEZ (“PLAINTIFFS”), are the  
7 natural parents of Graciela Martinez.

8 4. Defendant, BMW OF NORTH AMERICA, LLC, (“BMW”) at all times herein relevant,  
9 is a Delaware corporation with its principal place of business in Woodcliff Lake, New Jersey. BMW is  
10 authorized to do, has regularly done, and is doing, business in the State of California, and has  
11 systematically conducted business on a regular basis in the State of California, under and by virtue of the  
12 laws of the State of California.

13 5. Defendant, MADERA UNIFIED SCHOOL DISTRICT (“DISTRICT”), at all times herein  
14 relevant, is a public entity licensed to operate in Madera, California.

15 6. PLAINTIFFS herein allege that the Madera High School-South Campus (“SCHOOL”)   
16 located at 705 W. Pecan Avenue in Madera, California, at all times herein relevant, is a school in the  
17 DISTRICT.

18 7. Graciela Martinez, at all times relevant herein, was a student at the SCHOOL, located  
19 within the DISTRICT. Graciela Martinez was born on May 24, 1999, and was 14 years old at the time  
20 of the subject incident.

21 8. On the morning of September 11, 2013, Oscar Martinez drove himself and his sisters,  
22 Patricia Martinez and Graciela Martinez, to the SCHOOL in the 1997 BMW 328i four door sedan,  
23 California license plate number 6SEW737 and VIN number WBACD4327VAV50137 (“BMW 328i”),  
24 and parked in the parking lot.

25 9. After arriving, Oscar Martinez walked onto the campus to attend a zero period class that  
26 began at 6:40 a.m.; Patricia Martinez walked onto campus to socialize with friends; and Graciela  
27 Martinez waited in the BMW 328i to sleep for another hour before her class began at 7:40 a.m.

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1           10.     After Oscar Martínez locked the subject BMW 328i as he left for class, Graciela Martinez  
2 became trapped inside the BMW 328i and was unable to get out.

3           11.     Later that afternoon, around 3:00 p.m., when Graciela Martinez' brother, Oscar Martinez,  
4 returned to the BMW 328i and unlocked the doors, he found Graciela Martinez in the back seat. She was  
5 pale in color and did not have a pulse.

6           12.     Graciela Martinez was pronounced dead a short time later. An autopsy revealed that she  
7 had died of heat stroke and environmental hyperthermia due to vehicle entrapment.

8           13.     The true names and capacities, whether individual, plural, corporate, partnership, associate,  
9 or otherwise, of DOES 1 through 100, inclusive, are unknown to PLAINTIFFS who therefore sue said  
10 defendants by such fictitious names. The full extent of the facts linking such fictitiously sued defendants  
11 is unknown to PLAINTIFFS. PLAINTIFFS are informed and believe, and thereupon allege, that each  
12 of the defendants designated herein as a DOE was, and is, negligent, or in some other actionable manner,  
13 responsible for the events and happenings hereinafter referred to, and thereby negligently, or in some  
14 other actionable manner, legally and proximately caused the hereinafter described injuries and damages  
15 to PLAINTIFFS. PLAINTIFFS will hereafter seek leave of the Court to amend this Complaint to show  
16 the defendants' true names and capacities after the same have been ascertained.

17           14.     PLAINTIFFS are informed and believe, and thereon allege, that at all times mentioned  
18 herein, Defendants, BMW and DOES 1 through 50, inclusive, were agents, servants, employees,  
19 successors in interest, partners, and/or joint venturers of their co-defendants, and were, as such, acting  
20 within the course, scope, and authority of said agency, employment, and/or venture, and that each and  
21 every defendant, as aforesaid, when acting as principal, was negligent in the selection and hiring of each  
22 and every other defendant as an agent, servant, employee, successor in interest, and/or joint venturer.

23           15.     PLAINTIFFS are informed and believe, and thereon allege, that at all times mentioned  
24 herein, Defendants, DISTRICT and DOES 51 through 100, inclusive, were agents, servants, employees,  
25 successors in interest, partners, and/or joint venturers of their co-defendants, and were, as such, acting  
26 within the course, scope, and authority of said agency, employment, and/or venture, and that each and  
27 every defendant, as aforesaid, when acting as principal, was negligent in the selection and hiring of each  
28 and every other defendant as an agent, servant, employee, successor in interest, and/or joint venturer.

1 16. PLAINTIFFS are also informed and believe, and thereon allege, that Defendants, BMW,  
2 and DOES 1 through 50, inclusive, designed, manufactured, tested, assembled, distributed, sold and/or  
3 placed into the stream of commerce, the subject BMW 328i.

4 17. PLAINTIFFS allege that they complied with the notice of claim requirements of the Tort  
5 Claims Act. On or about January 14, 2014, PLAINTIFFS submitted a claim for conforming with the  
6 requirements of Government Code section 910.4 to the Risk Management for the DISTRICT, which was  
7 rejected on February 11, 2014.

8 VENUE

9 18. Madera County is the proper venue because one of the Defendants, the DISTRICT, resides  
10 in Madera County for the purposes of venue and the injury complained of occurred in Madera County.

11 FIRST CAUSE OF ACTION  
12 (Strict Products Liability Against  
Defendants, BMW and DOES 1-50, Inclusive)

13 19. PLAINTIFFS re-allege and incorporate herein by reference each and every allegation and  
14 statement contained in the prior paragraphs.

15 20. PLAINTIFFS are informed and believe, and thereon allege, that at all times herein  
16 mentioned, Defendants, BMW and DOES 1-50, inclusive, were the designers, manufacturers, engineers,  
17 fabricators, assemblers, testers, distributors, sellers, inspectors, marketers, warrantors, lessors, renters,  
18 suppliers, modifiers, providers and/or advertisers of the BMW 328i.

19 21. PLAINTIFFS are informed and believe, and thereon allege, that the BMW 328i had design  
20 and/or manufacturing defects, which were capable of causing, and in fact, did cause serious, life  
21 threatening and fatal injuries to the users and consumers thereof, including Graciela Martinez, while being  
22 used in a manner reasonably foreseeable, thereby rendering the BMW 328i unsafe and dangerous for use  
23 by consumers. Defendants, BMW and DOES 1-50, inclusive, also failed to provide adequate warnings  
24 or instructions to consumers and users of the BMW 328i concerning the substantial danger associated  
25 with the BMW 328i and/or its component parts, or to instruct consumers and users regarding the  
26 operation of the BMW 328i, and inadequately warned or failed to warn, and inadequately instructed or  
27 failed to instruct, anticipated users of the BMW 328i, concerning operation of the BMW 328i's  
28 "double-locking" mechanism.

1           22.     PLAINTIFFS are informed and believe, and thereon allege, that Defendants also ignored  
2 and suppressed data regarding the deaths and serious injuries due to the “double-locking” mechanism  
3 contained in the BMW 328i. At the time the BMW 328i was manufactured, Defendants were aware of  
4 the danger associated with the “double-locking” mechanism. Further, Defendants, BMW and  
5 DOES 1-50, inclusive, received numerous complaints about the “double-locking” mechanism on 1997  
6 BMW 3-series vehicles, including the subject BMW 328i.

7           23.     At the time the subject BMW 328i was sold, Defendants, BMW and DOES 1-50,  
8 inclusive, knew, or should have known, that the “double-locking” mechanism contained a significant risk  
9 of trapping people inside BMW 3-series model vehicles, including the subject BMW 328i.

10          24.     Notwithstanding the danger that an individual could be trapped inside BMW 3-series  
11 model vehicles, Defendants, BMW and DOES 1-50, inclusive, failed to place a safety release lever inside  
12 the passenger compartment that would allow an occupant to get out of the car if they were inadvertently  
13 locked inside. Further, Defendants, BMW and DOES 1-50, inclusive, were aware that the horn would  
14 not operate unless the key was in the ignition, effectively preventing occupants from alerting bystanders  
15 that they had been trapped inside the vehicle.

16          25.     Despite the numerous complaints and availability of alternative locking mechanisms,  
17 Defendants, BMW and DOES 1-50, inclusive, chose to ignore the inherent safety problem of occupants  
18 being locking inside the vehicle without escape, and took no action to prevent injuries and deaths caused  
19 by suffocation and/or heat stroke.

20          26.     PLAINTIFFS are informed and believe, and thereon allege, that the subject BMW 328i  
21 was defective when placed on the market by Defendants, BMW and DOES 1-50, inclusive, and was of  
22 such a nature that these defects would not be discovered in the normal course of inspection and operation  
23 by users thereof. At all times relevant herein, the BMW 328i was in substantially the same condition as  
24 it was when it was originally placed into the stream of commerce by Defendants, BMW and DOES 1-50,  
25 inclusive.

26          27.     The defects described herein, and failure to adequately warn or instruct consumers of the  
27 risk associated with the “double locking” mechanism, legally and proximately caused the injuries and  
28 damages suffered by PLAINTIFFS complained of herein.

1           28.     As a direct and proximate result of the aforementioned conduct of Defendants, BMW and  
2 DOES 1-50, inclusive, PLAINTIFFS lost the love, care, comfort, society, support and companionship of  
3 their daughter, Graciela Martinez.

4           29.     As a direct and proximate result of the aforementioned conduct of Defendants, BMW and  
5 DOES 1-50, inclusive, the services of hospitals, physicians, surgeons, nurses, and the like, were employed  
6 to care for and treat Plaintiffs' daughter, Graciela Martinez, and hospital, medical, professional, and  
7 incidental expenses were incurred by PLAINTIFFS, the exact amount of which expenses will be stated  
8 according to proof, pursuant to Code of Civil Procedure Section 425.10.

9           30.     As a direct and proximate result of the aforementioned conduct of Defendants, BMW and  
10 DOES 1-50, inclusive, PLAINTIFFS have incurred economic losses in an amount to be stated according  
11 to proof, pursuant to Code of Civil Procedure Section 425.10.

12           31.     Prior to September 11, 2013, the officers, directors, employees and/or managing agents  
13 of Defendants, BMW and DOES 1-50, inclusive, were aware of the high danger and the severity of the  
14 risk of injury or death to consumers and users of 1997 BMW 3-series model vehicles, including the  
15 subject BMW 328i. Prior to that time, the officers, directors, employees and/or managing agents of  
16 Defendants, BMW and DOES 1-50, inclusive, were put on notice of the high risk to consumers and users  
17 of their vehicles, as a result of the numerous claims and lawsuits by occupants of vehicles manufactured  
18 by BMW, who were severely injured or killed as a result of the faulty "double-locking" system. These  
19 claims and lawsuits against Defendants, BMW and DOES 1-50, inclusive, involved individuals who were  
20 locked or trapped inside vehicles due to the faulty "double-locking" system.

21           32.     Prior to September 11, 2013, the officers, directors, employees and/or managing agents  
22 of Defendants, BMW and DOES 1-50, inclusive, were aware that the 1997 BMW 3-series model  
23 vehicles, including the subject BMW 328i, were not properly designed and manufactured, and that these  
24 vehicles' trunk and passenger compartments could be locked in such a way that it would be impossible  
25 to unlock the vehicle from the inside. The aforementioned components and/or component parts were  
26 designed and manufactured without an emergency release lever accessible from the passenger  
27 compartment in the event a person was inadvertently locked inside the vehicle. Defendants, BMW and  
28 DOES 1-50, inclusive, were also aware that the horn for the 1997 BMW 3-series model vehicles,

1 including the subject BMW 328i, was inoperable without the key in the ignition, effectively preventing  
2 a trapped occupant from alerting bystanders that they had been trapped inside the vehicle. Furthermore,  
3 Defendants, BMW and DOES 1-50, inclusive, were aware of the existence of alternative locking  
4 mechanisms that had the potential to yield significant safety benefits by reducing the risk of an occupant  
5 being trapped in one of these vehicles and chose not to include those alternative locking mechanisms.

6 33. The 1997 BMW 3-series model vehicles lacked such reasonable alternative locking  
7 mechanisms, an emergency release lever, and/or an operable horn to alert bystanders, despite the fact that  
8 Defendants, BMW and DOES 1-50, inclusive, were aware of the importance of preventing an occupant  
9 from being locked inside a vehicle; and despite the fact that it would have been practical and relatively  
10 inexpensive for Defendants, BMW and DOES 1-50, inclusive, to incorporate alternative designs into the  
11 1997 BMW 3-series model vehicles, including the subject BMW 328i, that would have provided a  
12 reasonable means for an occupant to get out of the vehicle if trapped inside.

13 34. Despite this knowledge, Defendants, BMW and DOES 1-50, inclusive, by and through  
14 their officers, directors, employees and/or managing agents, failed to recall and/or retrofit the BMW 328i;  
15 issue safety bulletins to the public; or even advise or warn purchasers or potential users, by providing  
16 warnings of the severe risk of injury or death from use of 1997 BMW 3-series model vehicles, including  
17 the subject BMW 328i. Although the officers, directors, employees and/or managing agents of  
18 Defendants, BMW and DOES 1-50, inclusive, were aware of the need to recall and/or retrofit these  
19 vehicles, including the BMW 328i; issue public safety bulletins; and/or provide adequate warnings,  
20 Defendants, through the decisions of their officers, directors, employees and/or managing agents, failed  
21 to utilize available safer alternative designs, adequately warn of the hazards, and/or retrofit or recall these  
22 model vehicles, including the BMW 328i, prior to the subject incident.

23 35. At all times mentioned herein, the officers, directors, and/or managing agents of  
24 Defendants, BMW and DOES 1-50, inclusive, authorized and/or ratified the conduct of their employees,  
25 who knew, or should have known, of the growing number of serious injuries and deaths to consumers,  
26 users, and bystanders resulting from the "double-locking" mechanism of the BMW 3-series model  
27 vehicles manufactured, designed and distributed by Defendants, and the need for an alternative design,  
28 safety devices or additional warnings. Further, at all times mentioned herein, the officers, directors,

1 and/or managing agents of Defendants, BMW and DOES 1-50, inclusive, authorized and/or ratified the  
2 conduct of their employees, who knowingly failed to provide, retrofit, and/or recall the BMW 3-series  
3 model vehicles, including the subject BMW 328i, in spite of their knowledge of the grave danger, and  
4 the availability of technically and economically feasible safety devices and features to prevent death  
5 and/or serious bodily injury to consumers and users of the subject BMW 328i.

6 **SECOND CAUSE OF ACTION**  
7 (Negligence Sounding In Products Liability  
8 Against Defendants, BMW and DOES 1-50, Inclusive)

9 36. PLAINTIFFS re-allege and incorporate herein by reference each and every allegation and  
10 statement contained in the prior paragraphs.

11 37. PLAINTIFFS are informed and believe, and thereon allege, that at all times herein  
12 mentioned, Defendants, BMW and DOES 1-50, inclusive, were engaged in business of designing, testing,  
13 developing, manufacturing, fabricating, assembling, distributing, warning, instructing, buying, selling,  
14 inspecting, servicing, repairing, marketing, warranting, leasing, renting, supplying, modifying, and/or  
15 providing BMW 3-series model vehicles, including the subject BMW 328i.

16 38. PLAINTIFFS are informed and believe, and thereon allege, that at all times herein  
17 mentioned, Defendants, BMW and DOES 1-50, inclusive, had a duty to design, test, develop,  
18 manufacture, fabricate, assemble, distribute, warn, instruct, buy, sell, inspect, service, repair, market,  
19 warrant, lease, rent, supply, modify, and/or provide the BMW 328i, in a reasonable manner, and further,  
20 to provide warnings and/or instructions pertaining to the BMW 328i in a reasonable manner.

21 39. PLAINTIFFS are informed and believe, and thereon allege, that at all times herein  
22 mentioned, Defendants, BMW and DOES 1-50, inclusive, knew, or in the exercise of reasonable care  
23 should have known, that the BMW 328i was not designed, tested, developed, manufactured, fabricated,  
24 assembled, distributed, bought, sold, inspected, serviced, repair, maintained, marketed, warranted,  
25 supplied, modified, and/or provided in a reasonable manner, and that the warnings and instructions  
26 provided with the BMW 328i, if any, were inadequate and not reasonable.

27 40. PLAINTIFFS are informed and believe, and thereon allege, that at all times herein  
28 mentioned, Defendants, BMW and DOES 1-50, inclusive, negligently, carelessly, and/or recklessly  
designed, tested, developed, manufactured, fabricated, assembled, distributed, bought, sold, inspected,



1 serviced, repair, maintained, marketed, warranted, supplied, modified, and/or provided the BMW 328i,  
2 and each and every component part thereof, in that the same was capable of causing, and, in fact, did  
3 cause personal injuries to the consumer and/or user thereof while being used in a manner reasonably  
4 foreseeable, thereby rendering the same unsafe and dangerous for use by the consumer, user, and/or  
5 bystander.

6 41. PLAINTIFFS are further informed and believe, and thereon allege, that Defendants, BMW  
7 and DOES 1-50, inclusive, also ignored and suppressed data regarding the deaths and serious injuries due  
8 to the "double-locking" mechanism contained in BMW 3-series model vehicles, including the subject  
9 BMW 328i.

10 42. Despite the availability of alternative locking mechanisms, Defendants, BMW and DOES  
11 1-50, inclusive, chose to ignore the inherent safety problem of occupants being locked inside the vehicle,  
12 and took no action to prevent such debilitating injuries and death from heat stroke and suffocation,  
13 because of concern about cost penalties.

14 43. Defendants, BMW and DOES 1-50, inclusive, failed to provide an alternative locking  
15 mechanism or allow the horn to be activated without the key in the ignition, which would have provided  
16 safety for occupants, in the event they were locked inside the vehicle. Defendants, BMW and  
17 DOES 1-50, inclusive, knew, or should have known, of the availability of alternative locking mechanisms  
18 in similar model vehicles produced by other manufacturers which were in production at the time the  
19 subject BMW 328i was produced by Defendants, BMW and DOES 1-50.

20 44. Defendants, BMW and DOES 1-50, inclusive, also failed to recall the BMW 328i, or warn  
21 consumers of the risk of serious injury or death from continued use of the BMW 328i, after having notice  
22 of an alarming number of injuries and deaths from the BMW 328i's and other similar vehicles'  
23 unreasonable and dangerous propensity to entrap occupants under foreseeable circumstances.

24 45. PLAINTIFFS are informed and believe, and thereon allege, that on or about September 11,  
25 2013, Graciela Martinez was using the subject BMW 328i in a reasonably foreseeable manner.

26 46. As a direct and proximate result of the aforementioned conduct of Defendants, BMW and  
27 DOES 1-50, inclusive, PLAINTIFFS suffered the loss of their daughter's, Graciela Martinez, love, care,  
28 comfort, society, support and companionship.

1           47.     As a direct and proximate result of the aforementioned conduct of Defendants, BMW and  
2 DOES 1-50, inclusive, the services of hospitals, physicians, surgeons, nurses, and the like, were employed  
3 to care for and treat Graciela Martinez, and hospital, medical, professional, and incidental expenses were  
4 incurred, the exact amount of which expenses will be stated according to proof, pursuant to Code of Civil  
5 Procedure Section 425.10.

6           48.     As a direct and proximate result of the aforementioned conduct of Defendants, BMW and  
7 DOES 1-50, inclusive, PLAINTIFFS have incurred economic losses in an amount to be stated according  
8 to proof, pursuant to Code of Civil Procedure Section 425.10.

9           49.     Prior to September 11, 2013, the officers, directors, employees and/or managing agents  
10 of Defendants, BMW and DOES 1-50, inclusive, were aware that the 1997 3-series model vehicles,  
11 including the subject BMW 328i, were not properly designed and manufactured, and that these vehicles'  
12 "double- locking" mechanism placed consumers in an unreasonably dangerous position where they could  
13 become locked inside the vehicle and it would be impossible for them to get out. The aforementioned  
14 components and/or component parts were designed and manufactured without an emergency release lever  
15 in the passenger compartment that would allow passengers to get out of the vehicle if they were locked  
16 inside. Defendants, BMW and DOES 1-50, inclusive, were also aware that the horn on BMW 3-series  
17 model vehicles, including the subject BMW 328i, would not work without the key in the ignition,  
18 effectively prevent a passenger from alerting anyone that he or she had been locked inside.

19           50.     The 1997 BMW 3-series model vehicles lacked such a reasonable locking mechanism and  
20 an inoperable horn, despite the fact that Defendants, BMW and DOES 1-50, inclusive, were aware of the  
21 importance of preventing an occupant from being locked inside a vehicle in the event of a collision, or  
22 on a hot day, despite the fact that it would have been practical and relatively inexpensive for Defendants,  
23 BMW and DOES 1-50, inclusive, to incorporate alternative designs into the 1997 BMW 3-series model  
24 vehicles, including the subject BMW 328i, that would have prevented an occupant from being locked  
25 inside a vehicle or would allow an occupant to get out of a locked vehicle.

26           51.     Despite this knowledge, Defendants, BMW and DOES 1-50, inclusive, by and through  
27 their officers, directors, employees and/or managing agents, failed to recall and/or retrofit the BMW 328i,  
28 issue safety bulletins to the public, or even advise or warn purchasers or potential users, by providing

1 warnings of the severe risk of injury or death from use of 1997 BMW 3-series model vehicles, including  
2 the subject BMW 328i. Although the officers, directors, employees and/or managing agents of  
3 Defendants, BMW and DOES 1-50, inclusive, were aware of the need to recall and/or retrofit these  
4 vehicles, including the BMW 328i, issue public safety bulletins, and/or provide adequate warnings,  
5 Defendants, through the decisions of their officers, directors, employees and/or managing agents, failed  
6 to utilize available safer alternative designs, adequately warn of the hazards, and/or retrofit or recall these  
7 model vehicles, including the BMW 328i, prior to the subject incident. Indeed, PLAINTIFFS believe and  
8 thereon allege that the officers, directors, employees and/or managing agents of Defendants, BMW and  
9 DOES 1-50, inclusive, summarily disregarded any information regarding the risk of an occupant being  
10 locked/trapped inside these vehicles, including the subject BMW 328i; disregarded any information  
11 regarding the prevention of occupants being locked inside the vehicle by the use of an alternative locking  
12 mechanism; and disregarded any information regarding the operation of the vehicle's horn to alert  
13 bystanders in the event an occupant were locked inside, which was unfavorable to their companies and  
14 might lead consumers and users to refrain from purchasing, renting, or using BMW 3-series model  
15 vehicles.

16 52. At all times mentioned herein, the officers, directors, and/or managing agents of  
17 Defendants, BMW and DOES 1-50, inclusive, authorized and/or ratified the conduct of their employees,  
18 who knew, or should have known, of the growing number of serious injuries and deaths to consumers,  
19 users, and occupants resulting from the faulty "double-locking" mechanism contained in the BMW  
20 3-series model vehicles manufactured, designed and distributed by Defendants, and the need for an  
21 alternative design, safety devices or additional warnings. Further, at all times mentioned herein, the  
22 officers, directors, and/or managing agents of Defendants, BMW and DOES 1-50, inclusive, authorized  
23 and/or ratified the conduct of their employees, who knowingly failed to provide, retrofit and/or recall the  
24 BMW 3-series model vehicles, including the subject BMW 328i, in spite of their knowledge of the grave  
25 danger, and the availability of technically and economically feasible safety devices and features to prevent  
26 death and/or serious bodily injury to consumers and users of the subject BMW 328i.

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**THIRD CAUSE OF ACTION**  
(Breach of Warranties Against  
Defendants, BMW and DOES 1-50, Inclusive)

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3       53.     PLAINTIFFS re-allege and incorporate herein by reference each and every allegation and  
4 statement contained in the prior paragraphs.

5       54.     PLAINTIFFS are informed and believe, and thereon allege, that at all times herein  
6 mentioned, Defendants, BMW and DOES 1-50, inclusive, expressly and/or impliedly warranted to  
7 PLAINTIFFS and to that class of people who would normally be expected to use and/or operate the  
8 BMW 328i, and each and every component part thereof, that the product was fit for the purpose for which  
9 it was to be used and was free from design and manufacturing defects to consumers and users thereof.

10       55.     As stated in detail above and re-alleged herein, the BMW 328i, and each and every  
11 component part thereof, was not free from such defects, nor fit for the purpose for which it was to be  
12 used, and was, in fact, defectively manufactured and designed and imminently dangerous to consumers,  
13 users and bystanders, including the PLAINTIFFS and their daughter, Graciela Martinez, and was capable  
14 of causing, and, in fact, did cause severe and fatal injuries to the users and consumers thereof, while being  
15 used in a manner reasonably foreseeable, thereby rendering same unsafe and dangerous for use by the  
16 consumers, users and/or bystanders.

17       56.     PLAINTIFFS are informed and believe, and thereon allege, that at all times herein  
18 mentioned, Defendants, BMW and DOES 1-50, inclusive, breached the above-described express and/or  
19 implied warranties, in that the BMW 328i was not of merchantable quality and production, was not fit  
20 for the purpose for which it was to be used, and was not free from design and manufacturing defects to  
21 consumers and users thereof.

22       57.     As a direct and proximate result of the aforementioned conduct of Defendants, BMW and  
23 DOES 1-50, inclusive, PLAINTIFFS suffered the loss of love, care, comfort, society, support and  
24 companionship of their daughter, Graciela Martinez.

25       58.     As a direct and proximate result of the aforementioned conduct of Defendants, BMW and  
26 DOES 1-50, inclusive, the services of hospitals, physicians, surgeons, nurses, and the like, were employed  
27 to care for and treat Graciela Martinez, and hospital, medical, professional, and incidental

28     ///

1 expenses were incurred, the exact amount of which expenses will be stated according to proof, pursuant  
2 to Code of Civil Procedure Section 425.10.

3 59. As a direct and proximate result of the aforementioned conduct of Defendants, BMW and  
4 DOES 1-50, inclusive, PLAINTIFFS have incurred economic losses in an amount to be stated according  
5 to proof, pursuant to Code of Civil Procedure Section 425.10.

6 **FOURTH CAUSE OF ACTION**  
7 (Negligence Against Defendants,  
8 DISTRICT, and DOES 51-100, Inclusive)

9 60. PLAINTIFFS re-allege and incorporate herein by reference each and every allegation and  
10 statement contained in the prior paragraphs.

11 61. PLAINTIFFS are informed and believe, and thereon allege, that at all times mentioned  
12 herein, Defendants, DISTRICT and DOES 51-100, inclusive, owed a duty of care to all reasonably  
13 foreseeable people, including PLAINTIFFS' daughter, Graciela Martinez, to manage, maintain, control,  
14 inspect, entrust, supervise and operate the SCHOOL in a reasonable manner.

15 62. PLAINTIFFS are informed and believe, and thereon allege, that at all times mentioned  
16 herein, Defendants, DISTRICT and DOES 51-100, inclusive, carelessly, grossly, negligently and  
17 recklessly managed, maintained, controlled, entrusted, inspected, supervised and operated the SCHOOL  
18 so as to fail to discover PLAINTIFFS' daughter, Graciela Martinez, locked inside the subject BMW 328i  
19 parked in the SCHOOL parking lot, and to fail to notify PLAINTIFFS that their daughter was not in class  
20 pursuant to SCHOOL policy.

21 63. PLAINTIFFS are informed and believe, and thereon allege, that Defendants', DISTRICT  
22 and DOES 51-100, inclusive, said careless, grossly negligent, reckless and unlawful conduct in regard  
23 to the management, maintenance, inspection, control, entrustment, inspection and operation of the  
24 SCHOOL was the direct, legal and proximate cause of the injuries and damages to PLAINTIFFS as herein  
25 alleged.

26 64. As a direct and proximate result of the aforementioned conduct of Defendants, DISTRICT  
27 and DOES 51-100, inclusive, PLAINTIFFS suffered the loss of their daughter's, Graciela Martinez, love,  
28 care, comfort, society, support and companionship.

///

1           65.     As a direct and proximate result of the aforementioned conduct of Defendants, DISTRICT  
 2 and DOES 51-100, inclusive, the services of hospitals, physicians, surgeons, nurses, and the like, were  
 3 employed to care for and treat PLAINTIFFS' daughter, Graciela Martinez, and hospital, medical,  
 4 professional, and incidental expenses were incurred, the exact amount of which expenses will be stated  
 5 according to proof, pursuant to Code of Civil Procedure Section 425.10.

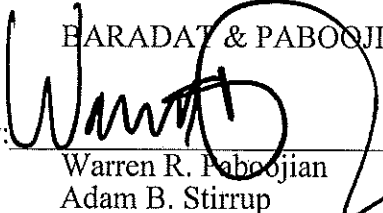
6           66.     As a direct and proximate result of the aforementioned conducted of Defendants,  
 7 DISTRICT and DOES 51-100, inclusive, PLAINTIFFS have incurred economic losses in an amount to  
 8 be stated according to proof, pursuant to Code of Civil Procedure Section 425.10.

9                                       PRAYER FOR RELIEF

10           WHEREFORE, PLAINTIFFS pray for judgment against Defendants, BMW and DISTRICT, and  
 11 DOES 1 to 100, inclusive, as follows:

- 12           1.     For non-economic damages including, but not limited to, past and future pain and suffering
- 13 and disfigurement, in an amount in excess of the jurisdictional minimum, according to proof;
- 14           2.     For economic damages related to loss of earnings and loss of financial support;
- 15           3.     For hospital, medical, professional and incidental expenses, according to proof;
- 16           4.     For prejudgment interest, according to proof;
- 17           5.     For damages for PLAINTIFFS' other economic losses, according to proof;
- 18           6.     For pre-trial interest, according to proof; and
- 19           7.     For such other and further relief as this Court may deem just and proper.

20 Dated: May 5, 2014

21                                       BARADAT & PABOOJIAN, INC.  
 22 By:   
 23 Warren R. Paboojian  
 24 Adam B. Stirrup  
 25 Kevin B. Kalajian  
 26 Attorneys for Plaintiffs  
 27 PEDRO MARTINEZ and  
 28 JACINTA MARTINEZ