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BRUCE EISEN, KYMMBERLI R. UREDA, LEE
8 SMITH, and FREDERICK NELSON-
BONEBRAKE, individually, and on behalf of a
9 class of similarly situated individuals

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
12

13	BRUCE EISEN, KYMMBERLI R.	}	NO. CV11-9405 CAS (FFMx)			
14	UREDA, LEE SMITH, and FREDERICK		}	Assigned for All Purposes to the Honorable Christina A. Snyder - Ctrm 5		
15	NELSON-BONEBRAKE, individually, and on behalf of a class of similarly situated individuals,					
16	Plaintiffs,				Date: April 15, 2013	
17	v.				Time: 10:00 a.m.	
18	PORSCHE CARS NORTH AMERICA,				}	[PROPOSED] AMENDED ORDER GRANTING PRELIMINARY APPROVAL OF CLASS SETTLEMENT
19	INC.,					
20	Defendant.					
21						

22 The parties to this litigation have entered into a Settlement Agreement dated
23 February 26, 2013 (“Agreement”), which if approved, would resolve this action on a
24 class basis. Plaintiffs have filed a Motion for Preliminary Approval of the settlement
25 set forth in the Agreement, which Defendant Porsche Cars North America (“PCNA”
26 or “Defendant”) supports. The Court has read and considered the Motion for
27 Preliminary Approval, the parties’ memoranda in support, the Agreement, various
28 declarations filed by the parties and all exhibits thereto, and finds there is a sufficient

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1 basis for granting preliminary approval of the Settlement, directing that notice be
2 disseminated to the Class, and setting a hearing at which the Court will consider
3 whether to grant final approval of the Settlement.

4 The Court now GRANTS the motion for preliminary approval and makes the
5 following findings and orders:

6 1. All defined terms used in this Order have the same meanings as set forth
7 in the Agreement.

8 2. The Court preliminarily certifies, for settlement purposes only, the
9 following Settlement Class (the “Class”) pursuant to Rule 23(b)(3) of the Federal
10 Rules of Civil Procedure:

11 Class: All persons throughout the United States who currently own or
12 lease or who previously owned or leased a Class Vehicle, which include:

13 (a) Model year 2001 - 2005 Porsche Boxster vehicles manufactured
14 with an Intermediate Shaft (“IMS”) between May 4, 2001 and February 21, 2005
15 with Vehicle Identification Numbers (“VINs”) in the following ranges:

- 16 • WP0CA29851S620508 - WP0CA29831S620619
- 17 • WP0CB29811S660405 - WP0CB29801S660492
- 18 • WP0CA29821U625959 - WP0CA29891U627644
- 19 • WP0CB29861U664289 - WP0CB29841U665473
- 20 • WP0CA29892S620061 - WP0CA29802S620238
- 21 • WP0CA29832U620061 - WP0CA29892U626107
- 22 • WP0CB29802U660062 - WP0CB29892U664319
- 23 • WP0CB29862S660062 - WP0CB29852S660344
- 24 • WP0ZZZ98Z2U602762
- 25 • WP0ZZZ98Z2U640813
- 26 • WP0CA298X3S620068 - WP0CA29853S620222
- 27 • WP0CA29813U620061 - WP0CA298X3U625002
- 28 • WP0CB29803U660063 - WP0CB29803U663240
- WP0CB29853S660068 - WP0CB298X3S660227
- WP0ZZZ98Z3U604185
- WP0ZZZ98Z3U640971
- WP0CA29854S620061 - WP0CA29824S621085
- WP0CA298X4U620061 - WP0CA29854U621568

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- WP0CB29804S660061 - WP0CB29834S660555
- WP0CB29854U660061 - WP0CB29834U661824
- WP0CA298X5U710067 - WP0CA29815U711852
- WP0CB29885U730069 - WP0CB29835U731310

(b) Model year 2001 - 2005 Porsche 911 vehicles manufactured with an IMS between May 4, 2001 and February 20, 2005, excluding the Turbo, GT2 and GT3 models, with VINs in the following ranges:

- WP0AA29991S622763-WP0AA29901S623641
- WP0CA299X1S654064-WP0CA29971S655284
- WP0ZZZ99Z1S644465
- WP0ZZZ99Z2S603927
- WP0AA299X2S620005-WP0AA29922S624193
- WP0BA29922S635067-WP0BA299X2S635740
- WP0CA29932S650004-WP0CA29952S655611
- WP0AA29903S620063-WP0AA29993S624175
- WP0BA29913S635062-WP0BA29983S635639
- WP0CA29943S650062-WP0CA29913S653887
- WP0ZZZ99Z3S641690-WP0ZZZ99Z3S644167
- WP0ZZZ99Z4S604191
- WP0AA29974S620062-WP0AA29934S623041
- WP0BA29984S635061-WP0BA29974S635231
- WP0CA29904S650061-WP0CA29924S653818
- WP0AA29935S620061-WP0AA29925S620245
- WP0BA29965S635061-WP0BA29995S635085
- WP0CA29995S650061-WP0CA29995S650254
- WP0AA29905S715077-WP0AA29905S717475
- WP0AB299X5S740081-WP0AB29955S742109
- WP0CA29935S755064-WP0CA29935S755209
- WP0CB29915S765072-WP0CB29925S765212
- WP0ZZZ99Z5S731099
- WP0ZZZ99Z5S701444

Excluded from the Class are:

- (c) officers or directors of Porsche;
- (d) the Judge to whom this case is assigned and any member of the Judge's immediate family;

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- 1 (e) any individuals with claims for personal injuries; and
2 (f) persons who have submitted a timely and valid request for
3 exclusion from the Settlement Class.

4 For purposes of simplicity in this Order, hereafter members of the Class will
5 collectively be referred to simply as the “Class”, “Class Member(s)” or the
6 “Settlement Class.”

7 3. The Court appoints plaintiffs Bruce Eisen, Kymmberli R. Ureda, Lee
8 Smith and Frederick Nelson-Bonebrake to serve as Class Representatives.

9 4. The Court appoints Stephen M. Harris of Knapp, Petersen & Clarke, to
10 serve as Class Counsel.

11 5. The Court finds that, for the purpose of settlement only, the
12 requirements of Rule 23 of the Federal Rules of Civil Procedure are met by the
13 Settlement Class. Joinder of all Class Members, consisting of the owners and lessees
14 of all Class Vehicles distributed by PCNA in the United States in a single proceeding
15 would be impractical, if not impossible, because of their numbers and dispersion.
16 Common issues exist among Class Members and predominate over questions
17 affecting only individual Class Members. Plaintiffs’ claims are typical of those of
18 the Class, as Plaintiffs formerly or presently own(ed) or lease(d) Class Vehicles
19 which experienced or may experience IMS related engine damage. Plaintiffs and
20 their counsel will fairly and adequately protect the interests of the Class; Plaintiffs
21 have no interests antagonistic to those of the Class, and have retained counsel
22 experienced and competent to prosecute this matter on behalf of the Class. Finally, a
23 class settlement is superior to other available methods for a fair and efficient
24 resolution of the controversy.

25 6. The certification of the Class for settlement purposes shall be without
26 force or effect if: (a) the Court does not give final approval to the Settlement or does
27 not enter judgment substantially as contemplated in the Agreement; or (b) the
28 Court’s approval of the Settlement and/or entry of a final approval order and

1 judgment are reversed or substantially modified on appeal. The Settlement Class
2 shall then be deemed decertified and Defendant shall retain all of its rights to oppose
3 certification of this action.

4 7. The Court preliminarily approves the parties' proposed Settlement,
5 finding that the terms of the Settlement are fair, reasonable, and adequate at this
6 point to warrant dissemination of notice to Class Members so that they can evaluate
7 the terms themselves, and to warrant the setting of a hearing to consider final
8 approval of the Settlement. The Court finds that the settlement contains no obvious
9 deficiencies and that the parties entered into the Agreement in good faith, following
10 arms-length negotiation between their respective counsel.

11 8. The Court hereby approves the form and procedures for disseminating
12 the settlement Notice to the Class Members as set forth in the Agreement. The Court
13 finds that the Notice to be given constitutes the best notice practicable under the
14 circumstances, and constitutes valid, due, and sufficient notice to Class Members in
15 full compliance with the requirements of applicable law, including the Due Process
16 Clause of the United States Constitution.

17 9. PCNA shall arrange for the printing and mailing (via U.S. Mail) of the
18 class Notice to all Settlement Class members who are identified as current or former
19 registered owners or lessees according to records held by PCNA or obtained from
20 R.L. Polk & Co. or Experian. The amendment of the parties' Agreement to permit
21 either R.L. Polk & Co. or Experian to obtain address data to facilitate giving notice
22 to the Class is hereby approved. In the event a R.L. Polk/Experian and PCNA
23 address for the same individual conflict, the R.L. Polk/Experian address will control.

24 10. R.L. Polk & Co./Experian is hereby authorized to use the information
25 provided by PCNA to obtain the names and most current addresses of Class Vehicle
26 owners through state agencies. Any state agency in possession of names or
27 addresses of class members is hereby authorized and directed to release that
28 information to R.L. Polk & Co./Experian upon request.

1 11. Such class Notice shall be mailed by the Settlement Administrator with
2 the Claim Form, in the form attached hereto as exhibits 1-2. The Settlement
3 Administrator will utilize national address databases and will otherwise make
4 reasonable efforts to determine updated address information in order promptly to re-
5 mail notices by first class mail to any Class Member whose notice is returned as
6 undeliverable, and will update contact data of Class Members as otherwise provided
7 in the Agreement. The Settlement Administrator will maintain a website that
8 contains information about the settlement and copies of related documents, including
9 the class notice and claim form, and contact data of Class Counsel. The Settlement
10 Administrator will also set up a toll-free phone number available to Class Members
11 who have questions about the claims process or need additional information, and this
12 information will include the contact data of Class Counsel. No later 60 days after
13 entry of the Preliminary Approval Order or receipt of the final mailing list
14 information regarding current and prior owners and lessees from R.L. Polk/Experian,
15 whichever is later, the Settlement Administrator shall (a) cause individual notice,
16 substantially in the form attached hereto as Exhibit 1, along with a claim form,
17 substantially in the form attached hereto as Exhibit 2, to be mailed to each such
18 identified Class Member.

19 12. As set forth in the Agreement, PCNA shall bear all costs and expenses
20 in connection with providing notice to the Class and administering the Settlement,
21 including, but not limited to, all fees, costs, and expenses of the Settlement
22 Administrator.

23 13. Garden City Group, Inc., 1531 Utah Avenue South, Suite 600, Seattle,
24 Washington, 98134, is hereby appointed Settlement Administrator to carry out the
25 duties set forth in this Order and the Settlement Agreement.

26 14. PCNA is authorized to respond to members of the Settlement Class
27 about the Action and the terms of the proposed Settlement provided for in the
28 Agreement, and to engage in any other communication within the normal course of

1 its business.

2 15. PCNA will comply with the requirements of 28 U.S.C. § 1715(b) and
3 serve, upon the appropriate State official of each State in which a Class Member
4 resides and the appropriate Federal official, a notice of the proposed Settlement
5 consisting of:

6 (a) the original complaint and all amended complaints in this Action;

7 (b) notice of the Fairness Hearing described below;

8 (c) the individual notice for mailing and summary notice for
9 publication;

10 (d) the Agreement;

11 (e) this Order;

12 (f) (1) if feasible, the names of Class Members who reside in each
13 State and the estimated proportionate share of the claims of such Class Members to
14 the entire settlement to that State's appropriate State official; or (2) if the provision
15 of information under subparagraph (1) is not feasible, a reasonable estimate of the
16 number of Class members residing in each state and the estimated proportionate
17 share of the claims of such Class Members to the entire Settlement; and

18 (g) Any written judicial opinion relating to the materials described
19 under subparagraphs (a) through (f).

20 PCNA shall also provide copies of the foregoing submissions to Class
21 Counsel.

22 16. A hearing on entry of Final Judgment and Order of Dismissal, the award
23 of fees and expenses to Class Counsel, and incentive payments to the Class
24 Representatives (the "Fairness Hearing") shall be held on December 2, 2013 at
25 10:00 a.m., in Courtroom 5 at the United States District Court, Central District of
26 California, 312 North Spring Street, Los Angeles, California 90012. At the Fairness
27 Hearing, the Court will consider: (a) whether the Action should be finally certified
28 for class action settlement purposes; (b) whether the Settlement should be approved

1 as fair, reasonable, and adequate for the class; (c) whether a judgment granting
2 approval of the Settlement and dismissing the lawsuit with prejudice should be
3 entered; and (d) whether Class Counsel’s application for attorneys’ fees and expenses
4 and incentive awards for the named Plaintiffs should be granted.

5 17. Any Class Member shall have the right to opt out of the Class and the
6 settlement by sending a written request for exclusion from the Class to the
7 address(es) listed in the Class Notice, postmarked no later than 90 days after mailing
8 of the Class notice. To be effective, the request for exclusion (or opt-out request)
9 must: (a) state the Class Member’s full name and current address, the model year
10 and make of the Class Vehicle, the date of purchase or lease of the Class Vehicle, the
11 Vehicle Identification Number (“VIN”) and whether the Class Member still owns or
12 leases the Class Vehicle; (b) clearly set forth his/hers/its desire to be excluded from
13 the Settlement and from the Settlement Class; and (c) be signed by the Class
14 Member. Any Settlement Class member who submits a timely and valid request for
15 exclusion will not be entitled to participate in the Settlement and cannot object to the
16 Settlement. Any Settlement Class member who does not submit a timely and valid
17 exclusion request shall be subject to and bound by the Settlement and every order or
18 judgment entered concerning the Settlement.

19 18. Any Settlement Class member who intends to object to final approval of
20 the Settlement or the Fee Application must, on or before 90 days after mailing of the
21 Class Notice, serve such objection to Class Counsel, PCNA’s counsel and the
22 Settlement Administrator at the addresses provided in the Class Notice. Any
23 objection to the Settlement must include the following information concerning the
24 objector: (i) full name, address and telephone number; (ii) model year and VIN of
25 his/her Class Vehicle(s), whether the Class Member is a current or previous owner or
26 lessee of a Class Vehicle, (iii) when the Class Member purchased or leased the Class
27 Vehicle; (iv) a statement of the objection(s) asserted, including the factual and legal
28 grounds for each such objection; (v) and copies of any documents the objector

1 wishes to submit in support of his or her position. If the objector intends to appear at
2 the Fairness Hearing through counsel, the objecting Class Member must serve upon
3 all counsel designated in the Class Notice, a Notice of Intention to Appear at the
4 Fairness Hearing (“Notice of Intention to Appear”). The Notice of Intention to
5 Appear shall be served no later than 90 days after the mailing of the Class Notice.
6 The Notice of Intention to Appear must: (i) furnish all exhibits, papers, or other
7 evidence the Class Member and/or his/her/their attorney intends to offer in support of
8 the objection.

9 19. Any Class Member who does not provide an Objection and/or Notice of
10 Intention to Appear in complete accordance with the deadlines and other
11 requirements set forth herein and in the Class Notice will be deemed to have waived
12 any objections to the Settlement and shall be barred from speaking or otherwise
13 presenting any views at the Fairness Hearing or from pursuing any appeals.

14 20. Counsel for the respective parties shall file memoranda, declarations, or
15 other statements and/or materials in support of the request for final approval of the
16 parties’ Settlement, no later than 14 days prior to the Final Approval hearing (i.e., by
17 November 18, 2013).

18 21. Class Counsel shall file an application for an award of attorneys’ fees
19 and costs not to exceed \$950,000 and for incentive awards not to exceed \$15,000.00
20 total for all Representative Class Plaintiffs (“Fee Application”) no later than 14 days
21 prior to the Final Approval hearing (i.e., by November 18, 2013).

22 22. Counsel for the parties shall promptly furnish to each other any and all
23 objections, written requests for exclusion or any related documents that come into
24 their possession.

25 23. The last day for counsel to file correspondence and any other documents
26 received from opt-outs and objectors shall be 10 days prior to the Final Approval
27 hearing (i.e., by November 22, 2013).

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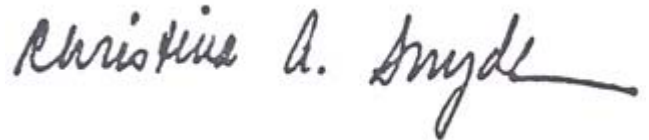
1 24. This Order shall become null and void, and shall be without prejudice to
2 the rights of the Parties, all of whom shall be restored to their respective positions
3 existing immediately before this Court entered this Order, if (i) the proposed
4 Settlement is not finally approved by the Court, or does not become final, pursuant to
5 the terms of the Agreement; or (ii) the proposed Settlement is terminated in
6 accordance with the Agreement or does not become effective as required by the
7 terms of the Agreement for any other reason. In such event, the proposed Settlement
8 shall become null and void and be of no further force and effect, and neither the
9 Agreement nor the Court’s orders, including this Order shall be used or referred to
10 for any purpose whatsoever.

11 25. The Court reserves the right to approve the Agreement with such
12 modifications as may be agreed by the Parties and without requiring further notice to
13 Class Members.

14 26. The Court reserves the right to continue the date of the Fairness Hearing
15 and related deadlines. In that event, the revised hearing date and/or deadlines shall
16 be posted on the website maintained by the Settlement Administrator, and the parties
17 shall not be required to re-send or re-publish the notices.

18 27. All further proceedings in this litigation (including, but not limited to,
19 any existing discovery obligations) are ordered stayed until final approval of the
20 Settlement or termination of the Agreement, whichever occurs earlier, except for
21 those matters necessary to obtain and/or effectuate final approval of the settlement.

22 **IT IS HEREBY ORDERED.**



23
24 Dated: April 24, 2013

25 _____
The Hon. Christina A. Snyder
Judge, United States District Court

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28 KNAPP,
PETERSEN
& CLARKE