

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

BOWEN, *et al.*,

Plaintiffs,

v.

PORSCHE CARS, N.A., INC.

Defendant.

Case No. 1:21-CV-471-MHC

**CLASS ACTION SETTLEMENT AGREEMENT**

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## **EXHIBITS**

**Exhibit 1 – Claim Form**

**Exhibit 2 – Email Notice**

**Exhibit 3 – Longform Notice**

**Exhibit 4 – Postcard Notice**

**Exhibit 5 – Proposed Preliminary Approval Order**

This Class Action Settlement Agreement (“Agreement” or “Settlement Agreement”) is made by and between Plaintiffs Kent Bowen and Kathleen Darnell (“Plaintiffs”) and Defendant Porsche Cars North America, Inc. (“PCNA” or “Defendant”). Plaintiffs and Defendant are referred to collectively as the “Parties.” This Agreement effects a full and final settlement and dismissal with prejudice of all of the Released Claims against all Released Persons relating to the above-captioned lawsuit (the “Action”) on the terms and to the full extent set forth below, subject to the approval of the Court.

## **I. THE PROPOSED SETTLEMENT**

On January 29, 2021, Plaintiffs filed a Class Action Complaint (ECF No. 1) against PCNA in the Northern District of Georgia under Case No. 1:21-CV-471-MHC. Plaintiffs’ Complaint alleged claims for trespass to personalty, violation of the Computer Fraud and Abuse Act (18 U.S.C. § 1030), negligence, and unjust enrichment. Plaintiffs allege that the Porsche Communication Management (“PCM”) unit in certain Porsche vehicles entered into a continuous reboot loop. Plaintiffs asserted their claims on behalf of a putative nationwide class of entities and individuals who owned or leased a Porsche vehicle equipped with an XM radio antenna and PCM system that received an alleged “update” to their PCM on or about May 21, 2020.

On February 24, 2021, PCNA filed a Motion to Dismiss (ECF No. 14) seeking dismissal of all of Plaintiffs' claims, which Plaintiffs opposed (ECF No. 21). PCNA's Motion was granted in part and denied in part on September 20, 2021 (ECF No. 36), dismissing Plaintiffs' claims for unjust enrichment and negligence and sustaining Plaintiffs' claims for trespass and violation of the Computer Fraud and Abuse Act. On October 20, 2021, Plaintiffs filed their First Amended Complaint, which added Plaintiff Kathleen Darnell (ECF No. 40). PCNA filed its Answer to Plaintiffs' First Amended Complaint on November 3, 2021 (ECF No. 43). The Parties entered the fact discovery period on November 3, 2021, and have engaged in active discovery since that time.

After arm's length settlement negotiations facilitated by mediator L. Joseph Loveland, Jr., mediator and arbitrator with JAMS, the Parties reached a settlement that they ultimately memorialized in this Agreement, which settles the claims of all entities and individuals who, as of May 20, 2020, owned or leased a Porsche vehicle equipped with an XM radio antenna and Porsche Communication Management (PCM) system 3.1 that were or could have been brought in this action, as more fully explained below.

As discussed in greater detail below, this Agreement, if approved by the Court, provides substantial compensation to all Settlement Class Members. The

amount PCNA will pay under this Agreement depends on how many Class Members timely file valid and complete claims.

Plaintiffs and Class Counsel, while believing that the claims asserted in the Action are meritorious, have considered the risks associated with the continued prosecution of this litigation and the relief secured in this Agreement, and believe that, in consideration of all the circumstances, the Proposed Settlement embodied in this Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class Members. PCNA, while denying wrongdoing of any kind and without admitting liability, nevertheless agrees to effectuate a full and final settlement of the claims asserted in this Action on the terms set forth below.

Accordingly, the Parties, through their respective counsel, agree that the Action be settled and compromised by the Plaintiffs, the Settlement Class, and Defendant on the following terms and conditions, subject to the approval of the Court after hearing.

## **II. DEFINITIONS**

The following terms shall be defined as set forth below:

- a. “Authorized Porsche Dealer” means a car dealer authorized by PCNA to sell and service Porsche vehicles.
- b. “Claim Form” means the Court-approved claim forms, without material alteration from Exhibit 1 except those alterations necessary to convert to electronic format with the functionality described herein, that a Settlement Class Member may submit to be considered for payment under the Agreement.

- c. “Claim Payment” means the payment issued by Defendant and/or the Settlement Administrator to Settlement Class Members who submit valid and timely claims.
- d. “Claims Submission Deadline” means the date sixty (60) days after the last day of the Reimbursement Period by which Claim Forms must be received by the Settlement Administrator to be considered timely.
- e. “Class Counsel” means the attorneys approved and appointed by the Court to represent the Settlement Class Members.
- f. “Court” means the Honorable Mark H. Cohen of the Northern District of Georgia, as well as any other judicial officer who may come to have responsibility for this Action.
- g. “Effective Date” means the later of (1) the date of entry of the “Final Order and Judgment” as defined herein, or (2) the date when any and all appeals from the Final Order and Judgment have been resolved and the deadlines for further appeal or review have expired.
- h. “Eligible Vehicle” means a Porsche vehicle equipped with an XM radio antenna and Porsche Communication (PCM) system 3.1.
- i. “Email Notice” means the Court-approved Email Notice, without material alteration from Exhibit 2, to be emailed to each potential Settlement Class member for whom an email address is available.
- j. “Escrow Account” means the escrow account managed by the Escrow Agent, which shall be the sole escrow account for compensation of Settlement Class Members under the Agreement.
- k. “Escrow Agent” means the agreed-upon entity to address and hold for distribution the funds identified in this Agreement pursuant to the terms of an escrow agreement to be executed by Class Counsel and PCNA’s Counsel. The Parties agree that Huntington Bank shall serve as Escrow Agent, subject to approval by the Court.
- l. “Fairness Hearing” or “Final Approval Hearing” means the hearing conducted by the Court to consider final approval of this Agreement.

- m. “Final Order and Judgment” means the order from the Court granting the motion for final approval of the Settlement Agreement, disposing of all claims asserted in the Action, and settling and releasing all claims consistent with the terms of this Agreement.
- n. “Legally Authorized Representative” means an administrator/administratrix, personal representative, or executor/executrix of a deceased Settlement Class Member’s estate; a guardian, conservator, or next friend of an incapacitated Settlement Class Member; or any other legally appointed Person or entity responsible for handling the affairs of a Settlement Class Member. For purposes of completing a Claim Form, a surviving spouse of a deceased Settlement Class Member will be considered a Legally Authorized Representative for purposes of this Agreement if no estate has been opened and no other person has legal authority for handling the affairs of the deceased Settlement Class Member.
- o. “Longform Notice” means the long-form notice without material change from Exhibit 3, which the Settlement Administrator will post to the settlement website and, upon request, mail to Settlement Class Members.
- p. “Notice Date” means the date that the mailing of the Email Notice and Postcard Notice to potential Settlement Class Members will be completed.
- q. “Opt-Out List” means the list of valid and timely requests for exclusion from the Settlement Class compiled by the Settlement Administrator.
- r. “Out-of-Pocket Costs” means monies spent (and not reimbursed by PCNA or an Authorized Porsche Dealer) by Settlement Class Members to address PCM 3.1 Rebooting Issues in an Eligible Vehicle, including (but not limited to) PCM repairs, PCM replacements, battery replacements, and towing expenses and alternative transportation costs incurred while receiving the repair or replacement (subject to the limitations outlined in Section IV of this Agreement). Out-of-Pocket Costs for towing expenses and alternative transportation costs must have been incurred due to PCM repairs or replacements to resolve PCM 3.1 Rebooting Issues in an Eligible Vehicle and must have been incurred no later than forty-eight (48) hours after the completion of the repair or replacement.



- s. “PCM 3.1 Rebooting Issues” means repeated rebooting cycles of the Porsche Communication System (PCM) occurring on or after May 20, 2020, in Porsche vehicles equipped with an XM antenna.
- t. “Person” means any natural person, individual, corporation, association, partnership, trust, or any other type of legal entity.
- u. “Postcard Notice” means the Court-approved short form notice, without material alteration from Exhibit 4, mailed via first-class mail to Settlement Class Members for whom no valid email address is available.
- v. “Proposed Preliminary Approval Order” means the proposed order attached hereto as Exhibit 5.
- w. “Proposed Settlement” means the settlement described in this Agreement, before final approval by the Court.
- x. “Reimbursement Period” means the 12 months after the date of the Final Approval Hearing.
- y. “Release” shall have the meaning given such term in Section XIV of this Agreement.
- z. “Released Claims” has the definition set forth in Section XIV of this Agreement.
- aa. “Released Persons” or “Released Parties” has the definition set forth in Paragraph 60 of this Agreement.
- bb. “Releasing Parties” has the definition set forth in Paragraph 61 of this Agreement.
- cc. “Settlement Administrator” means A.B. Data, Ltd.
- dd. “Settlement Class” is defined as all entities and individuals in the United States who, as of May 20, 2020, owned or leased an Eligible Vehicle. Excluded from the Class are Defendant, any Released Persons, Class Counsel, and the Court, as well as the Court’s spouse, and any person within the third degree of relationship to either of them.

ee. “Settlement Class Member” means any Person encompassed by the definition of the Settlement Class and not excluded from the class as set forth in II.dd., and who does not timely and validly opt out from the Settlement Class.

### **III. PRELIMINARY APPROVAL BY THE COURT AND CLASS CERTIFICATION**

1. Promptly after this Agreement is signed, but by no later than thirty (30) days after the Agreement is signed, Plaintiffs shall file the Agreement with the Court, together with a Motion for Preliminary Approval of the Class Action Settlement Agreement and Approval of Class Notice. In that motion, Plaintiffs shall ask the Court to find, under Federal Rule of Civil Procedure 23(e)(1)(B)(ii), that the Court will likely be able to certify the Settlement Class for purposes of judgment on the Proposed Settlement, under Rules 23(a), 23(b)(3), and 23(e) of the Federal Rules of Civil Procedure. It is expressly agreed that any certification of the Settlement Class shall be for settlement purposes only, and PCNA does not waive any arguments it may have that class certification for any other purpose would be improper.

2. Plaintiffs shall submit this fully executed Agreement to the Court, and request entry of the Proposed Preliminary Approval Order, without material alteration from Exhibit 5, or an Order that includes the substance of the Proposed Preliminary Approval Order, and specifically that:

- a. preliminarily approves this Agreement;
- b. finds that the Court possesses personal jurisdiction over Defendant and all Settlement Class Members and possesses subject matter jurisdiction to preliminarily approve this Agreement;

- c. finds, under Federal Rule of Civil Procedure 23(e)(1)(B)(ii), that the Court will likely be able to certify the Settlement Class for purposes of judgment on the Proposed Settlement;
- d. finds, under Federal Rule of Civil Procedure 23(e)(1)(B)(i), that the Court will likely be able to approve the Proposed Settlement under Rule 23(e)(2) as fair, reasonable, and adequate so as to warrant providing notice to the Settlement Class;
- e. approves the plan for disseminating notice to the Settlement Class consistent with this Agreement;
- f. approves the Claim Form to be distributed to and/or used by Settlement Class Members, and sets a Claims Submission Deadline by which the Claim Forms must be received by the Settlement Administrator in order to be deemed timely consistent with the timing requirement set forth in Paragraph 9;
- g. approves the settlement website as described herein, which may be amended during the course of the settlement as appropriate and agreed to by both Parties, and which shall be maintained for at least sixty (60) days after the Claims Submission Deadline;
- h. appoints A.B. Data, Ltd. as the Settlement Administrator;
- i. determines that the notice provided to potential Settlement Class Members (i) is the best practicable notice under the circumstances; (ii) is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action and their right to object to or exclude themselves from the Proposed Settlement; and (iii) constitutes due, adequate, and sufficient notice to all Persons entitled to receive notice;
- j. schedules the Fairness Hearing to finally consider the fairness, reasonableness, and adequacy of the Proposed Settlement and whether it should be finally approved by the Court on a date not sooner than one-hundred and five (105) days after entry of the Preliminary Approval Order;

- k. requires the Settlement Administrator to file proof of completion of notice at least ten (10) days prior to the Fairness Hearing, along with the Opt-Out List, which shall be a list of all Persons who timely and validly requested exclusion from the Settlement Class, and a declaration or affidavit attesting to the accuracy of the Opt-Out List;
- l. requires each potential Settlement Class Member who wishes to exclude himself or herself from the Settlement Class to submit an appropriate, timely request for exclusion, postmarked no later than thirty (30) days prior to the Final Approval Hearing;
- m. orders that any Settlement Class Member who does not submit a timely, written request for exclusion from the Settlement Class will be bound by all proceedings, orders, and judgments in the Action;
- n. provides that all findings and actions relating to class certification are undertaken on the condition that they shall be automatically vacated if this Agreement is terminated or is disapproved in whole or in part by the Court, the 11th Circuit Court of Appeals, or the United States Supreme Court, or if the agreement to settle is revoked, in which event this Agreement and the fact that it was entered into shall not be offered, received, or construed as an admission by any Party of liability or of the certifiability of any class;
- o. requires each Settlement Class Member who does not submit a timely request for exclusion from the Settlement Class and wishes to object to the fairness, reasonableness, or adequacy of this Agreement or to intervene in the Action, to follow the procedures set forth in Section XII of this Agreement, including those requirements applicable to any attorney representing a Settlement Class Member;
- p. requires any attorney hired by a Settlement Class Member for the purpose of objecting to any term or aspect of this Agreement or the Proposed Settlement or intervening in this Action to provide to the Settlement Administrator (who shall forward to Class Counsel and Counsel for PCNA) and to file with Clerk of Court, a notice of appearance, no later than the deadline for submitting objections.
- q. directs the Settlement Administrator to rent a post office box to which requests for exclusion, objections, notices of intention to appear, and

any other settlement-related communication may be sent, and provides that only the Settlement Administrator, the Court, the Clerk of the Court, and their designated agents shall have access to this post office box, except as otherwise expressly provided in this Agreement;

- r. directs the Settlement Administrator to promptly provide copies of all objections, requests for exclusion, motions to intervene, notices of intention to appear, or other communications that come into its possession to Class Counsel and Defendant's counsel;
- s. stays all proceedings in the Action until further order of the Court, except that the Parties may conduct proceedings necessary to implement the Proposed Settlement or effectuate the terms of this Agreement; and
- t. implements or orders any other provisions or directives or procedures not contemplated by the Parties, if necessary to comply with governing law and/or binding precedent and if such provisions do not materially alter the substantive terms of this Agreement.

3. In the event that the Proposed Settlement is not consummated for any reason, (a) the Parties and their attorneys shall proceed as though the Agreement had never been entered and the Parties and their Counsel shall not cite nor reference this Agreement (except as necessary in filings or briefings in this Action only); and (b) nothing in this Agreement may be used as an admission or offered into evidence in any proceeding.

#### **IV. CLAIM SUBMISSIONS**

4. Upon submission of a valid claim, Settlement Class Members will be entitled to monetary compensation through one of two options.

**Option 1:** Reimbursement of all Out-of-Pocket Costs, subject to a \$7,500 maximum reimbursement per Eligible Vehicle and the limitations set forth in Paragraph 6 regarding repairs or replacements performed after the Notice Date. Any towing and alternative transportation costs, to be compensable, must have been incurred due to a repair or replacement to resolve the PCM 3.1 Rebooting Issues in the Eligible Vehicle and must have been incurred no later than 48 hours after the completion of the repair or replacement. To receive payment under Option 1, Settlement Class Members must complete all information requested in the Option 1 section of the Claim Form, including listing the total Out-of-Pocket Costs sought, affirming that such costs have not previously been reimbursed by PCNA or an Authorized Porsche Dealer, and substantiating their claim with documentation, such as invoices or receipts specifying the Out-of-Pocket Costs incurred and the date the Out-of-Pocket Costs were incurred.

**Option 2:** Settlement Class Members who experienced PCM 3.1 Rebooting Issues and spent time addressing rebooting of their PCM on or after May 20, 2020, but who did not incur Out-of-Pocket Costs and/or do not have documentation to substantiate their Out-of-Pocket Costs may elect to receive either (i) a cash payment of \$25 or (ii) a \$50 credit at an Authorized Porsche

Dealer. To receive payment under Option 2, Settlement Class Members must complete all information requested in the Option 2 section of the Claim Form.

5. A Settlement Class Member may only recover once per Eligible Vehicle. For each Eligible Vehicle, Settlement Class Members may submit a claim under either Option 1 or Option 2, but not both. A Settlement Class Member may submit a claim under Option 1 for one Eligible Vehicle and another claim under Option 2 for a different Eligible Vehicle, but may not submit multiple claims related to a single Eligible Vehicle.

6. Claims under Option 1 and Option 2 will continue to be available to Settlement Class Members whose Eligible Vehicles have experienced or will experience PCM 3.1 Rebooting Issues, through the Reimbursement Period. Out-of-Pocket Costs for repair or replacement related to PCM 3.1 Rebooting Issues incurred after the Notice Date will only be recoverable if the repair or replacement is performed by an Authorized Porsche Dealer.

7. The Claim Form shall be without material alteration from Exhibit 1, except for changes necessary for conversion to electronic format.

8. Each Settlement Class Member will be provided an opportunity to submit a Claim Form via mail or electronically.

9. To be considered for payment, a Claim Form must be received by the Settlement Administrator no later than sixty (60) days after the last day of the

Reimbursement Period. In addition, for the claim to be valid, the claimant must be a Settlement Class Member and the Claims Form must include all required information and documentation. As set forth in Paragraph 33.d., the Settlement Administrator will provide Settlement Class Members with notice and an opportunity to cure defects in the submitted Claim Form.

## **V. SETTLEMENT ADMINISTRATOR**

10. The Parties agree to the appointment of A.B. Data, Ltd. as Settlement Administrator to perform the services described herein. Defendant shall be solely responsible for the payment of the Settlement Administrator's fees and costs, including all costs relating to dissemination of class notice and claims administration. Payments to Settlement Class Members will not be reduced or affected in any way by Defendant's agreement to pay the fees and costs of the Settlement Administrator.

11. The Settlement Administrator shall assist with the various administrative tasks set forth herein and any others necessary to implement the terms of this Agreement and the Proposed Settlement as preliminarily approved, including: (i) sending Email Notice and mailing or arranging for the mailing of the Postcard Notice described herein and submitting to the Parties and Court an affidavit offering proof thereof; (ii) handling email or mail returned as not delivered and making additional mailings as required under the terms of the Agreement; (iii) responding,



as necessary, to inquiries from Settlement Class Members; (iv) providing to Class Counsel and Defendant's Counsel, within three (3) business days of receipt, copies of all objections, motions to intervene, notices of intention to appear, and requests for exclusion from the Settlement Class; (v) preparing a list of all Persons who timely requested exclusion from the Settlement Class and submitting to the Court the Opt-Out List and supporting affidavit no later than ten (10) days before the Fairness Hearing scheduled by the Court; (vi) preparing a list of all Persons who submitted objections to the settlement and submitting an affidavit testifying to the accuracy of that list; (vii) preparing a list of all Persons who make a timely claim; (viii) implementing procedures for processing and handling claims submissions consistent with Section VIII; and (ix) promptly responding to requests for information and documents from Class Counsel, Defendant, and/or Defendant's Counsel.

12. As set forth herein, the Settlement Administrator shall set up, coordinate, maintain and/or implement (a) the post office box described in Paragraph 29; (b) the live call center as described in Paragraph 28; and (c) the website described in Paragraphs 25-27.

13. In no event shall the Parties or their counsel have any liability for the acts or omissions of the Settlement Administrator, or their agents, employees, or contractors.

14. All information submitted or created in connection with claims program (including all information provided in Claim Forms and the emails and addresses furnished to the Settlement Administrator in order to carry out the notice program) is confidential. Such information may be disclosed only to Defendant, Defendant's counsel, Class Counsel, the Settlement Administrator, and the Court. Such information may be used only for purposes of performing the obligations and exercising the rights created by this Settlement Agreement or in Court proceedings relating to approval of the Proposed Settlement.

## **VI. CLASS NOTICE**

15. Defendant will pay all costs of effectuating and implementing the notice to the Settlement Class set forth herein.

16. Within fourteen (14) days of the Preliminary Approval Order, Defendant will provide all last-known physical addresses and email addresses it possesses for the Settlement Class to the Settlement Administrator.

17. Within thirty (30) days of the Preliminary Approval Order, the Settlement Administrator shall substantially complete the process of sending notice to Settlement Class Members.

18. Email Notice shall be sent to each potential Settlement Class Member, for whom Defendant possesses an email address on a date suggested by the

Settlement Administrator and shall include a hyperlink to the Claim Form on the settlement website.

19. No later than sixty (60) days before the Claims Submission Deadline, a final reminder notice shall be emailed to each potential Settlement Class Member who has not yet submitted a Claim Form or request for exclusion. The Settlement Administrator, in consultation with the Parties, will determine the specific wording and layout of this reminder notice, which will be consistent with the Email Notice approved by the Court. The reminder notice described in this paragraph will only be sent via email.

20. Where the email address of a Settlement Class Member cannot be located or the email address of a Settlement Class Member is found to be no longer valid, the Settlement Administrator will undertake to send such Settlement Class Members a Postcard Notice, in the same form as Exhibit 4 through first-class U.S. mail.

21. Prior to mailing Postcard Notice, the Settlement Administrator shall run physical mailing addresses through the National Change of Address Database (“NCOA”) to attempt to obtain the most current name and/or physical mailing address for each potential Settlement Class Member who cannot be reached through Email Notice.

22. If any Postcard Notice mailed to any potential Settlement Class Member is returned to the Settlement Administrator as undeliverable, the Settlement Administrator will promptly log each Postcard Notice that is returned as undeliverable and provide copies of the log to Defendant and Class Counsel upon request. If the mailing is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator shall forward the mailing to that address. For the remaining returned mailings, the Settlement Administrator will use reasonable efforts, including potentially an Experian search or skip tracing, to attempt to obtain a new address, and those mailings shall be forwarded to any new address obtained through such a search. If any Postcard Notice is returned as undeliverable a second time, no further mailing shall be required. It is agreed by the Parties that the procedures set forth in the preceding Paragraphs and this Paragraph constitute reasonable and the best practicable notice under the circumstances and an appropriate and sufficient effort to locate current addresses for Settlement Class Members such that no additional efforts to do so shall be required. PCNA represents that it has conducted a reasonably diligent inquiry and has concluded that it possesses email addresses and/or mailing addresses for substantially all potential Settlement Class members.

23. The Parties agree that the Longform Notice and Claim Form, without material alteration from Exhibits 1 and 3, shall be posted to the settlement website

as set forth below, and will be available upon request to all potential Settlement Class Members.

24. The Longform Notice and Claim Form will also be made available to all potential Settlement Class Members by request to the Settlement Administrator, who shall send via first-class U.S. mail any of these documents as requested by any potential Settlement Class Member.

25. The Settlement Administrator shall initiate and continue to maintain the website [www.PorschePCMSettlement.com](http://www.PorschePCMSettlement.com) and post the Settlement Agreement, Postcard Notice, Longform Notice, Claim Form, Preliminary Approval Order, and frequently asked questions. The website may be amended from time to time as agreed to by the Parties. The Settlement Administrator shall maintain the website for at least sixty (60) days after expiration of the Claims Submission Deadline.

26. The home page of the website shall reflect the case settlement and shall have a “Make A Claim” button permitting a Settlement Class Member to access the Claim Form, with a method to submit the Claim Form electronically with a signature submitted through an electronic signature service in which the claimant may sign electronically using a computer, tablet, smart phone, or similar device, and a method to request that a copy of a paper Claim Form be mailed or emailed to the Settlement Class Member.

27. The website shall provide that a Settlement Class Member may submit a Claim Form electronically by entering or uploading all required information and documentation under Option 1 or Option 2, and by signing and submitting the Claim Form through submission of a signature submitted through an electronic signature service in which the claimant may sign electronically using a computer, tablet, smart phone, or similar device.

28. The Settlement Administrator shall maintain a live call center 24/7 with a person who will answer the potential Settlement Class Members' questions using an agreed upon script and can further take name, address, and relevant information to send out Longform Notices.

29. The Settlement Administrator shall rent a post office box to be used for receiving requests for exclusion, objections, notices of intention to appear, and any other settlement-related communications. Only the Settlement Administrator, the Court, the Clerk of the Court, and their designated agents shall have access to this post office box, except as otherwise expressly provided in this Agreement.

## **VII. CLAIM PAYMENTS**

30. To be eligible for a Claim Payment under this Settlement Agreement, a Settlement Class Member or his or her Legally Authorized Representative must timely submit a Claim Form that satisfies the requirements prescribed herein and must not have submitted a request for exclusion.

- a. Settlement Class Members seeking a cash payment will, by default, be paid electronically. During the claims process, Settlement Class Members will be able to select from the following options for receiving their Claim Payment electronically: PayPal, Venmo, or ACH. In lieu of electronic payment, Settlement Class Members seeking a cash payment may request to receive their Claim Payment via check, which the Settlement Administrator will cause to be mailed to the Settlement Class Member. Checks will be valid for ninety (90) days from the issuance date and, if the Settlement Class Member does not cash or deposit the check during this time, such funds will revert to the Escrow Account. The Settlement Administrator shall make Claims Payments as set forth in this subparagraph within thirty (30) days of the later of (i) the Settlement Administrator's receipt of a timely and valid claim, or (ii) the Effective Date. For avoidance of doubt, no payments will be made prior to the Effective Date.
- b. Settlement Class Members who make a claim under Option 2 may elect to receive a dealer credit valid at Authorized Porsche Dealers in lieu of receiving a cash payment. For avoidance of doubt, no credits will be provided prior to the Effective Date.

31. The Settlement Administrator shall establish procedures for receiving and processing Claim Forms consistent with Section VIII.

32. The Claim Payment described herein is the only payment to which Settlement Class Members are entitled under this Agreement. The payments shall be in full and final disposition of the Action, and in consideration for the release of any and all Released Claims as against any and all Released Persons. Any rights to Claim Payments under this Agreement shall inure solely to the benefit of Settlement Class Members and are not transferable or assignable to others.

#### **VIII. CLAIMS ADMINISTRATION**

33. Claim Forms that are timely submitted (either electronically or by mailing to the correct address) shall be processed as follows:

- a. To receive a Claim Payment under Option 1, Settlement Class Members must complete all information requested in the Option 1 section of the Claim Form and substantiate their claimed Out-of-Pocket Costs with documentation, *e.g.*, invoices and/or receipts, specifying the Out-of-Pocket Costs incurred and the date those Out-of-Pocket Costs were incurred.
- b. To receive a Claim Payment under Option 2, Settlement Class Members must complete all information requested in the Option 2 section of the Claim Form, including a sworn statement that the Settlement Class Member spent time addressing PCM 3.1 Rebooting Issues on or after May 20, 2020.
- c. If there is uncertainty as to whether a claim is valid, the Settlement Administrator shall consult with Class Counsel and Defendant's Counsel as to the validity of the claim and/or whether additional information or documentation will be required for the Settlement Class Member to receive compensation, and the Parties agree to work in good faith to resolve any



disputes as to the validity of claims or the documentation necessary to substantiate same.

- d. If a Claim Form is unsigned, illegible, incomplete, does not include the required documentation of Out-of-Pocket Costs under Option 1, does not include all of the required information in Claim Form, or indicates that the claimant is not a Settlement Class Member entitled to payment, the Settlement Administrator shall send the claimant a letter and/or email, with a copy to Defendant's Counsel and Class Counsel, informing him or her of the defect and providing the claimant with thirty (30) days in which to cure the defect. If the claimant does not subsequently provide an amended Claim Form and/or documentation curing the defect and postmarked or electronically submitted within thirty (30) days of the date of the Settlement Administrator's letter, that Claim Form shall be deemed defective and not eligible for payment, and the claimant shall not have an additional opportunity to cure the defect. However, regardless of any uncured defect, the Settlement Class Member's Release remains effective as to the Released Parties. PCNA retains the right, but has no obligation, to exercise discretion to authorize the Settlement Administrator to approve a Claim Payment notwithstanding any such defect.
- e. On a rolling basis following the Effective Date, the Settlement Administrator shall initiate electronic payment or mail a check for the full amount of Claim Payments to all Settlement Class Members with valid claims. Defendant shall provide sufficient funding to the Escrow Account to enable the Settlement Administrator to timely make the payments identified in Section VII.
- f. Claim Forms that are not timely received by the Settlement Administrator will not be considered for payment, and the Settlement Class Members whose Claim Forms are deemed untimely will be provided written notice thereof, but the Settlement Class Member's Release will remain effective as to the Released Parties. PCNA retains the right, but has no obligation, to exercise discretion to authorize the Settlement Administrator to approve a Claim Payment notwithstanding any such untimeliness.
- g. All Claim Payments to Settlement Class Members through a paper check will be through checks which indicate on their face that they are void after ninety (90) days from the date issued. Any checks not cashed by that date shall be voided, the funds will remain in the Escrow Account (until such

time as those funds revert to Defendant), and Defendant shall not be liable for payment of those claims.

## **IX. ESCROW ACCOUNT**

34. Within ten (10) business days after the Court enters the Final Approval Order, PCNA shall fund the Escrow Account with the “Funding Amount,” which funds shall be used, as necessary, to compensate Class Members who submit valid claims pursuant to this Agreement. The initial Funding Amount shall be \$300,000. If and when the funding level of the Escrow Account reaches the “Minimum Balance,” which shall initially be set at \$25,000, the Escrow Agent shall alert PCNA, and PCNA shall, within seven (7) business days, deposit such funds in the Escrow Account as are necessary to bring the balance of the Escrow Account back to the Funding Amount.

35. One-hundred-twenty (120) days after the Claims Submission Deadline, any funds in the Escrow Account, including all interest accrued, shall revert to PCNA, and this reversion will occur only after all timely and valid claims have been paid.

36. In the event that the Settlement Agreement is terminated or invalidated for any reason prior to the conclusion of the Reimbursement Period, any funds in the Escrow Account, including all interest accrued, shall revert to PCNA.

**X. ATTORNEYS' FEES AND COSTS AWARD**

37. PCNA agrees to pay the reasonable attorneys' fees and litigation costs of Class Counsel separate from and in addition to any payments to the Settlement Class Members in an amount not to exceed \$2,050,000 as set forth in Paragraphs 37-41. Plaintiffs, through Class Counsel, shall petition the Court for such attorneys' fees and litigation costs at least twenty-one (21) days before the Court's deadline for objections to the Proposed Settlement.

38. Class Counsel agrees not to seek more than \$1,975,000 in attorneys' fees for work performed by Class Counsel in connection with this Action and no more than \$75,000 in reimbursement of litigation costs actually incurred in this Action. If Class Counsel's fee request does not exceed \$1,975,000 and their request for costs does not exceed \$75,000, PCNA agrees not to oppose, undermine, or solicit others to oppose or undermine Class Counsel's motion for attorneys' fees and reimbursement of litigation costs and, if Class Counsel's request is granted by the Court, PCNA agrees to pay Class Counsel's Court-approved attorneys' fees and Court-approved litigation costs and waives its right to appeal such award of fees and costs, provided that the amount awarded by the Court in attorneys' fees does not exceed \$1,975,000 and the amount awarded by the Court for litigation costs does not exceed \$75,000. By executing this Agreement, Plaintiffs and Class Counsel agree that an award of attorneys' fees and litigation costs up to the amounts listed in this

Paragraph constitutes a reasonable award for the work performed and costs incurred in connection with this Action and that they will not seek any additional award exceeding these amounts in any future proceeding.

39. A decision by the Court to award less than the total amount of fees and costs requested by Class Counsel, or a subsequent decision by an appellate court to reduce the award of fees and costs due to Class Counsel, shall not be grounds for Plaintiffs, Class Counsel, or the Settlement Class Members to withdraw from this Settlement Agreement, and the remaining provisions of this Agreement shall remain in full force and effect.

40. Within ten (10) business days of the later of the Effective Date of a final order after all appeals have been exhausted approving Class Counsel's request for attorneys' fees, costs and expenses, PCNA shall pay to Class Counsel all Court-approved attorneys' fees and litigation costs ordered by the Court, provided that the amount awarded by the Court in attorneys' fees does not exceed \$1,975,000 and provided that the amount awarded by the Court in litigation costs does not exceed \$75,000. In the event that the award of attorneys' fees and litigation costs is reduced by the Court or on appeal, PCNA shall only pay the reduced amount of such award. Class Counsel shall timely furnish to PCNA any required tax information, account information, or necessary forms before the payment is due.

41. The payment of attorneys' fees and litigation costs pursuant to Paragraphs 37-40 shall be made through a wired deposit by PCNA into the attorney client trust account to be designated by Class Counsel. After the attorneys' fees and litigation costs have been deposited into this account, Class Counsel shall be solely responsible for allocating such attorneys' fees and litigation costs and distributing each participating firm's allocated share of such attorneys' fees and litigation costs to that firm, and PCNA shall have no responsibility for distribution of attorneys' fees and litigation costs among participating firms.

42. PCNA's agreement to pay Class Counsel's reasonable attorneys' fees and litigation costs pursuant to Paragraphs 37-41 is separate from PCNA's commitment to pay the Settlement Administrator's fees and costs pursuant to Paragraph 10.

## **XI. FINAL APPROVAL OF THE PROPOSED SETTLEMENT**

43. Class Counsel will file a motion seeking the Court's final approval of the Proposed Settlement fifty-one (51) days prior to the Fairness Hearing to be held at a time, date, and location as set by the Court and that will be stated in the Email Notice and Postcard Notice as well as on the settlement website. The motion shall request, at minimum, the Court to enter a Final Order and Judgment that:

- a. certifies the Settlement Class for settlement purposes only;

- b. finds the Court has personal jurisdiction over Defendant and all Settlement Class Members and subject matter jurisdiction to approve this Agreement and all Exhibits thereto;
- c. gives final approval to the Proposed Settlement and directs the Parties and counsel to comply with and consummate the terms of the Agreement;
- d. finds that Class Counsel and the Plaintiff adequately represented the Settlement Class;
- e. finds that the terms of this Agreement are fair, reasonable, and adequate to the Settlement Class Members, consistent and in compliance with all requirements of due process and applicable law;
- f. finds that the class notice set forth in this Agreement (i) constituted the best practicable notice under the circumstances; (ii) was reasonably calculated to apprise potential Settlement Class Members of the pendency of the Action, their right to object to or exclude themselves from the Proposed Settlement, and to appear at the Fairness Hearing; (iii) constituted due, adequate, and sufficient process and notice to all Persons entitled to receive notice; and (iv) satisfied all requirements of due process and applicable law;
- g. determines that the Agreement and the settlement provided for herein, and any proceedings taken pursuant thereto, are not, and should not in any event be offered, received, or construed as evidence of, a presumption, concession, or an admission by any Party of liability or of the certifiability of a litigation class; provided, however, that reference may be made to this Agreement and the settlement provided for herein in such proceedings as may be necessary to effectuate the provisions of this Agreement, as further set forth in this Agreement;
- h. approves the Opt-Out List and finds that the Opt-Out List is a complete list of all persons and entities who have timely requested exclusion from the Settlement Class and, accordingly, neither share in nor are bound by the Final Order and Judgment;
- i. provides that the Plaintiffs, all Settlement Class Members who have not been excluded from the Settlement Class as provided in the Opt-Out

List, and their heirs, estates, trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns, and successors, and/or anyone else claiming through them or acting or purporting to act for them or on their behalf, regardless of whether they have submitted a Claim Form, and regardless of whether they have received actual notice of the Proposed Settlement, have conclusively compromised, settled, discharged, and released all Released Claims against Defendant and the Released Persons, and are bound by the provisions of this Agreement;

- j. dismisses all claims in the Action on the merits and with prejudice, and without fees or costs except as provided herein, and entering final judgment thereon; and
- k. determines the amount of the attorneys' fees and costs award to Class Counsel.

44. Defendant will not oppose final approval of the Settlement Agreement as set forth herein, except that Defendant reserves the right to object to and appeal any order awarding attorneys' fees exceeding \$1,975,000 and/or any order awarding litigation costs exceeding \$75,000.

## **XII. REQUESTS FOR EXCLUSION AND OBJECTIONS**

45. The Parties and their respective counsel agree not to solicit or encourage any Person in requesting exclusion from the Settlement Class.

46. Potential Settlement Class Members who wish to exclude themselves from the Settlement Class must submit timely and written requests for exclusion. To be effective, such a request must include (i) the potential Settlement Class Member's name, address, and Vehicle Identification Number (VIN) and dates of ownership or lease of the potential Settlement Class Member's Eligible Vehicle(s); (ii) an

unequivocal statement that the Settlement Class Member wishes to be excluded from the Settlement Class; and (iii) the signature of the Settlement Class Member or the Legally Authorized Representative of the Settlement Class Member. The request must be mailed to the Settlement Administrator at the address provided in the Longform Notice postmarked no later than thirty (30) days prior to the Final Approval Hearing. Requests for exclusion must be exercised individually by the Settlement Class Member and are only effective as to the individual Settlement Class Member requesting exclusion.

47. Plaintiffs shall not elect or seek to opt out or exclude themselves from the Settlement Class.

48. The Settlement Administrator shall provide to Class Counsel and Defendant's Counsel, within three (3) business days of receipt, copies of all requests for exclusion from the Settlement Class. The Settlement Administrator shall also promptly log and prepare a list of all Persons who validly and timely requested exclusion from the Settlement Class (the "Opt-Out List") and shall submit an affidavit to the Court which includes and attests to the accuracy of the Opt-Out List no later than ten (10) days prior to the Final Fairness Hearing set by the Court.

49. All Settlement Class Members who do not timely and properly exclude themselves from the Settlement Class shall be bound by this Agreement, and their



claims shall be dismissed with prejudice and released to the extent provided for herein pursuant to the terms of a Final Order and Judgment.

50. Settlement Class Members who do not request exclusion from the Settlement Class may object to the Proposed Settlement. Settlement Class Members who choose to object to the Proposed Settlement must submit timely and written notices of their objections. Any Settlement Class Member who timely submits an objection in compliance with this paragraph may appear at the Fairness Hearing, in person or by counsel, and be heard to the extent and only if permitted by the Court. The Parties may serve discovery under Federal Rules of Civil Procedure 30, 33, and 34 on any objecting Settlement Class Member, including to obtain evidence substantiating that the objector is a member of the Settlement Class.

51. To be timely, a Settlement Class Member's objection or motion to intervene must be submitted to the Court and served on the Settlement Administrator no later than thirty (30) days prior to the Final Approval Hearing.

52. The right to object to the Proposed Settlement or to intervene in the Action must be exercised individually (*i.e.*, not aggregated with objections of other Settlement Class Members) by a Settlement Class Member or his or her attorney or Legally Authorized Representative.

53. An objection to the Proposed Settlement must:

- a. Include the name of the case and case number;

- b. Provide the name, address, telephone number, VIN and dates of ownership or lease of the Settlement Class Member's Eligible Vehicle(s), and signature of the Settlement Class Member filing the objection;
- c. Provide a statement that the objector has reviewed the Settlement Class definition and understands that he or she is a Settlement Class Member, and has not opted out and does not plan to opt out of the Settlement Class;
- d. Indicate the specific reasons why the Settlement Class Member objects to the Proposed Settlement;
- e. Contain the name, address, bar number, and telephone number of the objecting Settlement Class Member's counsel, if any, and any such attorney must comply with all applicable rules of the Court; and
- f. State whether the objecting Settlement Class Member intends to appear at the Fairness Hearing, either in person or through counsel.

54. In addition, an objection must contain the following information if the Settlement Class Member or his or her attorney requests permission to speak at the Fairness Hearing:

- a. A detailed statement of the legal and factual basis for each objection;
- b. A list of any and all witnesses the Settlement Class Member may seek to call at the Fairness Hearing (subject to applicable rules of procedure and evidence and at the discretion of the Court), with the address of each witness and a summary of his or her proposed testimony; and
- c. A list of any legal authority the Settlement Class Member will present at the Fairness Hearing.

55. Any Settlement Class Member who does not submit a timely objection may, in the discretion of the Court, waive the right to object or to be heard at the

Fairness Hearing and be barred from making any objection to the Proposed Settlement. Settlement Class Members who object to the Proposed Settlement shall remain Settlement Class Members and waive their right to pursue an independent remedy against Defendant to the extent their claims are released consistent with this Agreement. To the extent any Settlement Class Member objects to the Proposed Settlement, and such objection is overruled in whole or in part, such Settlement Class Member will be forever bound by the Final Order and Judgment of the Court. Settlement Class Members can avoid being bound by any judgment of the Court by complying with the exclusion provisions set forth herein. If a potential Settlement Class Member excludes themselves from the Settlement Class, they waive any right to object to the Final Approval of the Proposed Settlement.

56. The Settlement Administrator shall provide Class Counsel and Defendant's Counsel a copy of each objection, motion to intervene, or notice of intention to appear received by the Settlement Administrator within three (3) business days of receipt.

### **XIII. DENIAL OF LIABILITY**

57. Defendant maintains it acted in accordance with all applicable laws and regulations. Defendant nonetheless has concluded that it is in its best interests that the Action be settled on the terms and conditions set forth in this Agreement. Defendant reached this conclusion after considering the factual and legal issues in

the Action, the substantial benefits of a final resolution of the Action, and the expense that would be necessary to defend the Action through judgment, appeal, and any subsequent proceedings that may occur. Defendant believes that it stands a reasonable chance of success in the Action and in any appeal as to the merits of this case and as to the certification of a litigation class. Defendant maintains that its defenses on the merits and on class certification are meritorious. Because of the costs, resources, and time that would be incurred, Defendant asserts that it would not have settled this Action except on the terms set forth in this Agreement.

58. As a result of the foregoing, Defendant enters into this Agreement without admitting, conceding, or acknowledging any fault, liability, or wrongdoing of any kind. This Agreement shall not be construed as an admission or concession of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing of any kind. The terms of this Agreement, including the nature of the Agreement, are material to Defendant's decision to settle this Action notwithstanding its belief that its defenses are meritorious and its chances of success in this Action and in any appeal are significant. Moreover, Defendant denies any fault, wrongdoing or liability to Plaintiffs or the Settlement Class Members for monetary damages or other relief, but believes that the proposed settlement herein is desirable in order to avoid the further significant burden, expense, risk, and

inconvenience of protracted litigation, and the distraction and diversion of its personnel and resources.

#### **XIV. DISMISSAL OF ACTION AND RELEASE OF CLAIMS**

59. Upon the Effective Date, the Plaintiffs, all Settlement Class Members, and their heirs, estates, trustees, executors, administrators, principals, beneficiaries, representatives, agents, assigns, and successors, and/or anyone else claiming through them or acting or purporting to act for them or on their behalf, regardless of whether they have submitted a Claim Form, will be bound by the Final Order and Judgment and conclusively deemed to have fully released, acquitted, and forever discharged all Released Persons from all Released Claims as outlined and defined below (the “Release”).

60. “Released Persons” or “Released Parties” means (1) Porsche Cars North America, Inc., Porsche Automobil Holding SE, Porsche Holding Stuttgart GmbH, Dr. Ing. h.c. F. Porsche AG, Porsche Financial Services, Inc., Porsche Leasing Ltd., and any former, present, and future owners, shareholders, directors, officers, employees, attorneys, affiliates, parent companies, subsidiaries, predecessors, and successors of any of the foregoing (the “Porsche Released Entities”); (2) any and all contractors, subcontractors, and suppliers of the Porsche Released Entities; (3) any and all persons and entities indemnified by any Porsche Released Entity with respect to PCM 3.1 Rebooting Issues; (4) any and all other

persons and entities involved in the design, research, development, manufacture, assembly, testing, sale, leasing, repair, warranting, marketing, advertising, public relations, promotion, or distribution of any Eligible Vehicle, even if such persons are not specifically named in this paragraph, including without limitation all Porsche Authorized Dealers, as well as non-authorized dealers and sellers; (5) the Settlement Administrator; (6) lenders, creditors, financial institutions, or any other parties that financed any purchase or lease of an Eligible Vehicle; and (7) for each of the foregoing, their respective former, present, and future affiliates, parent companies, subsidiaries, predecessors, successors, shareholders, indemnitors, subrogees, spouses, joint ventures, general or limited partners, attorneys, assigns, principals, officers, directors, employees, members, agents, representatives, trustees, insurers, reinsurers, heirs, beneficiaries, wards, estates, executors, administrators, receivers, conservators, personal representatives, divisions, dealers, and suppliers.

61. In consideration for the Settlement Agreement, Plaintiffs and Settlement Class Members, on behalf of themselves and their agents, heirs, executors and administrators, successors, assigns, insurers, attorneys, representatives, shareholders, owners associations, and any other legal or natural persons who may claim by, through, or under them (the “Releasing Parties”), fully, finally, irrevocably, and forever release, waive, discharge, relinquish, settle, and acquit any and all claims, demands, actions, or causes of action, whether known or unknown, that they

may have, purport to have, or may have hereafter against any Released Party, as defined above, arising out of or in any way related to PCM 3.1 Rebooting Issues. This Release applies to any and all claims, demands, actions, or causes of action of any kind or nature whatsoever, whether in law or in equity, known or unknown, direct, indirect or consequential, liquidated or unliquidated, past, present or future, foreseen or unforeseen, developed or undeveloped, contingent or non-contingent, suspected or unsuspected, whether or not concealed or hidden, arising from or in any way related to PCM 3.1 Rebooting Issues, including without limitation (1) any claims that were or could have been asserted in the Action; and (2) any claims for fines, penalties, criminal assessments, economic damages, punitive damages, exemplary damages, liens, injunctive relief, attorneys', expert, consultant, or other litigation fees or costs other than fees and costs awarded by the Court in connection with this Settlement Agreement, or any other liabilities, that were or could have been asserted in any civil, criminal, administrative, or other proceeding, including arbitration (the "Released Claims"). This Release applies without limitation to any and all such claims, demands, actions, or causes of action regardless of the legal or equitable theory or nature under which they are based or advanced including without limitation legal and/or equitable theories under any federal, state, provincial, local, tribal, administrative, or international law, or statute, ordinance, code, regulation, contract, common law, equity, or any other source, and whether based in strict

liability, negligence, gross negligence, punitive damages, nuisance, trespass, breach of warranty, misrepresentation, breach of contract, fraud, or any other legal or equitable theory, whether, existing now or arising in the future, that arise from or in any way relate to PCM 3.1 Rebooting Issues. Notwithstanding the foregoing, this Agreement does not release any claims for wrongful death or personal injury.

62. For the avoidance of doubt, Plaintiffs expressly understand and acknowledge, and Settlement Class Members will be deemed to understand and acknowledge, that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that they now know or believe to be true, related to PCM 3.1 Rebooting Issues, the Action and/or the Release herein. Nevertheless, it is the intention of Class Counsel and the Plaintiffs in executing this Agreement to fully, finally, irrevocably, and forever release, waive, discharge, relinquish, settle, and acquit all such matters, and all claims relating thereto which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action or proceeding) with respect to PCM 3.1 Rebooting Issues.

63. Plaintiffs expressly understand and acknowledge, and Settlement Class Members will be deemed to understand and acknowledge, Section 1542 of the California Civil Code, which provides: **“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor**



**at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”** Each Plaintiff expressly acknowledges that he or she has been advised by Class Counsel of the contents and effect of Section 1542 and that he or she has considered the possibility that the number or magnitude of all claims may not currently be known. To ensure that this Release is interpreted fully in accordance with its terms, Plaintiffs and Settlement Class Members expressly waive and relinquish any and all rights and benefits that they may have under Section 1542 to the extent that such Section may be applicable to the Release. Plaintiffs and Settlement Class Members likewise expressly waive and relinquish any rights or benefits of any law of any state or territory of the United States, federal law or principle of common law, or of international or foreign law, which is similar, comparable, analogous, or equivalent to Section 1542 of the California Code to the extent that such laws or principles may be applicable to the Release.

64. Settlement Class Members who do not opt out expressly agree that this Release, and the Final Order and Judgment, is, will be, and may be raised as a complete defense to, and will preclude, any action or proceeding specified in, or involving claims encompassed by, this Release. Settlement Class Members who do not opt out shall not now or hereafter institute, maintain, prosecute, assert, and/or cooperate in the institution, commencement, filing or prosecution of any suit, action,

and/or other proceeding, against the Released Parties with respect to the claims, causes of action and/or any other matters subject to this Release. To the extent that they have initiated, or caused to be initiated, any suit, action, or proceeding not already encompassed by the Action, Settlement Class Members who do not opt out shall cause such suit, action, or proceeding to be dismissed with prejudice. If a Settlement Class Member who does not opt out commences, files, initiates, or institutes any new legal action or other proceeding for any Released Claim against any Released Party in any federal or state court, arbitral tribunal, or administrative or other forum, (1) the Released Party shall inform the Settlement Class Member about this Settlement Agreement and the Settlement Class Member's Release, and request that the action be voluntarily dismissed; (2) if such action is not voluntarily dismissed within seven (7) days of such notice, then the Released Party shall move for such legal action or other proceeding to be dismissed with prejudice and at that Settlement Class Member's cost; and (3) the respective Released Party shall be entitled to recover any and all reasonable related costs and expenses from that Settlement Class Member arising as a result of that Settlement Class Member's breach of his, her, their or its obligations under this Release.

65. Plaintiffs represent and warrant that they are the sole and exclusive owners of any and all claims that they personally are releasing under this Agreement. Plaintiffs further acknowledge that they have not assigned, pledged, or in any

manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to PCM 3.1 Rebooting Issues, including without limitation, any claim for benefits, proceeds or value under the Action, and that Plaintiffs are not aware of anyone other than themselves claiming any interest, in whole or in part, in any benefits, proceeds or values to which Plaintiffs may be entitled as a result of the PCM 3.1 Rebooting Issues. Settlement Class Members, by submitting a Claim Form, represent and warrant that they are the sole and exclusive owner of all claims that they personally are releasing under the Agreement and that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Action, including without limitation, any claim for benefits, proceeds or value under the Action, and that such Settlement Class Members are not aware of anyone other than themselves claiming any interest, in whole or in part, in any benefits, proceeds or values to which those Settlement Class Members may be entitled as a result of the PCM 3.1 Rebooting Issues.

66. Plaintiffs expressly understand and acknowledge, and Settlement Class Members will be deemed to understand and acknowledge, that any benefits pursuant to the Agreement are in full, complete, and total satisfaction of all of the Released Claims against the Released Parties, that the benefits of the Agreement are sufficient

and adequate consideration for each and every term of this Release, and that this Release shall be irrevocably binding upon Plaintiffs and Settlement Class Members who do not opt out of the Class.

67. The Release shall be effective with respect to all Releasing Parties, including all Settlement Class Members who do not opt out, regardless of whether those Settlement Class Members ultimately file a claim or receive compensation under this Agreement.

68. Class Counsel acknowledge that they have conducted sufficient independent investigation and discovery to enter into this Agreement and that they execute this Agreement freely, voluntarily, and without being pressured or influenced by, or relying on any statements, representations, promises, or inducements made by the Released Parties or any person or entity representing the Released Parties, other than as set forth in this Agreement. Plaintiffs acknowledge, agree, and specifically represent and warrant that they have discussed with Class Counsel the terms of this Agreement and have received legal advice with respect to the advisability of entering into this Agreement and the Release, and the legal effect of this Agreement and the Release. The representations and warranties made throughout the Agreement shall survive the execution of the Agreement and shall be binding upon the respective heirs, representatives, successors and assigns of the Parties.

69. Plaintiffs and Class Counsel hereby agree and acknowledge that this Section XIV was separately bargained for and constitutes a key, material term of the Agreement that shall be reflected in the Final Approval Order.

70. The Court shall retain exclusive and continuing jurisdiction over all Parties, the Action, and this Agreement to resolve any dispute that may arise regarding this Agreement or in relation to this Action, including any dispute regarding validity, performance, interpretation, administration, enforcement, enforceability, or termination of the Agreement and no Party shall oppose the reopening and reinstatement of the Action on the Court's active docket for the purposes of effecting this Section.

71. Upon entry of the Final Order and Judgment, the Action will be dismissed with prejudice as to Defendant, and the Plaintiffs and all Settlement Class Members will release all Released Persons from all Released Claims. Plaintiffs and all Settlement Class Members specifically release any right they may now or hereafter have to reform, rescind, modify, or set aside this Release or this Agreement through mutual or unilateral mistake or otherwise; and they assume the risk of such uncertainty and mistake in consideration of the consideration herein mentioned and in consideration of this being a final settlement.

## **XV. RETENTION OF RECORDS**

72. The Settlement Administrator shall retain copies or images of all returned Notices, Claim Forms (and/or data resulting therefrom) and correspondence relating thereto, for a period of up to two (2) years after the Effective Date. After this time, upon Defendant's request, Class Counsel shall destroy non-public documents containing personally identifiable information of the Settlement Class received as part of the administration of this Agreement, including but not limited to completed Claim Forms and accompanying documentation or other reports prepared by the Settlement Administrator, but Class Counsel shall not be required to destroy any work product. Nothing herein shall alter or obviate the Parties' obligation to destroy or return any materials produced in this litigation under the terms of the Stipulated Protective Order agreed to by the Parties and entered by the Court (ECF No. 50).

## **XVI. MISCELLANEOUS PROVISIONS**

73. Each Party to this Agreement warrants that he, she, they, or it is fully authorized to enter into this Agreement, and is acting upon his, her, their, or its independent judgment and upon the advice of his, her, their, or its counsel and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other party, other than the warranties and representations expressly made in this Agreement.

74. The Parties and undersigned counsel agree to undertake best efforts to effectuate this Agreement and the terms of the Proposed Settlement, including taking all steps and efforts contemplated by this Agreement, and any other reasonable steps and efforts which may become necessary by order of the Court or otherwise.

75. The headings and captions contained in this Agreement are for reference purposes only and in no way define, extend, limit, describe, or affect the scope, intent, meaning, or interpretation of this Agreement.

76. Unless otherwise noted, all references to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal or state legal holiday, such date or deadline shall be on the first business day thereafter.

77. Except as otherwise provided in a written amendment executed by the Parties or their counsel, this Agreement contains the entire agreement of the Parties hereto and supersedes any prior agreements or understandings between them. All terms of this Agreement shall be construed as if drafted by all parties hereto. The terms of this Agreement are and shall be binding upon each of the Parties and their agents, attorneys, employees, successors, and assigns, and upon all other Persons claiming any interest in the subject matter hereof through any of the parties hereto, including any Settlement Class Member.

78. This Agreement may be amended or modified only by a written instrument signed by all Parties.

79. This Agreement shall be subject to, governed by, construed, and enforced pursuant to the laws of the State of Georgia, without regard to principles of conflicts of law.

80. The exhibits to this Agreement are integral parts of the settlement and are hereby incorporated and made part of this Agreement.

81. To the extent permitted by law, this Agreement may be pleaded as a full and complete defense to any action, suit, or other proceeding which may be instituted, prosecuted, or attempted in breach of this Agreement.

82. This Agreement shall be deemed to have been executed upon the last date of execution by all the undersigned Parties and/or counsel.

83. The Parties expressly acknowledge and agree that this Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, related notes, and correspondence, constitute an offer of compromise and a compromise within the meaning of Federal Rule of Evidence 408 and any equivalent rule of evidence in any state or territory.

84. Any disagreement and/or action to enforce this Agreement shall be commenced and maintained only in the United States District Court for the Northern District of Georgia.



85. The Settlement Class, Plaintiffs, Class Counsel, PCNA, and/or PCNA's Counsel shall not be deemed to be the drafter of this Agreement or of any particular provision, nor shall they argue that any particular provision should be construed against its drafter. All Parties agree that this Agreement was drafted by counsel for the Parties during extensive arm's-length negotiations. No parol or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which this Agreement was made or executed.

86. This Agreement may be signed with an electronic or facsimile signature and in counterparts, each of which shall constitute a duplicate original.

87. Whenever this Agreement requires or contemplates that one of the Parties or the Settlement Administrator shall or may give notice to a Party, notice shall be provided by e-mail and/or next-day (excluding Saturdays, Sundays and Federal Holidays) express delivery service as follows:

If to PCNA, then to:

Cari K. Dawson  
Kara F. Kennedy  
ALSTON & BIRD LLP  
1201 West Peachtree Street  
Atlanta, GA 30309-3424  
Email: cari.dawson@alston.com  
Email: kara.kennedy@alston.com

If to Plaintiffs or the Settlement Class, then to:

Matthew R. Wilson  
Michael J. Boyle, Jr.  
MEYER WILSON CO., LPA  
305 West Nationwide Boulevard  
Columbus, Ohio 43215  
Email: mwilson@meyerwilson.com  
Email: mboyle@meyerwilson.com

88. The Parties' Stipulated Protective Order in this Action (ECF No. 50) remains binding on the disclosure of Confidential and Highly Confidential information under this Agreement. The confidentiality of all Confidential Information and Highly Confidential Information shall be protected from disclosure by Class Counsel and the Plaintiffs to any Person other than the Settlement Administrator or a Person authorized by Court Order.

89. The Parties agree that Class Counsel or anyone associated with Class Counsel's firms shall not utilize the Confidential Information and Highly Confidential Information, as defined in the Parties' Stipulated Protective Order (ECF No. 50), in any other litigation whether pending or future unless independently obtained through discovery or other procedures in that litigation.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by themselves and their counsel:

**For Plaintiffs:**

Dated: 12/26/2022

  
Plaintiff Kenton Bowen

Dated: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff Kathleen Darnell

**For Class Counsel:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Matthew R. Wilson  
Michael J. Boyle, Jr.  
**MEYER WILSON CO., LPA**  
305 West Nationwide Boulevard  
Columbus, Ohio 43215  
Telephone: (614) 224-6000  
Facsimile: (614) 224-6066  
mwilson@meyerwilson.com  
mboyle@meyerwilson.com

Dated: \_\_\_\_\_

\_\_\_\_\_  
David Stein  
Kyla J. Gibboney  
**GIBBS LAW GROUP LLP**  
1111 Broadway, Suite 2100  
Oakland, CA 94607  
Telephone: (510) 350-9700  
Facsimile: (510) 350-9701  
ds@classlawgroup.com  
kjpg@classlawgroup.com

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by themselves and their counsel:

**For Plaintiffs:**

Dated: \_\_\_\_\_ Plaintiff Kenton Bowen

Dated: 12-23-22   
Plaintiff Kathleen Darnell

**For Class Counsel:**

Dated: \_\_\_\_\_

Matthew R. Wilson  
Michael J. Boyle, Jr.  
**MEYER WILSON CO., LPA**  
305 West Nationwide Boulevard  
Columbus, Ohio 43215  
Telephone: (614) 224-6000  
Facsimile: (614) 224-6066  
mwilson@meyerwilson.com  
mboyle@meyerwilson.com

Dated: 1-3-23 

David Stein  
Kyla J. Gibboney  
**GIBBS LAW GROUP LLP**  
1111 Broadway, Suite 2100  
Oakland, CA 94607  
Telephone: (510) 350-9700  
Facsimile: (510) 350-9701  
ds@classlawgroup.com  
kjl@classlawgroup.com


IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by themselves and their counsel:

**For Plaintiffs:**

Dated: \_\_\_\_\_  
Plaintiff Kenton Bowen

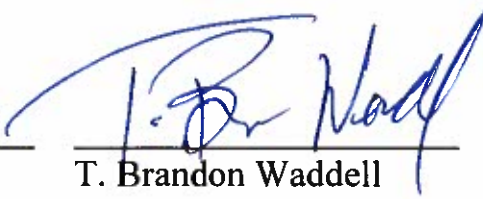
Dated: \_\_\_\_\_  
Plaintiff Kathleen Darnell

**For Class Counsel:**

Dated: 1/3/23 \_\_\_\_\_  
  
Matthew R. Wilson  
Michael J. Boyle, Jr.  
**MEYER WILSON CO., LPA**  
305 West Nationwide Boulevard  
Columbus, Ohio 43215  
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