

1 Stephen M. Harris, Bar No. 110626
smh@kpclegal.com
2 Barry R. Gammell, Bar No. 103218
bg@kpclegal.com
3 K.L. Myles, Bar No. 243272
klm@kpclegal.com
4 KNAPP, PETERSEN & CLARKE
550 North Brand Boulevard, Suite 1500
5 Glendale, California 91203-1922
Telephone: (818) 547-5000
6 Facsimile: (818) 547-5329

7 Attorneys for Plaintiffs
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
12

13 BRUCE EISEN, individually, and on
14 behalf of a class of similarly situated
individuals,
15 Plaintiff,
16 v.
17 PORSCHE CARS NORTH AMERICA,
INC.,
18 Defendant.

} NO. CV11-9405 CAS (FFMx)
} Assigned for All Purposes to
} the Honorable Christina A. Snyder -
} Ctrm 5
} Date: April 15, 2013
} Time: 10:00 a.m.
} Ctrm: 5
} **NOTICE OF MOTION AND
} MOTION FOR PRELIMINARY
} APPROVAL OF CLASS ACTION
} SETTLEMENT; MEMORANDUM
} OF POINTS AND AUTHORITES**

21
22 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF
23 RECORD:

24 PLEASE TAKE NOTICE THAT on April 15, 2013 at 10:00 a.m., or as soon
25 thereafter as the matter may be heard in Courtroom 5 of the above-entitled Court,
26 located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiffs Bruce Eisen,
27 KymMBERLI R. Ureda, Lee Smith, and Frederick Nelson-Bonebrake ("Plaintiffs") will
28 and hereby do move this Court to:

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1 1. Preliminarily approve the Settlement Agreement and Release
2 ("Agreement" or "Settlement"), attached as Exhibit 1 to the Declaration of Stephen
3 M. Harris.

4 2. Conditionally certify, for settlement purposes only, a settlement class of
5 all persons throughout the United States who currently own or lease or who
6 previously owned or leased a model year 2001-2005 Porsche Boxster vehicle
7 manufactured with an intermediate shaft "IMS" between May 4, 2001 and
8 February 21, 2005 or a model year 2001-2005 Porsche 911 vehicles manufactured
9 with an IMS between May 4, 2001 and February 20, 2005, excluding the Turbo, GT2
10 and GT3 models.

11 3. Appoint Plaintiffs as Class Representatives.

12 4. Appoint Stephen M. Harris of Knapp, Petersen & Clarke as Class
13 Counsel.

14 5. Set a hearing date for final approval of the class action settlement.

15 This Motion is based upon: (1) this Notice of Motion and Motion; (2) the
16 attached Memorandum of Points and Authorities in Support of Motion for
17 Preliminary Approval of Class Action Settlement; (3) the Declaration of Stephen M.
18 Harris; (4) the [Proposed] Order Granting Preliminary Approval of Class Action
19 Settlement, filed concurrently herewith; (5) the records, pleadings, and papers filed
20 in this action; and (6) upon such other documentary and oral evidence or argument as
21 may be presented to the Court at the hearing of this Motion.

22 Dated: March 13, 2013

KNAPP, PETERSEN & CLARKE

23
24 By: 

Stephen M. Harris
Attorneys for Plaintiffs
BRUCE EISEN, KYMMBERLI R.
URED, LEE SMITH, and
FREDERICK NELSON-
BONEBRAKE, individually, and on
behalf of a class of similarly situated
individuals

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Bruce Eisen, Kymmerli R. Ureda, Lee Smith, and Frederick Nelson-
 5 Bonebrake ("Plaintiffs") belong to a putative nationwide class of over 57,900 current
 6 and former owners and lessees of certain 2001 through 2005 Porsche Boxster
 7 vehicles and certain 2001 through 2005 Porsche 911 vehicles distributed and sold by
 8 Porsche Cars North America, Inc. ("PCNA"). They allege that defects in the design,
 9 manufacture, and assembly of the engines installed in the class vehicles resulted in
 10 mechanical failures in the Class Vehicles. Plaintiffs further allege that the
 11 mechanical failure is due to an intermediate shaft ("IMS") condition which causes
 12 engine failure, or engine damage ("Engine Defect") (Docket No. 26, First Amended
 13 Complaint ["FAC"] FAC ¶ 6).

14 Plaintiffs and PCNA have reached a settlement of nationwide class claims
 15 subject to approval by this Court. PCNA has agreed to reimburse all class members
 16 who have, or will, incur costs in connection with repairing or replacing an engine
 17 when said damage is or has been caused or contributed to by the IMS. PCNA will
 18 also pay limited out-of-pocket costs for towing and/or a replacement rental vehicle.
 19 PCNA's obligations are based upon the payment and reimbursement schedule more
 20 fully described below and in the Agreement attached as exhibit 1. (See, Exhibit 1 to
 21 Declaration of Stephen M. Harris ("Harris Decl.", § III, ¶ 4(j)).

22 Plaintiffs and their counsel believe the Settlement is fair and reasonable,
 23 providing class members' similar if not superior remedies than they could otherwise
 24 have expected to receive if the case had been successfully tried, but without the delay
 25 and risks associated with trial.

26 Plaintiffs respectfully request that this Court review the negotiated Agreement,
 27 attached as Exhibit 1 to the accompanying Harris Decl., and enter an order: (1)
 28 granting preliminary approval of the Settlement; (2) certifying a class and subclass

1 for settlement purposes and appointing Plaintiffs as class representatives and
 2 Plaintiffs' counsel, Stephen M. Harris of Knapp, Petersen & Clarke as class counsel;
 3 (3) approving the parties' proposed form and method of giving class members notice
 4 of the action and proposed Settlement; (4) directing that notice be given to class
 5 members in the proposed form and manner; and (5) setting a hearing on whether the
 6 Court should grant final approval of the Settlement, enter judgment, award attorneys'
 7 fees and expenses to Plaintiffs' counsel, and grant incentive awards to Plaintiffs.

8 II.

9 FACTS AND PROCEDURE

10 A. Named Plaintiffs Lease and Purchase of a Class Vehicle with an Engine 11 Defect

12 Plaintiff Bruce Eisen ("Eisen") leased a new 2003 Porsche Boxster
 13 vehicle in May of 2003, and subsequently purchased the vehicle. (Docket No. 26,
 14 First Amended Complaint ["FAC"] ¶ 22.) This vehicle was sold, distributed,
 15 advertised, marketed and warranted by PCNA, and bears the Vehicle Identification
 16 No. WPOCB29823U663093. (FAC ¶ 22.) In June of 2011, Eisen's Porsche
 17 underwent a catastrophic engine failure, with the cost of repairing and replacing
 18 said engine exceeding \$5,600, plus towing costs. (FAC ¶ 23.) PCNA refused to pay
 19 for or reimburse Eisen for the cost of these repairs. (FAC ¶ 24.)

20 Plaintiff Kymmberli R. Ureda ("Ureda") purchased a 2004 Porsche
 21 911 vehicle in November of 2003. (FAC ¶ 25.) This vehicle was sold, distributed,
 22 advertised, marketed and warranted by PCNA, and bears the Vehicle Identification
 23 No. WPO29964S650887. (FAC ¶ 25.) In October of 2011, Ureda's Porsche
 24 underwent a catastrophic engine failure as a result of the Engine Defect, with the
 25 cost of repairing and replacing said engine exceeding \$20,491.38, plus towing
 26 costs. (FAC ¶ 26.) PCNA refused to pay for or reimburse Ureda for the cost of
 27 these repairs. (FAC ¶ 27.)

28 ///

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1 Plaintiff Lee Smith ("Smith") purchased a 2002 Porsche 911 vehicle in July
 2 of 2011. (FAC ¶ 28.) This vehicle was sold, distributed, advertised, marketed and
 3 warranted by PCNA, and bears the Vehicle Identification No.
 4 WPOAA299325620282. (FAC ¶ 28.) In July of 2012, Smith's Porsche underwent a
 5 catastrophic engine failure as a result of the Engine Defect, with the cost of
 6 repairing and replacing said engine exceeding \$24,316.87, plus towing costs. (FAC
 7 ¶ 29.) PCNA refused to pay for or reimburse Smith for the cost of these repairs.
 8 (FAC ¶ 30.)

9 Plaintiff Frederick Nelson-Bonebrake ("Nelson-Bonebrake") purchased a
 10 2003 Porsche Boxster vehicle in February of 2005. (FAC ¶ 31.) This vehicle was
 11 sold, distributed, advertised, marketed and warranted by PCNA, and bears the
 12 Vehicle Identification No. WPOCA29883U621868. (FAC ¶ 31.) In June of 2011,
 13 Nelson-Bonebrake's Porsche underwent a catastrophic engine failure as a result of
 14 the Engine Defect, with the cost of repairing and replacing said engine exceeding
 15 \$8,107.26, plus towing costs. (FAC ¶ 32.) PCNA refused to pay for or reimburse
 16 Nelson-Bonebrake for the cost of these repairs. (FAC ¶ 33.)

17 All Class Vehicles when purchased new came with a New Car Limited
 18 Warranty covering defects in the materials and workmanship for a period of 50,000
 19 miles or four (4) years, whichever occurs first. Certain Class Vehicles were
 20 purchased with a Porsche Approved Certified Pre-Owned Limited Warranty
 21 ("ACPO") covering defects in materials and workmanship for a period of up to six
 22 (6) years or a cumulative 100,000 miles from the original in-service date,
 23 whichever occurs first, if the vehicle was still under the New Car Limited Warranty
 24 at time of purchase; or coverage for two (2) years or 50,000 miles from the used
 25 retail purchase but not to exceed 100,000 total vehicle miles, whichever occurs
 26 first, for vehicles purchased outside the New Car Limited Warranty.

27 ///

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1 **B. Class Members Similar Experience**

2 Porsche adopted a single row design for the IMS in 2001. Warranty claims of
 3 owners of Porsche vehicles with this design of the IMS (all Class Vehicles) spiked
 4 up to between 4% to 8% of all such Vehicles in the United States, and 4% to 10% of
 5 all Class Vehicles in California. Warranty claims for Porsche Boxster and 911
 6 vehicles relating to IMS issues, which had different versions of the IMS, have
 7 uniformly involved claims of far less than 1% of such vehicles.¹ Indeed, to date,
 8 Porsche has spent over \$20,000,000 reimbursing customers for the parts and labor
 9 necessary to repair vehicles experiencing engine failure as a result of the defective
 10 IMS shaft. (This entails approximately 3,100 claims granted under warranty or good
 11 will.) (See, Harris Decl., ¶ 13.)

12 **C. Plaintiffs' Allegations in FAC Regarding The Engine Defect**

13 The Class Vehicles are equipped with the IMS, which is located at the bottom
 14 portion of the inside of the Class Vehicles engines. (FAC ¶ 7.) The IMS rotates in a
 15 high rate of speed in correlation with the rotation of the engine. (*Id.*) In order to
 16 reduce vibration in the engine, the IMS is held in place by an intermediate shaft
 17 bearing. (FAC ¶ 8.) The intermediate shaft bearing is pressed into the engine block
 18 and is a part which is designed so that the outer circumference of the part can remain
 19 stationary, pressed into the block, while the inner portion of the part, which holds the
 20 IMS, is able to rotate in a stable manner, at a high speed. (*Id.*) Failures (including
 21 catastrophic failures) occur due to the fact that the IMS is not sufficiently robust to
 22

23 ¹ See *US. v. General Motors Corp.*, 518 F.2d 420, 427 (C.A.D.C. 1975) (defect exists
 24 where a significant (i.e., non-"de minimus") number of failures occur); *U.S. v. Ford*
 25 *Motor Corp.*, 453 F. Supp. 1240, 1243, 1246 (D. D.C. 1978) (finding existence of
 26 defect based on replacement-part sales data); *United States v. Ford Motor Co.*, 421 F.
 27 Supp. 1239, 1241-42 (D.D.C. 1976) (existence of defect based on warranty return
 28 rate of 2%); *United States v. General Motors Corp.*, 417 F. Supp. 933, 938 (D.D.C.
 1976) (GM stipulates that 300 fires in population of 375,000 vehicles constituted a
 significant number on which to base finding of defect), *aff'd*, 565 F.2d 754 (D.C. Cir.
 1977).

1 reliably operate without failure, for the anticipated life of the IMS. (FAC ¶ 10.) The
 2 IMS is not a part that is supposed to be serviced, meaning that the part should remain
 3 functional for the anticipated life of the engine. (*Id.*) The IMS does with high
 4 frequency fail during the time period of the useful life of the engine. (*Id.*)

5 Due to the location of the IMS within the engine, this deterioration process is
 6 not visible without removing major engine components, and generally has no visible
 7 or audible warning signs prior to eventual catastrophic or other engine failure. (FAC
 8 ¶ 13.) As a result of the Engine Defect, the engine can either lose power or seize,
 9 causing the vehicle to lose forward propulsion and the power steering and power
 10 braking system will no longer function, making it extremely difficult to steer or stop,
 11 and the vehicle ultimately breaks down and stops. (FAC ¶ 14.)

12 The Class Vehicles consist of certain model year 2001 - 2005 Porsche Boxster
 13 vehicles, and certain 2001 - 2005 Porsche 911 vehicles, as more fully described in
 14 the Agreement. (Agreement § I, ¶¶ a, b.) Approximately 57,929 Class Vehicles were
 15 sold in the United States. (Agreement § II, ¶ 2.) Approximately 30% of the Class
 16 Vehicles were sold in California. (Harris Decl. ¶ 8.)

17 The costs of the Engine Defect to consumers can be exorbitant because
 18 consumers will be required to pay thousands of dollars both to diagnose and repair
 19 the Engine Defect and to repair the extensive damage that it causes to a vehicle's
 20 engine. (FAC ¶ 16.) Additionally, the presence of the Engine Defect in the Class
 21 Vehicles has resulted in the vehicles having diminished value, thereby depriving
 22 plaintiffs and the Class Members of the benefit of the vehicle (and its value) that they
 23 paid for. (*Id.*)

24 Plaintiffs allege PCNA was aware of the Engine Defect before Plaintiffs
 25 purchased their Class Vehicles through sources not available to plaintiffs or Class
 26 Members, including but not limited to pre-release testing data, early consumer and
 27 dealer complaints about the Engine Defect to PCNA, testing conducted in response
 28 to those complaints, aggregate data from PCNA's dealers (such as warranty data,

1 goodwill data, repair data and parts purchases), reports from the National Highway
 2 Transportation and Safety Administration ("NHTSA"), and from other internal and
 3 external sources. (FAC ¶ 17, 18.)

4 Warranty claims of owners of Porsche vehicles with this design of the IMS (all
 5 class vehicles) dramatically rose to between 4% to 8% of all Class Vehicles in the
 6 United States, and to between 4% to 10% of all such Vehicles in California. Indeed,
 7 to date, Porsche has spent over \$20,000,000 reimbursing its customers for the parts
 8 and labor necessary to repair vehicles experiencing engine failure as a result of the
 9 defective IMS shaft. (This entails approximately 3,100 claims granted under
 10 warranty or good will.) (See, Harris Decl., ¶ 13.)

11 Despite PCNA being on notice of the defect from various internal and external
 12 sources, Porsche has not recalled the Class Vehicles to repair the Engine Defect, has
 13 not offered all of the owners and lessees of Class Vehicles a suitable permanent
 14 repair or vehicle replacement free of charge, and has not offered to reimburse all
 15 owners and lessees of Class Vehicles who incurred costs relating to the Engine
 16 Defect, including costs related to inspections/diagnosis, and repair of the Class
 17 Vehicles. (FAC ¶ 20.)

18 **D. The Class Action Complaint Against PCNA**

19 On November 10, 2011, Eisen brought a class action against PCNA on behalf
 20 himself and a class of California consumers alleging (1) violations of California
 21 Consumer Legal Remedies Act, (2) violations of California Unfair Business
 22 Practices Act, and (3) fraud. (Docket No. 1.) On January 11, 2012, PCNA moved to
 23 dismiss the complaint pursuant to Federal Rules of Civil Procedure 9(b) and 9(b) (6).
 24 (Docket No. 8.) The Court granted the motion to dismiss with leave to amend.
 25 (Docket No. 14.) On October 10, 2012, the FAC was filed by Eisen, Ureda, Smith,
 26 and Nelson-Bonebrake as a putative nationwide class action on behalf of themselves
 27 and all other Class Members similarly situated for (1) breach of express warranties,
 28 (2) violation of State consumer protection statutes, and (3) breach of implied

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1 warranty of merchantability. (Docket No. 26.) Plaintiffs plead a class of “all persons
 2 throughout the United States who currently own or lease a Class Vehicle and who
 3 have sustained damages as a result of an engine failure due to the Engine Defect”
 4 (“Class”) and “all persons throughout the United States who previously owned or
 5 leased a Class Vehicle and who have sustained damages as a result of an engine
 6 failure due to the Engine Defect”. (Docket No. 26, FAC ¶¶ 83, 84.)²

7 **E. Investigation And Discovery**

8 Plaintiffs conducted a pre-filing and post-filing investigation, including, but
 9 not limited to, retaining an expert consultant regarding IMS failures, review of
 10 technical service bulletins, review of publicly available information relating to the
 11 nature and extent of the IMS problem, and obtaining and reviewing over 4,000 pages
 12 of IMS related documents produced by PCNA. Plaintiffs have also reviewed the
 13 status of other lawsuits, including settlement thereof, communicated with class
 14 members, and monitored complaints on NHTSA. Plaintiffs also deposed Alan Butler
 15 in May of 2012 (regarding warranty and warranty claim data) and Steffan Reinert
 16 (concerning the technical aspects of the IMS problems) in July of 2012. (Harris
 17 Decl., ¶¶ 11-12.)

18 **F. The Mediation/Settlement Agreement**

19 On August 22, and August 23, 2012, the parties participated in two full day
 20 mediation sessions with the honorable Edward J. Wallin. At that time, only Bruce
 21 Eisen was a named plaintiff. The parties were able to agree on all aspects of the
 22 settlement (other than attorneys’ fees, costs, and enhancements) after these two day
 23 sessions, including agreement to a nationwide class for settlement purposes only, and
 24 signed a document titled “Eisen v. Porsche Settlement Terms” after the conclusion of
 25

26 ² The operative pleading referred to a class and sub-class, but both classes are
 27 combined for purposes of the settlement. (Settlement Agreement, § III, ¶ 19; FAC,
 28 ¶ 84.)

1 these negotiation sessions. After the mediation, Plaintiffs submitted a First Amended
 2 Complaint which included the additional plaintiffs, Kymmerli R. Ureda, Lee Smith
 3 and Frederick Nelson-Bonebrake as additional parties. The parties later came to
 4 agreement on November 12, 2012 with respect to the total enhancements payable to
 5 the class representatives (subject to court approval) and also modified the settlement
 6 previously agreed to in order to increase the mileage limitation aspect of the
 7 Agreement. (Harris Decl., ¶ 14.)

8 The parties thereafter were able to negotiate the language of the formal
 9 Agreement, claim form, and notice. (*Id.*, ¶ 15.)

10 On October 23, 2012, the Court granted the parties' stipulation to extend the
 11 time for PCNA to file its response to the FAC to December 24, 2012 for settlement
 12 purposes. (Docket No. 30) In their stipulation, the parties advised the Court that
 13 following successful negotiations, the parties had agreed to all of the terms of the
 14 Settlement Agreement as it relates to the Class and Class Members, including the
 15 terms of the Class Notice and Claim Form, and the amount of incentive awards for
 16 the Representative Class Plaintiffs, with the only issue remaining unresolved being
 17 attorneys' fees and costs. (Docket No. 29 ¶ 2.)

18 On December 27, 2012, this court entered an order vacating the deadline for
 19 PCNA to file an answer. (Docket No. 30.)

20 **G. The Mediation Concerning Class Counsel's Fees And Costs**

21 On February 4, 2013, the parties participated in an additional mediation with
 22 the Honorable Edward J. Wallin. (Harris Decl. ¶ 18.) The mediation was successful
 23 as the parties agreed that PCNA would not to oppose a petition on behalf of class
 24 counsel for attorneys' fees, and verifiable costs, in a total amount not to exceed
 25 \$950,000.00. (Agreement § III, ¶ 19.) The requested amount is in addition to the
 26 benefits PCNA will provide to Class Members under the terms of the Settlement and
 27 thus will not reduce the class benefits provided for under the Settlement.

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1 **1. Preliminary Approval Motion**

2 This court ordered that Plaintiffs file their motion no later than March 13,
3 2013. (Docket No. 35)

4 **H. The Proposed Settlement**

5 **1. The Proposed Settlement Class**

6 The settlement class consists of “all persons in the United States, who
7 currently own or lease or who previously owned or leased a Class Vehicle
8 (“Settlement Class”). (Agreement, § I, ¶ 19.) Excluded from the Settlement Class are
9 the following: a) officers and directors of PCNA, b) the Judge to whom this case is
10 assigned and any member of the Judge’s immediate family, c) persons with personal
11 injury claims; and d) persons who have submitted a timely and valid request for
12 exclusion from the Settlement Class.” (*Id.*)

13 **2. The Proposed Payment and Reimbursement Schedule**

14 Porsche’s warranty normally extends only to four years or 50,000 miles,
15 whichever comes first, other than the extended warranty applicable to Porsche’s pre-
16 owned vehicle program. (Harris Decl., ¶ 20.) Here, the Settlement permits class
17 members to obtain reimbursement for out of pocket payments for past or future
18 engine damage or replacement caused or contributed to by the IMS, up to ten years
19 after the vehicle is first placed in service, or up to 130,000 miles on the odometer,
20 whichever occurs first. Moreover, settlement class members can receive limited
21 reimbursement (up to \$200) for out-of-pocket towing and rental expenses.
22 (Agreement, § III, ¶ 4(j) and (l).)

23 Payments and reimbursements as set out in the table below will be based on
24 mileage without regard to the amount of time since the vehicle was first placed in
25 service, except that no Class Member will be entitled to any payment or
26 reimbursement for any IMS damage occurring to a Class Vehicle more than ten (10)
27 years after the vehicle was placed in service and the New Car Limited Warranty
28 commenced, or in other words, the date the warranty commenced (normally but not

exclusively the date of sale to the original customer). (Agreement, § III, ¶ 4(j).) The payment or reimbursement for IMS damage will only be for Repairs³ as defined in the Settlement Agreement.

The Payment and Reimbursement Schedule is as follows:

	New Vehicle-Purchaser	ACPO Purchaser ⁴	Open-Market Used Vehicle Purchaser
Up to 50,000	100%	100%	25%
50,001-60,000 miles	90%	100%	25%
60,001-70,000 miles	80%	100%	25%
70,001-80,000 miles	70%	100%	25%
80,001-90,000 miles	60%	100%	25%
90,001-100,000 miles	50%	100%	25%
100,001-130,000 miles	40%	40%	25%

(Id.)

3. The Proposed Notice to the Class and Others of the Settlement

A Settlement Administrator is appointed under the Agreement (Garden City Group) who will disseminate notice of the Settlement and the hearing on a Final Approval Motion (see, Exhibit 2 of the Harris Decl.). Notice will be sent by First-Class U.S. Mail, postage paid, to potential Settlement Class members, including current and prior owners and lessees of Class Vehicles. The procedure for giving notice to potential Settlement Class members is set forth in Section III, Paragraphs 7 through 11, of the Agreement. In addition to mail notice, the settlement administrator

³ "Repair(s) means the cost of the parts and labor used to repair engine damage, including, without limitation, repair or replacement of the engine caused or contributed to by an IMS in a Class Vehicle and in addition, limited costs for towing and/or replacement vehicle rental during the repair period as provided for in this Agreement." (Agreement § I, ¶ 20.)

⁴ Approved Certified Pre-Owned Vehicle.

1 will maintain a toll free number and web site dedicated to advising Class Members
 2 about the Settlement. (*Id.*) The web site, notice and toll free number will also include
 3 Class Counsel's contact data so that Class Members may contact Class Counsel and
 4 obtain their assistance with any questions they may have. (*Id.*, and Notice, exhibit 2
 5 to Harris Decl.)

6 Class members will have 90 days to submit a claim from the date of
 7 transmission of the notice, and can do so via mail, email, federal express or
 8 facsimile. (§ III, ¶ 4, j; Ex.'s 2-3 to Harris Decl.) Class members who experience an
 9 IMS condition after receiving Notice shall contact PCNA for verification of the IMS
 10 condition at an authorized Porsche dealership. (Agreement, § III, ¶ 4(d).) If the
 11 condition is verified, PCNA will pay for the repair pursuant to the Payment and
 12 Reimbursement Schedule. (Agreement, § III, ¶ 4(d), (j).) Moreover, class members
 13 who experience an IMS condition in the future (i.e. after receiving Notice) can
 14 submit claims after the final approval date, consistent with the terms of the
 15 settlement. Class members, via class counsel, can also appeal denial of their claims.
 16 (Agreement, § III, ¶¶ 4, j, m-o.)

17 The Settlement Agreement, at Section III, Paragraph 13, establishes the
 18 procedure for those potential Settlement Class members who wish to be excluded
 19 from the settlement; Section III, Paragraph 14, established the procedure for those
 20 potential Settlement Class members who wish to object to the settlement.

21 **4. The Proposed Release of the Class**

22 Class Members who do not opt out of the Settlement according to the
 23 procedures set forth in the Settlement Agreement shall release any and all claims or
 24 causes of action that were, or could have been, asserted by Plaintiffs or any Class
 25 Members against PCNA, regarding the Engine Defects of the Class Vehicles as
 26 alleged in the Action (excluding potential claims for personal injury). (Agreement,
 27 § III, ¶ 5.) This includes unknown claims relating to the Engine Defect of the Class
 28 Vehicles. (*Id.*)

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1 III.

2 ARGUMENT

3 A. The Proposed Class Action Settlement Should Receive Preliminary
 4 Approval

5 1. Overview of the Class Action Settlement Process and the Role of
 6 Preliminary Approval

7 A class action settlement like the one proposed here must be approved by the
 8 Court to be effective. *See* Fed. R. Civ. Proc. 23(e). Court approval occurs in three
 9 steps: (1) a preliminary approval hearing, at which the court considers whether the
 10 proposed settlement is within the range of reasonableness meriting final approval; (2)
 11 a notice and comment stage, during which class members are informed about the
 12 proposed settlement and given an opportunity to object; and (3) a “formal fairness
 13 hearing,” or final approval hearing, at which the court decides whether the proposed
 14 settlement should be approved as fair, adequate, and reasonable to the class. *See*
 15 Manual for Complex Litigation (Fourth) §§ 21.632-34 (2004).

16 Whereas at the final approval stage the Court must decide whether the parties
 17 negotiated a settlement that is fair, reasonable, and adequate to class members, at the
 18 preliminary approval stage, the Court need only decide whether the settlement falls
 19 within a range of reasonableness possibly meriting final approval (i.e., whether it
 20 would be worthwhile to give the class notice of the settlement and proceed with a
 21 formal fairness hearing). *See Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th Cir.
 22 1982); *Acosta v. Trans Union*, 243 F.R.D. 377, 386 (C.D. Cal. 2007) (“To determine
 23 whether preliminary approval is appropriate, the settlement need only be potentially
 24 fair, as the Court will make a final determination of its adequacy at the hearing on
 25 Final Approval, after such time as any party has had a chance to object and/or opt
 26 out.”); 4 Newberg & Conte, § 11.25. If the settlement has no obvious deficiencies,
 27 then it falls within the range of possible approval. *See In re Initial Pub. Offering Sec.*
 28 *Litig.*, 226 F.R.D. 186, 191 (S.D.N.Y. 2005). In other words, the Court makes only a

1 preliminary determination of the settlement's fairness, reasonableness, and adequacy,
 2 pointing out any settlement terms that are so unacceptable at the outset that a formal
 3 fairness hearing would be a waste of time. *See* Manual for Complex Litigation, §
 4 21.632; 4 Newberg & Conte, § 11.25.

5 Plaintiffs ask the Court to take the first step in the settlement approval process
 6 and grant preliminary approval of the Settlement. Plaintiffs further request that the
 7 Court provisionally certify the Settlement Class, appoint Plaintiffs as Class
 8 Representatives and their attorneys as Class Counsel, order dissemination of notice
 9 to Class Members, and set a date for the final approval hearing.

10 **2. The Proposed Settlement Is Well Within the Range of**
 11 **Reasonableness Warranting Preliminary Approval and Justified in**
 12 **Light of the Risks of Continued Litigation**

13 The settlement presented by the parties contains no obvious deficiencies and
 14 does not provide for excessive attorneys' fees at the expense of the class. Indeed, as
 15 its terms were negotiated at arm's length by experienced counsel⁵ knowledgeable in
 16 complex class litigation, and with the assistance of a retired California Court of
 17 Appeal judge, the settlement enjoys a presumption of fairness. *See, e.g., In re*
 18 *Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 173-174 (S.D.N.Y.
 19 2000). "Once the Settlement is presumed fair, it is not for the Court to substitute its
 20 judgment as to a proper settlement for that of such competent counsel." *Id.* (internal
 21 quotes omitted).

22 An objective evaluation confirms that the benefits negotiated for the class are
 23 well within the range of reasonableness. It follows that the class is now receiving,
 24 through a settlement, nearly as much as could reasonably be expected after a
 25 successful trial verdict. The alternative would be protracted litigation that would

27 ⁵ See, Harris Decl., ¶¶ 18-22.
 28

1 leave class members uncompensated, and many completely unaware that their
 2 vehicles suffer from an Engine Defect, a problem which poses of a risk of the
 3 vehicles coming to a stop on the road or highway.

4 If the parties had been unable to resolve this case through settlement, the
 5 litigation could have been even more expensive and lengthy. For instance, in a case
 6 against General Motors alleging a defect in an intake manifold gasket, another
 7 plaintiffs' counsel devoted more than 58,000 hours over five years before resolving
 8 the cases for cash reimbursements through a claims-made process. *In Re General*
 9 *Motors Dex-Cool Cases*, No. HG03093843 (Cal. Super Ct. Alameda County 2008).

10 The reality is that any case against a major automotive manufacturer alleging a
 11 defect in thousands of vehicles has the potential to take up significant amounts of the
 12 Court's and the parties' resources. In addition, if the case were to proceed, Plaintiffs
 13 would need to retain multiple experts resulting in significant additional expenses.

14 It goes without saying that PCNA would strongly oppose class certification
 15 were the case to proceed on the merits. "The value of a class action 'depends largely
 16 on the certification of the class,' and . . . class certification undeniably represents a
 17 serious risk for plaintiffs in any class action lawsuit." *Acosta v. Trans Union, LLC*,
 18 243 F.R.D. 377, 392 (C.D. Cal. 2007) (quoting *In re GMC Pick-Up Truck Fuel Tank*
 19 *Prods. Liab. Litig.*, 55 F.3d 768, 817 (3d. Cir. 1995). As explained herein, Plaintiffs'
 20 counsel believe that this case is appropriate for class certification in the litigation
 21 context. However, there is always a risk that a Court would not find this action
 22 suitable for certification as a nationwide class or a multi-state class, or, even if class
 23 certification were granted in the litigation context, class certification can always be
 24 reviewed or modified before trial, and a class may be decertified at any time. *See*,
 25 e.g., *Mazza v. American Honda Motor Co.*, 666 F.3d 581 (9th Cir. 2012) (the Ninth
 26 Circuit reversed the certification of a nationwide class composed of consumers
 27 seeking relief under California's consumer protection laws); *Wal-Mart Stores, Inc. v.*
 28 *Dukes*, 131 S. Ct. 2541 (2011).

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Given the favorable terms of the settlement and the manner in which these terms were negotiated, the proposed settlement should be viewed, at least preliminarily, as a fair, reasonable, and adequate compromise of the issues in dispute. It is worthwhile for the Court to grant preliminary approval to the settlement, order dissemination of notice to the class for comment, and proceed to a formal fairness hearing.

B. Conditional Class Certification Is Appropriate for Settlement Purposes

1. The Proposed Class Meets the Requirements of Rule 23

Before granting preliminary approval of the Settlement, the Court should determine that the proposed settlement class meets the requirements of Rule 23. *See Amchem Prods. v. Windsor*, 521 U.S. 591, 620 (1997); Manual for Complex Litigation, § 21.632. An analysis of the requirements of Rule 23(a) and 23(b)(3), commonly referred to as numerosity, commonality, typicality, adequacy, predominance, and superiority, shows that certification of this proposed settlement class is appropriate.

2. The Proposed Class Is Sufficiently Numerous and Ascertainable

The numerosity requirement is met where “the class is so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). Generally, courts will find a class sufficiently numerous if it consists of 40 or more members. *Vasquez v. Coast Valley Roofing, Inc.*, 670 F. Supp. 2d 1114, 1121 (E.D. Cal. 2009) (numerosity is presumed at a level of 40 members); *Consolidated Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995) (“numerosity is presumed at a level of 40 members”); *Swanson v. American Consumer Industries*, 415 F.2d 1326, 1333 (7th Cir. 1969) (numerosity satisfied with class of 40 individuals); *Ikonen v. Hartz Mountain Corp.*, 122 F.R.D. 258, 262 (S.D. Cal. 1998) (finding a purported class of 40 members sufficient to satisfy numerosity).

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1 Here, the proposed settlement class consists of all current and former owners
2 and lessees within the continental United States of approximately 57,929 Class
3 Vehicles.

4 **3. There are Questions of Law and Fact that Are Common to the**
5 **Class**

6 The second Rule 23(a) requirement is commonality, which is satisfied “if there
7 are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a) (2). The
8 “commonality requirement has been ‘construed permissively,’ and its requirements
9 deemed minimal.” *Estrella v. Freedom Fin’l Network*, 2010 U.S. Dist. LEXIS
10 61236 (N.D. Cal. 2010) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019-
11 1020 (9th Cir. 1998). Moreover, “‘there is clear justification for handling the dispute
12 on a representative rather than an individual basis’ if ‘common questions present a
13 significant aspect of the case and they can be resolved for all members of the class in
14 a single adjudication....’” *Mazza*, 666 F.3d at 589 (quoting *Hanlon*, 150 F.3d at
15 1022).

16 Here, each Class Member purchased or leased 2001 through 2005 Porsche
17 Boxster vehicles and 2001 through 2005 Porsche 911 vehicles (excluding the Turbo,
18 GT2 and GT3 models). PCNA contends that the vehicles manufactured with an IMS
19 are no more susceptible to engine damage than other vehicles, and thus perform
20 appropriately under normal driving conditions. It follows that the principal common
21 questions of law and fact which a trier of fact would need to resolve are whether the
22 Boxster’s and 911’s IMS systems are defective, and if so, whether PCNA had an
23 obligation to apprise consumers of the defect and make repairs relating to the defect
24 at no cost to the consumer. The need to determine whether an inherent defect exists
25 not only satisfies Rule 23’s commonality requirement, it raises the very type of
26 overarching common question that has driven class certifications in other automotive
27 defect cases. *See, e.g., Hanlon*, 150 F.3d at 1020 (allegedly defective rear liftgate
28 latches); *Parkinson v. Hyundai Motor Am.*, 258 F.R.D. 580, 595-97 (C.D. Cal. 2008)

(allegedly defective flywheels); *Chamberlan v. Ford Motor Co.*, 223 F.R.D. 524, 526 (N.D. Cal. 2004) (allegedly defective engine intake manifolds); *Daffin v. Ford Motor Co.*, 458 F.3d 549, 552 (6th Cir. Ohio 2006) (allegedly defective throttle body assembly); *see also Wolin v. Jaguar Land Rover N. Am.*, 617 F.3d 1168, 1172 (9th Cir. 2010) (reversing denial of class certification in a case regarding allegedly defective tire alignment).

4. Plaintiffs' Claims are Typical of the Proposed Settlement Class

"Like the commonality requirement, the typicality requirement is 'permissive' and requires only that the representative's claims are 'reasonably co-extensive with those of absent class members; they need not be substantially identical.'" *Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010) (quoting *Hanlon*, 150 F. 3d at 1020). "In determining whether typicality is met, the focus should be on the defendants' conduct and plaintiff's legal theory, not the injury caused to the plaintiff." *Lozano v. AT&T Wireless Services, Inc.*, 504 F.3d 718, 734 (9th Cir. 2007). Thus, typicality is "satisfied when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability." *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001) (quoting *Marisol v. Giuliani*, 126 F.3d 372, 376 (2nd Cir. 1997)).

Here, Plaintiffs assert that Class Members' claims arising from the IMS failures are reasonably coextensive with the legal claims asserted by the named Plaintiffs. Each Class Member's claim arises from the same underlying conduct—namely, PCNA's's alleged concealment of an inherent defect in the IMS installed in the Porsche Class Vehicles. In addition, Class Members have similar interests in the remedies being provided by the proposed settlement, which include reimbursements for IMS related damage to their vehicles.

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1 **5. Plaintiffs and Plaintiffs' Counsel Will Adequately Represent the**
2 **Interests of the Proposed Settlement Class**

3 The final Rule 23(a) requirement asks whether "the representative parties will
4 fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a) (4).
5 This requirement is satisfied if: (1) the proposed representative Plaintiffs do not have
6 conflicts of interest with the proposed class, and (2) Plaintiffs are represented by
7 qualified and competent counsel. *Hanlon*, 150 F.3d at 1020.

8 Here, none of the proposed representative Plaintiffs have individual interests
9 in this litigation that conflict with the best interests of the class. To the contrary, each
10 named Plaintiff as well as each Class Member has a common interest in obtaining
11 reimbursement from PCNA as a result of its alleged concealment of the Engine
12 Defect. In addition, the named Plaintiffs are represented by counsel well versed in
13 prosecuting automotive class actions.

14 While the Court usually must speculate to some extent in assessing whether
15 the named plaintiffs' and their counsel will adequately represent the class, in this
16 case the Court can look to the proposed settlement negotiated by Plaintiffs and their
17 counsel. The settlement provides fair compensation for Class Members' claims by
18 providing them with reimbursement for repairs to their Class Vehicles relating to
19 IMS failures.

20 **6. Common Issues Predominate Over Individual Issues**

21 "In addition to meeting the conditions imposed by Rule 23(a), the parties
22 seeking class certification must also show that the action is maintainable under Fed.
23 R. Civ. P. 23(b) (1), (2) or (3)." *Hanlon*, 150 F.3d at 1022. Here, the proposed class
24 is maintainable under Rule 23(b) (3), as common questions predominate over any
25 questions affecting only individual members and class resolution is superior to other
26 available methods for a fair resolution of the controversy. *Id.* (citing Fed. R. Civ. P.
27 23(b) (3)).

28 Each class members' claims depends on whether his/her/its Class Vehicle

1 suffers from an inherent IMS defect, and thus raise just the sort of predominantly
 2 common questions courts have found to justify class treatment. *See, e.g., Hanlon*,
 3 150 F.3d at 1022-1023 (allegedly defective rear lift gate latches); *Chamberlan*, 223
 4 F.R.D. at 526 (allegedly defective engine intake manifolds); *Daffin*, 458 F.3d at 552
 5 (allegedly defective throttle body assembly). Moreover, proof of the manifestation
 6 of the defect is not a prerequisite to class certification. *Wolin*, 617 F.3d at 1173.

7 Preliminary approval is not precluded by *Mazza*, where after analyzing
 8 governmental interests, the court denied certification “[u]nder the facts and
 9 circumstances of [the] case,” holding “that each class member’s consumer protection
 10 claim should be governed by the consumer protection laws of the jurisdiction in
 11 which the transaction took place.” *Mazza*, 666 F.3d at 594. In *Mazza*, plaintiffs’
 12 claims against a vehicle manufacturer were for false advertising. “Thus, *Mazza*
 13 stands for the unremarkable proposition that it is difficult to certify a class where the
 14 class members are not all exposed to the same representations. This proposition has
 15 no relevance to [a] case, where Plaintiffs’ theory is that Defendant’s *omissions*
 16 violated the [states’ consumer statutes] and that partial representations *on the product*
 17 *itself* are misleading.” *Tait v. BSH Home Appliances Corp.*, SA CV 10-0711 DOC,
 18 2012 WL 6699247 (C.D. Cal. Dec. 20, 2012) (Emphasis in original). Here too,
 19 Plaintiffs’ theory is that PCNA’s failure to disclose the existence of the Engine
 20 Defect violated unfair and deceptive acts and practice laws of each state. In addition,
 21 the claims for breaches of express warranty and implied warranty of merchantability
 22 are based upon the same facts pertaining to each Class Member. Importantly, with
 23 respect to the warranty claims occurring within warranty, Class Members will not
 24 need to show that any particular warranty was delivered or made to them by PCNA
 25 in order to be reimbursed under the Settlement Agreement. They need merely show
 26 proof of IMS damage to a Class Vehicle occurring within 10 years after the vehicle
 27 was placed in service or 130,000 miles, whichever comes first.

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1 7. **Class Settlement Is Superior to Other Available Means of**
 2 **Resolution**

3 Similarly, there can be little doubt that resolving all Class Members' claims
 4 through a single class action is superior to a series of individual lawsuits. "From
 5 either a judicial or litigant viewpoint, there is no advantage in individual members
 6 controlling the prosecution of separate actions. There would be less litigation or
 7 settlement leverage, significantly reduced resources and no greater prospect for
 8 recovery." *Hanlon*, 150 F.3d at 1023. Indeed, the terms of the Settlement negotiated
 9 on behalf of the class demonstrates the advantages of a collective bargaining and
 10 resolution process.

11 Addressing the allegations of an inherent defect in the design of the Class
 12 Vehicles' IMS through a class action is superior to individual litigation or any
 13 alternative methods that may exist. This action was filed precisely because Plaintiffs
 14 believed those alternatives, such as filing complaints with NHTSA or directly with
 15 PCNA, would have proven ineffective in addressing the problem on a class-wide
 16 basis. Although the repair costs expended by consumers are not insignificant, costing
 17 thousands of dollars, the amount in controversy is not nearly enough to incentivize
 18 individual action. See *Wolin*, 617 F.3d at 1175 ("Where recovery on an individual
 19 basis would be dwarfed by the cost of litigating on an individual basis, this
 20 [superiority] factor weighs in favor of class certification."). As the Ninth Circuit
 21 found in the *Wolin* automotive defect case, "[f]orcing individual vehicle owners to
 22 litigate their cases, particularly where common issues predominate for the proposed
 23 class, [would be] an inferior method of adjudication." *Id.* at 1176. "There would be
 24 less litigation or settlement leverage, significantly reduced resources and no greater
 25 prospect for recovery." *Hanlon*, 150 F.3d at 1023. The superiority of proceeding
 26 through the class action mechanism, on the other hand, is demonstrable. By
 27 aggregating Class Members' claims, Plaintiffs' counsel have been able to expend the
 28 resources necessary to conduct discovery of the alleged Engine Defect and negotiate

1 a settlement with PCNA that, if approved, will provide Class Members with
 2 reimbursements for their repair costs. As the class action device provides the superior
 3 means to effectively and efficiently resolve this controversy, and as the other
 4 requirements of Rule 23 are each satisfied, certification of the settlement class
 5 proposed by the parties is appropriate.

6 **C. The Proposed Notice Plan Meets The Requirements of Rule 23**

7 Upon certifying a 23(b)(3) class, Rule 23(c)(2)(B) requires the Court to “direct
 8 to class members the best notice that is practicable under the circumstances,
 9 including individual notice to all members who can be identified through reasonable
 10 effort.” In addition, Rule 23(e)(1) requires that before a proposed settlement may be
 11 approved, the Court “must direct notice in a reasonable manner to all class members
 12 who would be bound by the proposal.”

13 The parties have agreed on a notice plan that satisfies the requirements of Rule
 14 23. Under this plan, PCNA will cause to be mailed notice of class certification and
 15 the proposed settlement to all current and former owners and lessees of class vehicles
 16 who can be reasonably identified.⁶ The form of the notice to be mailed, attached as
 17 Exhibit 2 to the Harris Declaration, includes all the content required by Rule 23(c)
 18 (2) (B), such as a description of the action and class claims, as well as the Class
 19 Members’ right to opt out or object to the proposed settlement, including any
 20 application for attorneys’ fees, costs and service awards.

21 **IV.**

22 **CONCLUSION**

23 The Parties have negotiated a fair and reasonable settlement that almost
 24 certainly never would have been arrived at but for the use of a class action as a
 25

26 ⁶ Moreover, the Agreement also provides for a web site and toll free number to be
 27 maintained in order to notify the Class Members about the Settlement, and to answer
 28 questions that they may have.

1 procedural device, dedicated and informed Class Representatives and experienced
2 Plaintiffs' counsel. Preliminary Approval should thus be granted.

3 Dated: March 13, 2013

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6 By: 

Stephen M. Harris
Attorneys for Plaintiffs
BRUCE EISEN, KYMMBERLI R.
UREDIA, LEE SMITH, and
FREDERICK NELSON-
BONEBRAKE, individually, and on
behalf of a class of similarly situated
individuals

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KNAPP,
PETERSEN
& CLARKE

1 Stephen M. Harris, Bar No. 110626
smh@kpclegal.com
2 Barry R. Gammell, Bar No. 103218
bg@kpclegal.com
3 K.L. Myles, Bar No. 243272
klm@kpclegal.com
4 KNAPP, PETERSEN & CLARKE
550 North Brand Boulevard, Suite 1500
5 Glendale, California 91203-1922
Telephone: (818) 547-5000
6 Facsimile: (818) 547-5329
7 Attorneys for Plaintiffs
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.
14 UREDA, LEE SMITH, and FREDERICK
NELSON-BONEBRAKE, individually,
15 and on behalf of a class of similarly
situated individuals,

16 Plaintiffs,

17 v.

18 PORSCHE CARS NORTH AMERICA,
19 INC.,

20 Defendant.

NO. CV11-9405 CAS (FFMx)

Assigned for All Purposes to
the Honorable Christina A. Snyder -
Ctvm 5

Date: April 15, 2013
Time: 10:00 a.m.
Ctvm: 5

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS SETTLEMENT**

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

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1 disseminated to the Class, and setting a hearing at which the Court will consider
2 whether to grant final approval of the Settlement.

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

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

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

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

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

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

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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 similar service. In the event a R.L. Polk and PCNA address for
21 the same individual conflict, the R.L. Polk address will control.

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

27 11. Such class Notice shall be mailed by the Settlement Administrator with
28 the Claim Form. The Settlement Administrator will utilize national address databases

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1 and will otherwise make reasonable efforts to determine updated address information
2 in order promptly to re-mail notices by first class mail to any Class Member whose
3 notice is returned as undeliverable, and will update contact data of Class Members as
4 otherwise provided in the Agreement. The Settlement Administrator will maintain a
5 website that contains information about the settlement and copies of related
6 documents, including the class notice and claim form, and contact data of Class
7 Counsel. The Settlement Administrator will also set up a toll-free phone number
8 available to Class Members who have questions about the claims process or need
9 additional information, and this information will include the contact data of Class
10 Counsel. No later 30 days after entry of the Preliminary Approval Order or receipt
11 of the final mailing list information regarding current and prior owners and lessees
12 from R.L. Polk, whichever is later, the Settlement Administrator shall (a) cause
13 individual notice, substantially in the form attached to the Harris Declaration as
14 Exhibit 2, along with a claim form, substantially in the form attached to the Harris
15 Declaration as Exhibit 3, to be mailed to each such identified Class Member.

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

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

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

27 15. PCNA will comply with the requirements of 28 U.S.C. § 1715(b) and
28 serve, upon the appropriate State official of each State in which a Class Member

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1 resides and the appropriate Federal official, a notice of the proposed Settlement
2 consisting of:

- 3 (a) the original complaint and all amended complaints in this Action;
- 4 (b) notice of the Fairness Hearing described below;
- 5 (c) the individual notice for mailing and summary notice for
6 publication;
- 7 (d) the Agreement;
- 8 (e) this Order;
- 9 (f) (1) if feasible, the names of Class Members who reside in each
10 State and the estimated proportionate share of the claims of such Class Members to
11 the entire settlement to that State's appropriate State official; or (2) if the provision
12 of information under subparagraph (1) is not feasible, a reasonable estimate of the
13 number of Class members residing in each state and the estimated proportionate
14 share of the claims of such Class Members to the entire Settlement; and
15 (g) Any written judicial opinion relating to the materials described
16 under subparagraphs (a) through (f).

17 PCNA shall also provide copies of the foregoing submissions to Class
18 Counsel.

19 16. A hearing on entry of Final Judgment and Order of Dismissal, the award
20 of fees and expenses to Class Counsel, and incentive payments to the Class
21 Representatives (the "Fairness Hearing") shall be held on _____, 2013 at _____, in
22 Courtroom 5 at the United States District Court, Central District of California, 312
23 North Spring Street, Los Angeles, California 90012. At the Fairness Hearing, the
24 Court will consider: (a) whether the Action should be finally certified for class
25 action settlement purposes; (b) whether the Settlement should be approved as fair,
26 reasonable, and adequate for the class; (c) whether a judgment granting approval of
27 the Settlement and dismissing the lawsuit with prejudice should be entered; and
28 (d) whether Class Counsel's application for attorneys' fees and expenses and

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1 incentive awards for the named Plaintiffs should be granted.

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

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

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1 Fairness Hearing (“Notice of Intention to Appear”). The Notice of Intention to
2 Appear shall be served no later than 90 days after the mailing of the Class Notice,
3 (i.e., no later than ____.) The Notice of Intention to Appear must: (i) furnish all
4 exhibits, papers, or other evidence the Class Member and/or his/her/their attorney
5 intends to offer in support of the objection.

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

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

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

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

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

25 24. This Order shall become null and void, and shall be without prejudice to
26 the rights of the Parties, all of whom shall be restored to their respective positions
27 existing immediately before this Court entered this Order, if (i) the proposed
28 Settlement is not finally approved by the Court, or does not become final, pursuant to

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1 the terms of the Agreement; or (ii) the proposed Settlement is terminated in
2 accordance with the Agreement or does not become effective as required by the
3 terms of the Agreement for any other reason. In such event, the proposed Settlement
4 shall become null and void and be of no further force and effect, and neither the
5 Agreement nor the Court's orders, including this Order shall be used or referred to
6 for any purpose whatsoever.

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

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

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

18 **IT IS HEREBY ORDERED.**

19

20 Dated: March _____, 2013

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

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