

**IN THE UNITED STATES DISTRICT COURT
FOR DISTRICT OF NEW JERSEY**

ED CHAN and BRENDAN J.
KAVANAUGH, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

PORSCHE CARS NORTH AMERICA,
INC.,

Defendant.

Civil Action No. 2:15-cv-2106-CCC-
JBC [consolidated with Civil Action
No. 2:16-cv-605-CCC-JBC]

Order

ROY JONES and ALYCE
RUBINFELD, individually and on
behalf of a class of similarly situated
individuals,

Plaintiffs,

v.

PORSCHE CARS NORTH AMERICA,
INC., A DELAWARE
CORPORATION AND DOES 1-10
INCLUSIVE,

Defendants.

WHEREAS, Plaintiffs have made a motion (the “Motion”), pursuant to Federal Rule of Civil Procedure 23, for an order preliminarily approving the settlement of the above-captioned action (the “Action”), in accordance with the Settlement Agreement and Release of Claims dated in August of 2016 (referred to

collectively with its exhibits as the “Agreement”), which sets forth the terms and conditions for a proposed settlement of the Action and its dismissal with prejudice.

WHEREAS, as a condition of the Agreement, Plaintiffs, on behalf of themselves, and individually, and (upon class certification for settlement purposes only) on behalf of each of the Settlement Class Members, have agreed to release all claims as specified in Section 47 of the Agreement; and

WHEREAS, the Court has read and considered Plaintiffs’ Motion, the Agreement, and all arguments and submissions related to the Motion;

IT IS HEREBY ORDERED:

1. This Preliminary Approval Order incorporates by reference the definitions in the Agreement, and all defined terms used herein shall have the same meanings as set forth in the Agreement.

2. The Court has subject matter jurisdiction over this Action and, for purposes of this settlement only, has personal jurisdiction over all the Parties, including all members of the Settlement Class.

3. The Court preliminarily approves the Agreement as fair, reasonable, and adequate, subject to further consideration at the Final Fairness Hearing as set forth below in Paragraph 10.

4. For purposes of this settlement only, the Court preliminarily certifies the “Settlement Class” defined as:

All current and former owners and lessees of a Class Vehicle bought or leased (new or used) from an authorized Porsche dealer in the United States. Excluded from the Settlement Class are the following: (i) officers and directors of PCNA (as those terms are defined above); (ii) the judge to whom this Action is assigned and any member of that judge’s immediate family; (iii) Insurers of the Class Vehicles; (iv) all persons and/or entities claiming to be subrogated to the rights of Class Members; (v) issuers or providers of extended vehicle warranties or issuers or providers of extended service contracts; (vi) individuals and/or entities who validly and timely opt-out of the Settlement; (vii) consumers or businesses that have purchased Class Vehicles previously deemed a total loss (i.e. salvage) (subject to verification through Carfax or other means); (viii) current and former owners of a

Class Vehicle that previously have released their claims against PCNA with respect to the issues raised in the Action; (ix) any current or former owner or lessee of a Class Vehicle that has received or obtained full reimbursement in money or in kind (goodwill) or warranty replacement or assistance with respect to replacement of a windshield on a Class Vehicle; (x) United States residents that have purchased Class Vehicles in the United States but have since transported the vehicle outside the United States for permanent use abroad; (xi) individuals or entities that have purchased and/or leased Class Vehicles as “fleet” vehicles (i.e. rentals or company vehicles); and (xii) judges of the United States Court of Appeals for the Third Circuit or justices of the United States Supreme Court. “Class Vehicle(s)” are model year 2007-2016 Porsche brand vehicles with a Luxor Beige, Sand Beige, Cognac, Platinum Grey, or Natural Brown dashboard.

The Court hereby finds and orders that, by not objecting to the certification of the Settlement Class, and by taking other steps to negotiate, execute, and implement the Agreement, PCNA is not waiving any rights or defenses other than as expressly set forth in the Agreement.

5. The Settlement Class is preliminarily certified pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3), and all members of the Settlement Class shall have the right to exclude themselves by way of the opt-out procedure set forth below in Paragraph 21.

6. The Court preliminarily finds, solely for purposes of the settlement, that the Action may be maintained as a class action on behalf of the Settlement Class because: (a) the members of the Settlement Class are so numerous that joinder of all members of the Settlement Class is impracticable; (b) there are questions of law and fact common to the members of the Settlement Class that predominate over any individual questions; (c) Plaintiffs’ claims are typical of the claims of those members of the Settlement Class; (d) Plaintiffs and Settlement Class Counsel have fairly and adequately represented and protected the interests of all the members of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

7. The Court preliminarily finds that any applicable requirements of the Class Action Fairness Act have been met.

8. The Court preliminarily finds that Plaintiffs Ed Chan, Roy Jones, Alyce Rubinfeld and Brendan J. Kavanagh fairly and adequately represent the interests of the Settlement Class and therefore designates them as Representative Class Plaintiffs.

9. Pursuant to Federal Rule of Civil Procedure 23(g), and after consideration of the factors described therein and the arguments of the Parties, the Court designates as Class Counsel the law firms of Capstone Law APC, The Law Office of Robert L. Starr, and The Law Offices of Stephen M. Harris, P.C. The Court preliminarily finds that based on the work Class Counsel have done in identifying, investigating, and prosecuting the claims in the Action, Settlement Class Counsels' experience in handling class actions and the claims of the type asserted in the Action, Class Counsels' knowledge of the applicable law and the resources Class Counsel have committed and will commit to representing the Settlement Class, Class Counsel have and will fairly and adequately represent the interests of the Settlement Class. The Court authorizes Plaintiffs and Class Counsel to enter into the Agreement on behalf of the Settlement Class, subject to final approval by this Court of the settlement. Plaintiffs and Class Counsel, on behalf of the Settlement Class, are authorized to take all appropriate action required or permitted to be taken by the Settlement Class pursuant to the Agreement to effectuate its terms.

10. The Final Fairness Hearing shall take place before the Honorable Claire C. Cecchi at 10:00 a.m. on Friday, October 6, 2017 at the United States District Court for the District of New Jersey, in Courtroom 2B, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, New Jersey 07101 to determine: whether the proposed settlement of the Action on the terms and

conditions provided for in the Agreement is fair, reasonable, and adequate as to the Settlement Class members and should be approved; whether the Judgment, as provided for in the Agreement, should be entered; the amount of fees and costs that should be awarded to Class Counsel, and the amount of the service payment that should be awarded to Representative Class Plaintiffs, as provided for in the Agreement. At that time, the Court will also hear and consider any timely and otherwise proper objections.

11. The Court finds that the notice provisions set forth in Section IV of the Agreement constitute the only required notice and that such notice satisfies the requirements of Due Process, the Federal Rules of Civil Procedure, and any other applicable laws and rules, and constitutes the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all persons entitled thereto. The Court approves the form and content of the Claim Form and Notice attached as Exhibits A and B, respectively, to the Agreement. The Court directs that notice be sent to Settlement Class members within 75 days after entry of this Preliminary Approval Order, or **June 17, 2017**, whichever is later.

12. PCNA, through the Settlement Administrator, will arrange for the printing and mailing (via U.S. Mail) of the class Notice to all Settlement Class members. Using information provided by PCNA and Class Counsel, as well as information it has collected on its own, Experian will compile and send to the Settlement Administrator the mailing list of potential Settlement Class members consisting of all identifiable registered current and prior owners or lessees of Class Vehicles in the United States at their last known address. In the event the Experian and PCNA addresses for the same individual conflicts, the Experian address will control.

13. Experian is hereby authorized to use the information provided by PCNA to obtain the names and most current addresses of Class Vehicle owners

through state agencies. Any state agency in possession of names or addresses of Settlement Class members is hereby authorized and directed to release that information to Experian upon request.

14. Such class Notice shall be mailed by the Settlement Administrator with the Claim Form, in the form attached to the Agreement as Exhibits A and B. The Settlement Administrator shall complete mailing of the Notice within 75 days after entry of this Preliminary Approval Order or **June 17, 2017** (111 days before the Final Fairness Hearing), whichever is later. The Settlement Administrator will utilize national address databases (such as the NCOA) and will otherwise make reasonable efforts to determine updated address information in order to promptly re-mail notices by First Class U.S. Mail, postage paid, to any Settlement Class member whose notice is returned as undeliverable and will update contact data of Settlement Class members as otherwise provided in the Agreement. PCNA shall have no further obligation to locate or mail additional copies of the Notice.

15. The Settlement Administrator will maintain a website that contains information about the settlement, copies of documents filed with the Court, frequently asked questions (FAQs), the class Notice, and the Claim Form. The Settlement Administrator will also set up a toll-free phone number available to Settlement Class members who have questions about the claims process or need additional information.

16. PCNA is authorized to respond to members of the Settlement Class about the Action and the terms of the proposed settlement provided for in the Agreement and to engage in any other communication within the normal course of its business.

17. Within ten (10) days of the filing of the Preliminary Approval Motion, or **April, 13, 2017** (176 days before the Final Fairness Hearing), whichever is later, PCNA will have complied with the requirements of 28 U.S.C. § 1715(b) and

served notice of the proposed settlement upon the appropriate Federal official and appropriate State official of each State in which a Settlement Class member resides.

18. The Court approves the claims procedures set forth in Section VI of the Agreement. To be treated as valid, Claim Forms must be properly completed and postmarked within one (1) year from the mailing of the Notice, or June 18, 2018, whichever is later. Notwithstanding that provision, any Claim Forms seeking reimbursement for polarized sunglasses to ameliorate or mitigate Windshield Reflection or Glare must be properly completed and postmarked within ninety (90) days from the mailing of the Notice.

19. All members of the Settlement Class who do not request exclusion (“opt out”) from the Settlement Class pursuant to the requirements of Paragraph 21 below shall be bound by all determinations and judgments in the Action concerning the settlement, including, but not limited to, the dismissal of the Action with prejudice and the validity, binding nature, and effectiveness of the release set forth in Paragraph 47 of the Agreement.

20. The Court approves Garden City Group, Inc., located at 1531 Utah Avenue South, Suite 600, Seattle, Washington 98134, as the Settlement Administrator.

21. Any member of the Settlement Class who wishes to opt-out of the Settlement Class shall submit to the Settlement Administrator, with a postmark no later than forty-five (45) days after the last mailing of the class Notice, or **August 1, 2017** (66 days before the Final Fairness Hearing), whichever is later, an appropriate written request for exclusion by First Class U.S. Mail, postage paid, to the United States Post Office Box established by the Settlement Administrator for the purposes of the settlement. The request for exclusion must be personally signed by the Settlement Class member and include: (a) their full name and mailing

address; (b) the model year and model of their Class Vehicle(s) and the approximate date(s) of purchase or lease; (c) Vehicle Identification Number (VIN) of the Class Vehicle; (d) a statement whether the Settlement Class Member requesting exclusion still owns or leases the Class Vehicle; and (e) a statement that the Settlement Class member desires to be excluded from the Settlement Class. Failure to comply with these requirements and to timely submit the request for exclusion will result in the Class Member being bound by the terms of the Settlement.

22. Any member of the Settlement Class who has not previously opted-out in accordance with the terms of Paragraph 21 above (a “Settlement Class Member”) may appear at the Final Fairness Hearing to argue against approval of the settlement and/or to oppose any application for an award of attorneys’ fees and costs or service payments to Representative Class Plaintiffs; provided, however, that no Settlement Class member shall be heard, and no objection may be considered, unless the Settlement Class member has filed with this Court a valid written statement of the objection postmarked no later than 45 days after the mailing of the Class Notice or **August 1, 2017** (66 days before the Final Fairness Hearing), whichever is later. Copies of all objection papers must be mailed by First Class U.S. Mail, postage paid, to the United States Post Office Box established and maintained by the Settlement Administrator for the purposes of this class settlement. All objections must also be filed with the Court and mailed to Class Counsel and on counsel for PCNA at the following addresses:

As to Settlement Class Counsel:
Jordan L. Lurie, Esq.
CAPSTONE LAW APC
1840 Century Park East, Suite 450
Los Angeles, CA 90067

As to PCNA:
William F. Kiniry, Jr.
DLA PIPER LLP (US)
1650 Market St., Suite 4900
Philadelphia, PA 19103

To be valid, all objections must be in writing and include: (a) the objector's full name, current address, email address and telephone number; (b) the model year and vehicle identification number (VIN) of the objector's Class Vehicle(s); (c) a statement of whether the objector is a current or prior owner or lessee; (d) a statement of when the objector purchased or leased the Class Vehicle(s); (e) a statement of the position the objector wishes to assert; and (f) copies of all relevant documents.

23. The costs of notice and settlement administration shall be paid as described in Paragraph 40 of the Agreement.

24. This Preliminary Approval Order, the Agreement, and any act performed or document executed pursuant to, in furtherance thereof, or in seeking entry of this Preliminary Approval Order:

(a) Will not be offered or received against any of the Released Parties as evidence of, or be construed as or deemed to be evidence of, any admission or concession by any of the Released Parties as to the truth or relevance of any fact alleged by Plaintiffs, the existence of any class alleged by Plaintiffs, the propriety of class certification had the Action been litigated rather than settled, or the validity of any claim that has been or could have been asserted in the Action or in any other litigation, or the validity of any defense that has been or could have been asserted in the Action or in any other litigation, or of any liability, negligence, fault, or wrongdoing of any of the Released Parties;

(b) Will not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, regulation, or principle of common law or equity, or of any liability or wrongdoing whatsoever, by PCNA or any of the other Released Parties, or of the truth of any of the claims or allegations in this Action. Evidence relating to the Agreement shall not be discoverable or used, directly or indirectly, in any way, whether in the Action or in any other action or proceeding, except for purposes of demonstrating, describing, implementing, or enforcing the terms and conditions of the Agreement, this Preliminary Approval Order, the Final Approval Order, and/or the Final Judgment and Order of Dismissal; and

(c) Will not be construed against PCNA or any of the Released Parties as an admission or concession that the consideration to be given under the Agreement represents the amount that could be or would have been recovered after trial.

25. Pending final determination of whether the settlement should be approved, Representative Class Plaintiffs, all Settlement Class members, and any person or entity allegedly acting on behalf of Settlement Class members (directly, indirectly, representatively, as *parens patriae*, or in any other capacity) are preliminarily enjoined from commencing, instituting, continuing, pursuing, maintaining, prosecuting, bringing, joining, or enforcing, directly or indirectly, in any judicial, administrative, arbitral, or other forum, any Released Claim(s) or any claim(s) relating to any action taken by a Released Party that is authorized or required by the Agreement or this Order. This injunction is necessary to protect the Court's flexibility and authority to effectuate this settlement and to enter judgment when appropriate and is ordered in aid of the Court's jurisdiction and to protect its judgments pursuant to 28 U.S.C. Section 1651(a).

26. The Court reserves the right to adjourn or continue the date of the Final Fairness Hearing without further notice to Settlement Class members and retains jurisdiction to consider all further applications arising out of or connected with the settlement. The Court may approve the settlement without further notice to Settlement Class members.

27. No later than seven (7) calendar days before the deadline to file objections to the settlement, Class Counsel shall file with the Court an application for an award of attorneys' fees and costs and for an award of service payments to all Representative Class Plaintiffs and for a Motion for Final Approval of the Class Action Settlement.

28. No later than 14 calendar days before the Final Fairness Hearing, or **September 22, 2017**, whichever is later, Class Counsel shall have the option to file a Supplemental Brief Supporting Final Approval. This Supplemental Brief may include any responses to written objections to the Settlement.

29. In the event that any of the provisions of this Preliminary Approval Order is asserted by any Released Party as a defense in whole or in part to any Released Claim, or otherwise asserted (including, without limitation, as a basis for a stay) in any other suit, action, arbitration, or other proceeding brought by a Settlement Class member or any person actually or purportedly acting on behalf of any Settlement Class member(s), that suit, action, arbitration, or other proceeding shall be immediately stayed and enjoined until the Court has entered an order or judgment finally determining any issues relating to such defense or assertion and no further judicial review of such order or judgment is possible. Solely for purposes of such suit, action, arbitration, or other proceeding, to the fullest extent they may effectively do so under applicable law, the Parties irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of the Court or that the Court

is, in any way, an improper venue or an inconvenient forum. This paragraph is necessary to protect and effectuate the Agreement, this Preliminary Approval Order, and the Court's flexibility and authority to effectuate the Agreement and is ordered in aid of the Court's jurisdiction and to protect its judgments.

30. The Court finds that if Final Settlement Approval does not occur, or if the Agreement terminates prior to Final Settlement Approval, the Parties shall return to the *status quo ante* in the Action, without prejudice to the right of any Party to assert any right or position that it could have asserted if the Agreement had never been reached, proposed, or preliminarily approved by the Court. In such an event, nothing (1) in the Agreement (as well as the negotiation, execution, or implementation of the Agreement), (2) in the Preliminary Approval Order, or (3) filed in connection with seeking entry of the Preliminary Approval Order, shall be construed as an admission or concession by PCNA or any of the Released Parties of any of the allegations raised in the Action or any other action, of any fault, wrongdoing, or liability of any kind, or of the propriety of certification of a litigation class; nor is PCNA or any of the Released Parties estopped from (i) challenging those allegations in further proceedings in the Action or in any other action, or (ii) opposing any subsequent class certification motion(s). Moreover in such event, the Parties shall be deemed to have preserved all of their rights or defenses and shall not be deemed to have waived any substantive or procedural rights of any kind that they may have as to each other or to any member of the proposed Settlement Class, including, without limitation, the right to move to compel arbitration as to any claims that might be asserted by any of the Plaintiffs or by any member of the proposed Settlement Class and the right to oppose any class certification motion(s) on any ground. In addition, in such event, the certification of the Settlement Class shall be vacated, and the operative complaints in the Action shall be the Amended Complaint filed on March 26, 2015 (Case No.

2:15-cv-02166-CCC (JBCx) and the Complaint filed on June 25, 2015 (Case No. 2:15-cv-05766), and the certification of the Settlement Class for settlement purposes shall not be considered as a factor in connection with any subsequent class certification motion(s).

31. All proceedings in this Action are stayed pending final approval of the settlement, except as may be necessary to implement the settlement or comply with or enforce the terms of the Agreement or District Court Orders.

DATED: April 11, 2017

By: 

Claire C. Cecchi
UNITED STATES DISTRICT JUDGE