

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

**Kent Bowen, individually and on behalf of  
others similarly situated,**

*Plaintiff,*

v.

**Porsche Cars N.A., Inc.**

*Defendant.*

**Case No. 1:21-CV-00471-MHC**

**PORSCHE CARS NORTH AMERICA, INC.’S ANSWER  
TO PLAINTIFFS’ FIRST AMENDED COMPLAINT**

Defendant Porsche Cars North America, Inc. (“PCNA”), by and through its undersigned counsel, hereby responds to the allegations of Plaintiffs’ First Amended Complaint and asserts its affirmative defenses. Unless expressly admitted, PCNA denies each and every allegation in the First Amended Complaint, including any allegations in the preamble, unnumbered and numbered paragraphs, titles, headings, footnotes, and characterizations of documents. Headings and titles are included in this Answer only for the purposes of organization and reference.

In response to the unnumbered paragraph preceding Paragraph 1 on the first page of the First Amended Complaint, PCNA admits that Plaintiffs have brought this action against PCNA and purports to proceed individually and on behalf of a

class, but denies that Plaintiffs have stated a valid claim for relief or that this action is appropriate for class certification or any form of class treatment.

### **INTRODUCTION**

1. PCNA admits that certain vehicles distributed by PCNA contain a Porsche Communication Management (“PCM”) unit, which allows drivers to access music, navigation tools, and other functions. PCNA further admits that Plaintiffs assert claims premised on an alleged software update that purportedly damaged Plaintiffs’ and other Porsche owners’ PCM units, but denies that there was “a software update that caused permanent damage” to PCM units or that Plaintiffs have stated a valid claim for relief. PCNA denies the remaining allegations in Paragraph 1.

2. PCNA admits that in 2020, some Porsche owners reported experiencing PCM-related issues, including rebooting, but denies Plaintiffs’ characterization of those issues. PCNA lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 2 and therefore denies them.

3. PCNA lacks knowledge or information sufficient to form a belief about the truth of the allegation in Paragraph 3 that Plaintiff Bowen was not a Sirius satellite radio subscriber and therefore denies the allegation. PCNA denies the remaining allegations in Paragraph 3.

4. PCNA admits that Plaintiffs purport to seek damages and equitable relief on behalf of themselves and a class, but denies that PCNA has engaged in misconduct, that Plaintiffs have stated a valid claim for relief, or that this action is appropriate for class certification or any form of class treatment.

### **PARTIES**

5. PCNA lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 5 and therefore denies them.

6. PCNA lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 6 and therefore denies them.

7. PCNA admits the allegations in Paragraph 7.

### **JURISDICTION AND VENUE**

8. Paragraph 8 contains legal conclusions, to which no response is required. Inasmuch as a response is required, PCNA admits that Plaintiffs purport to assert claims on behalf of a class and that jurisdiction is proper in this Court, but denies that that this action is appropriate for class certification or any form of class treatment.

9. Paragraph 9 contains legal conclusions, to which no response is required. Inasmuch as a response is required, PCNA admits that this Court has

federal-question subject-matter jurisdiction, but denies that Plaintiffs state a valid claim under the Computer Fraud and Abuse Act.

10. Paragraph 10 contains legal conclusions, to which no response is required. Inasmuch as a response is required, PCNA admits that the Court has personal jurisdiction over PCNA.

11. Paragraph 11 contains legal conclusions, to which no response is required. Inasmuch as a response is required, PCNA admits that venue is proper in this Court, but denies that PCNA either transmitted (or facilitated Sirius's transmission of) a software update to Porsche vehicles as alleged. PCNA denies the remaining allegations in Paragraph 11.

### **FACTUAL ALLEGATIONS**

12. Inasmuch as Paragraph 12 purports to quote or summarize Sirius marketing materials, those materials speak for themselves. Otherwise, PCNA admits that it distributes Porsche vehicles in the United States, including vehicles equipped with Sirius satellite radio receivers. PCNA denies the remaining allegations in Paragraph 12.

13. Inasmuch as Paragraph 13 characterizes documents or data without citing to them, those materials speak for themselves. Otherwise, PCNA admits that it distributes Porsche vehicles, including vehicles equipped with Sirius satellite radio

receivers and/or PCM units, but denies that all Porsche vehicles are equipped with satellite radio receivers or a PCM. PCNA lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 13 and therefore denies them.

14. Paragraph 14 contains legal conclusions, to which no response is required. Inasmuch as a response is required, PCNA admits that it employs engineers and other employees whose responsibilities include monitoring vehicle performance and troubleshooting issues that arise with Porsche vehicles, but denies that PCNA designs or manufactures Porsche vehicles or equipment. PCNA denies the remaining allegations in Paragraph 14.

15. Paragraph 15 contains legal conclusions, to which no response is required. Inasmuch as a response is required, PCNA admits that when issues arise in Porsche vehicles that can be repaired or mitigated, PCNA communicates with Porsche-authorized dealers regarding those issues and the recommended repairs to address them. PCNA denies that there is any “defect” in the Plaintiffs’ or putative class members’ vehicles and denies the remaining allegations in Paragraph 15.

16. PCNA lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 16 and therefore denies them.

17. Inasmuch as Paragraph 17 purports to quote or summarize Sirius investor materials cited in footnotes 2 and 3, those materials speak for themselves. Otherwise, PCNA admits that PCNA has a business relationship with Sirius and that certain Porsche vehicles come equipped with Sirius satellite radio. PCNA denies the remaining allegations in Paragraph 17.

18. PCNA admits that certain Porsche vehicles are sold with free Sirius satellite radio trials. PCNA lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 18 and therefore denies them.

19. PCNA denies that the PCM is standard on all Porsche models. PCNA admits the remaining allegations in Paragraph 19.

20. PCNA admits that certain PCM units have the features alleged in Paragraph 20. Inasmuch as Paragraph 20 suggests that every PCM 3.0 and 3.1 unit has the alleged features, PCNA denies the allegations this paragraph.

21. PCNA lacks knowledge and information sufficient to form a belief about the truth of the allegations in Paragraph 21 and therefore denies them.

22. PCNA lacks knowledge and information sufficient to form a belief about the truth of the allegations in Paragraph 22 and therefore denies them.

23. PCNA admits that it has the technical capacity to perform certain software updates to Porsche vehicles. PCNA specifically denies that it manufactures vehicles and denies the remaining allegations in Paragraph 23.

24. PCNA denies that it transmitted, or facilitated the transmission of, the alleged “Update” to PCMs on or about May 21, 2020, or that PCMs are even capable of being updated in the manner alleged. PCNA lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 24 and therefore denies them.

25. PCNA denies the allegations in Paragraph 25.

26. PCNA denies the allegations in Paragraph 26.

27. PCNA denies the allegations in Paragraph 27.

28. PCNA denies the allegations in Paragraph 28.

29. PCNA denies the allegations in Paragraph 29.

30. Inasmuch as Paragraph 30 purports to quote or summarize an article from Torque News, that article speaks for itself. Otherwise, PCNA lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 30 and therefore denies them.

31. PCNA denies the allegations in Paragraph 31.

32. Inasmuch as Paragraph 32 purports to quote or summarize social media or blog posts, those materials speak for themselves. Otherwise, PCNA lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 32 and therefore denies them.

33. PCNA states that the cost of replacing Porsche component parts varies across models, markets, and dealers, and based on the issue being addressed. Otherwise, PCNA denies the allegations in Paragraph 33.

34. PCNA lacks knowledge or information sufficient to form a belief about the truth of the allegation in Paragraph 34 that putative class members are concerned about future PCM software updates and therefore denies the allegation. Otherwise, PCNA denies the allegations in Paragraph 34.

35. PCNA admits that it has communicated with Porsche-authorized dealers regarding certain issues with PCM 3.0 and 3.1 units, but denies Plaintiffs' characterization of those issues. PCNA lacks knowledge or information sufficient to form a believe about the truth of the remaining allegations in Paragraph 35 and therefore denies them.

36. Inasmuch as Paragraph 36 purports to quote or summarize materials from Porsche Englewood regarding PCM rebooting issues, those materials speak for themselves. PCNA admits that it has communicated with Porsche-authorized dealers

regarding methods for addressing rebooting issues in certain PCM units, including performing a PCM handover or hard reset, but denies the remaining allegations in Paragraph 36.

37. Inasmuch as Paragraph 37 purports to quote or summarize materials from Byers Imports Porsche about PCM issues, those materials speak for themselves. PCNA denies that any update occurred in the manner alleged. PCNA lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 37 and therefore denies them.

38. PCNA denies the allegations in Paragraph 38.

39. Inasmuch as Paragraph 39 purports to quote or summarize forum posts, those materials speak for themselves. Otherwise, PCNA lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 38 and therefore denies them.

40. PCNA denies the allegations in Paragraph 40.

41. PCNA lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 41 and therefore denies them.

42. PCNA lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 42 and therefore denies them.

43. PCNA lacks knowledge or information sufficient to form a belief about the truth of the allegation in Paragraph 43 that Plaintiff Bowen is not a Sirius customer and therefore denies the allegation. PCNA denies the remaining allegations in Paragraph 43.

44. PCNA lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 44 and therefore denies them.

45. PCNA lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 45 and therefore denies them.

46. PCNA lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 46 and therefore denies them.

47. PCNA lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 47 and therefore denies them.

48. Inasmuch as Paragraph 48 purports to quote or summarize an invoice from Byers Imports, which Plaintiff Bowen attached to the First Amended Complaint as Exhibit A, that invoice speaks for itself. Otherwise, PCNA lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 48 and therefore denies them.

49. PCNA lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 49 and therefore denies them.

50. PCNA lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 50 and therefore denies them.

51. PCNA lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 51 and therefore denies them.

52. PCNA denies the allegations in Paragraph 52.

53. PCNA denies that any update occurred in the manner alleged. Otherwise, PCNA lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 53 and therefore denies them.

54. Paragraph 54 states legal conclusions, to which no response is required. Inasmuch as a response is required, PCNA denies the allegations. Otherwise, PCNA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 54 and therefore denies them.

55. PCNA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 55 and therefore denies them.

56. Inasmuch as Paragraph 56 purports to quote or summarize an invoice from Rusnak/Westlake Porsche, which Plaintiff Darnell attached to the First Amended Complaint as Exhibit B, that invoice speaks for itself. Otherwise, PCNA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 56 and therefore denies them.

57. PCNA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 57 and therefore denies them.

58. PCNA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 58 and therefore denies them.

59. Inasmuch as Paragraph 59 purports to quote or summarize an invoice from Phantom Electronics, which Plaintiff Darnell attached to the First Amended Complaint as Exhibit C, that invoice speaks for itself. Otherwise, PCNA lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 59 and therefore denies them.

### **CLASS ACTION ALLEGATIONS**

60. PCNA admits that Plaintiffs seek to certify a class as defined in Paragraph 60 but denies that this action is appropriate for class certification or any form of class treatment.

61. PCNA admits that Plaintiffs purport to exclude from the putative class the individuals listed in Paragraph 61. PCNA denies that this action is appropriate for class certification or any form of class treatment.

62. PCNA denies the allegations in Paragraph 62.

63. Inasmuch as Paragraph 63 purports to quote or summarize a PCNA press release, that release speaks for itself. PCNA admits that certain Porsche

automobiles are equipped to receive satellite radio. PCNA denies the remaining allegations in Paragraph 63.

64. Paragraph 64 contains legal conclusions, to which no response is required. Inasmuch a response is required, PCNA denies the allegations in Paragraph 64 and specifically denies that this action is appropriate for class certification or any form of class treatment.

65. Paragraph 65 contains legal conclusions, to which no response is required. Inasmuch a response is required, PCNA denies the allegations in Paragraph 65 and specifically denies that this action is appropriate for class certification or any form of class treatment.

66. Paragraph 66 contains legal conclusions, to which no response is required. Inasmuch a response is required, PCNA denies the allegations in Paragraph 66 and specifically denies that this action is appropriate for class certification or any form of class treatment.

67. Paragraph 67 contains legal conclusions, to which no response is required. Inasmuch a response is required, PCNA lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 67 and therefore denies them.

68. Paragraph 68 and its subparts contains legal conclusions, to which no response is required. Inasmuch a response is required, PCNA denies the allegations in Paragraph 68 and each of its subparts, and specially denies that this action is appropriate for class certification or any form of class treatment.

69. Paragraph 69 contains legal conclusions, to which no response is required. Inasmuch a response is required, PCNA denies the allegations in Paragraph 69 and specifically denies that this action is appropriate for class certification or any form of class treatment.

70. Paragraph 70 contains legal conclusions, to which no response is required. Inasmuch a response is required, PCNA denies the allegations in Paragraph 70 and specifically denies that this action is appropriate for class certification or any form of class treatment.

## **COUNT I**

### **TRESPASS TO PERSONALTY**

71. PCNA incorporates by reference its responses to the allegations set forth above as if fully set forth herein.

72. Paragraph 72 contains legal conclusions, to which no response is required. Inasmuch a response is required, PCNA refers to Georgia trespass statute for the full contents thereof.

73. Paragraph 73 contains legal conclusions, to which no response is required. Inasmuch a response is required, PCNA admits that Porsche vehicles owned by Plaintiffs and putative class members are chattels or personalty. Otherwise, PCNA lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 73 and therefore denies them.

74. Paragraph 74 contains legal conclusions, to which no response is required. Inasmuch a response is required, PCNA denies the allegations in Paragraph 74.

75. Paragraph 75 contains legal conclusions, to which no response is required. Inasmuch a response is required, PCNA denies the allegations in Paragraph 75.

76. Paragraph 76 contains legal conclusions, to which no response is required. Inasmuch a response is required, PCNA denies the allegations in Paragraph 76.

## **COUNT II**

### **VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT**

**(18 U.S.C. § 1030)**

77. PCNA incorporates by reference its responses to the allegations set forth above as if fully set forth herein.

78. Paragraph 78 contains legal conclusions, to which no response is required. Inasmuch a response is required, PCNA refers to the Computer Fraud and Abuse Act for the full contents thereof. Otherwise, to the extent Paragraph 78 suggests that every PCM 3.0 and 3.1 unit has cellular telephone connectivity and GPS capability, PCNA denies this allegation and the remaining allegations in this paragraph.

79. Paragraph 79 contains legal conclusions, to which no response is required. Inasmuch a response is required, PCNA denies the allegations in Paragraph 79.

80. Paragraph 80 contains legal conclusions, to which no response is required. Inasmuch a response is required, PCNA denies the allegations in Paragraph 80.

81. Paragraph 81 contains legal conclusions, to which no response is required. Inasmuch a response is required, PCNA denies the allegations in Paragraph 81.

82. Paragraph 82 contains legal conclusions, to which no response is required. Inasmuch a response is required, PCNA refers to the Computer Fraud and Abuse Act for the full contents thereof.

83. Paragraph 83 contains legal conclusions, to which no response is required. Inasmuch a response is required, PCNA refers to the Computer Fraud and Abuse Act for the full contents thereof.

84. Paragraph 84 contains legal conclusions, to which no response is required. Inasmuch a response is required, PCNA denies the allegations in Paragraph 73.

85. Paragraph 85 contains legal conclusions, to which no response is required. Inasmuch a response is required, PCNA denies the allegations in Paragraph 85.

### **RESPONSE TO PLAINTIFFS' PRAYER FOR RELIEF**

In response to Plaintiffs' Prayer for Relief, PCNA denies that Plaintiffs or the putative class are entitled to the relief requested.

### **AFFIRMATIVE DEFENSES**

By way of further response, and without admitting or acknowledging that PCNA bears the burden of proof as to any of them, PCNA submits the following defenses.

To avoid waiver, PCNA further reserves its right to add to or withdraw or rely on any and all further defenses that become available or appear during any subsequent proceedings in this action and specifically reserves its right to amend this

Answer for purposes of asserting additional defenses, and specifically anticipates making such amendments in response to any future amendments to the First Amended Complaint. PCNA further reserves the right to withdraw defenses that it determines are not applicable during the course of discovery and other proceedings in this action.

#### **FIRST AFFIRMATIVE DEFENSE**

Plaintiffs' have failed, in whole or in part, to state a claim upon which relief can be granted against PCNA.

#### **SECOND AFFIRMATIVE DEFENSE**

Plaintiffs' claims and/or the claims of some or all putative class members are barred in whole or in part because they consented to the access about which they now complain.

#### **THIRD AFFIRMATIVE DEFENSE**

Plaintiffs' claims and/or the claims of some or all putative class members are barred in whole or in part by the failure to mitigate damages.

#### **FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims and/or the claims of some or all putative class members are barred, in whole or in part, because they have not suffered cognizable damages.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs' purported class allegations are insufficient as a matter of law. PCNA specifically reserves the right to challenge the sufficiency of Plaintiffs' purported class allegations, and the proposed class treatment of this action, at the appropriate stage of the action.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims and/or the claims of some or all putative class members are barred because any alleged injury suffered did not result or was not proximately caused by any act or omission or any wrongful conduct on the part of PCNA.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims and/or the claims of some or all putative class members are barred by the doctrine of payment and/or release.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims and/or the claims of some or all putative class members are barred due to accord and satisfaction.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims and/or the claims of some or all putative class members are barred by compromise and settlement.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims and/or the claims of some or all putative class members are barred by the doctrine of waiver and/or forfeiture.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims and/or the claims of some or all putative class members are barred by the doctrine of estoppel.

**TWELFTH AFFIRMATIVE DEFENSE**

Any damages allegedly sustained by Plaintiffs and/or putative class members were legally and proximately caused or contributed to by the negligence, comparative fault, assumption of risk, consent, negligence per se, or other culpable conduct of the Plaintiffs, the putative class members, or other third parties.

**THIRTEENTH AFFIRMATIVE DEFENSE**

To the extent Plaintiffs and/or putative class members request attorney's fees, such request may be improper or excessive under applicable law.

**PRAYER FOR RELIEF**

WHEREFORE having fully answered Plaintiffs' allegations, PCNA specifically denies that Plaintiffs are entitled to any of the relief requested and hereby prays as follows:

- a) That class certification be denied;

- b) That judgment be entered in its favor and against Plaintiffs on all counts of the First Amended Complaint, dismissing all claims of the First Amended Complaint against PCNA with prejudice;
- c) That Plaintiffs be denied all relief sought in the First Amended Complaint;
- d) That PCNA be awarded such other and further relief to which it is entitled by law, together with such other relief as the Court deems just and equitable under the circumstances, including reimbursement of all costs and attorneys' fees incurred in defending this matter.

**JURY DEMAND**

PCNA hereby demands a jury trial for all claims found to be triable.

Dated: November 3, 2021

Respectfully submitted,

/s/ Cari Dawson

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*Attorneys for Defendant Porsche Cars  
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**CERTIFICATE OF COMPLIANCE WITH LR 5.1**

I certify that the foregoing document is written in 14-point Times New Roman font in accordance with Local Rule 5.1

/s/ Cari Dawson  
Cari K. Dawson

**CERTIFICATE OF SERVICE**

I hereby certify that on November 3, 2021, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send electronic notification of such filing to all registered counsel.

This 3rd day of November 2021.

/s/ Cari Dawson

CARI K. DAWSON

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