

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

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

Plaintiff,

vs.

Porsche Cars N.A., Inc.

Defendant.

Case No:

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

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Plaintiff Kent Bowen, individually and on behalf of others similarly situated, brings this class action lawsuit against Defendant Porsche Cars, N.A., Inc. (“Porsche” or “Defendant”) and alleges as follows:

### **INTRODUCTION**

1. This case arises from a software update that caused permanent damage to the Porsche Communication Management (“PCM”) unit—an “infotainment” system by which drivers may access music, navigation tools, etc.—in thousands of vehicles distributed by Porsche.

2. Around May 21, 2020, many Porsche owners’ PCMs began malfunctioning. Specifically, the vehicle’s PCM would continuously reboot, meaning that it would activate and deactivate on an almost constant basis. This prevented Porsche owners from using the PCM or otherwise enjoying their vehicles, drained their car batteries, destroyed their PCM hard drives, and caused countless other inconveniences (hereafter, “the Malfunction”).

3. The Malfunction was caused by a remote digital signal carrying a software or firmware update to Porsche vehicles which, on information and belief, originated either from Porsche itself or, from satellite radio provider Sirius XM Radio at Porsche’s direction or with Porsche’s facilitation (hereafter, “the Update”). The Update related to the Sirius satellite radio functionality of the PCM. No one

obtained Plaintiff's permission to send the Update to his vehicle, and Plaintiff is not even a Sirius satellite radio subscriber.

4. Plaintiff, on behalf of himself and others similarly situated, seeks damages and appropriate equitable relief from Defendant's misconduct.

### **PARTIES**

5. Plaintiff Kent Bowen is, and at all times relevant was, a resident of Columbus, Ohio. Plaintiff Bowen owns a 2011 Porsche Panamera.

6. Defendant Porsche Cars N.A., Inc. is a Delaware corporation headquartered in Atlanta, Georgia.

### **JURISDICTION AND VENUE**

7. This matter in controversy exceeds \$5,000,000, as each member of the proposed Class of thousands may be entitled to thousands of dollars in damages, exclusive of interest and costs. Further, Plaintiff alleges a national class, which will result in at least one Class member belonging to a different state. Therefore, both elements of diversity jurisdiction under the Class Action Fairness Act of 2005 ("CAFA") are present, and this Court has jurisdiction pursuant to 28 U.S.C. § 1332(d)(2).

8. Additionally, Plaintiffs state claims under the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, *et seq.* This Court therefore has federal-question subject-matter jurisdiction of this action pursuant to 28 U.S.C. § 1331.

9. Porsche is subject to personal jurisdiction in this Court because Defendant is headquartered here, and because it engages in substantial, continuous, systematic, and non-isolated business activity within the state of Georgia.

10. Venue is proper within this District because a substantial part of the events giving rise to the claims occurred in this District, namely that Porsche either transmitted the software update to Porsche vehicles, or made the decision facilitate Sirius's doing so, from its Atlanta headquarters.

## **FACTUAL ALLEGATIONS**

### **I. Defendant's Misconduct**

#### **A. The Business Relationship Between Porsche and Sirius**

11. Porsche is a distributor of luxury vehicles, and it represents to consumers that they should expect a product “renowned for performance, quality, engineering, and innovation”—an image which Porsche's relationship with Sirius, a purveyor of premium radio content, is intended to bolster.<sup>1</sup>

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<sup>1</sup> See *Porsche Selects XM as Exclusive Satellite Radio Provider Under New, Long-Term Agreement*, SIRIUSXM (Oct. 30, 2006), <http://investor.siriusxm.com/investor-overview/press-releases/press-release->

12. Porsche sells approximately 60,000 vehicles per year in the United States. Most of them come equipped with a satellite radio antenna, and all of them equipped with a PCM. In the past, Porsche has equipped different vehicles with different versions of the PCM. For the model year vehicles implicated by this action Porsche was, on information and belief, equipping vehicles with PCM 3.0 or 3.1.

13. Porsche employs engineers and other professionals to accomplish design and manufacturing work on its vehicles, including among them AI Engineers, Mobile Engineers, and Software Engineers. Because Porsche has warranty commitments and regulatory obligations, Porsche also employs such personnel to conduct quality control, including monitoring vehicle performance, developing updates and improvements, identifying defects, and troubleshooting those defects when they arise.

14. When Porsche identifies a defect and understands how to repair or mitigate the defect, Porsche communicates to local dealerships about the defect, including the troubleshooting or repair steps Porsche recommends.

15. Sirius is a leading satellite radio provider, offering drivers the ability to subscribe to more than 300 radio channels, including customizable music, news,

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[details/2006/Porsche-Selects-XM-as-Exclusive-Satellite-Radio-Provider-Under-New-Long-Term-Agreement/default.aspx](https://www.federalregister.gov/documents/2006/04/20/06-0804-porsche-selects-xm-as-exclusive-satellite-radio-provider-under-new-long-term-agreement/default.aspx).

comedy and sports content. Sirius uses a number of satellites to broadcast content almost everywhere in the United States, providing a more consistent and higher quality signal than typical radio programming.

16. Porsche and Sirius have a longstanding business relationship, dating back to 2004.<sup>2</sup> As part of their business relationship, Porsche allows and facilitates distribution of Sirius products—including hardware and software for satellite radio programming—for Porsche vehicles.<sup>3</sup>

17. Porsche profits from distributing Sirius products to Porsche vehicles and benefits financially from this arrangement. Porsche vehicles were sold with free trials of Sirius service, which further benefited Porsche financially, as the opportunity to obtain Sirius services in Porsche's vehicles enhances the desirability and value proposition of Porsche vehicles.

## **B. The PCM Update**

18. The PCM, which is standard in all Porsche models, is the central control unit for all infotainment applications—including radio, disc operation, sound

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<sup>2</sup> *Porsche to Offer Factory-Installed XM Radio on Three Porsche Models*, SIRIUSXM (July 13, 2004), <http://investor.siriusxm.com/investor-overview/press-releases/press-release-details/2004/PORSCHE-TO-OFFER-FACTORY-INSTALLED-XM-RADIO-ON-THREE-PORSCHE-MODELS/default.aspx>.

<sup>3</sup> *Porsche Announces SIRIUS Satellite Radio Offering*, SIRIUSXM (July 13, 2004), <http://investor.siriusxm.com/investor-overview/press-releases/press-release-details/2004/Porsche-Announces-SIRIUS-Satellite-Radio-Offering/default.aspx>

settings, on board computer, navigation and telephone. The PCM's color touchscreen puts myriad features at the driver's fingertips.

19. Through the PCM interface, Porsche owners have the ability to customize their driving experience by adjusting radio and sound preferences, accessing content on connected mobile devices, sending and receiving text messages and telephone calls, displaying real time traffic and road condition alerts, and utilizing sophisticated, turn-by-turn GPS navigation services. The PCM is also interactive, permitting drivers to issue verbal commands which the PCM computer responds to in real-time.

20. Proper functionality of the PCM's data processing and communication capabilities is important to the operation and enjoyment of Porsche vehicles.

21. The PCM for the affected Porsche vehicles stores its programming information on a disk contained within a hard drive.

22. As the manufacturer of the vehicles, Porsche has the technical capacity to update software in Porsche vehicles, ostensibly to ensure they are operating optimally.

23. Around Memorial Day 2020, Sirius provided promotional content to all owners of a Porsche vehicle equipped with a satellite radio antenna. In connection with the Memorial Day promotion, on information and belief, Porsche either

transmitted, or facilitated Sirius's transmission of, the Update to all eligible Porsche vehicles around May 21, 2020, regardless of whether the owner was a Sirius customer. The Update was transmitted to vehicles remotely and without advance notice to, or permission from, drivers.

24. On information and belief, all Porsche vehicles with a satellite radio antenna and PCM system 3.0 or 3.1 were affected by this Malfunction, including, but not limited to, the Panamera, Cayenne, 911 Macan, Cayman, and Boxster for model years 2010 through the present.

25. On information and belief, all affected vehicles received the Update, regardless of whether the owner was a Sirius customer.

26. The Update was defective, in that it could not write over existing software on the PCM hard drive.

27. The Update caused the same Malfunction: the PCM entering a near-continuous reboot cycle, draining the vehicle's battery, damaging the PCM hard drive, depriving the owner of the ability to enjoy his vehicle, causing an irritating and potentially dangerous "static" noise, and resulting in numerous other significant problems.

28. If Porsche had adequately tested the Update prior to transmitting it, or facilitating its transmission, to the vehicles, the Malfunction would have been detected before it affected Porsche vehicles.

29. Malfunctions caused by software updates are not new. Indeed, a 2018 Sirius-related software update caused a substantially similar malfunction in Chrysler, Dodge, and Ram products.<sup>4</sup> On information and belief, these malfunctions resulted in issuance of technical service bulletins and other public reporting to which Porsche had access.

30. Porsche knew or should have known that Sirius-related software updates could put its customers at similar risk, yet Porsche either itself transmitted, or facilitated Sirius's transmission of the updates to Porsche vehicles all the same and without taking appropriate steps to vet the Update.

### **C. Customers' Response to the Malfunction**

31. Almost immediately after the Update, Porsche owners began complaining about the Malfunction on various online forums accessible to Porsche.

The following examples are representative:

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<sup>4</sup> Mary Conway, *Ram Trying to Fix Continuous Uconnect Reboot Problem in 2018 Rams*, TORQUE NEWS (Feb. 15, 2018), <https://www.torquenews.com/3768/ram-trying-fix-continuous-uconnect-reboot-problem-2018-rams>.

- a. Apparently @SIRIUSXM broke my car with an update. Every two minutes the PCM (radio, gps, etc.) is rebooting. Searching the interwebs turned up a lot of upset @Porsche owners.<sup>5</sup>
- b. I think Porsche has been hacked. My PCM keeps randomly rebooting itself.<sup>6</sup>
- c. 2011 Panamera Base, today PCM started shutting off while car running. Display goes blank, then get Porsche splash screen, then liability screen. Stays on for about 2.5 minutes and "reboots" again. Drove home about 30 minutes and like clockwork every 2+ minutes. I input active navigation to my house just to see and it retains the active navigation upon reboot. An enigma wrapped in a riddle. 78K miles, latest PCM software and maps done in 2019. Nothing is connected (USB, phone, etc.).

Looked online and there are fresh reports today on other sites of this same activity. Here's one from 6 Speed online posted today.

*"ATTENTION TO ALL!!*

*Talked to my dealership multiple time about PCM reboot that started yesterday evening.*

*Bob in Louisville (Nice guy in service) stated "XM Sat Radio put out an update that is causing ALL Porsche cars with PCM to have this reboot ever 2 min"!!! I won't bore you with to many detail, but from what I know about how XM sends updates, I believe it!!!*

*My indi shop in Lex KY is also getting lots of calls... " and another owner same thread, "Happened to me today on the way home from work!!!! This is crazy!!!!"*

I'll see how it goes. Nut farm...<sup>7</sup>

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<sup>5</sup> Dale Watts (@tdwatts), TWITTER (May 24, 2020, 8:50 PM), <https://twitter.com/tdwatts/status/1264720480084377601>.

<sup>6</sup> Laurie Bailey Vaughn (@LaurieBailey), TWITTER (May 21, 2020), <https://twitter.com/LaurieBailey/status/1263501879209791489>.

<sup>7</sup> smithsor, REENLIST.COM (May 21, 2020, 5:46 PM), <https://rennlist.com/forums/panamera/1195476-pcm-restarting-xm-radio-fault.html>.

- d. Same over here (and two others I know locally). If I am on a call when it does this the phone will disconnect. Also, it will also come back to what I was listening when it originally happened (Howard 100) regardless what I am listening on regular radio or on Sirius/XM. The Service Manager at the dealership stated he had a few calls about this as well and that he thought at this point that it could be a corrupted file that was downloaded by Sirius/XM. Would be very interesting to hear if it is happening to anyone without Sirius/XM service.<sup>8</sup>
- e. After Sirius XM signal activated, PCM reboots every 5 minute - seems as software glitch, calling a dealer in Houston, service guy stated you are probably #52 calling today about this problem, hope PORSCHE can look into this - as for this moment he stated NO idea what to do....<sup>9</sup>
- f. Yep just talked to my SA.  
There is a notice out to all dealerships about this, all dealers I guess are on the wait to hear back from Corporate to hear back on the outcome from their checks. My guess is this is probably only affecting older vehicles that don't have the on-air updates? after XM updated their part, it messed with Porsche's system as Porsche wasn't updated to match XM update? Most likely Porsche will have to make updates on their systems and manually update PCMs to match.....truly P.I.T.A.<sup>10</sup>
- g. Mine started doing it this AM too. Is there any way to turn off the PCM so the battery doesn't drain all day? I literally am just seeing this but have to drive to an appointment... hope my car still starts. There's a thread in the Cayenne forum as well, so not just 911s it seems!<sup>11</sup>

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<sup>8</sup> shammerman, REENLIST.COM (May 21, 2020, 1:21 PM), <https://rennlist.com/forums/991/1195409-pcm-issue-with-recent-ios-update.html>.

<sup>9</sup> Max9889, REENLIST.COM (May 21, 2020, 11:02 PM), <https://rennlist.com/forums/panamera/1195476-pcm-restarting-xm-radio-fault.html>.

<sup>10</sup> 2010panny4S, REENLIST.COM (May 21, 2020, 2:16 PM), <https://rennlist.com/forums/991/1195409-pcm-issue-with-recent-ios-update.html>.

<sup>11</sup> RSBro, REENLIST.COM (May 21, 2020, 4:04 PM),

32. For affected Porsche vehicles, the approximate cost of replacing a malfunctioning PCM is between \$2,000 and \$4,000 dollars, and the approximate cost of replacing a car battery is about \$600. Porsche has typically not agreed to provide these repairs for free, and vehicle owners and lessees have thus borne the costs instead.

33. The Malfunction is ongoing, as Porsche has not provided Plaintiff or the Class with a complete, permanent solution. Class members have been forced to choose between paying to replace their PCMs on the one hand and suffering ongoing inconvenience and property damage as a result of the malfunction on the other. Moreover, members of the Class are concerned that Porsche will not prevent delivery of defective and unauthorized software updates in the future, a concern that could also impact the value of their vehicles on resale.

#### **D. Defendant's Response to the Malfunction**

34. Porsche acknowledged the Malfunction through internal communications with its dealers, many of whom have relayed that information to Porsche customers.

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<https://rennlist.com/forums/991/1195409-pcm-issue-with-recent-ios-update.html>.

35. In its internal communications, Porsche informed its dealers of potential solutions—a “handover,” or a “hard reset” of the PCM settings—but these did not completely or permanently resolve the malfunction, nor do they account for the permanent damage the Malfunction had already caused.<sup>12</sup>

36. In response to an overwhelming number of complaints, a Porsche dealer—who was in communication with Porsche—informed drivers that a Sirius-related update had “caused major functional issues with the PCM (Center Touchscreen) affecting virtually all Porsche vehicles. If your Porsche PCM has started malfunctioning the Sirius XM update is likely the issue.”<sup>13</sup>

37. Porsche has not compensated its customers for costs of repairs or replacements for damage caused by the Malfunction, despite its knowledge of how many consumers had been affected.

38. Many Porsche owners demanded that Porsche and Sirius stop transmitting to their vehicles, but both were unwilling or unable to do so. The following complaints are representative:

- a. Its been over 24 hours and the signal is still being sent and I still have access to FREE sirius radio. So much for demanding the

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<sup>12</sup> *Porsche Communication Management (PCM) Rebooting Issues*, PORSCHE ENGLEWOOD (May 22, 2020), <https://www.porscheinglewood.com/porsche-communication-management-pcm-rebooting-issues>.

<sup>13</sup> *Porsche PCM Update*, BYERS IMPORTS PORSCHE, <https://www.byersporsche.com/porsche-pcm-update.htm>.

signal STOP. So frustrating!! So I still have the old PCM in with the rebooting still going on. Have reached out once again yesterday to PCNA "customer relations" about trying to find a more mutually agreeable plan to replace the PCM. No response yet. I was so looking forward to trying the "handover reset" once again after Sirius promised that I would have no signal going to PCM today - but low and behold my request fell on deaf ears. ... I will def follow up if I have any better news. - Thanks for reaching out.<sup>14</sup>

- b. **Update:** Another hour wasted with SXM support > Tech Support > Escalated ticket filed. Still receiving all SXM channels over ONE MONTH after canceling service. They are absolutely no help. Mouth breathers. Not asking them to solve the reboot loop issue, just cut off the service so we can check off that box in troubleshooting. Wanted to charge me to re-activate and then try de-activating (my suggestion, they had no ideas whatsoever). I hung up.

Took matters in my hands. Yanked the PCM. Disconnected the SXM antenna. Vehicle handover procedure, pulled the fuse, let it set. Fired back up... and... still reboot loop.

Pulled HDD from PCM, and... reboot loop stopped. Ok. That's something we can work with.

Now digging through the long threads on how to replace the HDD. There is a lot of noise on those threads - things tried, then failed. Not yet clear to me which exact HDD replacement model works in the 3.1. Will keep digging, but at least a step closer. No thanks to SXM or Porsche. Rennlist to the rescue.<sup>15</sup>

- c. Called Sirius.

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<sup>14</sup> LaVista7615, REENLIST.COM (June 25, 2020, 5:23 PM), <https://rennlist.com/forums/cayenne-958-2011-2018/1195303-pcm-rebooting-every-2mins-2015-cs-21.html>.

<sup>15</sup> Mike Murcia, REENLIST.COM (July 10, 2020, 8:46 PM), <https://rennlist.com/forums/panamera/1195476-pcm-restarting-xm-radio-fault-7.html>.

They said that the “free” subscription that I am receiving is part of a promotion that started in late June and runs through July 8t [sic]

LaVista7615, do you know how long you have been receiving stations from XM?

Others?

For whatever reason, they can activate a subscription but they can't deactivate a free promo so there is no way of turning off the XM connection to our car to determine if that is causing the problem.

Here were the suggested solutions from XM:

1. Wait until the free subscription ends
2. To take the car to an authorized repair center and have them disconnect the XM Module

They also suggested completing the following form to report/escalate the problem:

[https://listenercare.siriusxm.com/app/unresolved\\_issue](https://listenercare.siriusxm.com/app/unresolved_issue)<sup>16</sup>

39. There is no indication that Porsche has modified its business practices with respect to updates nor has Porsche offered appropriate remuneration to its victims.

## **II. Plaintiff's Experience**

40. In 2012, Plaintiff purchased a used 2011 Porsche Panamera for \$85,000.

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<sup>16</sup> JRoach, REENLIST.COM (July 3, 2020, 6:33 PM), <https://rennlist.com/forums/cayenne-958-2011-2018/1195303-pcm-rebooting-every-2mins-2015-cs-21.html>.

41. Plaintiff's vehicle was equipped with a PCM and a satellite radio antenna.

42. Although Plaintiff is not a Sirius customer, Porsche or, with Porsche's facilitation, Sirius transmitted the Update to his PCM around May 21, 2020.

43. Shortly after his vehicle received the Update, the PCM in Plaintiff's vehicle began malfunctioning. Specifically, the PCM would reboot approximately every two to ten minutes, regardless of whether the engine was turned on. Every time the PCM rebooted, it emitted a loud static sound, which made it uncomfortable and potentially dangerous to drive the vehicle for any length of time.

44. As a result of the Malfunction, Plaintiff was unable to access the features of his PCM, his car battery degraded, and his PCM hard drive was permanently damaged, along with numerous other significant problems. Moreover, Plaintiff never consented to receiving the Update and thus suffered an unauthorized invasion into his PCM depriving him of full utility of his vehicle.

45. On June 28, 2020, Plaintiff brought his vehicle to his local Porsche Dealer, Byers Imports, LLC, for repair. Plaintiff was informed that his hard drive had been irreparably damaged by the reboot cycles, and he would need to replace the PCM entirely. Additionally, the Byers Imports service department informed Plaintiff that the malfunction was caused by a faulty software update.

46. Plaintiff authorized the replacement on July 3, 2020. He was unable to use his vehicle until the replacement was complete, more than two months later.

47. On September 16, 2020, Byers Imports finished replacing Plaintiff's PCM. Plaintiff was billed \$3,270.78, which he paid, and no part of which has been reimbursed by Porsche. (Exhibit A).

48. Because of the Update and resulting Malfunction, Plaintiff was required to devote 5-10 hours of his time to communicating with dealership personnel and otherwise attending to the diagnosis and repair of his vehicle. This required Plaintiff to devote time to the Malfunction that he otherwise would have spent working, costing him at least \$2,000 beyond what he spent on the repair cost.

### **CLASS ACTION ALLEGATIONS**

49. Plaintiff seeks certification of a Class defined to include:

All entities and individuals who, on the date the Update was transmitted, owned or leased a Porsche vehicle equipped with an XM radio antenna and Porsche Communication Management (PCM) system 3.0 or 3.1 that received the Update.

50. Excluded from the Class are Defendant and its employees, officers, directors, legal representatives, successors and wholly or partly owned subsidiaries or affiliated companies; class counsel and their employees; and the judicial officers and their immediate family members and associated court staff assigned to this case.

51. The Class can be readily identified from Porsche's records relating to vehicle sales, warranties, and contact information used for effecting recalls.

### **I. Numerosity**

52. Porsche sells approximately 60,000 vehicles in the United States per year, most of which are equipped to receive satellite radio.<sup>17</sup>

53. On information and belief, the Class includes at least thousands of Porsche owners. Porsche's and Sirius's records will reveal the total number of Class members with greater precision.

### **II. Typicality**

54. Plaintiff's claims are typical of the claims of the Class. Plaintiff, like all members of the Class, owns a Porsche vehicle that received the Update. Plaintiff, like other Class members, thus had his vehicle and PCM accessed without permission in a manner that damaged his vehicle and PCM.

### **III. Adequacy of Representation**

55. Plaintiff will fairly and adequately protect the Class' interests and has retained counsel competent and experienced in class-action litigation. Plaintiff's interests are coincident with, and not antagonistic to, absent Class members'

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<sup>17</sup> *Porsche Posts Record U.S. Retail Sales in 2019*, PORSCHE (Jan 3, 2020), [https://newsroom.porsche.com/en\\_US/company/porsche-posts-record-us-retail-sales-in-2019-01032020.html](https://newsroom.porsche.com/en_US/company/porsche-posts-record-us-retail-sales-in-2019-01032020.html).

interests because, by proving his individual claims, he will necessarily prove the liability of Porsche to the Class as well. Plaintiff is cognizant of, and determined to, faithfully discharge his fiduciary duties to the absent Class members as their representative.

56. Plaintiff's counsel have substantial experience in prosecuting class actions. Plaintiff and his counsel are committed to vigorously prosecuting this action, have the financial resources to do so, and do not have any interests adverse to the Class.

#### **IV. Commonality and Predominance**

57. There are numerous questions of law and fact, the answers to which are common to each Class and predominate over questions affecting only individual members, including the following:

- a. Whether Porsche transmitted, or facilitated transmission of, the Update;
- b. Whether the Update caused the Malfunction or damage to Porsche vehicles or PCMs;
- c. Whether Porsche owed a duty of care in connection with transmitting (or facilitating the transmission of) the Update to Class members' vehicles;
- d. Whether Porsche failed to use reasonable care in connection with the Update;

- e. Whether Porsche transmitted (or facilitated transmission of) the Update without first receiving consent from Class members;
- f. Whether Porsche is liable for damages caused by the Update;
- g. Whether Porsche's alleged conduct violated the Computer Fraud and Abuse Act;
- h. Whether Plaintiff and Class members have been injured by Porsche's conduct and, if so, the determination of the appropriate Class-wide measure of damages; and
- i. Whether Porsche was unjustly enriched to the detriment of Plaintiff and Class members, thereby entitling Plaintiff and Class members to disgorgement of all benefits derived by Porsche.

#### **V. Superiority and Manageability**

58. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all the individual Class members is impracticable. Moreover, the burden imposed on the judicial system by individual litigation of the thousands of Class members' claims would be enormous.

59. The prosecution of separate actions by the individual Class members would also create a risk of inconsistent or varying adjudications. The conduct of this action as a class action presents far fewer management difficulties, conserves judicial resources and the parties' resources, and protects the rights of each Class member.

**COUNT I**

**TRESPASS TO PERSONALTY**

60. Plaintiff repeats and re-alleges the allegations in the paragraphs above as if fully set forth herein.

61. Georgia law prohibits interference with the possession of, and unlawful abuse or damage to, Plaintiff's and Class members' chattel or personalty.

62. Plaintiff's and Class members' Porsche vehicles, each of which contained a PCM, are chattels or personalty.

63. Through Defendant's conduct alleged herein, including transmitting or facilitating transmission of the Update to Plaintiff's and Class members' PCMs, Defendant interfered with possession of, and caused damage to, Plaintiff's and Class members' Porsche vehicles and PCMs. The Update, which Defendant either transmitted or facilitated the transmission of, was intended to—and in fact did—affect operation of the PCM in Plaintiff's and Class members' Porsche vehicles.

64. As alleged herein, Defendant's conduct caused harm to Plaintiff and Class members by, among other things, causing the PCM to enter a near-continuous reboot cycle, draining the vehicle's battery, damaging the PCM hard drive requiring repair and replacement, and depriving the owner of the ability to enjoy their vehicle.

65. Plaintiff and Class members suffered actual damages as a result of Defendant's conduct in an amount to be determined at trial.

**COUNT II**

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

**(18 U.S.C. § 1030)**

66. Plaintiff repeats and re-alleges the allegations in the paragraphs above as if fully set forth herein.

67. Plaintiff's and Class members' PCMs came equipped with, among other things, cellular telephone connectivity and GPS capability which allows users to engage in interstate and foreign commerce and communication. As such, the PCMs qualify as "protected computers" as defined in the Computer Fraud and Abuse Act.

68. Through Defendant's conduct alleged herein, including transmitting (or facilitating the transmission of) the Update to Plaintiff's and Class members' PCMs, Defendant intentionally accessed a protected computer without authorization in violation of 18 U.S.C. § 1030(a)(5)(C).

69. Through Defendant's conduct alleged herein, including transmitting or facilitating transmission of the Update to Plaintiff's and Class members' PCMs,

Defendant intentionally accessed a protected computer without authorization, and caused damage and loss in violation of 18 U.S.C. § 1030(a)(5)(C).

70. Through Defendant’s conduct alleged herein, including transmitting and/or facilitating transmission of the Update to Plaintiff’s and Class members—despite information that similar Sirius-related updates had caused malfunctions in the past—Defendant intentionally accessed a protected computer without authorization, and recklessly caused damage and loss in violation of 18 U.S.C. § 1030(a)(5)(B).

71. The Computer Fraud and Abuse Act, 18 U.S.C. § 1030(g), provides a civil cause of action to “any person who suffers damage or loss” as a result of a violation of the CFAA.

72. 18 U.S.C. § 1030(e)(11) defines the term “loss” to “mean[] any reasonable cost to any victim, including the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense . . . .” 18 U.S.C. § 1030(e)(11) further defines the term “loss” to include “any revenue lost, cost incurred, or other consequential damages incurred because of interruption of service.” 18 U.S.C. § 1030(e)(8) defines “damage” as “any impairment to the integrity or availability of data, a program, a system, or information.”

73. By transmitting, or facilitating transmission of, the Update, Defendant caused damage to Plaintiff's and Class members' PCMs, including continuous reboot cycles which damaged the PCM hard drive, often requiring repair and replacement. Because of Defendant's unlawful conduct, Plaintiff and Class members have expended time and suffered inconvenience in response to the effects of the Malfunctioning and seeking to eliminate or repair the Malfunctioning and, in many cases, have spent hundreds or thousands of dollars on repairs, including to replace the PCM. Plaintiff and Class members have also sustained other consequential damages, including loss of use of their vehicles, battery degradation, and other inconveniences.

74. As a result of Defendant's conduct, Plaintiff and class members suffered damage and loss in excess of \$5,000.

### **COUNT III**

#### **NEGLIGENCE**

75. Plaintiff repeats and re-alleges the allegations in the paragraphs above as if fully set forth herein.

76. Defendant owed a duty to refrain from depriving or interfering with possession of, or otherwise causing damage to, Plaintiff's and Class members' personal property and chattel.

77. In addition to the allegations set forth herein, Defendant breached these duties and acted without the requisite care in at least the following respects:

- a. failing to notify and/or warn Plaintiff and Class members of the potential risk of harm that the Update posed to their vehicles and PCMs;
- b. transmitting, or facilitating transmission of the Update to Plaintiff and Class members PCMs, despite knowledge that previous updates had caused similar damage to vehicles;
- c. transmitting or facilitating transmission of the Update to all Porsche vehicles without authorization and without regard to the fact that Plaintiff and Class members were not satellite radio subscribers and had no relationship with Sirius;
- d. transmitting or facilitating transmission of the Update which damaged and/or destroyed the PCM hard drive;

78. Through the exercise of reasonable care the harm could have been avoided or detected and corrected.

79. As a proximate result of Defendant's lack of due care, Plaintiff and Class members suffered harm as set forth herein in an amount to be determined at trial.

**COUNT IV**

**(UNJUST ENRICHMENT)**

80. Plaintiff repeats and re-alleges the paragraphs above as if fully set forth herein.

81. Plaintiff alleges this claim in the alternative to his legal claims and asserts for the purposes of this claim that he lacks an adequate remedy at law.

82. Porsche acted unlawfully and in breach of its legal duties as set forth above by, among other things, interfering with Plaintiff's and Class members' personal property and gaining access to the PCMs without authorization, when causing the damage alleged herein.

83. Plaintiff and Class members have conferred a benefit upon Porsche, including in connection with purchasing Porsche vehicles and by paying Porsche to repair the damaged PCMs.

84. Despite Defendant's unlawful conduct, Plaintiff and Class members have not been compensated and Porsche has instead retained the benefits conferred upon it.

85. The failure to compensate Plaintiff and Class members in this scenario would be unjust.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, hereby demand:

- a. certification of the proposed Class;
- b. appointment of the undersigned counsel as class counsel;
- c. an order enjoining Porsche, as detailed above, from engaging any further in the unlawful conduct set forth herein;
- d. restitution and disgorgement of all profits wrongfully obtained;
- e. an award to Plaintiffs and the Class of all damages, including attorneys' fees and reimbursement of litigation expenses, recoverable under applicable law;
- f. such other relief as this Court deems just and equitable.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury on all applicable claims.

Dated: January 29, 2021

/s/  
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