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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

STEVE FERRARI, et al.,)	Case No. 4:17-CV-00018-YGR
)	
Plaintiffs,)	ORDER GRANTING PLAINTIFFS’ MOTION
)	FOR PRELIMINARY APPROVAL OF CLASS
v.)	ACTION SETTLEMENT AND CERTIFICATION
)	OF SETTLEMENT CLASS
AUTOBAHN, INC. DBA AUTOBAHN)	
MOTORS; MERCEDES-BENZ USA, LLC;)	
AND SONIC AUTOMOTIVE, INC.)	
)	
Defendants.)	
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This matter came before the Court on Plaintiffs’ Motion for Preliminary Approval of Class Settlement and Certification of Settlement Class. The Parties have entered into a Settlement Agreement (the “Settlement”) which has been filed with the Court and is attached hereto as **Exhibit A**. If approved, the Settlement would resolve all claims in the above-captioned class action lawsuit (the “Action” or the “Class Action Lawsuit”) against Defendants Sonic Automotive, Inc. and Autobahn, Inc. (collectively the “Autobahn Defendants”) and some but not all of the claims against Defendant Mercedes-Benz USA.

Upon review and consideration of the motion papers and the Settlement and all exhibits thereto, including the **revised** proposed forms of notice to the Class and the **revised** proposed Claim Form, the Court finds that there is sufficient basis for: (1) granting preliminary approval of the Settlement; (2) provisionally certifying the Class for settlement purposes only; (3) appointing

1 Class Counsel and the Class Representative Plaintiffs to represent the Class; (4) approving the
2 Parties' **revised** proposed notice program and **revised** forms of notice substantially similar to
3 those forms attached **hereto** and directing that notice be disseminated to the Class pursuant to the
4 notice program provided in the Second Supplemental Brief In Support of Preliminary Approval of
5 Pro Tanto Class Action Settlement; (5) approving the Parties' **revised** proposed Claim Form and
6 the **revised** procedures set forth in the Second Supplemental Brief In Support of Preliminary
7 Approval of Pro Tanto Class Action Settlement for Class Members to exclude themselves from
8 the Class, and object to the Settlement; (6) authorizing the Parties to select a Settlement
9 Administrator to conduct the duties assigned to that position in the Settlement; and (7) setting a
10 hearing (the "Fairness Hearing") at which the Court will consider: (a) whether to grant Final
11 Approval of the Settlement; (b) Class Counsel's Application for Attorneys' Fees and Costs; and
12 (c) any Request for service awards for the Class Representative Plaintiffs.

13 The Court notes that parties will not select the Settlement Administrator originally
14 identified in the Settlement Agreement.

15 Based upon the foregoing, **IT IS HEREBY ORDERED THAT:**

16 1. Capitalized terms not otherwise defined herein shall have the same meaning as set forth
17 in the Settlement Agreement.

18 2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(d), and has
19 personal jurisdiction over the Parties. Venue is proper in this District.

20 3. This Action is provisionally certified as a class action for the purposes of settlement
21 only pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(3), and 23(e). The Settlement
22 Class is defined as follows:

23 All consumers who during the period January 1, 2005 through February 28,
24 2018 received service from Autobahn, together with all consumers who
25 purchased a CPO automobile from Autobahn during the period January 1,
26 2007 through December 31, 2012, as reflected in the business records of
Autobahn, Inc.

27 The Settlement Class is divided into sub-Classes 1A, 1B, 2, 3A, and 3B, which are defined in the
28 Settlement Agreement. Excluded from the Class are: (a) any persons who are employees,

1 directors, officers, and agents of the Autobahn Defendants or their subsidiaries and affiliated
2 companies; (b) any persons who timely and properly exclude themselves from the Settlement; and
3 (c) the Court, the Court's immediate family, and Court staff.

4 4. Certification of the Settlement Class shall be solely for settlement purposes and
5 without prejudice to the Parties in the event the Settlement is not finally approved by this Court or
6 otherwise does not take effect.

7 5. In support of this Preliminary Approval Order, the Court conditionally and
8 preliminarily finds, for settlement purposes only, that: (a) the members of the Settlement Class
9 are so numerous that joinder of all members of the Settlement Class ("Class Members") is
10 impracticable; (b) there are questions of law and fact common to the Class Members, each of
11 whom could have asserted the types of claims raised in the Action, and these questions
12 predominate over any questions affecting individual Class Members; (c) the named Class
13 Representatives' claims are typical of the claims of the Class Members; (d) the named Class
14 Representatives and Class Counsel identified below are able to adequately represent the Class
15 Members; and (e) class-wide treatment of the disputes raised in the Action is superior to other
16 available methods for adjudicating the controversy.

17 6. The Court preliminarily approves the proposed Settlement as fair, reasonable, and
18 adequate, entered into in good faith, free of collusion, and within the range of possible judicial
19 approval. The Court makes note of the Parties' representation that the Settlement was reached
20 through extensive arms-length negotiations supervised by mediator and retired Judge Raul
21 Ramirez.

22 7. The Court appoints the following as Class Counsel: Varnell & Warwick, P.A. and
23 Franck & Associates.

24 8. The Court appoints Plaintiffs Steve Ferrari, Michael Keynejad, Patricia Rubin, John
25 Diaz, Ray Gapasin, and Harold Fethe as Class Representatives for the Settlement Class.

26 9. The Court directs the parties to select a Settlement Administrator to carry out all duties
27 and responsibilities of the Settlement Administrator specified in the Settlement.

28 10. The Court approves the program for disseminating notice to the Class set forth in the

1 Settlement, as revised by the Second Supplemental Brief In Support of Preliminary Approval of
2 Pro Tanto Class Action Settlement for Class Members (the “Notice Program”). The Court
3 approves the form and content of the proposed forms of notice **in the forms attached hereto as**
4 **Exhibits B and C.** The Court finds that the proposed forms of notice are clear and readily
5 understandable by Class Members. The Court finds that the Notice Program, including the
6 proposed forms of notice, constitutes the best notice practicable under the circumstances,
7 constitutes valid, due, and sufficient notice to the Class in full compliance with the requirements
8 of applicable law, including Federal Rule of Civil Procedure 23 and the Due Process Clause of
9 the United States Constitution, and is the only notice to the Class of the Settlement that is
10 required.

11 The Court further notes that it has corrected an error in the case number identified in
12 paragraph 6(a)(i) of the proposed long form notice. **Plaintiffs are ORDERED to add a table of**
13 **contents to the beginning of the long form notice (Exhibit C) for ease of reference.**

14 11. The Court approves the form and content of the proposed Claim Form, **in the form**
15 **attached hereto as Exhibit D** and approves the procedures set forth in the Second Supplemental
16 Brief In Support of Preliminary Approval of Pro Tanto Class Action Settlement for Class
17 Members to submit Claims. The Court further approves of the procedures set forth in the Second
18 Supplemental Brief In Support of Preliminary Approval of Pro Tanto Class Action Settlement for
19 Class Members to receive vouchers, elect to receive cash value in lieu of vouchers, and receive
20 redemption checks.

21 12. The Parties acknowledge that the Autobahn Defendants have prepared a list of Class
22 Members that is reasonably calculated to include the email addresses and physical addresses of all
23 the Class Members known by the Autobahn Defendants, for the Settlement Administrator’s use in
24 disseminating notice, vouchers, claim forms, and redemption checks. The list of Class Members,
25 and the information provided therein, shall be used only to effectuate the Agreement.

26 13. The “Notice Date” shall be **30 days after issuance of this Order.**

27 14. By no later than the Notice Date, the Settlement Administrator shall send the Short
28 Form Class Notice in the form approved by the Court, to Class Members via email for those Class

1 Members for whom an email address is available, along with a link to the Settlement Website.
2 Where a Class Member's email address is unknown, the Settlement Administrator shall send the
3 Short Form Class Notice in the form of a postcard to the class member's last known address.

4 15. By no later than the Notice Date, the Settlement Administrator shall post the Long
5 Form Class Notice, in substantially the same form approved by the Court, on the Settlement
6 Website. The Settlement Administrator shall also implement on the website an electronic means
7 for Class Members to file a Class 2 Claim, which shall be in substantially similar form to the
8 approved Claim Form (**Exhibit D hereto**), and to elect to receive a check in lieu of a voucher.

9 16. The Settlement Administrator shall establish and use a Settlement Website to allow
10 Class Members to find further information about the terms of the Settlement, their rights,
11 important dates and deadlines, and related information. The Settlement Website shall include, in
12 PDF format, the operative complaint, the Settlement Agreement, the Motion for Preliminary
13 Approval, the Preliminary Approval Order, the Long Form Class Notice, any papers filed in
14 support of Final Approval of the Settlement, Class Counsel's Application for Attorneys' Fees and
15 Costs (after it is filed), the Final Approval Order (after it is entered), and other case documents as
16 agreed upon by the Parties and/or required by the Court and shall be operational and live on the
17 date the Settlement Administrator begins emailing notice. The Settlement Administrator shall
18 take down the Settlement Website no later than one hundred and eighty (180) days after the
19 Effective Date. Within five (5) business days after the Settlement Website is taken down, the
20 Settlement Administrator shall transfer ownership of the URL for the Settlement Website to the
21 Autobahn Defendants.

22 17. The Settlement Administrator shall establish and maintain a toll-free telephone
23 number ("Toll-Free Number") where Class Members can call to request a copy of the Settlement
24 Agreement, a Claim Form, or any other information concerning the Settlement or the Settlement
25 Agreement.

26 18. Any Class Member who wishes to be excluded from the Class must mail a written
27 request for exclusion to the Settlement Administrator, postmarked no later than the **Opt-Out**
28 **Deadline: October 31, 2018**, which: (a) must contain the name and address of the person to be

1 excluded; (b) if applicable, must contain the name and address of any person claiming to be
2 legally entitled to submit an exclusion request on behalf of the Class Member and the basis for
3 such legal entitlement; (c) must be mailed by U.S. Mail, proper postage prepaid, to the Settlement
4 Administrator at the specified mailing address; (d) must be submitted or postmarked on or before
5 the Opt-Out Deadline; and (e) must be personally signed and clearly indicate that he/she wants to
6 be excluded from the Class. So-called “mass” or “class” opt-outs shall not be allowed.

7 19. If the Settlement is finally approved and becomes effective, any Class Member who
8 does not send a timely and valid request for exclusion shall be a Settlement Class Member and
9 shall be bound by all subsequent proceedings, orders, and judgments in the Action, including, but
10 not limited to, the Release, even if he or she has litigation pending or subsequently initiates
11 litigation against the Autobahn Defendants relating to the claims and transactions released in the
12 Action. The Court notes that the provisions of Paragraphs 36 and 37 of the Settlement Agreement
13 are addressed to civil claims released by the “Releasing Parties,” and these Paragraphs do not
14 pertain to regulatory actions brought by law enforcement agencies, regulatory, or other
15 governmental actors that are not released under the Agreement.

16 20. Any Class Member or person legally entitled to act on his or her behalf may object to
17 the fairness, reasonableness, or adequacy of the Settlement, to Class Counsel’s Request for
18 Attorneys’ Fees and Costs (“Fee Application”), and/or the Request for service awards for the
19 Plaintiffs. To be valid, any objection must be made in writing, must be filed with the Court and
20 served upon Class Counsel and counsel for the Autobahn Defendants no later than the **Objection**
21 **Deadline: October 31, 2018**, and must include the following: (a) the name of the Action (*Ferrari*
22 *v. Autobahn, Inc.*, No. 17-CV-0018-YGR); (b) the objector’s full name, address, and telephone
23 number; (c) if applicable, the name and address of any person claiming to be legally entitled to
24 object on behalf of a Class Member and the basis of such legal entitlement; (d) whether the
25 objector is represented by counsel and, if so, the identity of such counsel, and all previous
26 objections filed by the objector and their counsel within the last two years; (e) a notice of intent to
27 appear at the Final Fairness Hearing if the objector intends to so appear; (f) a statement of all
28 objection(s) being asserted; (g) a description of the facts and legal authorities underlying each

1 objection; (h) a list of any witnesses who may be called to testify at the Final Fairness Hearing,
2 whether in person, by deposition, or affidavit; (i) a list of any exhibits, and copies of same, which
3 the objector may offer at the Final Fairness Hearing; and (j) the objector's signature.

4 21. Any Class Member who submits a timely and valid written objection may appear at
5 the Fairness Hearing, either in person or through personal counsel hired at the Class Member's
6 own personal expense. Any Class Member who does not submit a timely and valid objection
7 shall be deemed to have waived all objections and shall forever be foreclosed from making any
8 objection to the fairness, adequacy, or reasonableness of the Settlement and any Final Approval
9 Order and Final Judgment entered approving it, Class Counsel's Fee Application, or any Request
10 for service awards for the Plaintiffs.

11 22. Upon request, the Settlement Administrator shall provide to the Parties proof of the
12 extent and effectiveness of Class Notice.

13 23. Upon the request, the Settlement Administrator shall provide to Class Counsel and the
14 Autobahn Defendant's Counsel all exclusion requests submitted by Class Members, including
15 any related correspondence. After the Opt-Out Deadline has passed, the Settlement Administrator
16 shall provide to Class Counsel and Autobahn Defendant's Counsel a complete and final list of
17 Class Members who submitted requests to exclude themselves from the Class.

18 24. Class Counsel shall file their Motion for Attorneys' Fees and Service Awards for the
19 Plaintiffs by no later than **September 27, 2018**. After it is filed, Class Counsel's Motion for
20 Attorneys' Fees and Service Awards for the Plaintiffs shall be posted on the Settlement Website.

21 25. The Parties shall file any motions in support of Final Approval of the Settlement,
22 including any responses to any Class Member objections, by no later than **December 11, 2018**.

23 26. The Fairness Hearing shall be scheduled for **Tuesday, January 15, 2019, at 2:00**
24 **p.m.** to assist the Court in determining whether the Settlement should be finally approved as fair,
25 reasonable, and adequate to the Settlement Class Members; whether Final Judgment should be
26 entered dismissing the Autobahn Defendants and the Released Claims with prejudice; whether
27 Class Counsel's Fee Application should be approved; and whether any request for service awards
28 for the Plaintiffs should be approved.

1 27. The Court reserves the right to modify the date of the Fairness Hearing and related
2 deadlines set forth herein. In the event the Fairness Hearing is moved, the new date and time
3 shall be promptly posted on the Settlement Website by the Settlement Administrator.

4 28. This Order shall become null and void and shall be without prejudice to the rights of
5 the Parties, all of whom shall be restored to their respective positions as they existed immediately
6 before the Court entered this Order, if: (a) the Settlement is not finally approved by the Court, or
7 does not become final, pursuant to the terms of the Settlement; (b) the Settlement is terminated in
8 accordance with the Settlement; or (c) the Settlement does not become effective pursuant to the
9 terms of the Settlement for any other reason.

10 29. If the Settlement does not become final and effective pursuant to the terms of the
11 Settlement, the Class Representatives, the Class Members, and the Autobahn Defendants shall be
12 returned to their respective statuses as of the date immediately prior to the execution of the
13 Settlement Agreement, and this Preliminary Approval Order shall have no force or effect, and
14 neither this Preliminary Approval Order nor the Settlement shall be construed or used as an
15 admission, concession, or declaration by or against Autobahn Defendants of any fault,
16 wrongdoing, breach, or liability, or be construed or used as an admission, concession, or
17 declaration by or against any of the Plaintiffs or Class Members that their claims lack merit or
18 that the relief requested is inappropriate, improper, or unavailable, or as a waiver by any party of
19 any defenses or claims he, she, or it may have in this Action or in any other lawsuit, and it shall
20 not be admissible in evidence, or usable for any purpose whatsoever in the Action, any
21 proceeding between the Parties, or in any action related to the Released Claims or otherwise
22 involving the Parties, Class Members, or any Released Party.

23 30. Pending the final determination of whether the Settlement should be approved, all
24 claims against the Autobahn Defendants in this Action, except as may be necessary to implement
25 the Settlement or comply with the terms of the Settlement, are hereby stayed.

26 31. Pending the final determination of whether the Settlement should be approved,
27 Plaintiffs and each Class Member, and any person purportedly acting on behalf of any Class
28 Member(s), are hereby enjoined from commencing, pursuing, maintaining, enforcing, or

1 prosecuting, either directly or indirectly, any Released Claims in any judicial, administrative,
2 arbitral or other forum, against any of the Released Parties or Partially Released Entities,
3 provided that this injunction shall not apply to the claims of any Class Members who have timely
4 and validly requested to be excluded from the Class. Such injunction shall remain in force until
5 the Effective Date or until such time as the Parties notify the Court that the Settlement has been
6 terminated, or until such time that the Court issues an order modifying this injunction. This
7 injunction is necessary to protect and effectuate the Settlement, this Preliminary Approval Order,
8 and this Court's authority regarding the Settlement, and is ordered in aid of this Court's
9 jurisdiction and to protect its judgments.

10 32. At the request of the Parties, and to improve the efficiency of the administration
11 process, the Court orders the following modifications to the procedure outlined in the Settlement
12 Agreement to be followed by the Settlement Administrator:

13 a. The electronic means by which Class Members may elect to receive a
14 check and make a claim for Class 2 shall be available to Class Members no later than the
15 **Notice Date**, and the deadline for Class Members to make such election and/or claim shall
16 be **November 13, 2018**.

17 b. Each Class Member shall receive a single Voucher or check for the total
18 amount to which he or she is entitled. Vouchers or checks shall be provided **within 30**
19 **days of the Effective Date**.

20 c. The Settlement Administrator is relieved of the requirement to make
21 periodic reports to the Parties but shall make such information available to the Parties
22 upon request. This includes information concerning exclusion requests received, vouchers
23 redeemed for cash, fee and expense reports, and other matters relating to administration of
24 the Settlement.

25 d. The Settlement Administrator should consider how the timing of
26 establishing any necessary bank accounts and issuing checks will impact administrative
27 costs, including tax filings, and attempt to minimize such costs. The Settlement
28 Administrator shall consult with counsel for the Parties and seek relief from the Court if it

1 is necessary to alter deadlines ordered by the Court in order to reasonably minimize such
 2 costs.

3 33. Class Counsel, the Autobahn Defendants, and the Settlement Administrator are
 4 directed to carry out their obligations under the Settlement and this Preliminary Approval Order.


5 34. Without further order of the Court, the Parties may agree to make non-material
 6 modifications in implementing the Settlement Agreement that are not inconsistent with this
 7 Order.

SUMMARY OF KEY DATES	
Event	Date
Notice Date	September 27, 2018
Deadline to file Motion for Attorneys' Fees and service awards	September 27, 2018
Opt-Out Deadline	October 31, 2018
Objection Deadline	October 31, 2018
Deadline for Class 2 Claims	November 13, 2018
Deadline to Elect To Receive Check	November 13, 2018
Filing of Motion for Final Approval	December 11, 2018
Hearing on Motion for Final Approval and Motion for Attorneys' Fees and Service Awards	Tuesday, January 15, 2019 , at 2:00 p.m.

17 This terminates Docket Nos. 136 and 156.

18 **IT IS SO ORDERED.**

19 Dated August 28, 2018


 YVONNE GONZALEZ ROGERS
 United States District Judge

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