

3. A person who violates the requirements of the Safety Act, or a regulation thereunder, is liable to the United States Government for a civil penalty. 49 U.S.C. § 30165(a)(1); 49 C.F.R. § 578.6(a). A separate violation occurs for each motor vehicle and for each failure or refusal to allow or perform a required act. 49 U.S.C. § 30165(a)(1); 49 C.F.R. § 578.6(a). The maximum penalty for each violation was \$7,000 until March 17, 2016, at which point the maximum penalty for each violation was increased to \$21,000. Effective November 27, 2018, the maximum penalty for each violation has increased to \$21,780, with \$108,895,910 as the maximum penalty for a related series of violations. 83 Fed. Reg. 60732, 60735 (Nov. 27, 2018).

4. NHTSA has the power to issue compulsory process, such as Information Requests (IRs). 49 U.S.C. § 30166(e). A person who violates 49 U.S.C. § 30166 or a regulation prescribed under that section is liable to the United States for daily civil penalties. 49 U.S.C. § 30165(a)(3); 49 C.F.R. § 578.6(a)(3). The maximum penalty for each daily violation was \$7,000 until March 17, 2016, at which point the maximum penalty for each daily violation was increased to \$21,000. Effective November 27, 2018, the maximum penalty for each violation has increased to \$21,780, with \$108,895,910 as the maximum penalty for a related series of violations. 83 Fed. Reg. 60732, 60735 (Nov. 27, 2018).

5. Bical Chevrolet is a dealer of motor vehicles within the meaning of the Safety Act, *see* 49 U.S.C. § 30102(a)(2), and a person within the meaning of 49 U.S.C. § 30165.

6. NHTSA received information suggesting that Bical Chevrolet sold and delivered at least one new vehicle to a customer without having remedied safety-related defects or noncompliances about which the manufacturer, General Motors Company, had given notice pursuant to the Safety Act.

7. On March 16, 2017, NHTSA opened an audit query (AQ17-002) in order to

determine whether Bical Chevrolet complied with the requirements of the Safety Act.

8. In connection with AQ17-002, NHTSA sent IR letters to Bical Chevrolet and General Motors Company. NHTSA had difficulties in obtaining responses to IR letters from Bical Chevrolet throughout the AQ investigation, including not receiving a response to the first IR until more than three months after the original deadline. Additionally, in NHTSA's view, Bical Chevrolet failed to provide a full response to the second IR.

9. Information from General Motors Company indicates that between 2014 and 2016 Bical Chevrolet retailed at least 54 vehicles without applying the recall remedy. The recalls involved had to do with a variety of issues, including loss of power steering assist, the ignition switch may move out of run position and airbags may not deploy in a crash, loss of brake vacuum assist, overheated exhaust components, and more.

II. LEGAL AUTHORITY

10. NHTSA enters into this Settlement Agreement pursuant to its authority under the Safety Act, 49 U.S.C. § 30101, *et seq.*, as delegated by the Secretary of Transportation, 49 C.F.R. §§ 1.95, 501.2(a)(1), and by the NHTSA Administrator, 49 C.F.R. § 501.8, including, among other things, its authorities to compromise the amount of civil penalties, 49 U.S.C. § 30165(b); to ensure that defective and noncompliant equipment is recalled and remedied, 49 U.S.C. §§ 30118-30120; and to require any person to make reports, 49 U.S.C. § 30166(e).

11. In consideration of Bical Chevrolet's entry into this Settlement Agreement and its representations outlined below, it is AGREED by Bical Chevrolet and NHTSA as follows:

III. TERMS OF SETTLEMENT AGREEMENT

Safety Act Admission

12. Bical Chevrolet does not contest NHTSA's conclusion that it violated the Safety Act by selling and delivering certain new motor vehicles that were subject to a recall before the

vehicles were remedied, as required by 49 U.S.C. §§ 30112(a) and 30120(i).

13. Bical Chevrolet does not contest NHTSA's conclusion that it violated the Safety Act by initially failing to provide full and complete responses to information requests from NHTSA by their deadlines.

Civil Penalty

14. Bical Chevrolet shall, in order to resolve the audit query, pay a civil penalty in the sum of \$40,000 ("Civil Penalty") in connection with the matters addressed in this Settlement Agreement. Bical Chevrolet shall pay this Civil Penalty in two installments of \$20,000 each by electronic funds transfer to the U.S. Treasury in accordance with instructions provided by NHTSA. The first payment will be due no later than 30 calendar days following execution of this Settlement Agreement. The second payment will be due no later than 120 days following execution of this Settlement Agreement.

Representations

15. Bical Chevrolet agrees to take, and represents that it has already undertaken, certain actions to prevent the sale and delivery of unremedied motor vehicles as required by the Safety Act. Bical Chevrolet states that since the onset of the AQ, Bical has improved its processes in its sales and service departments to verify that it checks every vehicle for recalls prior to delivery to the purchaser. Bical Chevrolet agrees that it will continue to take the aforementioned measure going forward.

16. Bical Chevrolet further represents that it has not sold or delivered any unremedied new motor vehicles since March 1, 2018.

17. Bical also represents that it checks for open recalls on every customer vehicle brought in for service. Bical Chevrolet agrees that it will continue to take the aforementioned measure going forward.

18. Bical Chevrolet represents that it checks for open recalls on every trade-in vehicle, regardless of make or model, and takes steps to have the vehicles repaired prior to retail sale. Bical Chevrolet agrees that it will continue to take the aforementioned measure going forward.

19. Bical Chevrolet agrees that it will implement and strictly adhere to any systems instituted by General Motors Company requiring dealerships to check vehicles for open recalls prior to vehicle delivery.

IV. AMENDMENT

20. This Settlement Agreement cannot be modified, amended or waived except by an instrument in writing signed by all parties.

V. MISCELLANEOUS

21. **Application of Federal Law.** Nothing in this Settlement Agreement shall be interpreted or construed in a manner inconsistent with, or contravening, any federal law, rule, or regulation at the time of the execution of this Settlement Agreement, or as amended thereafter.

22. **Release.**

A. Upon payment of the Civil Penalty, the Secretary of Transportation, by and through the Administrator of NHTSA, will be deemed to have released Bical Chevrolet, including its current and former directors, officers, employees, agents, parents, subsidiaries, affiliates, successors, and assigns from liability for civil penalties pursuant to 49 U.S.C. § 30165, in connection with any and all violations of Bical Chevrolet's Safety Act obligations related to the conduct at issue in AQ17-002 from the inception of the Safety Act through the execution date of this Settlement Agreement.

B. This Settlement Agreement does not release Bical Chevrolet from civil or criminal liabilities, if any, that may be asserted by the United States, the U.S. Department of

Transportation, NHTSA, or any other governmental entity, other than as described in this Settlement Agreement.

23. **Breach.** In the event of Bical Chevrolet's breach of, or failure to perform, any term of this Settlement Agreement, NHTSA reserves the right to pursue any and all appropriate remedies, including, but not limited to, actions compelling specific performance of the terms of this Settlement Agreement, assessing interest for untimely settlement payments, and/or commencing litigation to enforce this Settlement Agreement in any United States District Court of competent jurisdiction. Bical Chevrolet agrees that, in any such enforcement action, it will not raise any objection as to venue.

24. **Attorneys' Fees.** The parties shall each bear their own respective attorneys' fees, costs, and expenses.

25. **Authority.** The parties who are the signatories to this Settlement Agreement have the legal authority to enter into this Settlement Agreement, and each party has authorized its undersigned to execute this Settlement Agreement on its behalf.

26. **Tax Deduction/Credit.** Bical Chevrolet agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, local, or foreign tax for any fine or civil penalty paid pursuant to this Settlement Agreement.

27. **Corporate Change.** This Settlement Agreement shall be binding upon, and inure to the benefit of, Bical Chevrolet and its current and former directors, officers, employees, agents, parents, subsidiaries, affiliates, successors, and assigns. Bical Chevrolet agrees to waive any and all defenses that may exist or arise in connection with any person or entity succeeding to the interests or obligations herein, including as a result of any changes to the corporate structure or relationships among or between Bical Chevrolet and any of its parents, subsidiaries, or affiliates.

28. **Severability.** Should any condition or other provision contained herein be held invalid, void or illegal by any court of competent jurisdiction, it shall be deemed severable from the remainder of this Settlement Agreement and shall in no way affect, impair or invalidate any other provision of this Settlement Agreement.

29. **Third Parties.** This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Settlement Agreement.

30. **Counterparts.** This Settlement Agreement may be executed in counterparts, each of which shall be considered effective as an original signature.

31. **Effective Date.** This Settlement Agreement shall be effective upon its full execution.

32. **Integration.** This Settlement Agreement is a fully integrated agreement and shall in all respects be interpreted, enforced and governed under the federal law of the United States. This Settlement Agreement sets forth the entire agreement between the parties with regard to the subject matter hereof. There are no promises, agreements, or conditions, express or implied, other than those set forth in this Settlement Agreement.

[SIGNATURES ON NEXT PAGE]

APPROVED AND AGREED:

NATIONAL HIGHWAY TRAFFIC SAFETY
ADMINISTRATION,
U.S. DEPARTMENT OF TRANSPORTATION

Dated: March 4, 2019

By: 

Jonathan C. Morrison
Chief Counsel

Dated: March 11, 2019

By: 

Christopher S. Perry
Acting Assistant Chief Counsel
for Litigation and Enforcement

Dated: March 11, 2019

By: 

Sarah Sorg
Senior Trial Attorney

AGREED:

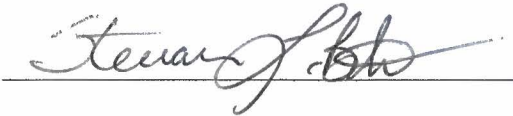
BICAL CHEVROLET CORP.

Dated: March 8, 2019

By: 

Lilaahar Bical
Dealer Operator

Dated: March 8, 2019

By: 

Stevan LaBonte
Counsel to Bical Chevrolet Corp.