

**UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION**

1200 New Jersey Avenue, SE
West Building, W41-326
Washington, DC 20590

In re: _____)
)
Northwest Chrysler Jeep Dodge Ram)
AQ17-004)
_____)

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into pursuant to the authority of the National Highway Traffic Safety Administration (“NHTSA”), an operating administration of the U.S. Department of Transportation, to resolve, mitigate, and control risks of harm, and promote safety. It sets forth the penalties agreed to by Northwest Chrysler Jeep Dodge Ram (“Northwest”), and the requirements agreed to by Northwest’s parent entity, Ken Garff Automotive, LLC (“Ken Garff”), in connection with Northwest’s violations of the National Traffic and Motor Vehicle Safety Act of 1966 as amended and recodified (the “Safety Act”), 49 U.S.C. Ch. 301, and applicable regulations thereunder, as detailed herein.

I. NATURE OF THE ACTION

1. The Safety Act provides for regulation of motor vehicles and motor vehicle equipment by the Secretary of Transportation. The Secretary has delegated her authorities under the Safety Act to NHTSA. *See* 49 C.F.R. §§ 1.95(a), 501.2.

2. The Safety Act prohibits a dealer from selling, introducing or delivering for introduction into interstate commerce, or delivering under sale or lease, motor vehicles¹ or motor vehicle equipment that contain a safety-related defect or that do not comply with an applicable

¹ As used in this settlement agreement, “motor vehicle” and “motor vehicles” refers to new motor vehicles and not used motor vehicles. The relevant prohibition does not apply to vehicles after the first purchase in good faith other than for resale. 49 U.S.C. 30112(b)(1).

motor vehicle safety standard about which notice has been given under 49 U.S.C. § 30118(c).
See 49 U.S.C. §§ 30112(a), 30120(i).

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). During the timeframe that the violations at issue occurred, 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.

4. Northwest 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. Northwest is wholly owned by Ken Garff.

5. NHTSA received information suggesting that, in violation of the Safety Act, Northwest sold and delivered at least one motor vehicle to a customer without having remedied safety-related defects or noncompliances about which the manufacturer, Fiat Chrysler Automobiles (“FCA”), had given notice pursuant to the Safety Act.

6. On August 18, 2017, NHTSA opened an audit query (AQ17-004) to determine whether Northwest complied with the requirements of the Safety Act.

7. In connection with AQ17-004, NHTSA sent Information Request letters to Northwest and FCA. Information from FCA indicates that between 2015 and 2017 Northwest retailed at least 310 motor vehicles without applying the recall remedy. The recalls involved had to do with a variety of safety issues, including unintended side curtain air bag deployment, the automatic transmission not shifting into park, and water entering the power lift gate module.

II. LEGAL AUTHORITY

8. NHTSA enters into this Settlement Agreement pursuant to its authority under the Safety Act, 49 U.S.C. Ch. 301, as delegated by the Secretary of Transportation, 49 C.F.R. §§ 1.95, 501.2, 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).

9. In consideration of Northwest's and Ken Garff's entry into this Settlement Agreement and its representations outlined below, it is AGREED by Northwest, Ken Garff and NHTSA as follows:

III. TERMS OF SETTLEMENT AGREEMENT

A. Safety Act Admission

10. Northwest admits that it sold and delivered certain motor vehicles that were subject to a recall before the motor vehicles were remedied, in violation of the requirements of 49 U.S.C. §§ 30112(a) and 30120(i).

B. Civil Penalty

11. Northwest shall pay a civil penalty in the sum of \$100,000 ("Civil Penalty") in connection with the matters addressed in this Settlement Agreement. Northwest shall pay this Civil Penalty by electronic funds transfer to the U.S. Treasury in accordance with instructions provided by NHTSA. The Civil Penalty payment is due no later than 30 calendar days following execution of this Settlement Agreement.

C. Representations

12. Northwest agrees to take, and represents that is has already undertaken, certain actions to prevent the sale and delivery of unremedied, recalled motor vehicles as required by the

Safety Act.

13. Northwest stated that it has reaffirmed the processes and procedures used by Northwest to ensure that no motor vehicle is sold before safety recall repairs have been completed on that vehicle.

14. Ken Garff further represented that it performed an audit on 60 randomly selected motor vehicles sold at Northwest between October 1, 2019 and November 30, 2019 to determine whether the dealership is complying with the Safety Act. Out of those 60 motor vehicles, 8 had open recalls, which Northwest had repaired prior to the sale and delivery of such motor vehicles.

15. By October 1, 2020, Ken Garff's Senior Service Director and its Senior Director of Loss Prevention will conduct Video Conference Training for all General Managers and Service Managers regarding company policy, procedures, and compliance to prohibit sales of motor vehicles with open recalls. Ken Garff will promptly notify NHTSA after the training has been conducted.

16. Prior to March 1, 2021, Ken Garff's Senior Service Director will conduct Original Equipment Manufacturer (OEM) specific Video Conference Training for all General Managers and Service Managers regarding integration of OEM's recall notifications into the dealership's inventory files. Ken Garff will promptly notify NHTSA after the training has been conducted.

17. During 2021, Ken Garff's Loss Prevention department will begin random dealership audits, consisting of quarterly audits reviewing 25 motor vehicle sales for each of 10-15 dealerships, to determine compliance. Ken Garff expects to audit all its dealerships annually. If issues are found during the audits, Ken Garff will take additional actions to come into compliance.

IV. AMENDMENT

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

V. MISCELLANEOUS

19. **Notification.** Ken Garff shall provide all notifications relating to completion of its training obligations under this Settlement Agreement by electronic mail to Sarah Sorg at sarah.sorg@dot.gov.

20. **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.

21. **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 Northwest and Ken Garff, and all of their current and former directors, shareholders, officers, members, managers, 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 Northwest's Safety Act obligations related to the conduct at issue in AQ17-004 through the execution date of this Settlement Agreement.

B. This Settlement Agreement does not release Northwest or Ken Garff 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.

22. **Breach.** In the event of Northwest's failure to pay the Civil Penalty, or Ken Garff's failure to perform its duties and obligations under 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 and/or commencing litigation to enforce this Settlement Agreement in any United States District Court of competent jurisdiction. Northwest and Ken Garff agree that, in any such enforcement action, it will not raise any objection as to venue.

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

24. **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.

25. **Corporate Change.** This Settlement Agreement shall be binding upon, and inure to the benefit of, Northwest and Ken Garff and all of their current and former directors, shareholders, officers, members, managers, employees, agents, parents, subsidiaries, affiliates, successors, and assigns. Northwest and Ken Garff agree 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 Northwest and Ken Garff and any of their parents, subsidiaries, or affiliates.

26. **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.

27. **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.

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

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

30. **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: _____

By: _____

Jonathan C. Morrison
Chief Counsel

Dated: _____

By: _____

Kerry Kolodziej
Assistant Chief Counsel
for Litigation and Enforcement

Dated: _____

By: _____

Sarah Sorg
Senior Trial Attorney

AGREED:

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Dated: _____

By: _____
John K. Garff
President
Ken Garff Automotive LLC

Dated: _____

By: _____
John K. Garff
President
Northwest Chrysler Jeep Dodge Ram