

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

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

**In re:** \_\_\_\_\_ )  
 )  
**International Autos, Inc.** )  
AQ15-003 )  
\_\_\_\_\_ )

**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. This Settlement Agreement sets forth the penalties and requirements agreed to by International Autos, Inc. and all of its subsidiary companies (collectively, “International Autos”), in connection with International Autos’ violations of the National Traffic and Motor Vehicle Safety Act of 1966 as amended and recodified (the “Safety Act”), 49 U.S.C. § 30101, *et seq.*, 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 his authorities under the Safety Act to the NHTSA Administrator, 49 C.F.R. §§ 1.95(a), 501.2(a)(1).

2. The Safety Act also prohibits a dealer from selling, introducing or delivering for introduction into interstate commerce, or delivering under sale or lease motor vehicles or motor vehicle equipment that contain a safety-related defect or do not comply with an applicable 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 of not more than \$21,000 for each violation. Pub. L. 114-94, § 24110 (2015); 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 increased to \$21,000.<sup>[1]</sup>

4. International Autos is a dealer of motor vehicles within the meaning of the Safety Act, *see* 49 U.S.C. § 30102(a)(1), and a person within the meaning of 49 U.S.C. § 30165.

5. NHTSA received information that alleged International Autos sold and delivered new motor vehicles to first purchasers without having remedied safety-related defects or noncompliances about which the manufacturer, BMW of North America, LLC, (“BMW NA”) had given notice pursuant to the Safety Act.

6. On August 18, 2015, NHTSA opened an audit query in order to determine whether International Autos violated the Safety Act by selling and delivering new motor vehicles that contain safety-related defects.

7. Since receiving notice of NHTSA’s audit query, International Autos 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. International Autos now also checks for open recalls on every customer vehicle brought in for service. Additionally, International Autos checks for open recalls on every trade-in vehicle, regardless of make or model, and takes steps to have the vehicle

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<sup>[1]</sup> *See* Pub. L. 114-94, § 24110 (2015). The maximum penalty for a related series of violations was \$35,000,000 until March 17, 2016, at which point it was increased to \$105,000,000. *Id.*

repaired prior to retail sale.

## **II. LEGAL AUTHORITY**

8. 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 authority to compromise the amount of civil penalties, 49 U.S.C. § 30165(b); and ensure that defective and noncompliant equipment is recalled and remedied, 49 U.S.C. §§ 30118-30120. In consideration of International Autos' entry into this Settlement Agreement and its representations outlined below, it is AGREED by International Autos and NHTSA as follows:

## **III. TERMS OF SETTLEMENT AGREEMENT**

### **Safety Act Admission**

9. International Autos admits that while its conduct was not intentional, 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).

### **Civil Penalty**

10. International Autos shall pay a civil penalty in the sum of forty thousand dollars (\$40,000) ("Civil Penalty") in connection with the matters addressed in this Settlement Agreement. International Autos shall pay this Civil Penalty in one lump-sum payment by electronic funds transfer to the U.S. Treasury in accordance with instructions provided by NHTSA, no later than 30 calendar days following execution of this Settlement Agreement.

### **Representations**

11. International Autos 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 as described in International Autos' Inventory Recall/Update Policy As of June 25, 2015.

12. International Autos represents that it has not sold or delivered any unremedied new motor vehicles as of at least June 25, 2015.

13. International Autos represents that it will cooperate in good faith with BMW NA to implement the Deterrence Plan identified in paragraph 21.b of the December 17, 2015 Consent Order directed to BMW NA.

#### **IV. AMENDMENT**

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

#### **V. MISCELLANEOUS**

15. **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.

16. **Release.**

A. Upon payment of the Civil Penalty, the Secretary of Transportation, by and through the Administrator of NHTSA, releases International Autos, 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 International Autos' Safety Act obligations, including those expressly identified in this Settlement Agreement, from the inception of the Safety Act through the execution date of this Settlement Agreement.

B. This Settlement Agreement does not release International Autos from civil or criminal liabilities, if any, that may be asserted by the United States, the Department of Transportation, NHTSA, or any other governmental entity, other than as described in this Settlement Agreement.

17. **Breach.** In the event of International Autos' 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. International Autos agrees that, in any such enforcement action, it will not raise any objection as to venue. International Autos expressly waives any and all defenses, at law or in equity, and agrees not to plead, argue, or otherwise raise any defenses other than (i) that the payment of the Civil Penalty was made to NHTSA as set forth herein, and (ii) that International Autos has substantially complied with the terms of this Settlement Agreement.

18. **Attorney's Fees.** The parties shall each bear their own respective attorneys' fees, costs, and expenses.

19. **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 representatives to execute this Settlement Agreement on its behalf.

20. **Tax Deduction/Credit.** International Autos 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.

21. **Corporate Change.** This Settlement Agreement shall be binding upon, and inure to the benefit of, International Autos and its current and former directors, officers, employees, agents, parents, subsidiaries, affiliates, successors, and assigns. International Autos 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 International Autos and any of its parents, subsidiaries, or affiliates.

22. **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.

23. **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.

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

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

26. **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: April 26, 2016

By: 

Paul A. Hemmersbaugh  
Chief Counsel

Dated: April 26, 2016

By: 

Kerry E. Kolodziej  
Acting Assistant Chief Counsel  
for Litigation and Enforcement

Dated: April 26, 2016

By: 

Justine S. Casselle  
Trial Attorney

Dated: April 26, 2016

By: 

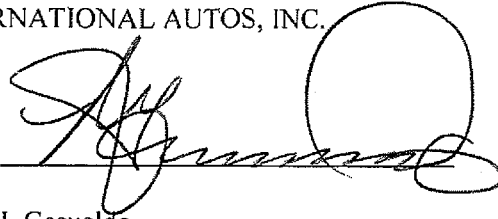
Thomas P. Healy  
Trial Attorney

AGREED:

INTERNATIONAL AUTOS, INC.

Dated: April 26, 2016

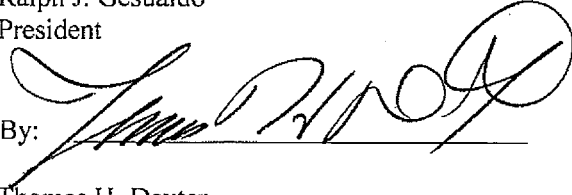
By:

A handwritten signature in black ink, appearing to read 'R. Gesualdo', written over a horizontal line. To the right of the signature is a large, hand-drawn circle.

Ralph J. Gesualdo  
President

Dated: April 26, 2016

By:

A handwritten signature in black ink, appearing to read 'T. Dexter', written over a horizontal line. To the right of the signature is a large, hand-drawn circle.

Thomas H. Dexter  
Secretary