

**UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION**
1200 New Jersey Avenue, SE
West Building, W41-326
Washington, DC 20590

In re:
Champion Ford Edinboro, Inc.
AQ17-001

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 Champion Ford Edinboro, Inc. ("Champion Ford") in connection with Champion Ford's 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 her authorities under the Safety Act to the NHTSA Administrator, 49 C.F.R. §§ 1.95(a), 501.2(a)(1).

2. The Safety Act 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. 49 U.S.C. § 30165(a)(1); 49 C.F.R. § 578.6(a). Prior to March 17, 2016, the maximum civil penalty per

violation was \$7,000.¹ 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).

4. Champion Ford 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 a Vehicle Owner Questionnaire (“VOQ”) that alleged Champion Ford had sold and delivered new motor vehicles to first purchasers without having remedied safety-related defects or noncompliances about which the manufacturer, Ford Motor Company, had given notice pursuant to the Safety Act.

6. On January 4, 2017, NHTSA opened Audit Query (AQ) 17-001 in order to determine whether Champion Ford violated the Safety Act by selling and delivering new motor vehicles that contain safety-related defects.

7. In connection with AQ17-001, NHTSA sent information request (IR) letters to Champion Ford and Ford Motor Company. The responses to the IR letters identified 23 instances between 2014 and 2016 in which unremedied motor vehicles were sold and delivered by Champion Ford to first purchasers in violation of the Safety Act.

8. Since receiving notice of NHTSA’s audit query, Champion Ford has instituted a new policy to verify that its employees check every motor vehicle for open recalls prior to delivery.

II. LEGAL AUTHORITY

9. 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

¹ 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.*

Champion Ford's entry into this Settlement Agreement and its representations outlined in Paragraphs 11-16 below, it is AGREED by Champion Ford and NHTSA as follows:

III. TERMS OF SETTLEMENT AGREEMENT

Civil Penalty

10. Champion Ford shall, in order to resolve the audit query, pay a civil penalty in the sum of twenty thousand dollars (\$20,000.00) ("Civil Penalty") in connection with the matters addressed in this Settlement Agreement. Champion Ford 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. Champion Ford agrees to take, and represents that it has already undertaken, certain actions described herein to prevent the sale and delivery of unremedied motor vehicles as required by the Safety Act.

12. Champion Ford further represents that it has not sold and delivered any unremedied new motor vehicles since September 30, 2015.

13. Champion Ford agrees that, on the date of the Settlement Agreement's execution, it shall provide written notice to NHTSA, certifying that it has remedied each of the 23 vehicles identified in AQ17-001 sold and delivered with an open recall.

14. Champion Ford agrees that it will strictly adhere to Ford Motor Company's Smart Vincent system and related procedures which require dealerships to check every Ford vehicle for open recalls prior to the execution of sale documents.

IV. AMENDMENT

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

V. MISCELLANEOUS

16. **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.

17. **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 Champion Ford, 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 Champion Ford's Safety Act obligations related to the conduct at issue in AQ17-001 from the inception of the Safety Act through the execution date of this Settlement Agreement.

B. This Settlement Agreement does not release Champion Ford 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.

18. **Breach.** In the event of Champion Ford'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. Champion Ford agrees that, in any such enforcement action, it will not raise any objection as to venue. Champion Ford 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 Champion Ford has substantially complied with the terms of this Settlement Agreement.

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

20. **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.

21. **Tax Deduction/Credit.** Champion Ford 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.

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

23. **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.

24. **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.

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

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

27. **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]

AGREED:

CHAMPION FORD EDINBORO, INC.

Dated: April 13, 2018

By: 


Mark Winkler
Partner

Dated: April 13, 2018

By: 

Timothy Sennett
Counsel to Champion Ford Edinboro, Inc.

Dated: April 13, 2018

By: 

Christopher Sennett
Counsel to Champion Ford Edinboro, Inc.

APPROVED AND AGREED:

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

Dated: April 16, 2018

By: 

Jonathan C. Morrison
Chief Counsel

Dated: April 16 2018

By: 

Emily Su
Assistant Chief Counsel
for Litigation and Enforcement

Dated: April 16 2018

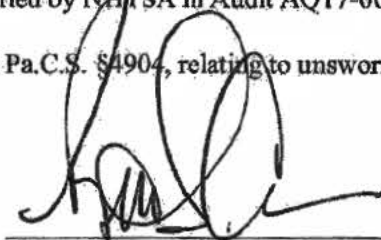
By: 

Justine S. Casselle
Trial Attorney

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CERTIFICATION

On this, the 14 day of February, 2018, Richard Carson, the undersigned states that he is the Sales Manager and Partner of Champion Ford Edinboro, Inc. ("Champion") and that he is authorized to make the following certification. Pursuant to Section 13 of the Settlement Agreement between Champion and the National Highway Traffic Safety Administration ("NHTSA"), the undersigned hereby certifies that Champion has remedied all open recalls on each of the twenty-three (23) vehicles identified by NHTSA in Audit AQ17-001. This Certification is subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.



Richard Carson, Sales Manager and Partner