

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

_____)
In re:)
)
AQ18-004)
Mercedes-Benz USA, LLC)
_____)

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the National Highway Traffic Safety Administration (“NHTSA” or “the Agency”), an operating administration of the U.S. Department of Transportation, and Mercedes-Benz USA, LLC (“MBUSA”), to resolve Audit Query 18-004 (the “Audit Query”).

WHEREAS, NHTSA’s Office of Defects Investigation (ODI) opened the Audit Query on October 22, 2018, to investigate certain recall management issues. *See* AQ 18-004 Opening Resume. The Audit Query was also intended to address MBUSA’s practices involving “planned owner notification dates, planned dealer notification dates, and estimated percentage of units with a defect/noncompliance.” *See id.*

WHEREAS, NHTSA thereafter issued an associated Information Request to which MBUSA responded in writing, in part on November 12, 2018 and in part on December 14, 2018;

WHEREAS, NHTSA reviewed MBUSA’s responses and in April 2019, sent MBUSA additional questions relating to those responses as well as a series of further questions;

WHEREAS, MBUSA and its then parent company, formerly Daimler AG and now known as Mercedes-Benz AG (and referred to herein as “MBAG”) have met with NHTSA on multiple occasions since submitting the written responses;

WHEREAS, MBAG and MBUSA had initiated numerous efforts as early as 2015 to optimize its recall management processes, including the launch of a global internal program to increase employees' awareness about vehicle safety and compliance. These efforts also involved the development of an automated tool for recall administration which MBUSA began to develop in 2017 and launched in 2019;

NOW THEREFORE, the parties set forth the basis for the Settlement Agreement and the terms under which they have agreed to resolve the matter.

Basis for the Settlement Agreement

1. From 2016-2018, the time period covered by the Audit Query, MBAG and MBUSA reported a total of 101 safety-related defects or noncompliances necessitating recalls in the United States. In some of those recalls, MBUSA missed certain deadlines as set forth below. In all cases, consumers were notified of the recall, the recall campaign was launched as soon as parts became available, and there was no effort to mislead the Agency with regard to any recalls.

2. Notwithstanding MBUSA's explanations and positions, NHTSA has determined as follows:

a. In six recalls, the customer notifications were mailed beyond the 60-day deadline from the submission of the Part 573 notification report, as required by 49 C.F.R. § 577.7(a)(1).

(i) In five of those recalls, MBUSA mailed the notification letters to customers between 61 and 66 days after submitting the Part 573 notification report to NHTSA.

- (ii) In the remaining recall, MBUSA mailed the notification letter to customers 80 days after submitting the Part 573 notification report to NHTSA.
- b. In 22 recalls, MBUSA mailed all customer notifications but did not upload the final version of those documents to the recalls portal within five business days as required by 49 C.F.R. § 573.6(c)(10). Many of those document upload oversights were pointed out during NHTSA's 2018 Recall Management Division audit, and MBUSA quickly uploaded the documents thereafter. MBUSA's automated recall management tool will assist in assuring that such deadlines are strictly adhered to in the future.
- c. NHTSA identified six Quarterly Reports, involving four recalls, which MBUSA did not submit within the schedule set forth in 49 C.F.R. § 573.7(d). These do not include Quarterly Reports for which MBUSA followed NHTSA's published guidance document with regard to campaigns launched near the end of a quarter.
- d. In 14 recalls, MBUSA indicated in its initial Part 573 notification report that the estimated launch date for the recall was unknown, but did not update that information in the recall portal when the recall launch date later became apparent as required by 49 C.F.R. § 573.6(a). Prospectively, MBUSA will ensure that all updates to the Part 573 notification reports are timely provided.
- e. For recalls 18V-405 and 18V-610, NHTSA has alleged that MBUSA did not submit the report within five business days of when it knew or should have known that the noncompliance existed as required by 49 U.S.C. § 30118 and

49 C.F.R. § 573.6(b). With regard to 18V-405, MBAG initially had concluded that all affected vehicles were contained and remedied while within its direct control, and submitted the Part 573 report upon learning that certain vehicles had not been contained. With regard to 18V-610, MBAG submitted its Part 573 report upon completing its investigation.

- f. NHTSA also raised concerns with regard to the efficacy of MBUSA's VIN Lookup Tool, the requirements for which are contained in 49 C.F.R. § 573.15. NHTSA's concerns have arisen from potential service interruptions to the VIN lookup tool. MBUSA has requested that NHTSA collaborate to ensure NHTSA's and MBUSA's technical interfaces are effectively communicating.

Civil Penalty

3. The Secretary of Transportation has the authority to impose and to compromise the amount of civil penalties under the Safety Act, taking certain factors into account. *See* 49 U.S.C. § 30165. This authority has been delegated to NHTSA. *See* 49 C.F.R. § 1.95.

4. Pursuant to 49 U.S.C. § 30165, NHTSA and MBUSA have agreed that MBUSA shall, in order to resolve the Audit Query, pay the United States a civil penalty not to exceed \$20 million (the "Total Civil Penalty").

a. Of this total amount, MBUSA will pay \$13 million as a lump sum payment within 45 days of the effective date of this Settlement Agreement (the "Lump Sum Payment") in accordance with instructions provided by NHTSA.

b. MBUSA shall only be liable for payment of the remaining \$7 million (the "Abeyance Funds") in accordance with the conditions in Paragraph 7 below. MBUSA

shall be released from any amount of the Abeyance Funds remaining at the expiration or termination of this Settlement Agreement as set forth in Paragraph 7.

c. If MBUSA fails to make the Lump Sum Payment set forth above, or any payments of the Abeyance Funds as may become due in accordance with Paragraph 7 on or before their respective due dates, MBUSA shall be in default of this Settlement Agreement and any unpaid amount of the Lump Sum Payment, or any Abeyance Funds as may become due in accordance with Paragraph 7, shall become immediately due and owing. In that event: (i) MBUSA agrees not to contest any collection action undertaken by NHTSA or the United States pursuant to applicable law, including the Claims Collection Act and the U.S. Department of Transportation's regulations, 49 C.F.R. § 89, either administratively or in any court, and (ii) MBUSA affirmatively waives any and all defenses or rights that would otherwise be available to it in any such proceeding. In addition, in such a proceeding, MBUSA shall pay the United States all reasonable costs of collection and enforcement, including attorneys' fees and expenses. This provision does not preclude MBUSA from contesting the imposition of any amounts of the Abeyance Funds on the merits.

5. In determining the amount of an appropriate civil penalty, NHTSA has considered the substantial financial investment that MBUSA has made in the development and rollout of its automated recall management tool, as well as the hiring of additional personnel and ongoing trainings, which predated the institution of the Audit Query. NHTSA additionally considered the civil penalty factors set forth in 49 U.S.C. § 30165(c), and has stated that it has taken MBUSA's views of how those factors should be applied into account.

Settlement Administration

6. Assessment Meetings. On a quarterly basis, beginning with the quarter following the execution of this Settlement Agreement, MBUSA will meet with NHTSA, either in person, by phone, or electronically, to discuss MBUSA's performance under the Safety Act with respect to recalls that MBUSA has submitted to NHTSA within the last quarter, as well as the operation and performance of the VIN Lookup Tool ("Assessment Meetings").

a. MBUSA will be prepared to discuss the recall administration issues that are pertinent to the Audit Query, namely, the timely issue of customer notifications, upload of representative copies of recall-related communications, performance of the VIN Lookup Tool, information and details in the Part 573 Reports, and submission of quarterly completion rate reports.

b. The Assessment Meetings will occur on a quarterly basis for the term of this Settlement Agreement unless the parties agree to a different meeting frequency.

c. NHTSA agrees to work with MBUSA in good faith to promptly raise concerns as set forth in Paragraph 10. To that end, within twenty-one (21) days following each Assessment Meeting, NHTSA may provide feedback as to whether MBUSA has adequately performed its obligations under the Safety Act with regard to the recalls reviewed during the Assessment Meeting, and will work in good faith with MBUSA to resolve any concerns about MBUSA's performance.

7. Deficiency Notice, Opportunity to Cure, and Payment of Abeyance Funds. In addition to the general review of recall management activities discussed at Assessment Meetings, should NHTSA identify any concerns involving recall decision-making or implementation, or a perceived failure of the VIN Lookup Tool or compliance with 49 C.F.R. § 573.15, NHTSA

agrees to inform MBUSA within twenty-one (21) days from the time NHTSA's enforcement personnel first became aware of the concern using reasonable due diligence (the "Deficiency Notice").

a. To the extent that NHTSA timely communicates a Deficiency Notice, MBUSA will have twenty-one (21) days, or such other time period as mutually agreed by MBUSA and NHTSA, from the date on which the problem, issue, or concern was communicated to MBUSA by NHTSA ("Cure Period") to rectify or cure the issue ("Opportunity to Cure").

b. In response to the Deficiency Notice and within the Cure Period, MBUSA will provide an explanation of the issue, along with supporting documentation. Should there be a reasonable dispute over whether the VIN Lookup tool is in compliance or, whether MBUSA's recall management actions, recall decision-making or implementation warrants a Deficiency Notice, the parties agree to reasonably discuss the issue and how best to resolve the concern.

c. In the event that (i) MBUSA invokes the Opportunity to Cure a recall management issue more than once over the term of the Settlement Agreement (and once more should NHTSA extend the term for a second year) and/or (ii) the VIN Lookup Tool cannot be brought into compliance during the Cure Period, then MBUSA may become liable to pay a portion of the Abeyance Funds for each day until such issue is rectified or cured or until the VIN Lookup Tool is brought into compliance, as applicable. Payment of the Abeyance Funds shall be prorated at a daily rate equal to \$7 million divided by the 730 days in the Settlement Term (equal to \$9,575 per day), with payment due within

forty-five (45) days from the date MBUSA becomes liable for payment of such Abeyance Funds.

8. In the event that any Abeyance Funds become due and owing, these shall constitute compromised civil penalties pursuant to 49 U.S.C. § 30165(b). Such payments will be made by electronic funds transfer to the U.S. Treasury, in accordance with the instructions provided by NHTSA and as set forth in this Settlement Agreement.

9. NHTSA and MBUSA have discussed that MBUSA and MBAG are currently developing more robust procedures with regard to reporting noncompliance concerns. MBAG is also currently reviewing recent compliance issues. MBUSA agrees that it will keep NHTSA informed of the company's progress and any compliance concerns raised by its ongoing review.

10. NHTSA will apply these Settlement Administration provisions in a fair and just manner and will communicate with MBUSA in good faith.

Term of the Settlement Agreement

11. The term of this Settlement Agreement is one year from the date of execution. At the end of the term, NHTSA shall have the opportunity at its discretion to extend the term, and therefore the Assessment Meetings as set forth above, for up to an additional year if NHTSA reasonably decides that MBUSA should not be released from such obligation based on its performance, feedback from NHTSA and any Deficiency Notices issued over the course of the term. If NHTSA opts to extend the term, it shall provide MBUSA notice of its intention to do so no later than 30 days before the expiration of the term.

Miscellaneous

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

13. 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.

14. None of the specific reporting obligations described in this Settlement Agreement relieve MBUSA of its obligation to submit any other reports or satisfy any other obligations required by law.

15. This Settlement Agreement shall be effective upon execution by both MBUSA and NHTSA. Any breach of the obligations under this Settlement Agreement may, at NHTSA's option, be immediately enforceable in any United States District Court.

16. This Settlement Agreement has been negotiated and prepared by both MBUSA and NHTSA. If any of the Settlement Agreement's provisions require a court's interpretation, no ambiguity found in this Settlement Agreement shall be construed against the drafter.

17. 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.

18. 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.

19. 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.

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

21. 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.

[SIGNATURE PAGES FOLLOW]

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

Dated: 12/17, 2019

By: 

James C. Owens
Acting Administrator

Dated: 12/17, 2019

By: 

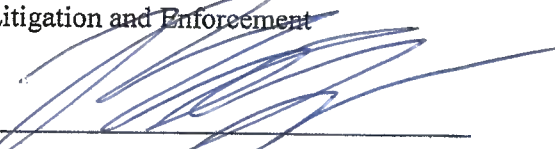
Jonathan C. Morrison
Chief Counsel

Dated: 12/17, 2019

By: 

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

Dated: December 7, 2019

By: 

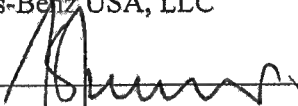
Thomas P. Healy
Trial Attorney

MERCEDES-BENZ USA, LLC

Dated: 12-19-19 2019

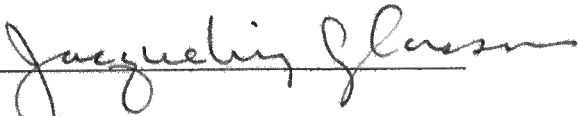
By: 

Christian Treiber
Vice President Customer Services
Mercedes-Benz USA, LLC

By: 

Nicholas Speeks
President & CEO
Mercedes-Benz USA, LLC

Dated: 12-17, 2019

By: 

Jacqueline Glassman
Christie Iannetta
King & Spalding, LLP
Counsel for Mercedes-Benz USA, LLC