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No. 53640-4-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

RODNEY R. PARR and LINDA J. PARR, husband and wife,

Appellants/Plaintiffs,

v.

HASELWOOD IMPORTS, INC., a Washington corporation; WILER MANAGEMENT TRUST; HASELWOOD FAMILY TRUST,

Respondents/Defendants.

REPLY BRIEF OF APPELLANTS

VANDEBERG JOHNSON &
GANDARA, LLP

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RULES

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I. INTRODUCTION

Section 10.7.2[1] of the purchase and sale agreement (PSA) states that income "received by and/or posted in the accounting records" of the dealerships after closing increases the sale price of the dealership. CP 115. Thus, income earned before the closing date, but received by the dealership after closing, increases the sale price for the benefit of the sellers, who are the Plaintiffs in this action. The PSA contains no date by which this income must be received by the dealership.

After closing, the Defendants received approximately $1.4 million from Volkswagen of America ("Volkswagen") in exchange for releasing all claims against Volkswagen—which were claims that accrued when the Plaintiffs owned the dealerships.[2] CP 203. Because this Volkswagen payment constitutes income "received by" the dealership after closing, this payment rightfully belongs to the Plaintiffs pursuant to § 10.7.2 of the PSA. At a minimum, there are genuine issues of material fact as to whether the Volkswagen payment constitutes income that rightfully belongs to the Plaintiffs.

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[1] Section 10.7.2 of the purchase and sale agreement, reprinted at page 115 of the Clerk's Papers (CP), is attached as **Appendix A** to this brief.

[2] The individual release of claims executed by the Defendant, reprinted at CP 203, is attached as **Appendix B** to this brief.

In their response brief, the Defendants present no credible argument contesting the Plaintiffs' assertion that the Volkswagen payment constitutes income that increases the sale price of the dealership. Nor have the Defendants presented any evidence of actual damages allegedly suffered by them. At best, the respondents' brief establishes that there are genuine issues of material fact to be resolved at trial.

For these reasons, the superior court's order granting the summary judgment dismissal of the Plaintiffs' claims should be reversed.

A. Summary Judgment Should Not Have Been Granted

Summary judgment is improper if there are material questions of fact regarding the interpretation of a contract and the intent of the contracting parties. *Berg v. Hudesman*, 115 Wn.2d 657, 671, 801 P.2d 222 (1990) ; CR 56(c). In *Berg*, for example, the Washington Supreme Court reversed the trial court's ruling granting summary judgment in a breach of contract case because "there are material questions of fact remaining as to the intent of the contracting parties and interpretation of the ground lease." *Berg*, 115 Wn.2d at 671.

Here, the superior court granted summary judgment even though the Volkswagen payment constituted income that rightfully belongs to the Plaintiffs. At a minimum, there are genuine issues of material fact as to

whether the parties intended the payment to be income and whether the payment qualifies as income in accordance with § 10.7.2 of the PSA.

In their response brief, the Defendants incorrectly claim that "the Parrs conceded to the trial court" that "the issues presented here were appropriately decided on summary judgment." Respondents Br. at 14. On the contrary, the Parrs made no such concession.

Indeed, in argument before the superior court, counsel for the Parrs specifically rejected the Defendants' assertion that the Parrs had conceded that this matter was appropriately decided on summary judgment:

> [Defendants' counsel] said we are in agreement that this is resolvable by summary judgment. We certainly disagree with that.

Report of Proceeding (RP) at 16:12-14. *See also* RP at 29:14-16 ("Your Honor, we respectfully request that you find that there are certainly disputed material facts ...") Moreover, the Parrs never moved for summary judgment—further undermining Defendants' argument that the Parrs considered this matter ripe for summary judgment.

As stated in the Parrs' opening brief, there are genuine issues of material fact regarding the interpretation of the PSA and whether the parties intended for the Volkswagen settlement payments to be classified as income under § 10.7.2 of the PSA. As discussed below, these genuine issues warrant reversal of the superior court's summary judgment order

1. Under the PSA, the Volkswagen Payments Are Income that Belongs to the Parrs.

Section 10.7.2 of the PSA provides that items of income and expense not "received by and/or posted in the accounting records" by the closing date, shall affect the sale price for the dealerships after closing. CP 115. Items of income will increase the sale price, while items of expense shall decrease the sale price. CP 115. Section 10.7.2 then lists "accounts receivable" as an example of items of income. CP 115.

The PSA defines "Accounts Receivable" to include accrued monetary claims as of the closing date:

> [A]ll amounts due the Dealerships ... on account of services rendered, parts or accessories sold or delivered, used or new vehicles sold or delivered, **receivables due from the Franchisor**, and all other **accrued monetary claims** or money due the Dealerships ... **as of the Closing Date** with regard to the Business.

CP 89 (§ 1.1) (emphasis added). The Volkswagen payment was made by the franchisor (Volkswagen) to the dealership "as of September 18, 2015," when the Parrs owned the dealership. CP 484, 515. Under § 10.7.2, accounts receivable constitute income that belongs to the Parrs.

Furthermore, "liabilities" are defined under the PSA to include "settlements of any kind ... regardless of when asserted or incurred.... " CP 90-91 (§ 1.20). Sections 10.7.2, 1.1, and 1.20 indicate that payments that accrued as of September 18, 2015 should be allocated to the Plaintiffs even

when they are posted after the closing date. At a minimum, there are genuine issues of material fact as to whether the Volkswagen settlement payments should be allocated to the Plaintiffs under the PSA.

2. Because the Volkswagen Lawsuit and Release Addressed Claims Arising Before the Closing Date, the Settlement Payments Constitute Income Under § 10.7.2 of the PSA.

As discussed in the Parrs' opening brief, the Volkswagen settlement applied to several separate and distinct claims that accrued when the Parrs owned the dealership. For example, the claims asserted against Volkswagen for illegal pricing, allocation schemes, and coercion to use Volkswagen Credit cites conduct by Volkswagen dating to 2007 and 2013. Appellant Br. at 8-13, 23-24.

In addition, the releases executed by the dealers, including the release signed by Eric Wiler for Defendant Haselwood Volkswagen of Bremerton, specifically referenced that the release covered claims of illegal pricing, allocation schemes, and coercion to use Volkswagen Credit. CP 203 (Appendix B). This release included all claims for monetary damages "arising before the Effective Date" of the settlement agreement that relate to "allocation complaints or irregularities," the method that Volkswagen uses to measure the sales and service performance or objectives of its Volkswagen-branded franchise dealers, and all discrimination or coercion claims "related in any way to the sale,

incentivization or use of VCI wholesale and retail financing product." CP 203.

Thus, the settlement agreement and release of claims addresses claims stemming from Volkswagen's actions prior to the closing date of December 10, 2015. Furthermore, the settlement requires that class members be Volkswagen dealerships as of September 18, 2015.

In their response brief, the Defendants do not dispute that the Volkswagen settlement and release involved claims that arose when the Parrs owned the dealership. Instead, the Defendants claim—*without citing to any authority*—that "the legal concept of a cause of action 'accruing' is not the same as 'accrued monetary claims' as referenced in the PSA." Resp. Br. at 20.

On the contrary, claims accrue "when the party has the right to apply to a court for relief." *Schreiner Farms, Inc. v. Am. Tower, Inc.*, 173 Wn. App. 154, 160, 293 P.3d 407 (2013) (quotation omitted). Under this standard, the class action claims for illegal pricing, allocation schemes, coercion to use Volkswagen Credit, and regarding the emissions scandal all accrued when the Parrs owned the dealerships.

Because these claims accrued when the Parrs owned the dealership, they satisfy the definition of accounts receivable in § 1.1 of the PSA. CP 89. And as an account receivable, the Volkswagen settlement payments

constitute income under § 10.7.2 of the PSA—income that belongs to the Parrs. At the very least, whether the Volkswagen settlement payments constitute income under § 10.7.2 is a genuine issue of material fact that warrants reversal of the court's summary judgment order.

3. The Parties' Conduct—through numerous post-closing adjustments—Reveals an Intent To Consider the Volkswagen Payments as Income Under § 10.7.2 of the PSA.

Under *Berg*, the parties' actions after closing, and the context of their PSA, are admissible to elucidate their intent. In this case, the parties wanted to avoid an interruption in the operation of the dealership business, while also fairly attributing income and expenses to the party operating the business at the time the income or expense accrued. Thus, the parties agreed to make post-closing adjustments to the purchase price in § 10.7.2 of the PSA, and no time limit was imposed for applying these adjustments.

Consistent with § 10.7.2, the accounting firm Peterson Sullivan, LLP provided the parties with reports after closing showing the amounts due to and owing from one party to the other as of the date of the report. CP 482-83. For several months after closing, both Mr. Parr and the Defendants made numerous adjustments to the purchase price. For example, over a six-month period, the Plaintiffs paid the Defendants over $1,000,000 via wire transfers. CP 483 (¶ 9).

In their Response brief, the Defendants argue that "there is no need to look at the parties' conduct when the contract is clear and unambiguous." Resp. Br. at 30. The Parrs correctly contend that under § 10.7.2 of the PSA, the Volkswagen payments are income that rightfully belongs to the Parrs. The Parrs, however, acknowledge that there are genuine issues of material fact as to whether the parties intended the Volkswagen payments to be treated as income under § 10.7.2. For this reason, the parties' actions after closing, within the context of their PSA, are not only admissible but helpful to prove intent.

By providing for post-closing adjustments, by making adjustments to the purchase price for many months after closing, and by imposing no time limit for making these adjustments, the parties' conduct shows that income, such as the Volkswagen settlement, received in December 2016, was intended to be classified as income under § 10.7.2. At a minimum, the parties' conduct creates a genuine issue of material fact.

4. The Defendants' Reliance on GAAP Is Misplaced.

As discussed in the opening brief, it is § 10.7.2 of the PSA, and not generally accepted accounting principles ("GAAP"), that governs the allocation of Volkswagen settlement payments. Opening Brief at 28-29.

As Michael Massey, the Plaintiffs' expert, stated in his declaration:

> GAAP does not govern which of the parties is entitled to the VW Settlement Payment. It only determines when the payment is to be recorded on the books of the Company. It is Section 10.7.2 of the PSA that determines which of the parties is entitled to the money.

CP 457-58 (¶ 10).

Indeed, under the plain text of § 10.7.2, "items of income" need only be "received by" the dealership after closing; there is no requirement that these items of income be posted in the accounting records of the dealership:

> 10.7.2 The Parties recognize and agree that at Closing there will be **items of income** and expense which **will not have been received by** and/or posted in the accounting records of the Dealerships and the Real Estate Entities.

CP 115 (Appendix A) (emphasis added). Thus, Mr. Massey concurs it is § 10.7.2 that determines entitlement to the Volkswagen settlement payments.

5. No Evidence of Damages Suffered by the Defendants

As stated in the Parrs' opening brief, there is no evidence that the Defendants suffered any damage from the Volkswagen scandal. Appellants Br. at 26-27. Indeed, the only evidence in the record is the Defendants were "minimally impacted by the VW emissions scandal." CP 401.

Nevertheless, the Defendants continue to claim that "Haselwood suffered real harm as a result of the scandal." CP 28. In support of this statement, the Defendants cite only to one industry-wide report (CP 333-

64), and to a one-page article by the plaintiffs' attorney in the class action lawsuit (CP 196), that do not refer any specific damages allegedly suffered by the Defendants. Moreover, the industry-wide report cited by the Defendants actually paints a positive picture for Volkswagen dealers: "The settlement, coupled with consumers trading in a higher than expected percentage of their VWs for new VWs, has created much-needed goodwill for the brand. Contrarian buyers are bullish on Volkswagen … ." CP 358.

At the very least, whether Defendants suffered any damages is a material question of fact.

B. The Plaintiffs Have Not Abandoned Their Accounting Claim.

In an argument bordering on the absurd, the Defendants claim that the Plaintiffs have abandoned their accounting claim. Resp. Br. at 32-33. In support of this abandonment argument, the Defendants state that the Plaintiffs failed to respond to a single sentence that appeared in a footnote in the Defendants' motion for summary judgment. Resp. Br. at 33 (citing footnote 33 that appeared on page 10 of the Defendant's motion for summary judgment). The following sentence, which appears in footnote 33, is the *only* argument specifically addressing the accounting claim:

> To the extent Parr intends to maintain his claim for accounting in light of his admission that he has no complaint with the post-closing work performed by Peterson Sullivan, as explained herein there is no evidence that the accounting was improperly performed and thus, for

> all of the same reasons that the breach of contract claim should be dismissed, so should the claim for accounting.

Footnote 33 at p. 10 of Defendants' summary judgment motion, at CP 35.

First of all, Peterson Sullivan, LLP, was not involved in determining which of the parties was entitled to the Volkswagen payment. In his declaration, Chris Russell, CPA, the managing partner, stated: "Peterson Sullivan, LLP was never asked, nor did our firm ever undertake to determine which of the parties to this lawsuit was entitled to any funds from Volkswagen or as a result of the class action lawsuit involving the Volkswagen diesel emissions scandal." CP 452.

Secondly, the motion for summary judgment contained no section addressing the Plaintiffs' accounting claim. CP 26-44. Nor did the Defendants' reply in support of their summary judgment motion contain an argument addressing the Plaintiffs' accounting claim. CP 516-27.

The Plaintiffs failure to respond to an argument raised only in a footnote does not constitute abandonment of a claim. *See Graham Neighborhood Ass'n v. F.G. Assocs.,* 162 Wn. App. 98, 115 n.6, 252 P.3d 898 (2011) (appellate court may decline to consider an argument raised only in a footnote in the proponent's brief.

II. CONCLUSION

For the above reasons, and for the reasons stated in their opening brief, the Plaintiffs request that the superior court's orders granting summary judgment and awarding attorneys' fees and costs to the Defendants be reversed and this case be remanded to the superior court for trial.

RESPECTFULLY SUBMITTED this 5th day of December, 2019.

VANDEBERG JOHNSON &
GANDARA, LLP

By _____
Daniel C. Montopoli, WSBA # 26217
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APPENDICES

Appendix A: Section 10.7.2 of the purchase and sale agreement (CP 115)

Appendix B: The individual release of claims executed by the Defendant (CP 203-04)

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APPENDIX A

10.5 **Certificate of Existence**

Sellers shall cause to be delivered to Purchaser Certificates of Existence for each of the Dealerships and Real Estate Entities.

10.6 **Resignation of Officers, Directors and Managers**

At Closing, and simultaneously with the transfer of the Dealerships and Real Estate Entities to Purchaser, the officers and directors of the Business and the Managers of each of the Real Estate Entities shall resign in writing so that Purchaser shall be free to fill those vacancies.

10.7 **Further Assurances; Post-Closing Cooperation**

10.7.1 At any time or from time to time after the Closing, Sellers and Purchaser shall each execute and deliver to each other such other documents and instruments, provide such materials and information and take such other actions as each may reasonably request more effectively to transfer the Business, Dealerships and Real Estate Entities and, to the full extent permitted by Law, to put Purchaser in actual possession and operating control of the Business and the Dealerships and Real Estate Entities and otherwise to fulfill their respective obligations under this Agreement and the Operative Agreements.

10.7.2 The Parties recognize and agree that at Closing there will be items of income and expense which will not have been received by and/or posted in the accounting records of the Dealerships and the Real Estate Entities. Examples of these may be contracts in transit, dealer rebates, factory holdbacks, accounts receivable for work performed, sales made, etc., prior to the date of Closing. Examples of expense items are such things as rebates due customers, refunds due customers, customer deposits, purchases on account received, but not yet paid, etc. It is the intention of the Parties that the sale price of the Dealerships shall be increased by all such items of income and decreased by all such items of expense. Accordingly, as soon as practical after Closing, Peterson Sullivan, LLP, Certified Public Accountants, Seattle, Washington, shall determine the necessary adjustments to the purchase price of the Dealerships as a result of these items of income and expense. The amount so determined shall be paid by the Party owing a net positive amount to the other by bank wire transfer within five (5) days of the determination of the net amount due.

10.7.3 Following the Closing, each Party will afford the other Party, its counsel and its accountants, during normal business hours, reasonable access to the books, records and other data relating to periods prior to the Closing and the right to make copies and extracts therefrom, to the extent that such access may be reasonably required by the requesting Party in connection with (i) the preparation of Tax Returns, (ii) the determination or enforcement of rights and obligations under this Agreement or the Operative Agreements, (iii) compliance with the requirements of any Governmental or Regulatory Authority, (iv) in connection with any actual or threatened Actions or Proceedings or (v) any other reasonable business purpose. Further, each Party agrees for a period extending five (5) years after the Closing not to destroy or otherwise dispose of any such books, records and other data unless such Party first offers in writing to

APPENDIX B

INDIVIDUAL RELEASE OF CLAIMS

In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation,
MDL No. 15-2672 (N.D. Cal.)
This Document Relates to
Napleton et al. v. *Volkswagen Group of America, Inc. et al.*,
No. 16-02086

MUST BE COMPLETED BY DEALER SETTLEMENT CLASS MEMBER TO RECEIVE INDIVIDUAL DEALER SETTLEMENT PAYMENT PRIOR TO EFFECTIVE DATE OF FRANCHISE DEALER CLASS AGREEMENT

1. "Released Parties" means any person who, or entity that, is or could be responsible or liable in any way whatsoever, whether directly or indirectly, for the claims asserted in the Franchise Dealer Complaint in this action. The Released Parties include, without limitation, (1) Volkswagen AG, Volkswagen Group of America, Inc. (d/b/a Volkswagen of America, Inc.), Volkswagen Group of America Chattanooga Operations, LLC, VW Credit, Inc., VW Credit Leasing, Ltd., VCI Loan Services, LLC ("VCI"), and any former, present, and future owners, shareholders, directors, officers, employees, attorneys, affiliates, parent companies, subsidiaries, predecessors, and successors of any of the foregoing (the "VW Released Entities"); (2) any and all contractors, subcontractors, and suppliers of the VW Released Entities; (3) any and all persons and entities indemnified by any VW Released Entity with respect to the TDI Matter; (4) any and all other persons and entities involved in the design, research, development, manufacture, assembly, testing, sale, leasing, repair, warranting, marketing, advertising, public relations, promotion, or distribution of any Affected Vehicle, even if such persons are not specifically named in this paragraph; and (5) for each of the foregoing, their respective former, present, and future affiliates, parent companies, subsidiaries, predecessors, successors, shareholders, indemnitors, subrogees, spouses, joint ventures, general or limited partners, attorneys, assigns, principals, officers, directors, employees, members, agents, representatives, trustees, insurers, reinsurers, heirs, beneficiaries, wards, estates, executors, administrators, receivers, conservators, personal representatives, divisions, dealers, and suppliers. Notwithstanding the foregoing, this Release does not release any claims against Robert Bosch GmbH and Robert Bosch, LLC or any of their former, present, and future owners, shareholders, directors, officers, employees, attorneys, affiliates, parent companies, subsidiaries, predecessors, or successors.

2. In exchange for benefits that (i) I am eligible to receive under the class action settlement agreement in this case (the "Franchise Dealer Class Agreement")[1] and (ii) Volkswagen Group of America, Inc. ("VWGoA") and Volkswagen AG (collectively, "Volkswagen") have agreed to provide to me (the "Individual Dealer Settlement Payments"),

[1] The terms "Action," "Final Approval Order," "Franchise Dealer Complaint," "Individual Dealer Settlement Payments," "Initial Payment," "Released Party," "TDI Matter," and "Volkswagen Dealer Agreement" have the meanings given to them in Section 2 of the Franchise Dealer Class Agreement.

the sufficiency of which I hereby acknowledge, I, on behalf of myself and my agents, heirs, executors, administrators, successors, assigns, insurers, attorneys, representatives, shareholders, owners associations, and any other legal or natural persons who may claim by, through or under me, hereby fully, finally, irrevocably, and forever release, waive, discharge, relinquish, settle, and acquit the Released Parties, of and from the following claims: (1) all claims related in any way to the TDI Matter; (2) all claims related in any way to VWGoA's previously announced goals or objectives for U.S. sales volume growth, including any claims related in any way to incentives and other support payments or programs from VWGoA to any Volkswagen-branded franchise dealer related to such goals and any volume shortfall; (3) all claims for monetary damages arising before the Effective Date of the Franchise Dealer Class Agreement that relate in any way to allocation complaints or irregularities (but allocations may be asserted by any dealer as a defense to a franchise termination by VWGoA); (4) all claims for monetary damages arising before the Effective Date of the Franchise Dealer Class Agreement that relate in any way to the method upon which VWGoA measures the sales and service performance of its Volkswagen-branded franchise dealers or sets the sales and service objectives for its Volkswagen-branded franchise dealers (but the method upon which VWGoA measures the sales and service performance may be asserted by any Volkswagen-branded franchise dealer as a defense to a franchise termination by VWGoA); and (5) all discrimination or coercion claims arising before the Effective Date of the Franchise Dealer Class Agreement related in any way to the sale, incentivization or use of VCI wholesale and retail financing products (collectively, the "Released Claims"). Except as specifically enumerated above, all other claims are expressly preserved and are not released. For avoidance of doubt, to the extent that a Releasing Party owns a VW-branded dealership and also owns a Porsche-branded dealership and/or an Audi-branded dealership, that Releasing Party is releasing all Released Claims specifically and only with respect to its ownership of the VW-branded dealership, and does not release any claims with respect to its ownership of a Porsche-branded dealership and/or an Audi-branded dealership against any party.

3. This Individual Release will become effective and irrevocably binding upon me when I receive my Initial Payment under Section 4.1.3 of the Franchise Dealer Class Agreement and will remain binding whether or not the Franchise Dealer Class Agreement is finally approved, provided that VWGoA makes all of my Individual Dealer Settlement Payments. .

4. I acknowledge and agree that I have agreed to sign this Individual Release as the result of an arm's length voluntary transaction for valuable consideration, separate and apart from continuation of any existing Volkswagen Dealer Agreement, and that I have not been coerced or required to enter into the Individual Release or to not opt-out of the Franchise Dealer Class Agreement by VWGoA or anyone else.

5. In the event that I bring a future challenge to this Individual Release or any future action or proceeding based on a Released Claim, this Individual Release may be raised as a complete defense to, and will preclude, any action or proceeding specified in, or involving claims encompassed by, this Individual Release. I shall not now or hereafter institute, maintain, prosecute, assert, and/or cooperate in the institution, commencement, filing or prosecution of any suit, action, and/or other proceeding, against the Released Parties with respect to the Released Claims. To the extent that I have initiated, or caused to be initiated, any suit, action, or proceeding not already encompassed by the Action, I shall cause such suit, action, or proceeding to be dismissed with prejudice. If I commence, file, initiate, or institute any new legal action or other proceeding for any Released Claim against any Released Party in any federal or state court, arbitral tribunal, or administrative or other forum, (1) such legal action or

other proceeding shall be dismissed with prejudice and at my cost; (2) the respective Released Party shall be entitled to recover any and all reasonable related attorneys' fees, costs and expenses from me arising as a result of my breach of my obligations under this Individual Release; and (3) Volkswagen shall have the discretion to void this Individual Release and the Franchise Dealer Class Agreement as it pertains to me, in which case I shall immediately repay VWGoA any consideration paid to me pursuant to this Individual Release and the Franchise Dealer Class Agreement with legal interest thereon arising as a result of my breach of my obligations under this Individual Release.

6. This Individual Release incorporates by reference the release and associated provisions set forth in Section 9 of the Franchise Dealer Class Agreement as if set forth fully herein, and, as to those provisions, shall have the same scope and effect as the Franchise Dealer Class Agreement. This Individual Release supplements the release and associated provisions set forth in Section 9 of the Franchise Dealer Class Agreement. It does not supersede them.

7. I expressly understand and acknowledge that this Individual Release applies to claims of which I am not presently aware. I expressly understand and acknowledge Section 1542 of the California Civil Code, which provides: "**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**" I acknowledge that I am aware of the contents and effect of Section 1542 and have considered the possibility that the number or magnitude of all claims may not currently be known. To ensure that this Individual Release is interpreted fully in accordance with its terms, I expressly waive and relinquish any and all rights and benefits that I may have under Section 1542 to the extent that such section may be applicable to this Individual Release and likewise expressly waive and relinquish any rights or benefits of any law of any state or territory of the United States, federal law or principle of common law, or of international or foreign law, which is similar, comparable, analogous, or equivalent to Section 1542 of the California Code to the extent that such laws or principles may be applicable to this Individual Release.

8. For the avoidance of doubt, I expressly understand and acknowledge that I may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that I now know or believe to be true, related to the Released Claims, the Action and/or this Individual Release. Nevertheless, it my intention in executing this Individual Release to fully, finally, irrevocably, and forever release, waive, discharge, relinquish, settle, and acquit all such matters, and all claims relating thereto which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in the Action or any other action or proceeding) with respect to the Released Claims in accordance with the terms of the Franchise Dealer Class Agreement.

9. This Individual Release shall remain effective regardless of any judicial, quasi-judicial, arbitral, administrative, regulatory, or other decision relating to the liability of any Released Party in connection with the Released Claims, provided that VWGoA makes all of my Individual Dealer Settlement Payments. For the avoidance of doubt, this Individual Release shall remain effective even if the Final Approval is not granted, or the Final Approval Order is reversed and/or vacated on appeal, or if the Franchise Dealer Class Agreement is abrogated, terminated or otherwise voided in whole or in part, provided that VWGoA makes all of my Individual Dealer Settlement Payments.

10. This Individual Release is not intended to and expressly does not release Robert Bosch GmbH

or Robert Bosch, LLC and any of their former, present, and future owners, shareholders, directors, officers, employees, attorneys, affiliates, parent companies, subsidiaries, predecessors, and successors (the "Bosch Entities"). If I elect to pursue a claim against any Bosch Entity related to the Released Claims (either individually or as a member of a class) and obtain a final, non-appealable adversary judgment against that Bosch Entity for damages as to which any Bosch Entity seeks indemnification from one or more of the Released Parties, I will waive enforcement of my judgment against that Bosch Entity by the amount of the damages that such Released Parties are held to be responsible for by way of indemnification of any Bosch Entity, but not more than the Restitution Payment amount that I receive from all Released Parties. However, I shall have no obligation to reduce my judgment against any Bosch Entity unless and until any Bosch Entity has obtained—in the face of a vigorously litigated defense—a final, non-appealable adversary judgment for indemnification against one or more of the Released Parties based on such party's legal obligation to indemnify any Bosch Entity that existed prior to September 18, 2015. In the event that any Bosch Entity obtains such a judgment against a Released Party after I have recovered on a judgment against that Bosch Entity, I will return to the Bosch Entity the amount of the judgment against it by which I agree herein to have reduced that judgment, which amount will not exceed the Individual Dealer Settlement Payment that I receive from Volkswagen. In addition, I agree not to enter into any agreement to settle any claim I may have against any Bosch Entity unless such agreement expressly provides that the Released Parties shall be released from any claim for indemnification by a Bosch Entity against any Released Party that relates to my claim against the Bosch Entity.

11. This Individual Release, and any dispute arising out of or related to this Individual Release, shall be governed by and interpreted according to the Federal Rules of Civil Procedure and applicable jurisprudence relating thereto, and the laws of the State of California notwithstanding its conflict of law provisions. This Individual Release will be binding upon my successors, transferees, and assigns.

12. Any disagreement concerning and/or action to enforce this Individual Release shall be commenced and maintained only in the United States District Court for the Northern District of California.

13. I represent and warrant that I have carefully read and understand this Individual Release and that I execute it freely, voluntarily, and without being pressured or influenced by, or relying on, any statement or representation made by any person or entity acting on behalf of any Released Party. I certify that I understand that I have the right to consult with an attorney of my choice before signing this Individual Release.

14. I represent and warrant that I have authority to execute this Individual Release and that I am the sole and exclusive owner of all claims that I am releasing pursuant to this Individual Release. I acknowledge that I have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Released Claims.

*****SIGNATURE PAGE FOLLOWS*****

I acknowledge that I have read and understood this Release and that I have freely executed it by signing below.

Date: 11/7/16 Eric Wiler *Printed Name* *Signature*

Dealer principle
Title

Executed on behalf of: Haselwood Volkswagen of Bremerton
Dealer Settlement Class Member

When submitting this Individual Release, please include Exhibit 1 to the VW-Branded Dealer Settlement Notice*

WITNESS:

State of Washington)
) SS
County of Kitsap)

I, Irene Caulpetzer, a Notary Public in and for said County in the State aforesaid, do hereby certify that Eric Wiler, who is personally known to me and the same person whose name is subscribed to the foregoing instrument appeared before me this day in person and acknowledged that they signed, sealed, and delivered the same instrument as their free and voluntary act for the uses and purposes therein set forth.

My seal:

IRENE CAULPETZER
COMMISSION EXP.
NOTARY
PUBLIC
AUG. 15, 2019
STATE OF WASHINGTON

Irene Caulpetzer
NOTARY PUBLIC

EXHIBIT 1

DEALER NUMBER	423342
DEALER NAME	Haselwood Volkswagen of Bremerton P.O. Box 4670 Bremerton, WA 98312
INDIVIDUAL DEALER SETTLEMENT PAYMENT AMOUNT	$1,432,732.85

HW_000143

CERTIFICATE OF SERVICE

The undersigned makes the following declaration under penalty of perjury as permitted by RCW 9A.72.085.

I am a legal assistant for the firm of Vandeberg Johnson & Gandara. On the __ day of December, 2019, I caused to be served via email and first class mail a copy of the foregoing document to:

Steven W. Fogg
Todd Williams
Corr Cronin, LLP
1001 Fourth Avenue, Suite 3900
Seattle, WA 98154-1051
sfogg@corrcronin.com
twilliams@corrcronin.com

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 5th day of December, 2019, at Tacoma, Washington.

Rose Jennison

Rose Jennison, Legal Assistant

VANDEBERG JOHNSON & GANDARA

December 05, 2019 - 10:51 AM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	53640-4
Appellate Court Case Title:	Rodney & Linda Parr, Appellants v. Haselwood Imports, Inc., et al., Respondents
Superior Court Case Number:	17-2-01565-4

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