

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Small Business Administration (collectively the “United States”), Victory Automotive Group, LLC, and David Jones (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Victory Automotive Group, LLC, (“VAG”) is a Florida limited liability company with its principal address in Port Richey, Florida. VAG provides management services to approximately 42 car dealerships (“Affiliates”) located throughout the United States.

B. On July 12, 2021, David Jones (the “Relator”) filed a *qui tam* action in the United States District Court for the Middle District of Florida captioned *United States ex rel. David Jones v. Victory Automotive Group, LLC*, Case No. 8:21-cv-1742-CEH-CPT, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the “Civil Action”).

C. The United States contends that it has certain civil claims against VAG arising from a loan under the Paycheck Protection Program, 15 U.S.C. § 636(a)(36) (the “PPP”), that VAG obtained on April 17, 2020, and for which VAG sought forgiveness on May 6, 2021, and which was forgiven on June 24, 2021. These civil claims are based on the alleged “Covered Conduct” described in Paragraph E below.

D. The PPP is a federally guaranteed loan program created in response to the economic crisis spurred by the COVID-19 pandemic. The program authorizes SBA-approved private lenders to extend the loans, which were fully guaranteed by SBA. Proceeds

from PPP loans could be used for payroll and other eligible business expenses, such as mortgage interest, rent, and utilities. If a borrower used at least 60 percent of the proceeds for payroll and all other remaining proceeds for eligible business expenses, the borrower could receive loan forgiveness for the full amount of the loan. Only a “small business concern,” which is defined as a business with 500 or fewer employees or that satisfies the relevant employee-based or revenue-based size standard for the industry in which the business operates, is eligible for a PPP loan. To determine size, a business must apply the affiliation rules under 13 C.F.R. § 121.301(f), which require aggregating the employees and revenue of related companies. For the PPP, the affiliation rules are waived for any business concern operating as a franchise so long as it is assigned a franchise identifier code by the SBA.

E. “Covered Conduct” as used in this Agreement means the following allegations by the United States, which the United States contends occurred between April 3, 2020, and June 24, 2021:

- i. The United States alleges that VAG obtained a PPP loan for \$6,282,362 on or about April 3, 2020. VAG was ineligible for this loan because it was not a “small business concern” due to its size after inclusion of VAG’s Affiliates. These affiliation rules applied to VAG as it was not operating as a franchise with a franchise identifier code from SBA. Notwithstanding the size of VAG after inclusion of its Affiliates, VAG certified in its PPP loan application that the company was “eligible to receive a loan under the rules in effect at the time [the] application [was] submitted.”
- ii. The United States further alleges that by May 2021, VAG should have

known it was ineligible for PPP loans because of its size after inclusion of its Affiliates. Despite its ineligibility for the PPP loan, VAG applied for and obtained forgiveness of the full loan amount of \$6,282,362 on June 24, 2021.

F. This Settlement Agreement is neither an admission of liability by VAG nor a concession by the United States or Relator that their claims are not well-founded.

G. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator's reasonable expenses, attorneys' fees, and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. VAG shall pay to the United States \$9,000,000.00 (the "Settlement Amount"), of which \$6,971,256.95 is restitution, by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice no later than 60 days after the Effective Date of this Agreement.

2. Conditioned on the United States receiving the Settlement Amount and as soon as feasible after receipt, the United States shall pay \$1,620,000 to Relator (Relator's Share) by electronic funds transfer pursuant to instructions provided by Relator's counsel.

3. Within 20 days of the Effective Date of this Agreement, VAG shall pay to Relator's counsel reasonable expenses and attorney's fees and costs pursuant to 31 U.S.C. § 3730(d) in the amount of \$80,000.00 ("Fees Settlement"). The Fees Settlement will be

made by electronic funds transfer, pursuant to written instructions provided by Relator's Counsel.

4. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below, and upon the United States' receipt of the Settlement Amount, the United States releases VAG, together with VAG's current and former parent corporations; Affiliates; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them ("VAG Releasees"), from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. § 1833a; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 6 below, and upon the United States' receipt of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases the VAG Releasees from any civil monetary claim the Relator has on behalf of the United States under the False Claims Act, 31 U.S.C. §§ 3729-3733, for the Covered Conduct or allegations in the Civil Action.

6. Notwithstanding the release given in Paragraph 4 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;

- c. Except as explicitly stated in the Agreement, any administrative liability or enforcement right, or any administrative remedy, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement; and
- f. Any liability of individuals.

7. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the Relator's Share, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

8. Conditioned upon Relator's receipt of the Fees Settlement, Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases the VAG Releasees, and their officers, agents, and employees, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorneys' fees and costs.

9. VAG waives and shall not assert any defenses VAG may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth

Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

10. The VAG Releasees fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that the VAG Releasees have asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct or the United States' investigation or prosecution thereof.

11. The VAG Releasees fully and finally release the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that the VAG Releasees have asserted, could have asserted, or may assert in the future against the Relator, related to the Civil Action and the Relator's investigation and prosecution thereof.

12. This Agreement is intended to be for the benefit of the Parties only.

13. Upon receipt of the payment described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1). The dismissal will be with prejudice as to the Relator and with prejudice to the United States only as to the Covered Conduct.

14. Except as outlined above and specifically reserved in Paragraph 3, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

15. Each Party and signatory to this Agreement represents that it freely and voluntarily enters this Agreement without any degree of duress or compulsion.

16. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Middle District of Florida. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

17. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

18. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

19. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

20. This Agreement is binding on VAG's successors, transferees, heirs, and assigns.

21. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

22. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.


23. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.


THE UNITED STATES OF AMERICA

DATED: 9/27/2023 BY: By C. Wei
BENJAMIN C. WEI
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
United States Department of Justice

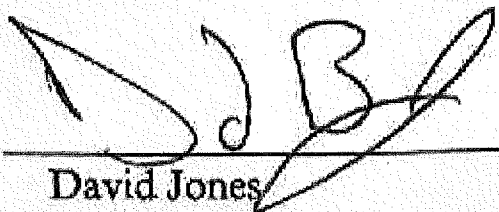
DATED: 9/28/23 BY: Lindsay S. Griffin
LINDSAY S. GRIFFIN
Assistant United States Attorney
Middle District of Florida

DEFENDANT

DATED: 9/26/23 BY:  , Eric Camp
Victory Automotive Group, LLC

DATED: 9/27/23 BY: 
RODNEY A. FIELDS
Counsel for Victory Automotive Group, LLC

RELATOR

DATED: 9/28/23 BY: 
David Jones

DATED: _____ BY: Janel Quinn 09/27/23 270 by permission
JANEL QUINN
Counsel for David Jones