

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

1200 New Jersey Avenue SE  
Washington, D.C. 20590

**In re:** \_\_\_\_\_ )  
 )  
**Diono LLC** )  
AQ18-003 )  
 )  
\_\_\_\_\_ )

**CONSENT ORDER**

This Consent Order is issued pursuant to the authority of the National Highway Traffic Safety Administration (“NHTSA”), an operating administration of the U.S. Department of Transportation. This Consent Order sets forth the requirements and performance obligations agreed to by Diono LLC (“Diono”), under the following terms and conditions.

**I. NATURE OF THE ACTION**

1. The National Traffic and Motor Vehicle Safety Act of 1966 as amended and recodified (the “Safety Act”), 49 U.S.C. Chapter 301, 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. *See* 49 C.F.R. § 1.95(a). All authorities lawfully vested and reserved to the NHTSA Administrator may be exercised by the NHTSA Deputy Administrator. *See* 49 C.F.R. § 501.5(a).

2. A manufacturer of motor vehicle equipment that decides in good faith that the motor vehicle equipment contains a defect related to motor vehicle safety or does not comply with an applicable federal motor vehicle safety standard (“FMVSS”) must notify NHTSA by submitting a Defect and Noncompliance Information Report (“DIR”). 49 U.S.C. § 30118(c); 49 C.F.R. § 573.6. A manufacturer must submit the DIR not more than five working days after it knew or should have known of a safety-related defect or noncompliance in its vehicles. *See* 49 C.F.R. § 573.6(b). *See also United States v. General Motors Corp.*, 656 F. Supp. 1555, 1559 n.5

(D.D.C. 1987); *United States v. General Motors Corp.*, 574 F. Supp. 1047, 1049-50 (D.D.C. 1983).

3. On or about September 14, 2017, Diono submitted a DIR to NHTSA describing various noncompliances with FMVSS No. 213 in 519,052 child restraints manufactured by Diono (NHTSA Recall No. 17C-003).

4. On July 19, 2018, NHTSA opened Audit Query (“AQ”) 18-003 to better understand and evaluate Diono’s compliance with its Safety Act obligations.

5. On July 20, 2018, NHTSA sent an Information Request (“IR”) to Diono requesting information as part of its AQ18-003 investigation into whether Diono’s DIR submission for Recall No. 17C-003 was untimely, whether the recall remedy it selected is adequate, and to investigate concerns regarding Diono’s owner letters. NHTSA also informed Diono that based on information currently available to NHTSA, it appeared that Diono may be in violation of its early warning reporting obligations pursuant to 49 U.S.C. § 30166(m) and 49 C.F.R. § 579.25, that Diono also may have failed to submit foreign recall information in compliance with 49 U.S.C. § 30166(l) and 49 C.F.R. § 579.12, and may have failed to comply with other regulations under the Safety Act.

6. NHTSA’s inquiry led it to determine that Diono had violated several provisions of the Safety Act, and regulations thereunder. Diono did not dispute that certain violations did occur. Rather, Diono asserted that the principal violations were committed by past employees and prior ownership. Diono represents that a new Chief Executive Officer (“CEO”) formally joined Diono in November 2017, and that since that time, the organization has been overhauled and new policies and processes have been put in place.

7. To administratively resolve investigation AQ18-003, NHTSA and Diono have mutually agreed to this Consent Order.

8. NHTSA issues this Consent Order pursuant to its authority under the Safety Act, 49 U.S.C. Chapter 301, consistent with U.S. Department of Transportation enforcement procedures, 49 C.F.R. Part 5, Subpart D, and in accordance with the delegations at 49 C.F.R. §§ 1.95, 501.5(a), to compromise the amount of civil penalties, 49 U.S.C. § 30165(b), to inspect and investigate, 49 U.S.C. § 30166(b)(1), to ensure that noncompliant motor vehicle equipment is recalled and remedied, 49 U.S.C. §§ 30118-30120, to require reports or answers to specific questions, 49 U.S.C. § 30166(e), and to ensure that foreign recall reporting requirements and early warning reporting requirements are met, 49 U.S.C. § 30166(l), (m).

It is **AGREED** by Diono and **ORDERED** by NHTSA that the following provisions shall apply.

## **II. TERMS AND CONDITIONS OF CONSENT ORDER**

### **Civil Penalty**

11. In determining an appropriate civil penalty amount, NHTSA considered the civil penalty factors set forth in 49 U.S.C. § 30165(c) and Diono's views of how those factors should be applied. NHTSA has also taken into account Diono's cooperation with NHTSA's AQ18-003 investigation.

12. Subject to the terms in the remainder of this Paragraph, Diono shall pay a civil penalty in the sum of five hundred thousand dollars (\$500,000) ("Total Civil Penalty").

- a. Of the Total Civil Penalty, the sum of one hundred and twenty thousand dollars (\$120,000) ("Non-Deferred Amount") shall be paid on the following schedule in accordance with the instructions provided by NHTSA: Diono shall make twelve (12) equal installments of ten thousand dollars (\$10,000), with the first installment payable no later than July 1, 2021. The remaining installments will be paid no later than the first business day of each month thereafter, with the final installment payment due no later than June 1, 2022. Diono shall provide

notification to NHTSA's Office of Chief Counsel when each payment is made.

The current contact for such notification is Sarah.Sorg@dot.gov.

- b. Of the Total Civil Penalty, the remaining sum of three hundred eighty thousand dollars (\$380,000) ("Abeyance Amount") shall be deferred and held in abeyance by NHTSA pending Diono's satisfactory completion, as reasonably determined by NHTSA, of the requirements of this Consent Order. In the event that Diono commits material violations of the Safety Act, regulations thereunder, or this Consent Order, during the term of this Consent Order, Diono may be obligated to pay the Abeyance Amount or a portion thereof in accordance with Paragraph 20 below, and may be liable for additional civil penalties beyond the Abeyance Amount for those violations of the Safety Act and regulations thereunder.

13. Pursuant to this agreement, Diono admits that it owes a debt in the amount of five hundred thousand dollars (\$500,000), as provided for in Paragraph 12, arising from activities under the jurisdiction of the U.S. Department of Transportation, due and owing to the United States under the Federal Claims Collection Act of 1966, as amended and codified at 31 U.S.C. § 3701, *et seq.* (hereinafter the "Claims Collection Act").

14. If Diono fails to make the payment of the Non-Deferred Amount as set forth in Paragraph 12a above, or any payments of the Abeyance Amount as may be imposed in accordance with this Consent Order, on or before their respective due dates, Diono shall be in default of this Consent Order and the remaining balance of the Total Civil Penalty shall become due immediately. In that event: (i) Diono 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. Part 89, either administratively or in any court and (ii) Diono 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, Diono shall

pay the United States all reasonable costs of collection and enforcement, including attorneys' fees and expenses. This provision does not preclude Diono from contesting the imposition of any of the Abeyance Amount in accordance with Paragraph 20 below.

15. Upon receipt of the Non-Deferred Amount and upon expiration of the Consent Order, Diono, including its current and former directors, officers, employees, agents, successors, and assigns will be deemed released from liability for civil penalties pursuant to 49 U.S.C. § 30165 in connection with any and all violations of the Safety Act or regulations thereunder relating to AQ18-003, from the inception of the Safety Act through the Effective Date of this Consent Order.

16. Nothing in this Consent Order discharges Diono from any obligation to comply with the Safety Act or regulations thereunder.

17. This Consent Order does not release Diono from liabilities, if any, that may be asserted by the United States, the U.S. Department of Transportation, NHTSA, or any governmental entity, other than the civil penalty liability under 49 U.S.C. § 30165 as described in Paragraph 15.

***Abeyance Amount***

18. The Abeyance Amount shall only become due and owing in accordance with and subject to the provisions set forth in Paragraph 20 below. Diono will be deemed released from any portion of the Abeyance Amount remaining at the expiration of this Consent Order.

19. In the event that Diono or its Consultant discovers additional violations of the Safety Act or regulations thereunder that occurred prior to November 1, 2017 and Diono promptly brings those violations to NHTSA's attention and takes prompt, reasonable steps to remedy the violations and prevent similar violations in the future, NHTSA agrees that it will not seek any of the Abeyance Amount with respect to those violations.

20. Should NHTSA receive notice or reasonably believe that Diono has materially violated the Safety Act, regulations thereunder, or the terms of this Consent Order, other than as provided by Paragraph 19, NHTSA shall provide written notice to Diono, including a statement regarding the Abeyance Amount that will be due if NHTSA makes a determination in accordance with this Paragraph. Diono will have thirty (30) calendar days or such other time as mutually agreed by NHTSA and Diono, from the date on which the issue was communicated to Diono by NHTSA (“Evaluation Period”) to respond to the notice in writing. Diono’s response will provide its views, along with any supporting information and documentation. Should there be a reasonable dispute, the parties agree to reasonably discuss the alleged violation. If no mutually agreeable resolution is reached after discussion and NHTSA reasonably determines that Diono has materially violated the Safety Act, regulations thereunder, or the terms of this Consent Order, then Diono will be liable for the Abeyance Amount determined by NHTSA, to be paid in accordance with instructions from NHTSA within thirty (30) calendar days of such determination.

**Retention of Consultant**

21. Diono represents that it has retained a Consultant with experience and expertise in motor vehicle safety and the requirements of the Safety Act and regulations thereunder. Diono agrees that the Consultant will assist Diono in meeting the performance obligations discussed in Paragraphs 22 to 26 below.

*Training Plan*

22. The Consultant shall advise and assist Diono in developing a Training Plan (“Training Plan”) and in training appropriate Diono employees regarding the Safety Act and regulations, and Diono’s associated policies and procedures. No later than one hundred twenty (120) calendar days after the Effective Date of this Consent Order, Diono shall submit a report describing Diono’s training plan, including details on the subjects to be taught and individuals

(identified by employee position and/or responsibilities) to be trained. NHTSA may provide feedback if it reasonably determines that revisions to the Training Plan are warranted. If such feedback is provided, Diono shall revise its Training Plan to incorporate NHTSA's feedback, and shall provide a copy of the revised Training Plan to NHTSA no later than thirty (30) calendar days after receiving any such feedback from NHTSA.

23. No later than one (1) year after the Effective Date of this Consent Order, Diono shall submit a report detailing its efforts to implement the Training Plan specified in Paragraph 22.

*Audit*

24. No later than thirty (30) calendar days after the Effective Date of this Consent Order, Diono shall have the Consultant begin an audit of Diono's compliance with the Safety Act and regulations thereunder, including but not limited to the efficacy of Diono's policies and procedures for complying with its reporting obligations under 49 C.F.R. Part 579, its processes and procedures of defect or noncompliance decision-making and reporting under 49 C.F.R. Part 573, its processes and procedures for complying with 49 C.F.R. Part 577, and its processes for quarterly recall reporting under 49 C.F.R. Part 573. The audit shall be completed no later than six (6) months after the Effective Date of this Consent Order.

25. No later than three (3) months after the completion of the audit required in Paragraph 24, Diono shall submit to NHTSA a written report from its Consultant detailing the factual findings and recommendations of the audit.

26. No later than one (1) year after the Effective Date of this Consent Order, Diono shall provide a detailed statement to NHTSA regarding any new or revised procedures that address the result of the audit and the recommendations of the Consultant.

27. Diono has agreed to repurchase or replace seats recalled under NHTSA Recall No. 17C-003 for those owners who need to use the seat in a harness mode for children over

sixty-five (65) pounds with a lap belt only and who do not have a tether anchorage available. Within sixty (60) calendar days of the Effective Date of this Consent Order, Diono will propose a repurchase or replacement program, including a draft notification letter and updated notice on its website, <http://diono.com/us>, to NHTSA for NHTSA's review. The repurchase or replacement program shall be without cost to seat owners, and may require seat owners to affirm or otherwise provide information demonstrating their eligibility. As part of the program, Diono's website will be updated to state that owners who require the use of the Radian in harness mode, at a lap-belt-only seating position, for children over 65 pounds, and who have no tethering option, should contact Diono for further assistance. NHTSA may provide feedback on any part of the proposed repurchase or replacement program and may submit it back to Diono for further revision, if necessary. Diono shall revise its proposed repurchase or replacement program to incorporate NHTSA's feedback, and Diono shall submit the revised proposal to NHTSA for NHTSA's review within two (2) weeks after Diono's receipt of NHTSA's feedback. NHTSA will review the revised proposal and may provide additional feedback, whereby Diono must incorporate any subsequent feedback from NHTSA. Diono must then submit the proposal to NHTSA for NHTSA's review within two (2) weeks after Diono's receipt of NHTSA's feedback. This feedback and revision process will continue on the above schedule until NHTSA has no additional feedback. Diono may not implement the program until NHTSA confirms that it has no additional feedback and that Diono's proposal is accepted.

28. Diono shall implement the repurchase or replacement program, including by mailing the owner letter and posting the notice on Diono's website, within thirty (30) calendar days of receiving NHTSA's acceptance of the proposal.

#### **Additional Reporting**

29. For the duration of the Consent Order, Diono will provide supplemental reports to NHTSA relating to its early warning reporting ("EWR") by providing a statement to NHTSA's

Trends Analysis Division (“TAD”) if it does not have any information to report for that quarter pursuant to 49 C.F.R. § 579.25.

- a. For aggregate data, 49 C.F.R. § 579.25(c), this supplemental report shall be provided in NHTSA’s EWR portal ([portal.nhtsa.gov/manufacturer/login](http://portal.nhtsa.gov/manufacturer/login)) by submitting data indicating there is no information to report (*i.e.* by placing zeroes for each model and production year in the appropriate fields).
- b. For death or injury incidents, 49 C.F.R. § 579.25(b), this supplemental report shall be provided in an email to TAD. The current contact for such notification is [Elizabeth.Wolfe@dot.gov](mailto:Elizabeth.Wolfe@dot.gov).

### **Meetings**

30. During the term of this Consent Order, Diono and its Consultant shall meet with NHTSA quarterly to discuss the actions it has taken to satisfy the terms of this Consent Order. The first meeting shall take place no later than ninety (90) calendar days after the Effective Date of this Consent Order.

### **III. TERM OF THE CONSENT ORDER**

31. Unless otherwise specified, the term of this Consent Order and Diono’s performance obligations is eighteen (18) months from the Effective Date.

### **IV. AMENDMENT**

32. This Consent Order cannot be modified, amended, or waived except by an instrument in writing signed by all parties, and no provision may be modified, amended, or waived other than by a writing setting forth such modification, amendment or waiver.

33. The parties may agree, without need for an amendment as specified in Paragraph 32, to reasonable changes to specified report or meeting dates.

## V. MISCELLANEOUS

34. Diono shall use its best efforts to take all actions and to do all things necessary to comply with this Consent Order, and to cooperate with NHTSA in carrying out the requirements of this Consent Order.

35. Nothing in this Consent Order 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 Consent Order, or as amended thereafter.

36. None of the specific reporting obligations described in this Consent Order relieve Diono of its obligation to submit any other reports required by the Safety Act or its corresponding regulations, or otherwise comply with existing laws and regulations.

37. The parties shall each bear their own respective attorneys' fees, costs, and expenses, except as provided in Paragraph 14 above.

38. This Consent Order shall be effective upon its full execution by all individuals and parties listed as signatories below ("Effective Date"). Any breach of the obligations under this Consent Order, may, at NHTSA's option, be immediately enforceable in any United States District Court. Diono agrees that it will not raise any objection as to venue.

39. In the event of Diono's breach of, or failure to perform, any term of this Consent Order, NHTSA reserves the right to pursue any and all appropriate administrative and/or judicial remedies, including, but not limited to, assessing interest for untimely civil penalty payments and/or commencing litigation to enforce this Consent Order in any United States District Court.

40. This Consent Order was negotiated and prepared by both NHTSA and Diono. If any of the provisions in this Consent Order require a court's interpretation, no ambiguity shall be construed against the drafter.

41. The parties who are the signatories to this Consent Order have the legal authority to enter into this Consent Order, and each party has authorized its undersigned to execute this Consent Order on its behalf.

42. In any legal action between the parties concerning the enforceability of this Consent Order, Diono expressly waives any and all defenses and agrees not to plead, argue, or otherwise raise any defenses other than (i) that the payment of the Non-Deferred Amount, set forth in Paragraph 12a, was made, if applicable, and/or (ii) that Diono has substantially complied with the terms of this Consent Order.

43. This Consent Order shall be binding upon, and inure to the benefit of, Diono and its current and former directors, officers, employees, agents, parents, subsidiaries, affiliates, successors, and assigns. Diono 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 Diono and any of its parents, subsidiaries, or affiliates.

44. 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 Consent Order and shall in no way affect, impair, or invalidate any other provision of this Consent Order.

45. This Consent Order shall not be construed to create rights in, or grant any cause of action to, any third party not a party to this Consent Order.

46. This Consent Order may be executed in counterparts, each of which shall be considered effective as an original signature.

47. This Consent Order is a fully integrated agreement and shall in all respects be interpreted, enforced, and governed under the federal law of the United States. This Consent Order, which is fully incorporated hereto by reference, 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 Consent Order.

[SIGNATURE PAGES FOLLOW]

APPROVED AND SO ORDERED:

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

Dated: January 19, 2021

By: James Owens Digitally signed by James Owens  
DN: cn=James Owens, o, ou=NHTSA,  
email=james.owens@dot.gov, c=US  
Date: 2021.01.19 16:08:53 -05'00'

James C. Owens  
Deputy Administrator

Dated: January 19, 2021

By: JONATHAN CHARLES MORRISON Digitally signed by JONATHAN  
CHARLES MORRISON  
Date: 2021.01.19 15:07:19  
-05'00'

Jonathan C. Morrison  
Chief Counsel

Dated: January 19, 2021

By: KERRY E KOLODZIEJ Digitally signed by KERRY E  
KOLODZIEJ  
Date: 2021.01.19 15:03:02 -05'00'

Kerry E. Kolodziej  
Assistant Chief Counsel  
for Litigation and Enforcement

Dated: January 19, 2021

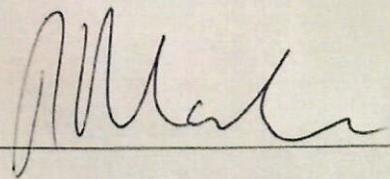
By: SARAH E SORG Digitally signed by SARAH E  
SORG  
Date: 2021.01.19 15:00:37 -05'00'

Sarah E. Sorg  
Senior Trial Attorney

AGREED:

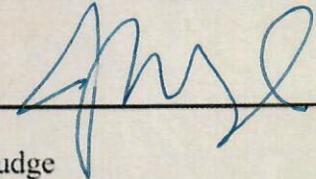
Dated: 1/19/21

Diono

By: 

Tim Maule  
President  
Diono LLC

Dated: 1/19/2021

By: 

Jonathan Judge  
Schiff Hardin LLP  
Counsel for Diono LLC