

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

1200 New Jersey Avenue SE  
Washington, DC 20590

<b>In re:</b>	)
Ferrari Early Warning Reporting	)

**CONSENT ORDER**

This Consent Order is based on the agreement of the National Highway Traffic Safety Administration (“NHTSA”), an operating component of the U.S. Department of Transportation, Ferrari S.p.A., and Ferrari North America, Inc. (collectively, “Ferrari”) to resolve claims associated with Ferrari’s violations of the early warning reporting requirements, 49 C.F.R. Part 579, Subpart C, under the terms and conditions incorporated herein.

**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. § 30101, *et seq.*, provides for regulation of motor vehicles and motor vehicle equipment by the Secretary of Transportation. 49 U.S.C. § 30111. The Secretary has delegated his authorities under the Safety Act to the NHTSA Administrator, 49 C.F.R. §§ 1.95(a), 501.2(a)(1). This delegation includes the authority to compromise the amount of civil penalties for violations of the Safety Act and regulations prescribed thereunder. *See* 49 U.S.C. § 30165(b); 49 C.F.R. § 1.95.

2. As required by the Transportation Recall Enhancement, Accountability, and Documentation (“TREAD”) Act, NHTSA established early warning reporting requirements for vehicle manufacturers. 49 U.S.C. § 30166(m); 49 C.F.R. Part 579, Subpart C. The early warning reporting requirements for light vehicle manufacturers are based on the aggregate number of

vehicles manufactured annually by the manufacturer itself and “any parent corporation, any subsidiary or affiliate, and any subsidiary or affiliate of a parent corporation” of the manufacturer. *See id.* § 579.4(c).

3. “[A] manufacturer whose aggregate number of light vehicles manufactured . . . is 5,000 or more” must submit comprehensive quarterly reports containing the information specified in 49 C.F.R. § 579.21. This includes information on incidents involving death or injury. *Id.* § 579.21(b). It also includes numbers of property damage claims, consumer complaints, warranty claims, and field reports. *Id.* § 579.21(c). The manufacturer must also submit copies of field reports. *Id.* § 579.21(d).

4. A manufacturer of fewer than 5,000 light vehicles must also report “each incident involving one or more deaths . . . that is identified in a claim against and received by the manufacturer or in a notice received by the manufacturer” if the death was allegedly “caused by a possible defect in the manufacturer’s vehicle.” *Id.* § 579.21(b)(1); *id.* § 579.27(b).

5. A person who violates NHTSA’s early warning reporting regulation is liable to the United States Government for daily civil penalties. *See* 49 U.S.C. § 30166(m); *id.* § 30165(a)(3). Effective December 27, 2012, the maximum civil penalty increased from \$6,000 to \$7,000 per day. Final Rule, 77 FED. REG. 70,710, 70,713 (Nov. 27, 2012) (codified at 49 C.F.R. § 578.6(a)(3)).

6. Ferrari is a manufacturer of motor vehicles within the meaning of the Safety Act, *see* 49 U.S.C. § 30102(a)(5), and a person within the meaning of 49 U.S.C. § 30165.

7. Ferrari North America, Inc. is a subsidiary of Ferrari S.p.A., which is formerly a subsidiary of Fiat S.p.A. (“Fiat”), and now a subsidiary of Fiat Chrysler Automobiles N.V. In July 2011, Fiat acquired a majority ownership interest in Chrysler Group LLC (“Chrysler”),

which is also now a subsidiary of Fiat Chrysler Automobiles N.V. Since that time, Chrysler was an affiliate of Ferrari within the meaning of 49 C.F.R. § 579.4(c).

8. Ferrari did not submit an early warning report that complies with the requirements of 49 C.F.R. § 579.21 for any quarter from the third quarter of 2011 through the second quarter of 2014.

9. Ferrari did not report three incidents involving a death to NHTSA pursuant to the early warning reporting requirements. Those incidents are identified by Ferrari's August 12, 2014 response to NHTSA's July 16, 2014 Information Request.

WHEREAS, it is the mutual desire of NHTSA and Ferrari to resolve claims associated with Ferrari's violations of the early warning reporting requirements, 49 C.F.R. Part 579, Subpart C, without the need for further action, to avoid the legal expenses and other costs of a protracted dispute and potential litigation;

THEREFORE, based on the agreement of the parties and pursuant to the authority of the Secretary of Transportation to compromise, 49 U.S.C. § 30165(b), and to require manufacturers to report information, 49 U.S.C. § 30166(m)(3)(C) and 49 C.F.R. § 579.28(1) (as delegated to the NHTSA Administrator, 49 C.F.R. § 1.95), it is ORDERED and AGREED as follows:

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

10. Ferrari admits that it violated 49 C.F.R. Part 579, Subpart C by failing to submit an early warning report that complies with the requirements of 49 C.F.R. § 579.21 for any quarter from the third quarter of 2011 through the second quarter of 2014, and by failing to report three incidents involving a death to NHTSA.

11. Ferrari acknowledges that Chrysler is, and was since July 2011, its affiliate (as defined by 49 C.F.R. § 579.4(c)) and that since July 2011 Ferrari has been required to comply

with the early warning reporting requirements for manufacturers of 5,000 or more light vehicles, 49 C.F.R. § 579.21.

12. Ferrari shall pay the United States a civil penalty in the sum of three and one-half million dollars (\$3,500,000) for its failure to comply with the early warning reporting requirements through the second quarter of 2014. Ferrari 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 Consent Order.

13. NHTSA will consider remedial actions Ferrari has taken prior to the execution of this Consent Order in determining whether Ferrari has carried out the performance requirements of this Consent Order.

14. Ferrari shall develop written procedures for comprehensive early warning reporting in compliance with 49 C.F.R. Part 579, Subpart C. No later than 45 calendar days after execution of this Consent Order, Ferrari shall provide a copy of such written procedures to NHTSA. If NHTSA reasonably determines that any changes to the written procedures are warranted, Ferrari shall revise its written procedures to incorporate NHTSA's feedback. Ferrari shall provide a revised copy of the written procedures to NHTSA no later than 30 calendar days after receiving any such feedback from NHTSA.

15. Ferrari shall train appropriate personnel (including new personnel and Ferrari S.p.A. employees) on its early warning reporting requirements and the written procedures for comprehensive early warning reporting, as developed in accordance with Paragraph 14. Ferrari's training shall include recurrent training on at least an annual basis.

16. No later than 60 calendar days after execution of this Consent Order, Ferrari shall meet with NHTSA to discuss the actions it has taken to satisfy Paragraphs 14 and 15 of this Consent Order.

17. No later than 60 calendar days after execution of this Consent Order, Ferrari shall contact NHTSA's Early Warning Division to provide it with information required to retroactively populate the TREAD database with the three incidents involving a death that Ferrari failed to timely report to NHTSA.

18. No later than 120 calendar days after execution of this Consent Order, Ferrari shall submit the information and documentation on property damage claims, consumer complaints, warranty claims, and field reports required by 49 C.F.R. § 579.21(c)-(d) for each quarter from the third quarter of 2011 through the second quarter of 2014. Ferrari shall submit this information in the manner specified by 49 C.F.R. § 579.29 and in accordance with any guidance provided by NHTSA's Early Warning Division for making such retroactive reports.

19. No later than 60 calendar days after resolution of the litigation concerning a death incident in Germany (as identified in Ferrari's August 12, 2014 response to NHTSA's July 16, 2014 Information Request), Ferrari shall provide written notice to NHTSA. Such written notice shall include information regarding the nature of the resolution and shall identify the amount of the judgment or settlement, if any.

20. Ferrari shall use its best efforts to comply with its obligations under the Safety Act, and regulations thereunder, to take all actions and do all things necessary to comply with this Consent Order, and to cooperate with NHTSA in carrying out the requirements of this Consent Order. Ferrari's best efforts shall include, among other things, (i) providing prompt notice to NHTSA in the event any requirement of this Consent Order cannot be met or timely

met, and (ii) ensuring employees involved with implementation of the performance requirements of this Consent Order are kept well-informed and are allocated sufficient time during their working hours to enable them to thoroughly and effectively perform actions to carry out or implement the performance requirements of this Consent Order.

21. Ferrari shall provide written notice of each required submission under this Consent Order by electronic mail to NHTSA's Director, Office of Defects Investigation (currently Frank Borris, Frank.Borris@dot.gov), and with a copy to NHTSA's Assistant Chief Counsel for Litigation and Enforcement (currently Timothy H. Goodman, Tim.Goodman@dot.gov) and Leo Yon in NHTSA's Early Warning Division (Leo.Yon@dot.gov).

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

22. Unless otherwise specified, the term of Ferrari's performance obligations under this Consent Order is one year, provided, however, that the commitments in Paragraphs 15 and 19 shall survive the term of this Consent Order.

### **IV. AMENDMENT**

23. 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 and signed by the party making the modification, amendment or waiver.

### **V. INTERPRETATION CONSISTENT WITH FEDERAL LAW**

24. 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.

## **VI. FULL AND AUTHORIZED SETTLEMENT**

25. Upon receipt of the payment set forth in Paragraph 12 above, the Secretary of Transportation, by and through the Administrator of NHTSA, releases Ferrari, 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 Ferrari's early warning reporting obligations through the second quarter of 2014.

26. This Consent Order does not release Ferrari from civil or criminal liabilities, if any, that may be asserted by the United States, the Department of Transportation, NHTSA, or any other governmental entity, other than its civil penalty liability under 49 U.S.C. § 30165 as described in Paragraph 25, above.

27. The parties shall each bear their own respective attorneys' fees, costs, and expenses.

28. This Consent Order shall be effective following the execution of this Consent Order. Any breach of the obligations under this Consent Order shall be immediately enforceable in any United States District Court. Ferrari agrees that it will not raise any objection as to venue.

29. This Consent Order constitutes the entire agreement regarding the resolution of the subject matter therein, and supersedes any and all prior or contemporaneous written or oral agreements or representations.

30. 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.

31. This Consent Order shall be binding upon, and inure to the benefit of, Ferrari and

its current and former directors, officers, employees, agents, parents, subsidiaries, affiliates, successors, and assigns. Ferrari 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 Ferrari and any of its parents, subsidiaries, or affiliates.

32. Ferrari S.p.A. and Ferrari North America, Inc. are jointly and severally responsible for the obligations of this Consent Order.

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

[SIGNATURE PAGES FOLLOW]



APPROVED AND SO ORDERED:

Dated: October 31, 2014



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DAVID J. FRIEDMAN  
Deputy Administrator

AGREED:

Dated: October 22, 2014

FERRARI S.p.A.

By: \_\_\_\_\_

A handwritten signature in blue ink, consisting of a vertical line on the left, a loop in the middle, and a horizontal line on the right.

Sabina Fasciolo  
General Counsel

AGREED:

Dated: October 22, 2014

FERRARI NORTH AMERICA, INC.

By:  \_\_\_\_\_

David M. Wertheim  
Vice President & General Counsel

AGREED:


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

Dated: October 22, 2014

By: 

O. Kevin Vincent  
Chief Counsel

Dated: October 22, 2014

By: 

Timothy H. Goodman  
Assistant Chief Counsel  
for Litigation & Enforcement

Dated: October 22, 2014

By: 

Kerry E. Kolodziej  
Senior Trial Attorney