

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

In re: _____)
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Ride the Ducks International, LLC)
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_____)

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, administratively to resolve a NHTSA enforcement action, mitigate and control risks of harm, and promote safety. It sets forth the requirements and performance obligations of Ride the Ducks International, LLC (“RTDI”), in connection with RTDI’s violations of the National Traffic and Motor Vehicle Safety Act (“Safety Act”) and NHTSA’s regulations as detailed herein under the following terms and conditions.

I. NATURE OF THE ACTION

1. The Safety Act 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).

2. The Safety Act applies to “manufacturers.” 49 U.S.C. § 30102(a)(6). A manufacturer is defined as a person “manufacturing or assembling motor vehicles or motor vehicle equipment.” *Id.*

3. The Safety Act applies to “motor vehicles,” defined as vehicles “driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line.” 49 U.S.C. § 30102(a)(7).

4. Under 49 C.F.R. § 571.7(e), certain vehicles built with a combination of new and used components are not considered to be new vehicles whose rebuilders must comply with the Safety Act. The “glider” exemption applies when a new cab or body is put on a truck when the engine, transmission, and axles are not new and at least two of those components are from the same vehicle. 49 C.F.R. § 571.7(e). The rule mainly applies to truck “glider” kits, as well as buses, that use new cabs with old parts.

5. Under 49 C.F.R. § 571.7(c), vehicles “manufactured for and sold directly to, the Armed Forces of the United States in conformity with contractual specifications” do not need to meet the FMVSS. This exception to the Safety Act’s applicability does not apply in instances where a military vehicle has been extensively modified or otherwise serves as a donor for what is essentially a new vehicle. In a November 30, 1987 NHTSA interpretation letter responding to an inquiry from D.F. Landers, President of Mobile Products, Inc., asking, among other things, if surplus military vehicles were subject to NHTSA’s jurisdiction, the Agency stated that surplus military “vehicles might become subject to Federal motor vehicle safety standards if there is a material change in . . . the intended or actual use, design or sale” of the vehicle. *See* NHTSA Interpretation Letter to D.F. Landers, President of Mobile Products, Inc. (Nov. 30, 1987).

6. Under the Safety Act and implementing regulations, a manufacturer of motor vehicles or equipment has a duty to notify NHTSA if the manufacturer learns or determines in good faith that there is a defect related to motor vehicle safety or a noncompliance with an applicable FMVSS. 49 U.S.C. § 30118(c)(1); 49 C.F.R. Part 573. The manufacturer’s notice to NHTSA must be in the form specified by regulation, and is known as a “Defect Information Report” or “Part 573 Report.” 49 C.F.R. Part 573. NHTSA’s regulations require a manufacturer to notify NHTSA not more than five working days after a defect in a vehicle or an item of equipment has been determined to be safety-related or noncompliant with an applicable FMVSS. 49 C.F.R. § 573.6(b). However, the manufacturer’s duty to notify and remedy begins “whether it

actually determined, or it should have determined, that its vehicles are defective and the defect is safety-related.” *United States v. General Motors Corp.*, 656 F. Supp. 1555, 1559 n. 5 (D.D.C. 1987), *aff’d on other grounds*, 841 F.2d 400 (D.C. Cir. 1988) (emphasis added).

7. A manufacturer of motor vehicles or equipment also has a duty to notify owners, purchasers, and dealers when it determines that any motor vehicle or equipment contains a defect that relates to motor vehicle safety or a noncompliance with an applicable FMVSS. *See* 49 U.S.C. §§ 30118(c), 30119; 49 C.F.R. Part 577. The notification to owners or purchasers must have been “furnished no later than 60 days from the date the manufacturer files its defect or noncompliance information report under part 573.” *See* 49 U.S.C. § 30119; 49 C.F.R. § 577.7(a)(1). The duty to notify and remedy arises when the manufacturer determined or should have determined that there was a safety-related defect or noncompliance. *United States v. General Motors Corp.*, 656 F. Supp. 1555, 1559 n. 5 (D.C. 1987), *aff’d on other grounds*, 841 F.2d 400 (D.C. Cir. 1988).

8. When a manufacturer learns that a motor vehicle or motor vehicle equipment contains a defect and it decides in good faith that the defect is related to motor vehicle safety, the Safety Act imposes a duty to remedy the motor vehicle. *See* 49 U.S.C. § 30120; 49 C.F.R. Part 573. The manufacturer is responsible for remedying the safety-related defect within a reasonable time. *See* 49 U.S.C. § 30120; 49 C.F.R. § 573.5. According to case law, “a manufacturer incurs its duties to notify and remedy whether it actually determined, or it should have determined, that its vehicles are defective and the defect is safety-related.” *United States v. General Motors Corp.*, 656 F. Supp. 1555, 1559 n. 5 (D.C. 1987), *aff’d on other grounds*, 841 F.2d 400 (D.C. Cir. 1988). The manufacturer also has a duty to recall any motor vehicles or motor vehicle equipment that fail to comply with applicable FMVSS under these same procedures. *See* 49 U.S.C. § 30120; 49 C.F.R. Part 573.

9. As required by the Transportation, Recall Enhancement, Accountability, and Documentation (“TREAD”) Act, NHTSA requires reporting of “Early Warning Information” based on the type of manufacturer. *See* 67 Fed. Reg. 45,822 (July 10, 2002). The first group consists of larger manufacturers of motor vehicles and all manufacturers of child restraint systems and tires. *See* 49 C.F.R. §§ 579.21-579.26. These manufacturers are required to report, on a quarterly basis, production information, information on incidents involving death or injury, and data regarding property damage claims, consumer complaints, warranty claims, and field reports. *See* 49 C.F.R. §§ 579.21-579.26. The second group consists of all other manufacturers of motor vehicles and motor vehicle equipment, including manufacturers of fewer than 100 buses annually. *See* 49 C.F.R. § 579.27. This second group of manufacturers must report the same information about incidents involving deaths as the first group, but is not required to report any other “Early Warning Information.” *Id.*

10. Manufacturers of motor vehicles and motor vehicle equipment are required to submit to NHTSA copies of all notices, bulletins, and other communications, including those related to any defect in its vehicles or items of equipment, a customer satisfaction campaign, consumer advisory, recall, or other safety activity involving the repair or replacement of motor vehicles or equipment (collectively, “service bulletins”), sent to more than one manufacturer, distributor, dealer, owner or purchaser. *See* 49 U.S.C. § 30166(m)(3)(A)(ii); 49 C.F.R. §§ 579.5(a)-(b). A copy of each communication shall be submitted to NHTSA not later than five working days after the end of the month in which it was issued. 49 C.F.R. § 579.5(d). All manufacturers must also submit an index to the communications that “identifies the make, model, and model year of the affected vehicles” and “includes a concise summary of the subject matter of the communication.” 49 U.S.C. § 30166(f)(2); 49 C.F.R. § 579.5. Manufacturers are required to submit to the Agency an index for each communications to dealers, owners, or

purchasers about a defect or noncompliance they were required to submit at any time since October 1, 2012. *See* 49 U.S.C. § 30166(f)(2); 81 Fed. Reg. 16,270 (March 25, 2016).

11. In general, motor vehicles must comply with applicable FMVSS and must be certified as such at the time of delivery. 49 U.S.C. §§ 30112(a), 30115. This certification must take the form of a label certifying compliance with applicable FMVSS that is permanently affixed by the manufacturer. 49 U.S.C. § 30115; 49 C.F.R. Part 567. Manufacturers of motor vehicles are responsible for “self-certifying” that their products meet all applicable FMVSS before they are offered for sale. *See* 49 U.S.C. §§ 30112, 30115.

12. Manufacturers of motor vehicles are required to submit identifying information and a description of the items they produce to NHTSA. 49 U.S.C. § 30166(e); 49 C.F.R. Part 566. Manufacturers must report this information no later than 30 days after manufacturing begins. 49 C.F.R. § 566.6.

13. Manufacturers of motor vehicles are also required to assign Vehicle Identification Numbers (“VINs”) in accordance with 49 C.F.R. Part 565. 49 U.S.C. § 30166(e); 49 C.F.R. Part 565.

14. A person who violates the notification requirements, remedy requirements, or certification requirements of the Safety Act, or a regulation thereunder, is liable to the United States Government for a civil penalty. 49 U.S.C. § 30165(a)(1); 49 C.F.R. § 578.6(a). A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform a required act. 49 U.S.C. § 30165(a)(1); 49 C.F.R. § 578.6(a). As of December 27, 2012, the maximum penalty per violation was \$7,000. 77 Fed. Reg. 70,710, 70,713 (Nov. 27, 2012) (codified at 49 C.F.R. § 578.6). That penalty increased from \$7,000 to \$21,000 per violation effective March 17, 2016. 81 Fed. Reg. 15,413 (Mar. 22, 2016). The maximum penalty for a related series of violations is currently \$105 million. *See id.* A person who violates 49 U.S.C. § 30166, 49 C.F.R. Part 565, 49 C.F.R. Part 566, and 49 C.F.R. Part 579

is liable to the United States for a civil penalty. *See* 49 U.S.C. § 30165(a)(3). As of December 27, 2012, the maximum penalty was \$7,000 per day. 77 Fed. Reg. 70,710, 70,713 (Nov. 27, 2012) (codified at 49 C.F.R. § 578.6). Effective March 17, 2016, the maximum civil penalty was increased from \$7,000 to \$21,000 per day. *See* 81 Fed. Reg. 15,413 (Mar. 22, 2016) (codified at 49 C.F.R. § 578.6(a)(3)). The maximum penalty for a related series of daily violations is currently \$105 million. *See id.*

15. RTDI is the current owner, operator, and licensor of certain amphibious vehicles and amphibious vehicle tour bus operations. RTDI operates tour operations which run amphibious vehicles on both the public roads and the public waterways. RTDI or its predecessor corporations manufactured amphibious vehicles (either directly or through a contract manufacturer) and sold the vehicles to a limited number of independent licensees who operate similar tour services. In total, there are currently 106 amphibious vehicles produced by RTDI either in operation or ready for use in the United States.

16. According to RTDI, RTDI's predecessor corporation began to produce and operate amphibious vehicles in 1977 in Branson, Missouri. The original amphibious vehicles were reconstructed WWII-era DUKW amphibious vehicles used for transport over land and water without harbors. These amphibious vehicles were retired in 2006.

17. RTDI also states it began manufacturing "Stretch" Duck amphibious vehicles in 1996. The "Stretch" Duck construction process began by stripping down an original DUKW to its frame and then renewing and lengthening the hull, replacing the engine, transmission and axles with new components or components sourced from other vehicles, changing the number of driven wheels and upgrading the brakes to all-wheel disc brakes. There are currently 57 "Stretch" Ducks either in operation or ready for use in the United States. In 2005, RTDI introduced the "Truck" Duck with a patented RTDI design. The "Truck" Duck is based on a M-Series 2 1/2 ton military cargo vehicle and its construction also involved substantial upgrading

and replacement of original components and the complete fabrication of a hull on the existing frame. There are currently 49 “Truck” Ducks either in operation or ready for use in the United States. Both the “Stretch” and the “Truck” Ducks are under 26,000 lbs. loaded weight.

18. RTDI represents that all amphibious vehicles that it operated or produced were appropriately registered within the state or territories in which they have operated. RTDI further represents that throughout its history, RTDI worked closely with the Coast Guard to meet and/or exceed all applicable marine standards. RTDI also represents that it has sponsored industry efforts to discuss and disseminate best safety practices for the operation of amphibious tour buses.

19. On October 1, 2013, RTDI issued a Service Bulletin (SB-00-14-13) to its licensees with regard to the potential for the front axle on the Stretch Ducks to fail. RTDI represents that all affected vehicles under its control were properly repaired in accordance with the Service Bulletin, and that it repeatedly reminded its licensees of the importance of conducting the repair on the vehicles within their fleets. The Service Bulletin stated it was released to “avoid axle fractures” and further stated that the axles should be repaired as soon as it was practical to do so and prior to operating in 2014. The Service Bulletin further stated that until the axle was repaired, the axles should be inspected on a daily basis.

20. On September 24, 2015, a Stretch Duck owned and operated by Ride the Ducks of Seattle was involved in a crash with a 2009 MCI motor coach while both vehicles were traveling over the George Washington Memorial Bridge (a.k.a. the Aurora Bridge), resulting in fatalities. Although the Stretch Duck involved in the crash had a front axle with the defect addressed by the October 1, 2013 Service Bulletin, it had not been repaired as directed by that bulletin.

21. After learning of the Aurora Bridge crash, NHTSA issued an Information Request to RTDI. In April 2016, RTDI submitted a timely response, which included the October 2013 Service Bulletin and all other Service Bulletins issued by RTDI to its operations and its

licensees. RTDI's response also included a number of lawsuits filed against RTDI related to the Aurora Bridge crash, some of which were received by RTDI during 2015.

22. Review of RTDI's submissions led NHTSA to conclude that RTDI is a "manufacturer" of "motor vehicles" under the Safety Act. The RTDI Stretch Duck vehicles used the frame, some hull sections, and miscellaneous other parts from donor WWII vintage DUKWs while a new hull, new engine, new transmission, refurbished axles from donor vehicles, new brakes, and new drive configuration were incorporated into the final product. The Stretch Ducks are not rebuilt vehicles under NHTSA regulations because three requisite components (engine, transmission, and axles) were changed and no two are from the same vehicle. 49 C.F.R. § 571.7(e). RTDI does not contest that it manufactured motor vehicles under the Safety Act.

23. RTDI has provided NHTSA with confirmation that all RTDI produced amphibious vehicles affected by the October 1, 2013 Service Bulletin other than those at Ride the Ducks Seattle (which are currently out of service) have had the axle repair conducted.

24. NHTSA issues this Consent Order pursuant to its authority under the Safety Act, 49 U.S.C. § 30101, et seq., as delegated by the Secretary of Transportation, 49 C.F.R. §§ 1.95, 501.2(a)(1), to compromise the amount of civil penalties for violations of the Safety Act and regulation thereunder, 49 U.S.C. § 30165(b), to inspect and investigate, 49 U.S.C. § 30166(b)(1), to ensure that defective vehicles are recalled, 49 U.S.C. §§ 30118-30119, and to require any person to file reports or answers to specific questions, 49 U.S.C. § 30166(g). It is AGREED by RTDI and ORDERED by NHTSA as follows:

II. TERMS AND CONDITIONS OF CONSENT ORDER

A. Admission of Safety Act Violations

25. RTDI did not comply with the legal obligations imposed on vehicle manufacturers by the Safety Act and represents that it acted on a good faith belief that only Coast Guard marine safety regulations and state level road safety rules were applicable to the

amphibious vehicles it manufactured. Nonetheless, RTDI agrees that as a matter of law, ignorance of its legal obligations under the Safety Act is not a defense. RTDI admits that it manufactured vehicles for sale that do not comply and/or are not certified as complying with applicable FMVSS, in accordance with 49 U.S.C. § 30112. RTDI also failed to submit service bulletins and other communications to NHTSA, including its October 1, 2013 service bulletin, in accordance with 49 C.F.R. § 579.5, and did not report claims that a defect in its products caused a death, including the September 2015 crash, in accordance with 49 C.F.R. § 579.27. RTDI also did not notify NHTSA of the safety defect in its 57 Stretch Ducks in accordance with 49 C.F.R. Part 573, did not provide a remedy for axle defect without charge as directed by 49 U.S.C. § 30120 and admits that its communication to owners regarding a safety related defect in the 57 Stretch Duck axles did not fully comply with 49 C.F.R. § 577.5 (describing potential safety consequences of a defect).

B. Civil Penalty

26. RTDI agrees that the United States is entitled to a civil penalty of up to one million dollars (\$1,000,000) for the violations set forth above, subject to the provisions of this Consent Order and applicable law, including the Federal Claims Collection Act of 1966, as amended and codified at 31 U.S.C. § 3701, *et seq.* (hereinafter the “Debt Collection Act”) (the “Total Civil Penalty”).

27. To satisfy its obligations to pay a civil penalty, as authorized by 49 U.S.C. § 30165(b), RTDI shall pay the sum of four hundred eighty thousand dollars (\$480,000.00) in accordance with the instructions provided in Paragraph 28 below (the “Non-Deferred Amount”). RTDI shall use the remaining twenty thousand dollars (\$20,000) to ensure satisfactory completion, as determined by NHTSA, of certain performance obligations described below in Paragraphs 49 through 52 (the “Industry Outreach Amount”). In the event RTDI commits further violations of the Safety Act or this Consent Order during the term of this Consent Order,

RTDI may, in addition to any civil penalties that would otherwise accrue, be potentially obligated to pay additional sums totaling up to a maximum of five hundred thousand dollars (\$500,000), in accordance with the terms and conditions set forth below (the "Deferred Amount").

28. RTDI shall make a payment of two hundred forty thousand dollars (\$240,000) no later than May 14, 2017. The remaining two hundred forty thousand dollars (\$240,000) shall be due in three equal annual increments due not later than May 14, 2018, May 14, 2019, and May 14, 2020 respectively. At its option, RTDI may pay any remaining amounts prior to their respective due dates. RTDI expressly agrees that the obligation to pay the foregoing sums as specified above shall survive the termination of this Consent Order.

29. The Deferred Amount shall only become due and owing in accordance with and subject to the provisions set forth in Paragraph 30 below. NHTSA and RTDI expect that RTDI will comply fully with this Consent Order and the Safety Act and that the Deferred Amount accordingly will not become due and will be released at the termination of this Consent Order. In the event RTDI is required to pay any of the Deferred Amount, such payments will be made by electronic funds transfer, in accordance with the instructions provided by NHTSA, no later than thirty (30) calendar days following a determination that they are due and owing.

30. Should NHTSA receive notice or make its own determination that RTDI has materially violated the Safety Act, regulations thereunder, or the terms of this Consent Order, a lump-sum payment of fifty thousand dollars (\$50,000) of the Deferred Amount will become due and owing within thirty (30) calendar days, in accordance with instructions provided by NHTSA. Upon a second notice or determination by NHTSA that RTDI has materially violated the Safety Act, regulations thereunder, or the terms of this Consent Order, an additional lump-sum payment of one hundred fifty thousand dollars (\$150,000) of the Deferred Amount will become due and owing within thirty (30) calendar days, in accordance with instructions provided by NHTSA.

Upon a third notice or determination by NHTSA that RTDI has materially violated the Safety Act, regulations thereunder, or the terms of this Consent Order, the remaining three hundred thousand dollars (\$300,000) of the Deferred Amount will become due and owing within thirty (30) calendar days, in accordance with the instructions provided by NHTSA. RTDI will not be liable for the above amounts if RTDI demonstrates to NHTSA's reasonable satisfaction that it acted in good faith and exercised reasonable best efforts to comply.

31. If RTDI fails to make any of the payments set forth above, RTDI shall be in default of this Consent Order and the balance of the Total Civil Penalty shall become immediately due and owing. In such event: (i) RTDI agrees not to contest any collection action undertaken by NHTSA or the United States pursuant to the Debt 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) RTDI 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, RTDI shall pay the United States all reasonable costs of collection and enforcement, including attorneys' fees and expenses. NHTSA in its sole discretion may waive or reduce any stipulated penalties owing under this Consent Order.

C. Performance Obligations

32. This Consent Order requires RTDI to execute certain performance obligations, the objectives of which are to assist NHTSA in its mission to, among other things, carry out safety programs under the Safety Act and to improve RTDI's processes and procedures for making safety-related defects and noncompliance determinations, reporting defects and noncompliances to NHTSA in a timely manner, and complying with reporting requirements. These performance obligations will be satisfied through the activities set forth in Paragraphs 34 through 54 below.

33. NHTSA will consider any and all remedial actions that RTDI has undertaken prior to the execution of this Consent Order in determining whether RTDI has carried out the performance requirements of this Consent Order.

1. Remediating Past Noncompliance with the Safety Act

34. No later than 5 working days after the execution of this Consent Order, RTDI shall submit to NHTSA a copy of its October 1, 2013 service bulletin, a Part 573 Report for the safety-related defect, and a report of a claim alleging that a death resulted from a safety defect related to the September 2015 crash involving deaths as referenced in Paragraph 20 above.

35. No later than 30 calendar days after the execution of the Consent Order, RTDI will send owners of the 57 Stretch Ducks formal customer notification as directed by 49 C.F.R. Part 577 and shall notify the owners that they are entitled to reimbursement for costs incurred in having remedied the vehicles or, in the case of the Seattle licensor, that a remedy remains available and that it is free of charge.

36. RTDI has consulted with NHTSA regarding which FMVSS applied to the vehicles when they were manufactured. RTDI acknowledges that NHTSA does not “approve” or endorse manufacturer certifications and that the duty to determine which FMVSS apply to RTDI’s vehicles remains with RTDI. Not later than 60 calendar days after the appointment of the Consultant, as set forth below, RTDI will submit a FMVSS compliance plan to NHTSA. The plan will identify those FMVSS for which RTDI has made a good faith determination are applicable to the vehicles it has manufactured. For each such FMVSS, RTDI shall state when and how RTDI intends to bring the vehicles into compliance with a particular standard by following the statutory recall process or filing a petition for inconsequential noncompliance under 49 C.F.R. Part 556 or a petition for exemption under 49 C.F.R. Part 555. No later than 120 days after the submission of the compliance plan, RTDI will submit a confirmation to NHTSA affirming that all such vehicles owned or operated by RTDI or RTDI licensees obligated by

contract to perform repairs as directed by RTDI comply with all applicable FMVSS (other than those for which petitions for inconsequentiality or exemption have or are to be filed pursuant to RTDI's plan or are subject to ongoing design and/or engineering efforts which, subject to NHTSA's consent, require further extension of the 120 day deadline) and have been certified as such by the application of certification labels. If NHTSA should not grant any part of RTDI's inconsequentiality petition or exemption petition, the parties agree to consult in good faith with regard to determining next steps to address the issue.

37. RTDI shall submit all manufacturer identification information required by 49 C.F.R. Part 566 within 90 calendar days of the execution of this Consent Order.

38. RTDI shall submit VIN information required in 49 C.F.R. Part 565 within 90 calendar days of the execution of this Consent Order. If vehicles have been assigned VINs that are not in compliance with the requirements of 49 C.F.R. Part 565, RTDI will provide a detailed report to NHTSA no later than 90 days after the execution of this Consent Order, with each vehicle's assigned VIN and a description of why the VIN does not conform to the requirements of Part 565.

39. No later than 90 calendar days after the execution of this Consent Order, RTDI shall submit in accordance with 49 U.S.C. §30166(f) and 49 C.F.R. § 579.5 any notices, bulletins, and communications (collectively, "service bulletins") from the past five (5) years that would have been subject to 49 C.F.R. § 579.5, regardless of whether RTDI has already provided those service bulletins in response to NHTSA's Information Request. RTDI shall also include indexes for each document that was issued since October 1, 2012.

40. No later than 90 calendar days after the execution of this Consent Order, RTDI shall establish an early warning account with NHTSA. No later than 180 calendar days after execution of this Consent Order, RTDI shall submit any and all reports required by 49 C.F.R. § 579.27 for the five years preceding the aforementioned date of execution.

2. *Retention of Outside Consultant*

41. No later than 60 calendar days after the execution of this Consent Order, RTDI shall retain an outside consultant (“Consultant”) with experience and expertise in motor vehicle safety and the requirements of the Safety Act and regulations thereunder. The Consultant position shall be held by a separate individual from the individual(s) representing RTDI in connection with this Consent Order. The Consultant shall advise and assist RTDI in developing a Compliance Plan and the Training Plan as referenced in Paragraphs 46 and 47. The Consultant shall review for sufficiency technical service bulletins (“TSBs”), other communications, and all reports required under the terms of the Consent Order, that RTDI is required to submit to NHTSA and/or owners during the term of the Consent Order. The Consultant shall advise and assist RTDI on all aspects of RTDI’s compliance with the Safety Act and regulations thereunder.

42. Within 30 days calendar days after the execution of this Consent Order and prior to retaining the Consultant as referenced in Paragraph 41, RTDI shall submit the name and detailed resume of the individual whom RTDI intends to retain to NHTSA for approval, which will not be unreasonably withheld. RTDI agrees to ensure NHTSA has the ability to interview the individual prior to granting or denying approval. NHTSA will notify RTDI within 10 working days if it does not accept the proposed Consultant. RTDI will then have an additional 15 working days to submit a second proposed Consultant to NHTSA. The same procedures will apply to NHTSA’s review of the name and resume of RTDI’s subsequent proposed Consultant.

43. RTDI will report to NHTSA in writing when it has retained the Consultant, including the identity of the Consultant and the date upon which the individual was officially retained. RTDI shall retain the Consultant at its sole expense as needed during the term of the Consent Order.

3. General Performance Obligations

44. No later than 90 calendar days after the execution of this Consent Order, RTDI shall also submit a report to NHTSA, notifying the agency of all potential safety-related defects or noncompliances with applicable FMVSS that are currently under review by RTDI, for which notice has not previously been given to NHTSA.

45. No later than 30 calendar days after the execution of this Consent Order, RTDI shall perform an engineering analysis of the Stretch Duck axle to determine if the remedy included in the October 1, 2013 Service Bulletin is effective and report the results to NHTSA.

46. RTDI shall develop new written procedures for: (a) making safety-related defect and noncompliance determinations and notifying NHTSA of such safety-related defects or noncompliances with FMVSS in accordance with 49 C.F.R. Part 573; (b) notifying vehicle owners, licensees, and purchasers of safety-related defects and noncompliances in accordance with 49 C.F.R. Part 577; (c) reporting in compliance with those sections of 49 C.F.R. Part 579 applicable to RTDI; and (d) ensuring vehicles manufactured by RTDI in the future comply with applicable FMVSS and other statutory and regulatory requirements administered by NHTSA (collectively, "Compliance Plan"). If NHTSA reasonably determines that any changes to the written procedures are warranted, RTDI shall revise its written procedures to incorporate NHTSA's feedback. RTDI shall provide a revised copy of the Compliance Plan to NHTSA no later than 30 calendar days after receiving any such feedback from NHTSA. RTDI agrees that the Compliance Plan required in the Paragraph shall be publicly available.

47. RTDI shall train appropriate personnel on its Safety Act reporting requirements and Compliance Plan. RTDI's training shall be recurrent on at least an annual basis. No later than 120 calendar days after the execution date of this Consent Order, RTDI shall submit a report describing RTDI's training plan, including details on the subjects to be taught and individuals to

be trained (the "Training Plan"). NHTSA may, at its option, accept, reject or revise any part of the proposed Training Plan and may submit it back to RTDI for further revision, if necessary.

48. No later than 180 calendar days after the execution of this Consent Order, RTDI shall submit a report detailing its efforts to implement the Compliance Plan specified in Paragraph 46 and the Training Plan specified in Paragraph 47.

4. *The Industry Outreach Performance Obligations*

49. In addition to RTDI's performance obligations described above, this Consent Order requires RTDI to execute certain performance obligations directed at industry education and outreach, the objectives of which are to further the goals of the Safety Act, particularly with regard to educating manufacturers building vehicles using combinations of donor and new components to produce complete vehicles, including other amphibious vehicle manufacturers and small, independent manufacturers of heavy trucks, of their obligations under the Safety Act and regulations thereunder for reporting information to NHTSA, manufacturing vehicles that comply with applicable FMVSS, and making safety-related defect determinations. The industry outreach performance obligations will be satisfied through the activities as set forth in Paragraph 50 through 52 below.

50. The parties agree that RTDI will expend not less than \$20,000 in execution of the industry outreach. Not less than 120 days after execution of this Consent Order, RTDI shall provide NHTSA with a plan for industry and consumer outreach, which NHTSA, at its option, may accept, reject, or revise and submit it back to RTDI for further revision, if necessary. The proposed plan shall include the following and which are to be completed over the next year:

- a. Educate manufacturers building vehicles using combinations of donor and new components to produce complete vehicles, including other amphibious vehicle manufacturers and small, independent manufacturers of heavy trucks, on the importance of meeting their Safety Act obligations, such as early warning and

other reporting requirements under 49 C.F.R. Part 579 and recall requirements under 49 C.F.R. Parts 30118 through 30120 and 49 C.F.R. Parts 573 and 577.

- b. Develop Safety Act educational materials for distribution to manufacturers.
- c. Offer to assist other manufacturers and, if requested, help these manufacturers in developing their own safety outreach programs.
- d. Educate licensees and other manufacturers on the importance of reporting potential defects directly to NHTSA, through VOQ complaints and otherwise.
- e. Work with licensees to enhance recall effectiveness and mitigate the impact of recalls on consumers.

The outreach plan shall include metrics of success for the foregoing targeted performance obligations. The targeted performance obligations may be carried out, at RTDI's discretion, with the assistance and participation of other designers, engineers and manufacturers of amphibious vehicles, specialty vehicles, and tourism markets. At RTDI's discretion, the targeted performance obligations may also be carried out with the assistance and participation of industry trade associations. Any non-RTDI assistance and participation shall be done in a manner consistent with antitrust guidelines.

51. RTDI shall expend its best efforts to complete the targeted performance obligations not less than one year after NHTSA gives its approval of the industry outreach plan. No later than 360 calendar days after the execution of this Consent Order, RTDI will submit a report to NHTSA detailing the amount of dollars that RTDI actually expended during the prior year in furtherance of its obligations. In the event of a dispute as to whether RTDI has expended any part or all of twenty thousand dollars (\$20,000), NHTSA shall advise RTDI of such in writing, to which RTDI shall have 15 working days to respond.

52. RTDI is responsible for the satisfactory completion of the targeted performance obligations described above. Subject to the provisions for extending the term of this Consent

Order in Paragraph 57, if RTDI has reasonably achieved all of the targeted performance obligations on or before 365 calendar days after the execution date of this Consent Order, RTDI will be released from any and all obligations to pay the Industry Outreach Amount, or any remaining portion thereof, to NHTSA. If, however, RTDI has not reasonably achieved the requirements of the performance obligations set out above by the end of the term of the Consent Order, the balance of the Industry Outreach amount shall become immediately due and owing. Should NHTSA extend the term of this Consent Order as set forth in Paragraph 57, RTDI's responsibility for the satisfactory completion of the targeted performance obligations shall also be extended for the term of one year.

5. *Completion of Performance*

53. RTDI will meet with NHTSA one year after the execution of the Consent Order to review the current status of RTDI's obligations under the Consent Order and to discuss any open items. Neither RTDI nor NHTSA anticipate open items as of that juncture, with the exception of the payment of the additional non-deferred payments as set forth above.

54. If there are unfulfilled items as of that meeting, RTDI will provide a plan for completing those items within a reasonable time, which is to be determined in consultation with NHTSA.

D. Compliance

55. RTDI shall comply with its obligations under the Safety Act and regulations thereunder to take all actions necessary to comply with this Consent Order and to cooperate with NHTSA in carrying out the requirements of this Consent Order. RTDI's reasonable best efforts shall include, but shall not be limited to: (i) providing prompt notice to NHTSA in the event any requirement of this Consent Order cannot be met or timely met, and (ii) ensuring that 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.

56. RTDI shall provide written notice of each required submission under this Consent Order by electronic mail to NHTSA's Medium & Heavy Duty Vehicle Division Chief (currently Bruce York, Bruce.York@dot.gov), and with copies to NHTSA's Associate Administrator for Enforcement (currently Jeffrey Giuseppe, Jeffrey.Giuseppe@dot.gov) and NHTSA's Assistant Chief Counsel for Litigation and Enforcement (currently Kerry Kolodziej, Kerry.Kolodziej@dot.gov).

III. TERM OF CONSENT ORDER

57. Unless otherwise specified, the term of this Consent Order and RTDI's performance obligations thereunder is one year from the date of execution, provided, however, that the commitments in Paragraph 28 and Paragraphs 34 through 54 shall survive the term of this Consent Order until the Non-Deferred Amount is paid in full and the performance obligations with respect to the Deferred Amount and Industry Outreach Amount are reasonably satisfied. NHTSA may, at its option, extend the period for one year.

IV. AMENDMENT

58. 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. MISCELLANEOUS

59. 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.

60. Upon receipt of the Non-Deferred Amount set forth in Paragraphs 27 and 28, and NHTSA's determination that RTDI has reasonably achieved all of the performance obligations, set forth in Paragraphs 34 through 54, at a date agreed upon by the parties, but at no time before the first anniversary of this Consent Order, RTDI, including its current and former directors, officers, employees, agents, parents, subsidiaries, affiliates, successors, and assigns will be released from liability for civil penalties pursuant to 49 U.S.C. § 30165 in connection with any and all violations of RTDI's Safety Act reporting obligations, including those expressly identified in this Consent Order, from the inception of the Safety Act through the execution date of this Consent Order. Additionally, the Secretary of Transportation, by and through the Administrator of NHTSA, hereby waives any and all enforcement action or claims against RTDI (including its current and former directors, officers, employees, agents, parents, subsidiaries, affiliates, successors, and assigns) for civil penalties solely with respect to potential violations of the Safety Act or its implementing regulations that are disclosed pursuant to the Terms and Conditions of the Consent Order included in Paragraph 39, and subject to RTDI's satisfactory fulfillment of its other obligations under this Consent Order. Should RTDI fail to satisfactorily disclose the service bulletins, incidents involving death, or safety-related defects it is required to report under Paragraph 39, NHTSA may pursue any and all enforcement action or claims for civil penalties with respect to potential violations of the Safety Act or its implementing regulations that are disclosed.

61. This Consent Order does not release RTDI 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 liabilities under 49 U.S.C. §§ 30165 and 30166 as described in this Consent Order.

62. None of the specific reporting obligations described in this Consent Order relieve RTDI of its obligation to submit any other reports required by the Safety Act or its corresponding regulations.

63. The parties shall each bear their own respective attorneys' fees, costs, and expenses, except as provided in Paragraph 31 above.

64. This Consent Order shall be effective following its execution. Any breach of the obligations under this Consent Order may, at NHTSA's option, be immediately enforceable in any United States District Court. RTDI agrees that it will not raise any objection as to venue.

65. In the event of RTDI'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 payments and/or commencing litigation to enforce this Consent Order in any United States District Court.

66. 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.

67. RTDI 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 Paragraphs 27 and 28, was made to NHTSA, if applicable, and (ii) that RTDI has substantially complied with the terms of this Consent Order.

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

69. 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.

70. 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.

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

72. 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 are fully incorporated 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.

APPROVED AND SO ORDERED:

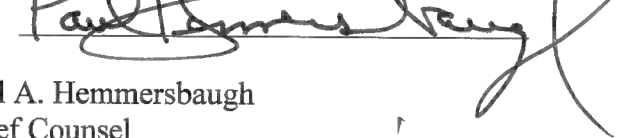
NATIONAL HIGHWAY TRAFFIC SAFETY
ADMINISTRATION,
U.S. DEPARTMENT OF TRANSPORTATION

Dated: November 15, 2016

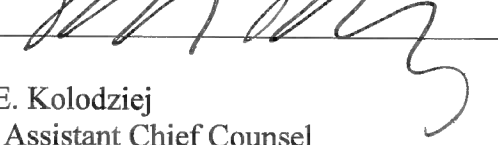
By: // ORIGINAL SIGNED BY //

Mark R. Rosekind, Ph.D.
Administrator

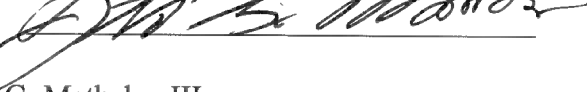
Dated: November 15, 2016

By: 
Paul A. Hemmersbaugh
Chief Counsel


Dated: November 15, 2016

By: 
Kerry E. Kolodziej
Acting Assistant Chief Counsel
for Litigation and Enforcement


Dated: November 15, 2016

By: 
Otto G. Matheke, III
Senior Trial Attorney

Dated: November 15, 2016

By: 
Sarah E. Sorg
Senior Trial Attorney

Dated: November 15, 2016

By: 
Jordan E. Stephens
Trial Attorney

AGREED:

RIDE THE DUCKS INTERNATIONAL, LLC

Dated: __, 2016 11 / 15 / 2016

By: 

Chris Herschend
President

Dated: __, 2016 11/15/2016

By: 

Robby Hultz
Managing Partner

Dated: __, 2016

By: _____

Jacqueline S. Glassman
King & Spalding
Counsel for Ride the Ducks International, LLC

AGREED:

RIDE THE DUCKS INTERNATIONAL, LLC

Dated: __, 2016

By: _____

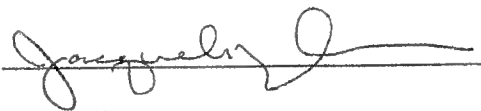
Chris Herschend
President

Dated: __, 2016

By: _____

Robby Hultz
Managing Partner

November
Dated: 15, 2016

By:  _____

Jacqueline S. Glassman
King & Spalding
Counsel for Ride the Ducks International, LLC