

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

1200 New Jersey Avenue SE  
Washington, DC 20590

**In re:** \_\_\_\_\_ )  
 )  
**Registered Importer** )  
**Newport International, Inc.** )  
\_\_\_\_\_ )

**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 (“DOT”). This Consent Order sets forth the requirements and performance obligations agreed to by Newport International, Inc. (“Newport”), 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 his 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. 49 C.F.R. § 501.5(a).

2. Under the Safety Act, motor vehicles that do not comply and that the fabricating manufacturers have not certified as complying with all applicable Federal Motor Vehicle Safety Standards (“FMVSS”) may not be imported into the United States. 49 U.S.C. § 30112(a). There are limited exceptions to this general prohibition.

3. One of the exceptions is that a nonconforming vehicle may be imported under the registered importer program. Under this program, a vehicle may be imported by a Registered Importer (“RI”) if NHTSA has determined that the particular make, model, and model year of the vehicle is capable of being modified to comply with all applicable FMVSS. This is referred to as import eligibility. *See* 49 U.S.C. § 30141(a); 49 C.F.R. §§ 591.5(f), 593.8(a).

4. After a vehicle enters the United States under the RI program, the RI must modify the nonconforming vehicle to comply with all applicable FMVSS and remedy all open safety recalls. *See* 49 U.S.C. § 30146(a); 49 C.F.R. § 592.6(c).

5. Following completion of all conformance modifications and recall repairs, the RI must permanently attach to the vehicle a certification label that identifies the RI, certifies that the vehicle complies with all applicable FMVSS, and otherwise complies with 49 C.F.R. § 567.4. *See* 49 U.S.C. §§ 30115, 30146(a)(3); 49 C.F.R. § 592.6(c).

6. The RI must also submit, within 120 days after importing the vehicle, a “conformity package” to NHTSA that includes a certification of conformance signed and submitted by a principal of the RI, certifying that the vehicle has been modified to comply with all applicable FMVSS, and that the vehicle is not subject to any safety recalls or that all noncompliances or defects that are the subject of safety recalls have been remedied. *See* 49 C.F.R. § 592.6(d)(1), (3), (5).

7. After submitting the conformity package, the RI must maintain possession of the vehicle until either NHTSA releases the conformance bond for the vehicle or 30 days have elapsed from the time NHTSA receives the certification of conformance. *See* 49 U.S.C. § 30146(a)(1); 49 C.F.R. §§ 592.6(e), 592.8(a).

8. The regulations applicable to RIs specify that, during the 30-day waiting period, the RI may not, among other things, sell or offer the vehicle for sale, or release custody of the vehicle for sale or other unauthorized purposes. *See* 49 C.F.R. § 592.6(e)(2),(5).

9. The Safety Act and regulations thereunder also specify the basis and process for suspensions or revocations of the registration of a RI. *See* 49 U.S.C. § 30141(c)(4); 49 C.F.R. § 592.7. NHTSA is authorized to “revoke or suspend a registration” if a RI fails to comply with the requirements of specific statutory and regulatory obligations, including 49 C.F.R. Part 592. *See* 49 C.F.R. § 592.7(b)(1). If NHTSA “has reason to believe a Registered Importer has violated one or more of [these requirements] and that suspension or revocation would be an appropriate sanction under the circumstances,” NHTSA is required to “notify the Registered Importer in writing of the facts giving rise to the allegation of the violation and the proposed length of a suspension, if applicable, or revocation.” 49 C.F.R. § 592.7(b)(2). The notice must also provide “the Registered Importer an opportunity to present data, views, and arguments, in writing and/or in person, within 30 days of the date of the notice, as to whether the violation occurred, why the registration ought not to be suspended or revoked, or whether the suspension should be shorter than proposed.” *Id.*

10. Newport is a RI and has been a RI since 2016.

11. A NHTSA Inspector inspected the Newport facilities in Arlington, Texas on multiple occasions between October 15, 2018 and November 5, 2018. During and following the inspections, NHTSA obtained information from which it preliminarily decided that Newport had violated certain statutes and regulations applicable to the RI program and that the suspension of Newport’s registration for 270 days would be an appropriate sanction under the circumstances.

12. In a July 6, 2020 Notice to Show Cause Why the Registration of Newport Should Not Be Suspended for 270 Days (“Notice to Show Cause”), NHTSA provided Newport with written notice of the alleged violations; the proposed suspension; and its opportunity to present data, views, and arguments as to whether the violations occurred, why its registration ought not to be suspended, or whether the suspension should be shorter than proposed.

13. The Notice to Show Cause alleged the following violations:

a. Newport falsely certified compliance with the FMVSS by applying a certification label on an imported vehicle prior to completion of all conformance modifications and repairs in violation of 49 U.S.C. § 30115 and 49 C.F.R. § 592.6(c) (one vehicle);

b. Newport submitted improperly executed certifications of conformance in violation of 49 C.F.R. § 592.6(d)(3) (one vehicle); and

c. Newport sold or offered imported vehicles for sale (or released custody of the vehicles to another person for purposes of selling the vehicles) prior to expiration of the waiting period in violation of 49 C.F.R. § 592.6(e)(2), (5) (twelve vehicles).

14. Newport submitted, through its representative, a written response to the Notice to Show Cause on August 21, 2020. At Newport’s request, NHTSA met with Newport and its representative on August 28, 2020. In its written response and during its meeting with NHTSA, Newport disputed certain violations alleged in the Notice to Show Cause and presented arguments as to why its registration should not be suspended or why its registration should not be suspended for the term proposed in the Notice to Show Cause. To administratively resolve these issues, NHTSA and Newport have mutually agreed to this Consent Order.

15. NHTSA issues this Consent Order pursuant to its authority under the Safety Act, 49 U.S.C. Chapter 301, 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 nonconforming motor vehicles are lawfully imported, modified to conform, and properly certified as conforming, 49 U.S.C. §§ 30141, 30146, and to require reports or answers to specific questions, 49 U.S.C. § 30166(e).

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

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

### **Suspension of Registered Importer Registration**

16. Subject to the terms of the remainder of this Paragraph, the registered importer registration of Newport is suspended for 180 calendar days (the “Total Suspension”).

a. Of the Total Suspension, a suspension of 30 calendar days shall be imposed, beginning on the 30th calendar day after the Effective Date of this Consent Order (the “Imposed Suspension”); and

b. Of the Total Suspension, 150 calendar days shall be deferred and held in abeyance by NHTSA during the term of this Consent Order (the “Abeyance Suspension”) pending Newport’s satisfactory completion, as reasonably determined by NHTSA, of the requirements of this Consent Order and compliance with the Safety Act and regulations thereunder during the term of this Consent Order. If Newport commits material violations of this Consent Order, the Safety Act, or regulations thereunder during the term of this Consent Order, NHTSA may impose the Abeyance Suspension, or any part of it, in accordance with Paragraph 25. Newport may also be subject to additional

enforcement action, including but not limited to an additional suspension beyond the Abeyance Suspension for any violations of the Safety Act or regulations thereunder during the term of this Consent Order.

17. During the term of the Imposed Suspension and any part of the Abeyance Suspension that may be imposed on Newport, Newport shall be subject to 49 C.F.R. § 592.7(d) (“Effect of suspension or revocation”) and 49 C.F.R. § 592.7(e) (“Continuing obligations”).

**Civil Penalty**

18. Subject to the terms in the remainder of this Paragraph, Newport shall pay a civil penalty in the sum of thirty thousand dollars (\$30,000) (the “Civil Penalty”). One-third of the amount of the Civil Penalty, ten thousand dollars (\$10,000), shall be paid within 15 calendar days of the Effective Date of this Consent Order in accordance with instructions provided by NHTSA. The remaining amount of twenty thousand dollars (\$20,000) will be deferred and held in abeyance by NHTSA pending the satisfactory completion by Newport, as reasonably determined by NHTSA, of the requirements of this Consent Order and compliance with the Safety Act and the regulations thereunder during the term of this Consent Order (the “Deferred Penalty”). In the event that Newport commits material violations of this Consent Order, the Safety Act, or regulations thereunder during the term of this Consent Order, Newport may be obligated to pay the Deferred Penalty, or any part of it, in accordance with Paragraph 24. Newport may also be subject to additional enforcement action, including but not limited to additional civil penalties beyond the Civil Penalty for any violations of the Safety Act and regulations thereunder during the term of this Consent Order.

19. Pursuant to the terms of this Consent Order, Newport admits that it owes a debt in the amount of thirty thousand dollars (\$30,000), as provided for in Paragraph 18, 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”).

20. If Newport fails to timely make payment of any amount of the Civil Penalty that becomes due under the terms of this Consent Order, Newport shall be in default of this Consent Order and the remaining balance of the Civil Penalty shall become due immediately. In that event: (i) Newport 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) Newport 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, Newport shall pay the United States all reasonable costs of collection and enforcement, including attorneys’ fees and expenses. This provision does not preclude Newport from contesting the imposition of the Deferred Penalty pursuant to Paragraph 24.

21. Upon expiration of the Consent Order (including any extension), Newport, 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 and from any further suspension or a revocation pursuant to 49 C.F.R. § 592.7 in connection with any and all violations of the Safety Act and regulations thereunder alleged in the Notice to Show Cause.

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

23. This Consent Order does not release Newport 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 and the suspension under 49 C.F.R. § 592.7 described in Paragraph 21.

**Imposition of Abeyance Suspension and Deferred Penalty**

24. Should NHTSA reasonably believe that Newport has materially violated the Safety Act, the regulations thereunder, or the terms of this Consent Order, NHTSA shall provide written notice to Newport, including a statement regarding the Abeyance Suspension (or portion thereof) that will be imposed and/or Deferred Penalty (or portion thereof) that will be due if NHTSA makes a determination in accordance with this Paragraph. Newport will have thirty (30) calendar days or such other time as mutually agreed by NHTSA and Newport, from the date on which the issue was communicated to Newport by NHTSA (“Evaluation Period”) to respond to the notice in writing. Newport’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 Newport has materially violated the Safety Act, regulations thereunder, or the terms of this Consent Order, then Newport shall be subject to the Abeyance Suspension (or portion thereof) determined by NHTSA, effective immediately, and/or liable for the Deferred Penalty determined by NHTSA, to be paid in accordance with instructions from NHTSA within thirty (30) calendar days of such determination.

25. Newport shall only be subject to the Abeyance Suspension or liable for payment of the Deferred Penalty in accordance with the conditions in Paragraph 24. Newport will be deemed released from any portion of the Abeyance Suspension and/or liability for any Deferred Penalty that has not been imposed pursuant to Paragraph 24 as of the expiration of this Consent Order.



## **Performance Obligations**

### **External Consultant**

26. Newport will retain an external consultant (the “Consultant”), at its sole cost and expense, during the term of this Consent Order. Newport has selected a Consultant which NHTSA has approved. Newport agrees that there is no attorney-client privilege between Newport and the Consultant during the term of this Consent Order and waives any argument to the contrary. Newport agrees to cooperate with the Consultant to ensure the Consultant has access to the information that is reasonably necessary to carry out its duties under the Consent Order.

### **Individual Vehicle Records**

27. Newport shall create and retain individual vehicle records (“IVR”) for each nonconforming vehicle it imports during the term of this Consent Order. The IVR shall be maintained in an electronic format that allows information and records relating to each vehicle to be identified and retrieved by reference to the vehicle’s Vehicle Identification Number (“VIN”). The IVR shall include, at a minimum, the following information for each vehicle:

a. Dates on which Newport purchased, took possession of, affixed a certification label to, and sold or otherwise released custody of the vehicle; the date on which NHTSA received Newport’s certification under 49 C.F.R. § 592.6(d) and the calculated date thirty (30) days thereafter; the date(s) on which the vehicle entered and the date(s) on which the vehicle left any facility identified by Newport for “storage” under 49 C.F.R. §§ 592.5(a)(5)(i), 592.6(l); and the dates on which Newport applied for, obtained, assigned, or was assigned any title for the vehicle;

b. All documents relating to the purchase, importation, transportation, titling, and sale of the vehicle by or to Newport;

c. Information and photographs demonstrating the conformance and/or nonconformance of each vehicle or associated item of equipment both after and prior to any modifications are performed with respect to FMVSS No. 101, *Controls and displays*; FMVSS No. 138, *Tire pressure monitoring systems*; FMVSS No. 139, *New pneumatic radial tires for light vehicles*; and FMVSS No. 208, *Occupant crash protection*; see 49 C.F.R. §§ 571.101, 571.138, 571.208; and

d. Information describing how (the manner), stating when (the calendar date) and where (physical location), and identifying by whom (the individual) each conformance modification was completed.

Each photograph retained by Newport as IVR shall be in a digital format that includes metadata establishing the date and the location where the photograph was taken.

28. Upon the reasonable written request from NHTSA referencing this Paragraph, Newport shall provide NHTSA with the IVR for any vehicle(s) identified in the request by VIN. Newport shall provide NHTSA with the requested IVR for each such vehicle within three (3) business days in an electronic format. The response by Newport to any such request specifically referencing this Paragraph constitutes a required report under 49 U.S.C. § 30166(e) and a response to NHTSA request under 49 C.F.R. § 592.6(o). For the sake of clarity, Newport acknowledges that written requests from NHTSA for the IVR for up to three vehicles per month are presumptively reasonable.

### **Written Procedures and Employee Training**

29. Newport, with assistance from the Consultant, shall develop written procedures and employee training materials to improve its compliance with the Safety Act and regulations thereunder. The written procedures and employee training materials shall separately incorporate and address each of the duties of a RI specified in 49 C.F.R. § 592.6 and the requirements for IVR specified in Paragraph 28.

30. Newport shall submit the written procedures and employee training materials required under Paragraph 29 to the Consultant and obtain written confirmation of the Consultant's approval of the written procedures and employee training materials.

31. Newport shall submit the written procedures and employee training materials required under Paragraph 30 and the written confirmation of the Consultant's approval required under Paragraph 35 to NHTSA within ninety (90) calendar days after the execution of this Consent Order, together with a proposed training schedule that includes both intervals and required attendees (identified by employee position and/or responsibilities) at training sessions. The training schedule shall include mandatory annual training for all employees whose responsibilities include any activity governed by the Safety Act and regulations ("employees with responsibility for NHTSA compliance") and mandatory on-boarding training within a reasonable time-period for new employees with responsibility for NHTSA compliance. Newport shall incorporate any reasonable feedback provided by NHTSA to the written procedures and employee training materials and adopt the written procedures and training schedule as mandatory company policies within thirty (30) calendar days after it submits the written procedures, employee training materials, and training schedule to NHTSA under this Paragraph. These policies shall not be changed by Newport during the term of this Consent Order without prior

notice and opportunity for feedback from NHTSA through the quarterly meetings described in Paragraph 33.

### **Consultant Audits**

32. Beginning sixty (60) calendar days after the Effective Date of this Consent Order, the Consultant shall perform, and Newport shall submit to and fully cooperate with, an audit of ten (10) vehicles (the “Audit Vehicles”) during each 60-day interval: 1) the period from 60 to 119 calendar days following the Effective Date of this Consent Order; 2) the period from 120 to 179 calendar days following the Effective Date of this Consent Order; 3) the period from 180 to 239 calendar days following the Effective Date of this Consent Order; and 4) the period 240 to 299 calendar days following the Effective Date of the Consent Order (collectively, the “Audit Periods”). If the term of this Consent Order is extended, the audits required under this Paragraph and the Audit Periods shall continue uninterrupted in 60-day intervals until sixty (60) calendar days prior to the expiration of the Consent Order. The Audit Vehicles shall be randomly chosen by the Consultant from a list that Newport shall provide to the Consultant on the first day of each Audit Period of all vehicles for which Newport has submitted a certification of conformance to NHTSA within the prior ninety (90) days. At a minimum, the Consultant shall audit Newport’s compliance, with respect to each of the Audit Vehicles, with each of the requirements and duties set forth in 49 C.F.R. § 592.6 and the requirements relating to IVR set forth in Paragraph 28 of this Consent Order.

33. Within thirty (30) calendar days following each of the Audit Periods described in Paragraph 32, the Consultant shall provide a written audit report to NHTSA and Newport that identifies the Audit Vehicles by make, model, and VIN, confirms that each of the Audit Vehicles was subject to audit in a manner consistent with the requirements of Paragraph 32, and separately

describes each noncompliance (if any) with each of the requirements and duties set forth in 49 C.F.R. § 592.6 or the requirements relating to IVR set forth in Paragraph 28 of this Consent Order with respect to each of the Audit Vehicles. If the Consultant identifies any such noncompliances, the report for that Audit Period shall include the Consultant's conclusion regarding the underlying cause of each such noncompliance and the Consultant's reasonable recommendations regarding process changes and controls to mitigate the risk of any similar future noncompliance.

34. Newport shall adopt and integrate any reasonable recommendations made by the Consultant in an audit report under Paragraph 33 as mandatory corporate policy (for all Newport locations) or take other appropriate action to implement the recommendations as appropriate within thirty (30) calendar days after receiving the audit report.

#### **Quarterly Meetings**

35. Newport and its Consultant shall meet with NHTSA, either virtually or in person, on at least a quarterly basis during the term of this Consent Order, and will include in those meetings a discussion of its progress on the Performance Obligations specified in this Consent Order, the results of the audits performed under Paragraph 32, and any issues identified by NHTSA relating to the compliance of Newport with the terms of this Consent Order, the Safety Act, or the regulations thereunder. The first of these quarterly meetings shall take place within ninety (90) calendar days after the Effective Date of this Consent Order.

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

36. Unless otherwise specified, the term of this Consent Order is one year from the Effective Date; provided, however, that NHTSA may extend the term of this Consent Order for an additional six months if NHTSA reasonably finds that an extension is warranted.

#### **IV. AMENDMENT**

37. 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.

38. The parties may agree, without need for an amendment as specified in Paragraph 37, to reasonable changes to specified report or meeting dates, schedules, or meeting cadences.

#### **V. MISCELLANEOUS**

39. Newport 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.

40. 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.

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

42. The parties shall each bear their own respective attorneys' fees, costs, and expenses, except as provided in Paragraph 20.

43. 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. Newport agrees that it will not raise any objection as to venue.

44. In the event of a breach of, or failure to perform, any term of this Consent Order by Newport, 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.

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

46. 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.

47. In any legal action between the parties concerning the enforceability of this Consent Order, Newport expressly waives any and all defenses and agrees not to plead, argue, or otherwise raise any defenses other than that Newport has substantially complied with the terms of this Consent Order.

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

49. 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.

50. 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.

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

52. 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: November 9, 2021

By: \_\_\_\_\_  
Steven S. Cliff, Ph.D.  
Deputy Administrator

Dated: November 9, 2021

By: *Ann Carlson*  
Ann Carlson  
Chief Counsel

Dated: November 9, 2021

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

Dated: November 9, 2021

By: \_\_\_\_\_  
Jeffrey A. Eyres  
Senior Trial Attorney

Dated: November 9, 2021

By: \_\_\_\_\_  
Alexandra Cohen  
Trial Attorney

AGREED:

Dated: November 3, 2021

By:

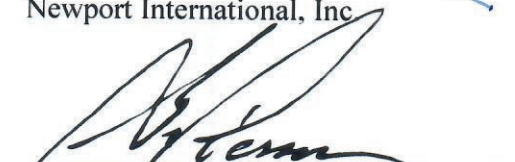


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Nehad Dwikat  
Newport International, Inc

Dated: November 3, 2021

By:



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Grey Pierson  
Counsel for Newport International, Inc.