

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

1200 New Jersey Avenue SE
Washington, DC 20590

In re:)
)
Zipcar, Inc.)
AQ18-001)

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 Zipcar, Inc. (“Zipcar”), 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 the authorities under the Safety Act to the NHTSA Administrator. 49 C.F.R. §§ 1.95(a), 501.4.

2. The Safety Act generally prohibits a rental company from renting motor vehicles that contain a safety defect or do not comply with an applicable motor vehicle safety standard about which notice has been given under 49 U.S.C. § 30118(c) unless the safety defect or noncompliance is remedied before rental. *See* 49 U.S.C. § 30120(i).

3. If the recall remedy is not immediately available and the recall notice specifies actions to temporarily alter the vehicle that eliminate the safety risk posed by the defect or noncompliance, then a rental company may rent the vehicle after causing the specified actions to be performed. *Id.* § 30120(i)(3)(C). Once the recall remedy becomes available to the rental company, the rental company may not rent the vehicle until it has been remedied. *Id.*

4. A person who violates 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 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)(1). The maximum penalty for each violation was \$21,000 from March 17, 2016, until November 26, 2018, at which point the maximum penalty for each violation increased to \$21,780.¹ This maximum penalty continued and continues to be adjusted upward annually. *See* 49 C.F.R. § 578.6(a)(1).

5. Zipcar is a rental company within the meaning of the Safety Act, *see* 49 U.S.C. § 30102(i)(2), and a person within the meaning of 49 U.S.C. § 30165.

6. On April 2, 2018, NHTSA opened an audit query investigation (AQ18-001) to evaluate information suggesting Zipcar rented at least one vehicle with an open recall and determine whether Zipcar violated the Safety Act by renting motor vehicles subject to a recall without having been remedied.

7. Based on NHTSA's inquiry, including information provided by Zipcar, NHTSA asserted that, during 2017 and 2018, Zipcar rented certain unremedied recalled vehicles in violation of the Safety Act. Solely for the purpose of these proceedings, Zipcar does not contest NHTSA's assertion, and NHTSA and Zipcar have mutually agreed to this Consent Order in order to administratively resolve the matter.

8. NHTSA issues this Consent Order pursuant to its authority under the Safety Act, 49 U.S.C. Chapter 301, 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 require any person to file reports or answers to specific questions, 49 U.S.C. § 30166(e), and to ensure that recalled vehicles are remedied before they are rented, 49 U.S.C. § 30120(i).

¹ *See* 81 FED. REG. 15,413 (Mar. 22, 2016); 83 FED. REG. 60,732 (Nov. 27, 2018).

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

II. TERMS AND CONDITIONS OF CONSENT ORDER

Civil Penalty

9. Subject to the terms in the remainder of this Paragraph, Zipcar shall pay a civil penalty in the sum of three-hundred thousand dollars (\$300,000) (“Total Civil Penalty”).

a. Of the Total Civil Penalty, the sum of one-hundred and fifty thousand dollars (\$150,000) (“Non-Deferred Amount”) shall be paid within thirty (30) calendar days after the Effective Date of this Consent Order in accordance with instructions provided by NHTSA.

b. Of the Total Civil Penalty, the sum of one-hundred and fifty thousand dollars (\$150,000) (“Abeyance Amount”) shall be deferred and held in abeyance by NHTSA pending Zipcar’s satisfactory completion, as reasonably determined by NHTSA, of the requirements of this Consent Order. In the event that Zipcar commits material violations of the Safety Act, regulations thereunder, or this Consent Order, during the term of this Consent Order, Zipcar may be obligated to pay the Abeyance Amount or a portion thereof in accordance with Paragraph 11 below, and may be liable for additional civil penalties beyond the Abeyance Amount for those violations of the Safety Act and regulations thereunder.

10. Pursuant to this agreement, Zipcar admits that it owes a debt in the amount of three-hundred thousand dollars (\$300,000), as provided for in Paragraph 9, 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”).

11. If Zipcar fails to make the payment of the Non-Deferred Amount as set forth in Paragraph 9(a) 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, Zipcar 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) Zipcar 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) Zipcar 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, Zipcar shall pay the United States all reasonable costs of collection and enforcement, including attorneys' fees and expenses. This provision does not preclude Zipcar from contesting the imposition of any of the Abeyance Amount in accordance with Paragraph 15 below.

12. Upon receipt of the Non-Deferred Amount and upon expiration of the Consent Order (including any extension), Zipcar, 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 AQ18-001 from the inception of the Safety Act through the Effective Date of this Consent Order.

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

14. This Consent Order does not release Zipcar 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 12.

Abeyance Amount

15. Should NHTSA reasonably believe Zipcar has materially violated the Safety Act, regulations thereunder, or the terms of this Consent Order during the term of this Consent Order, NHTSA shall provide written notice of the alleged violation(s) to Zipcar, including a statement regarding the Abeyance Amount or the portion thereof that will be due if NHTSA makes a final determination in accordance with this Paragraph. Zipcar will have thirty (30) calendar days, or such other time as mutually agreed by NHTSA and Zipcar, from the date on which the issue was communicated to Zipcar by NHTSA (“Evaluation Period”) to respond to the notice in writing. Zipcar’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 subsequently and reasonably makes a final determination in writing that Zipcar has materially violated the Safety Act, regulations thereunder, or the terms of this Consent Order during the term of this Consent Order, then Zipcar will be liable for the Abeyance Amount or the portion thereof determined by NHTSA. The Abeyance Amount or portion thereof will be paid by Zipcar in accordance with instructions from NHTSA within thirty (30) calendar days after NHTSA’s determination.

16. Zipcar shall only be liable for payment of the Abeyance Amount or portion thereof in accordance with the conditions in Paragraph 15. Zipcar will be deemed released from liability for any portion of the Abeyance Amount remaining at the expiration of this Consent Order.

Representations

17. Zipcar represents that it has made policy and process improvements since 2018, including by implementing a centralized real-time automated documentation system for recalled

vehicles and making such vehicles unavailable for new rental reservations, addressing the recall remedy status of vehicles and release of vehicles post-remedy, and increasing the frequency of communications between the Zipcar home office and field offices regarding the status of grounded vehicles and recall repairs.

18. Zipcar represents, in good faith, that it is not presently aware of any vehicle rental in which the applicable requirements of 49 U.S.C. § 30120(i) were not followed since it implemented enhancements to its recall policies and processes in 2018, other than as may have occurred with respect to 2015-2017 model year Ford Transit vehicles subject to NHTSA Recall No. 17V-408 (which have since received required recall remedies).

Written Recall Compliance Procedures

19. Zipcar will update its written recall compliance procedures to explain requirements for compliance with the Safety Act and the regulations thereunder, and will submit such procedures to its outside counsel for review. Zipcar will submit the written recall compliance procedures to NHTSA for review within ninety (90) calendar days after the Effective Date of this Consent Order. Zipcar will incorporate any reasonable feedback from NHTSA and thereafter submit its final written recall compliance procedures within thirty (30) calendar days after the date it receives feedback from NHTSA.

Training Materials

20. Zipcar will update its employee training materials about its compliance obligations related to the Safety Act and the regulations thereunder. Such training materials shall reflect the final written recall compliance procedures required by Paragraph 19.

21. Within sixty (60) calendar days after NHTSA's receipt of Zipcar's final written recall compliance procedures, Zipcar shall submit to NHTSA for review the employee training materials required under Paragraph 20, together with a proposed training schedule that includes

both intervals and required attendees (identified by employee position and/or responsibilities) at training sessions. Zipcar will incorporate any reasonable feedback from NHTSA and thereafter submit its final employee training materials within thirty (30) calendar days after the date it receives feedback from NHTSA.

Audit Report

22. Zipcar shall submit a written report to NHTSA one-hundred and eighty (180) calendar days after the Effective Date of this Consent Order that includes an audit of all Zipcar vehicles with an open recall at any time within one-hundred and fifty (150) calendar days after the Effective Date of this Consent Order. For the purpose of this audit report, a recall is considered to be an open recall as of the date Zipcar receives an owner notification letter from the vehicle manufacturer.

23. If the Consent Order is extended for one year, Zipcar shall submit a supplemental report to NHTSA one-hundred and eighty (180) calendar days after the date this Consent Order is extended that includes a second audit of all Zipcar vehicles with an open recall at any time between one-hundred and fifty (150) calendar days after the Effective Date of this Consent Order and one-hundred and fifty (150) calendar days after the date this Consent Order is extended. For the purpose of this audit report, a recall is considered to be an open recall as of the date Zipcar receives an owner notification letter from the vehicle manufacturer.

Quarterly Meetings

24. During the term of this Consent Order, Zipcar shall meet with NHTSA, either virtually or in person, every ninety (90) calendar days after the Effective Date of this Consent Order to discuss the progress of the requirements and performance obligations of this Consent Order and issues or concerns from either party. If one or more such meetings fails to occur due to circumstances beyond Zipcar's control, the meeting omission shall not be deemed a violation of

this Consent Order by Zipcar.

III. TERM OF THE CONSENT ORDER

25. Unless otherwise specified, the term of the Consent Order is one year from the Effective Date of this Consent Order; provided, however, that NHTSA may extend the term of this Consent Order for an additional year if NHTSA reasonably finds that an extension is warranted. If NHTSA finds that an extension of the original term of one year is warranted, it shall provide Zipcar with written notice of the extension and the factual basis for its determination that an extension is warranted at least thirty (30) days prior to the original expiration of this Consent Order.

IV. AMENDMENT

26. 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.

27. The parties may agree, without need for an amendment as specified in Paragraph 26, to reasonable changes to specified report or meeting dates, schedules, or meeting cadences.

V. MISCELLANEOUS

28. Zipcar shall use its reasonable 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.

29. 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.

30. The parties shall each bear their own respective attorneys' fees, costs, and expenses, except as provided in Paragraph 11 above.

31. 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. Zipcar agrees that it will not raise any objection as to venue.

32. In the event of Zipcar’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.

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

34. 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.

35. In any legal action between the parties concerning the enforceability of this Consent Order, Zipcar 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 9(a) was made, if applicable, and/or (ii) that Zipcar has substantially complied with the Safety Act, regulations thereunder, and the terms of this Consent Order during the term of this Consent Order.

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

37. 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.

38. 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.

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

40. 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 herein, 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 ORDERED:

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

Dated: October 16, 2023

By: ANN ELIZABETH CARLSON Digitally signed by ANN ELIZABETH CARLSON
Date: 2023.10.16 11:58:05 -04'00'

Ann Carlson
Acting Administrator

Dated: October 16, 2023

By: K JOHN DONALDSON Digitally signed by K JOHN DONALDSON
Date: 2023.10.16 10:35:09 -04'00'

John Donaldson
Acting Chief Counsel

Dated: October 16, 2023

By: KERRY ELIZABETH KOLODZIEJ Digitally signed by KERRY ELIZABETH KOLODZIEJ
Date: 2023.10.16 09:53:01 -04'00'

Kerry Kolodziej
Assistant Chief Counsel for
Litigation and Enforcement

Dated: October 16, 2023

By: THOMAS PAUL HEALY Digitally signed by THOMAS PAUL HEALY
Date: 2023.10.16 09:50:49 -04'00'

Thomas Healy
Senior Trial Attorney

Dated: October 16, 2023

By: SEAN ROBERT WARD Digitally signed by SEAN ROBERT WARD
Date: 2023.10.16 08:46:00 -04'00'

Sean Ward
Trial Attorney

AGREED:

ZIPCAR, INC.

Dated: October 12, 2023

By:



Andrew Boucher
General Counsel
Zipcar, Inc.

Dated: October 12, 2023

By:



Theodore Kornobis
K&L Gates LLP
Counsel to Zipcar, Inc.