UNITED STATES DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
1200 New Jersey Avenue SE
Washington, DC 20590

In re:	)
	)
AQ14-004, Honda TREAD Violations	)
	)

CONSENT ORDER

This Consent Order is based on the agreement of the National Highway Traffic Safety Administration ("NHTSA"), an operating component of the U.S. Department of Transportation, and American Honda Motor Company, Inc., and all its parent and subsidiary companies (collectively, "Honda"), to resolve claims associated with Honda's violations of the early warning reporting requirements, 49 C.F.R. Part 579, Subpart C, under the terms and conditions incorporated herein.

I. NATURE OF THE ACTION

1. The National Traffic and Motor Vehicle Safety Act of 1966 as amended and recodified (the "Safety Act"), 49 U.S.C. § 30101, *et seq.*, provides for regulation of motor vehicles and motor vehicle equipment by the Secretary of Transportation. 49 U.S.C. § 30111. The Secretary has delegated his authorities under the Safety Act to the NHTSA Administrator, 49 C.F.R. §§ 1.95(a), 501.2(a)(1). This delegation includes the authority to compromise the amount of civil penalties for violations of the Safety Act and regulations prescribed thereunder. *See* 49 U.S.C. § 30165(b); 49 C.F.R. § 1.95.

2. As required by the Transportation Recall Enhancement, Accountability, and Documentation ("TREAD") Act, NHTSA established early warning reporting ("EWR") requirements for vehicle manufacturers. 49 U.S.C. § 30166(m); 49 C.F.R. Part 579, Subpart C.

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

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

5. American Honda Motor Company, Inc. is a subsidiary of Honda Motor Company, Ltd.

6. Honda violated the TREAD Act reporting requirements by failing to submit all early warning information as required in 49 C.F.R. § 579.21.

A. Honda failed to report certain death and injury incidents that were required to be reported to NHTSA under 49 C.F.R. § 579.21(b). Specifically, Honda acknowledges that it did not report these death and injury incidents because: (1) Honda failed to properly enter the date that a written claim or reportable notice was received into one of its databases used to collect EWR information and, as a result, the incident was not reported to NHTSA; and (2) Honda's EWR system failed to report certain incidents due to coding problems. Additionally, Honda states that it interpreted a "notice received by a manufacturer" in § 579.21(b) of the EWR regulations to exclude certain third-party documents related to deaths and injuries.

B. Honda failed to duly report customer satisfaction campaigns, special warranty extensions, and warranty claims that involved good will, third-party vehicle service contracts, or Honda-certified, pre-owned vehicles, as required by NHTSA's EWR regulations. *See* 49 C.F.R. § 579.21(c). These violations date back to the inception of the EWR reporting requirements in 2003.

WHEREAS, it is the mutual desire of NHTSA and Honda to resolve claims associated with Honda's violations of the early warning reporting requirements, 49 C.F.R. Part 579, Subpart C, enacted under the TREAD Act, without the need for further action, and to avoid the legal expenses and other costs of a protracted dispute and potential litigation, as well as to establish remedial measures with the purpose of mitigating risk and deterring future violations;

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

II. TERMS AND CONDITIONS OF CONSENT ORDER

7. With respect to Paragraph No. 6.A, Honda admits that it violated 49 C.F.R. Part 579, Subpart C by failing to submit early warning reports that comply with the requirements of 49 C.F.R. § 579.21(b).

8. Honda acknowledges that the databases and the tools that it uses to draw information for its EWR reports contain systemic failures that led to Honda's failure to report incidents involving death or injury. Further, while the complete scope of the non-reporting is the subject of an ongoing assessment that shall be reported to NHTSA, Honda acknowledges that the

interpretation of a "notice received by a manufacturer" in 49 C.F.R. § 579.21(b) of the EWR regulations that Honda used incorrectly excluded certain third-party documents providing notice of deaths and injuries.

9. Honda shall pay the United States a civil penalty in the sum of thirty-five million dollars ($35,000,000) for failing to submit death and injury reports as required by NHTSA's early warning reporting requirements and as described in Paragraph No. 6.A of this Consent Order.

10. Honda further admits that it violated 49 C.F.R. Part 579, Subpart C by failing to submit early warning reports that comply with the requirements of 49 C.F.R. § 579.21(c). Specifically, while the complete scope of the non-reporting is the subject of an ongoing assessment that shall be reported to NHTSA, Honda admits that it failed to report customer satisfaction campaigns, special warranty extensions, and warranty claims that involved good will, third-party vehicle service contracts, and Honda-certified pre-owned vehicles. Moreover, Honda concedes that the scope of the non-reporting detailed in Paragraph No. 6.B is also a significant violation of the TREAD Act.

11. Honda acknowledges that it has systematically failed to report events that are required to be submitted under 49 C.F.R. § 579.21(c) by impermissibly excluding reportable events that involved good will, third-party vehicle service contracts, and Honda-certified pre-owned vehicles.

12. Honda shall pay the United States an additional civil penalty in the sum of thirty-five million dollars ($35,000,000) for the violations described in Paragraph No. 6.B of this Consent Order that is for failing to report customer satisfaction campaigns, special warranty

extensions, and warranty claims that involved good will, third-party vehicle service contracts, or Honda-certified pre-owned vehicles.

13. Honda shall pay the civil penalty amounts in Paragraph Nos. 9 and 12, totaling seventy million dollars ($70,000,000), in one lump-sum payment by electronic funds transfer to the U.S. Treasury in accordance with instructions provided by NHTSA, no later than 30 calendar days following execution of this Consent Order.

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

15. To the extent Honda has not already done so, Honda shall develop written procedures for comprehensive early warning reporting in compliance with 49 C.F.R. Part 579, Subpart C. No later than 60 calendar days after execution of this Consent Order, Honda shall provide a copy of such written procedures to NHTSA. If NHTSA reasonably determines that any changes to the written procedures are warranted, Honda shall revise its written procedures to incorporate NHTSA's feedback. Honda shall provide a revised copy of the written procedures to NHTSA no later than 30 calendar days after receiving any such feedback from NHTSA.

16. Sixty calendar days after incorporating any feedback from NHTSA and finalizing the written procedures specified in Paragraph No. 15, Honda shall submit a report detailing Honda's efforts to implement these written procedures. Honda shall continue submitting these reports every 60 calendar days until the one year anniversary of the execution date of this Consent Order.

17. Included with each report required under Paragraph No. 16, Honda shall supplement its written responses to NHTSA's November 3, 2014 Special Order.

18. Honda agrees that the report required under Paragraph No. 16 shall be publicly available. Honda shall not claim any portion of the report is (1) subject to attorney-client privilege or attorney work product or (2) confidential business information and not subject to public disclosure by NHTSA.

19. Honda shall train appropriate personnel on its early warning reporting requirements and the written procedures for comprehensive early warning reporting to ensure full and timely implementation of the procedures, as developed in accordance with Paragraph No. 15. Honda's training shall include recurrent training on at least an annual basis.

20. No later than 30 calendar days after the execution of this Consent Order, Honda shall confirm to NHTSA each death or injury incident covered in Paragraph No. 6.A that may relate to NHTSA Investigation No. PE14-016, or which involves frontal-driver or -passenger air bag inflators that ruptured, regardless of whether the vehicle in the incident could be tied to an area with high absolute humidity. Honda shall also confirm any other incident not reported under NHTSA's EWR reporting requirements to NHTSA that may relate to NHTSA Investigation No. PE14-016, or which involves frontal-driver or -passenger air bag inflators that ruptured, regardless of whether the vehicle in the incident could be tied to an area with high absolute humidity.

21. No later than 60 calendar days after execution of this Consent Order, Honda shall provide NHTSA's Early Warning Division the information required to retroactively populate the TREAD database with the death-and-injury reports related to Paragraph No. 6.A that Honda failed to report.

22. No later than 180 calendar days after execution of this Consent Order, Honda shall submit the information and documentation on property damage claims, consumer

complaints, warranty claims, and field reports required by 49 C.F.R. § 579.21(c)-(d) related to Paragraph No. 6.B.

23. Honda shall submit the information required in Paragraph Nos. 21 and 22 in the manner specified by 49 C.F.R. § 579.29 and in accordance with any guidance provided to Honda by NHTSA's Early Warning Division for making such retroactive reports.

24. After submitting the information required in Paragraph Nos. 21 and 22, Honda shall complete a third-party audit of all of Honda's reporting under 49 C.F.R. Part 579. No later than 60 calendar days after execution of requirements under Paragraph Nos. 21 and 22, Honda shall submit to NHTSA a report detailing the findings of the audit that will be made publicly available. Honda agrees the audit report required in this Paragraph shall be publicly available. Honda shall not claim any portion of the report is (1) subject to attorney-client privilege or attorney work product or (2) confidential business information and not subject to public disclosure by NHTSA.

25. One year from the execution date of this Consent Order, Honda shall complete a third-party audit of all aspects of Honda's TREAD Act reporting. Forty-five calendar days after the one-year anniversary of the execution date of this Consent Order, Honda shall submit to NHTSA a report that details the findings of the audit report, Honda's efforts to implement the written procedures of Paragraph No. 15, and the training program in accordance with Paragraph No. 19. Honda agrees the audit report required in this Paragraph shall be publicly available. Honda shall not claim any portion of the report is (1) subject to attorney-client privilege or attorney work product or (2) confidential business information and not subject to public disclosure by NHTSA.

26. Honda shall use its best efforts to comply with its obligations under the Safety Act, and regulations thereunder, 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. Honda's best efforts shall include, among other things, (i) providing prompt notice to NHTSA in the event any requirement of this Consent Order cannot be met or timely met and (ii) ensuring employees involved with implementation of the performance requirements of this Consent Order are kept well-informed and are allocated sufficient time during their working hours to enable them to thoroughly and effectively perform actions to carry out or implement the performance requirements of this Consent Order.

27. Honda shall cooperate fully and in good faith with NHTSA in NHTSA's Investigation No. PE14-016, and any of its derivative investigations. Honda's cooperation shall include, but not be limited to, (i) prompt responses to any information requests from NHTSA and (ii) making appropriate employees available to NHTSA investigators for interviews.

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

III. TERM OF CONSENT ORDER

29. Unless otherwise specified, the term of Honda's performance obligations under this Consent Order is one year, provided, however, that the commitments in Paragraph Nos. 19, 25, 26, and 27 shall survive the term of this Consent Order.

IV. AMENDMENT

30. 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 all parties.

V. INTERPRETATION CONSISTENT WITH FEDERAL LAW

31. Nothing in this Consent Order shall be interpreted or construed in a manner inconsistent with, or contravening, any Federal law, rule, or regulation at the time of the execution of this Consent Order, or as amended thereafter.

VI. FULL AND AUTHORIZED SETTLEMENT

32. Upon receipt of the payment set forth in Paragraph Nos. 9 and 12 above, the Secretary of Transportation, by and through the Administrator of NHTSA, releases Honda, including its current and former directors, officers, employees, agents, parents, subsidiaries, affiliates, successors, and assigns from liability for civil penalties pursuant to 49 U.S.C. § 30165 in connection with any and all violations of Honda's TREAD Act reporting obligations, to include Honda's retroactive reports required by Paragraph Nos. 21 and 22, from the inception of the TREAD Act through the execution date of this Consent Order.

33. This Consent Order does not release Honda from civil or criminal liabilities, if any, that may be asserted by the United States, the Department of Transportation, NHTSA, or any other governmental entity, other than its civil penalty liability under 49 U.S.C. § 30165 for the violations described in Paragraph No. 32 above.

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

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

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

37. 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.

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

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

[SIGNATURE PAGES FOLLOW]

APPROVED AND SO ORDERED:

Dated: December 29, 2014

Mark R. Rosekind

MARK R. ROSEKIND
Administrator

AGREED:

AMERICAN HONDA MOTOR COMPANY, INC.

Dated: December 29, 2014

By: _____

Rick Schostek
Executive Vice President
Honda North America, Inc.

AGREED:

MAYER BROWN LLP

Dated: December 29, 2014

By: Erika Z. Jones

Erika Z. Jones
Mayer Brown LLP

AGREED:

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

Dated: December 29, 2014 By: _____

O. Kevin Vincent
Chief Counsel

Dated: December 29, 2014 By: _____

Timothy H. Goodman
Assistant Chief Counsel
for Litigation & Enforcement

Dated: December 29, 2014 By: _____

Elizabeth Mykytiuk
Trial Attorney

Dated: December 29, 2014 By: _____

R. Nicholas Englund
Trial Attorney