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

In re:	)
	)
Triumph Motorcycles (America) Ltd.	)
AQ15-001	)
	)

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, 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 Triumph Motorcycles (America) Ltd. and its parent company, Triumph Motorcycles Ltd., (collectively, "Triumph") in connection with Triumph's violations of its reporting requirements, 49 U.S.C. § 30166(m) and 49 C.F.R. Part 579, untimely submissions under 49 C.F.R. Part 573, and failure to fully respond to compulsory process issued by NHTSA pursuant to 49 U.S.C. § 30166(g) and 49 C.F.R. Part 510, under the following terms and conditions, as well as all attachments, which are hereby incorporated by reference.

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).

2. A manufacturer has a duty to notify NHTSA, owners, purchasers, and dealers of the vehicle or equipment if the manufacturer learns or determines that the vehicle or equipment contains a defect and decides in good faith that the defect is related to motor vehicle safety. 49 U.S.C. § 30118(c)(1); 49 C.F.R. § 573.6(a). NHTSA's regulations require manufacturers 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. 49 C.F.R. § 573.6(b). 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."

3. Under 49 C.F.R. § 577.5(a), a manufacturer is required to submit a proposed owner notification letter to NHTSA no fewer than five Federal Government business days before it intends to begin mailing it to owners.

4. A person who violates the defect notification requirements of the Safety Act, or a regulation thereunder, is liable to the United States Government for a civil penalty of not more than $7,000 for each violation. 49 U.S.C. § 30165(a)(1); 49 C.F.R. § 578.6(a). A separate violation occurs for each 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).

5. Pursuant to the Transportation Recall Enhancement, Accountability, and Documentation ("TREAD") Act, Pub. L. No. 106-414, 114 Stat. 1800 (2000), NHTSA established early warning reporting requirements for vehicle manufacturers. 49 U.S.C. § 30166(m); 49 C.F.R. Part 579, Subpart C.

6. Manufacturers of 5,000 or more motorcycles are required to submit comprehensive quarterly reports, including production numbers and information on incidents

involving death or injury, the number of property damage claims, consumer complaints, warranty claims, and copies of field reports. *See* 49 C.F.R. § 579.23.

7. Under the Safety Act, and NHTSA's implementing regulations, each manufacturer is 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 service bulletin must 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).

8. Under the Safety Act and implementing regulations, a manufacturer of motor vehicles or equipment conducting a recall to remedy a defect or noncompliance must submit a report to NHTSA containing information about the manufacturer's progress in completing the recall "for each of six consecutive quarters beginning with the quarter in which the campaign was initiated ... or [until] corrective action has been completed on all defective or noncomplying vehicles, whichever occurs first." 49 C.F.R. § 573.7.

9. NHTSA has the power to issue compulsory process, including general and special orders requiring a person to provide documents and answer specific questions under oath. *See* 49 U.S.C. § 30166(g); 49 C.F.R. Part 510; *id.* § 1.95(a).

10. A person who violates 49 U.S.C. § 30166 or a regulation prescribed under that section is liable to the United States for daily civil penalties. 49 U.S.C. § 30165(a)(3); 49 C.F.R. § 578.6(a)(3). A person who violates NHTSA's early warning reporting regulation

(49 C.F.R. Part 579, Subpart C), the requirement to submit technical service bulletins and other communications to NHTSA (*id.* § 579.5), NHTSA's quarterly recall reporting regulation (*id.* § 573.7), or fails to respond fully to a special order issued by NHTSA (*id.* Part 510) is subject to daily civil penalties. 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)).

II. FACTUAL BACKGROUND

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

12. On September 8, 2014, Triumph notified NHTSA that Triumph determined that a defect, related to motor vehicle safety, existed in 1,368 model year ("MY") 2012-2013 Triumph Street Triple R motorcycles manufactured July 1, 2012 to October 1, 2013, and equipped with ABS. According to Triumph's Part 573 Report, the safety-related defect concerns a condition in which the four bolts that secure the two cable guides on either side of the headstock do not contain threadlock. As a result, the bolts could loosen. NHTSA designated this recall as Recall No. 14V-548.

13. The chronology of events section of Triumph's Part 573 Report states that on June 4, 2013 Triumph's Central Warranty Group notified Triumph North America of this potential defect.

14. NHTSA opened an Audit Query ("AQ") on April 29, 2015 to investigate whether Triumph's Part 573 Report for Recall No. 14V-548 was untimely and to investigate other potential reporting violations, including Triumph's failure to timely submit to NHTSA quarterly reports on the company's progress completing safety recalls as required by 49 C.F.R. Part 573,

failure to provide copies of Technical Service Bulletins (TSBs) and failure to provide early warning reporting material required under 49 C.F.R. Part 579. On April 29, 2015, NHTSA issued a Special Order directed to Triumph with a response due May 26, 2015. Triumph did not provide its full and complete response by that deadline.

15. In its August 7, 2015 response to the Special Order, Triumph stated that it submitted the Part 573 Report for Recall 14V-548 by electronic mail on June 5, 2013, and that Triumph proceeded with owner notification and remedy campaign under the assumption that NHTSA had received the report. Although Triumph produced a copy of its transmittal email (including its Part 573 defect report) that it stated had been sent to NHTSA on June 5, 2013, Triumph's records do not contain a formal acknowledgement from NHTSA that the agency actually received the email and report. Moreover, Triumph did not provide a proposed owner notification letter at the time, did not submit the final owner letter to NHTSA at the time, and did not provide quarterly recall reports for the recall at the time, as would have been required.

16. In its August 7, 2015 response to the Special Order, Triumph also stated that it previously misunderstood the requirements of 49 C.F.R. § 579.5, *Notices, bulletins, customer satisfaction campaigns, consumer advisories, and other communications.* Triumph had believed that it was only required to submit communications that were associated with safety recalls.

17. In its August 7, 2015 response to the Special Order, Triumph further stated that during the course of responding to the Special Order, Triumph discovered deficiencies in the manner in which it collected and reported EWR data to NHTSA.

18. Triumph's response to the Special Order also details several instances where Triumph was late in providing quarterly reports on safety recalls, as required by 49 C.F.R. § 573.7.

19. 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 regulations thereunder, 49 U.S.C. § 30165(b), to inspect and investigate, 49 U.S.C. § 30166(b)(l), to ensure that defective vehicles and equipment 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 Triumph and ORDERED by NHTSA as follows:

III. TERMS AND CONDITIONS OF CONSENT ORDER

Admission of Violations of the Safety Act

20. Triumph admits that it violated the Safety Act by failing to file certain quarterly reports on safety recalls in a timely manner, as required by 49 C.F.R. § 573.7.

21. Triumph admits that it violated the Safety Act by failing to furnish NHTSA with copies of notices, service bulletins, and other communications sent to more than one manufacturer, distributor, dealer, lessor, lessee, owner, or purchaser as required by 49 U.S.C. §§ 30166(f), 30166(m)(3)(B) and 49 C.F.R. § 579.5.

22. Triumph admits that it violated the Safety Act by failing to submit accurate early warning reports as required by 49 U.S.C. § 30166(m) and 49 C.F.R. Part 579.

23. Triumph admits that it violated the Safety Act to the extent that it failed to submit the required Part 573 Report to NHTSA within five working days after Triumph determined that a safety-related defect existed in vehicles, as required by 49 C.F.R. § 573.6(b).

24. Triumph admits that it violated the Safety Act to the extent that it failed to submit a copy of its proposed owner notification letters, as required by 49 C.F.R. § 577.5.

25. Triumph admits that it violated the Safety Act by failing to fully respond to NHTSA's April 29, 2015 Special Order by the May 26, 2015 deadline.

Civil Penalty

26. Triumph shall pay a civil penalty in the total sum of two million nine hundred thousand dollars ($2,900,000) for Triumph's violations of reporting requirements; untimely submissions under 49 C.F.R. Part 573; failure to fully respond to compulsory process issued by NHTSA; and to encourage Triumph to make timely and accurate reports and notifications in the future (the "Total Civil Penalty").

27. To satisfy its obligations to pay a civil penalty, as authorized by 49 U.S.C. § 30165(b), Triumph shall pay the sum of one million four hundred thousand dollars ($1,400,000) in accordance with the instructions provided in Paragraph 30 below (the "Non-Deferred Amount"). In the event that Triumph commits further violations of the Safety Act or this Consent Order, Triumph may be potentially obligated to pay the sum of one million dollars ($1,000,000) (the "Stipulated Penalty Amount"). This amount shall be deferred and held in abeyance by NHTSA pending Triumph's satisfactory completion, as reasonably determined by NHTSA, of the obligations described below in Paragraphs 32-34.

28. Triumph shall use the remaining sum of five hundred thousand dollars ($500,000) to ensure satisfactory completion, as reasonably determined by NHTSA, of certain performance obligations described below in Paragraphs 38-57 and Attachment A (the "Deferred Amount").

29. Triumph admits that it has a debt in the amount of two million nine hundred thousand dollars ($2,900,000) 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

"Debt Collection Act"), arising from activities under the jurisdiction of the U.S. Department of Transportation.

30. Triumph shall pay the Non-Deferred Amount in two equal installments by electronic funds transfer to the U.S. Treasury, in accordance with the instructions provided by NHTSA, with the first such installment payable no later than 180 calendar days following execution date of this Consent Order. The second and final installment shall be due no later than 360 days after the execution date of this Consent Order.

31. If Triumph fails to make the payments of the Non-Deferred Amount set forth in Paragraph 30 above on or before their respective due dates, Triumph 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) Triumph 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. § 89, either administratively or in any court; and (ii) Triumph 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, Triumph shall pay the United States all reasonable costs of collection and enforcement, including attorneys' fees and expenses.

The Stipulated Penalty Amount of the Civil Penalty

32. The Stipulated Penalty Amount shall become due and owing only in accordance with and subject to the provisions set forth in Paragraph 31 above and 33 below. NHTSA and Triumph expect that Triumph will comply fully with this Consent Order, the Safety Act and regulations thereunder, and that, accordingly, the Stipulated Penalty Amount will not become due at the termination of this Consent Order. In the event Triumph commits further material violations of the Safety Act, regulations thereunder, or this Consent Order, during the term of

this Consent Order, Triumph may be obligated to pay additional sums totaling up to one million dollars ($1,000,000) in accordance with Paragraph 33 below.

33. Should NHTSA receive notice or make its own determination that Triumph has materially violated the Safety Act, regulations thereunder, or the terms of this Consent Order, a lump-sum payment of two hundred thousand dollars ($200,000) of the Stipulated Penalty Amount will become due and owing to the U.S. Treasury within ten (10) calendar days, in accordance with instructions provided by NHTSA. Upon a second notice or determination by NHTSA that Triumph has materially violated the Safety Act, regulations thereunder, or the terms of this Consent Order, an additional lump-sum payment of three hundred thousand dollars ($300,000) of the Stipulated Penalty Amount will become due and owing to the U.S. Treasury within ten (10) calendar days, in accordance with instructions provided by NHTSA. Upon a third notice or determination by NHTSA that Triumph has materially violated the Safety Act, regulations thereunder, or the terms of this Consent Order, the remaining five hundred thousand dollars ($500,000) of the Stipulated Penalty Amount will become due and owing to the U.S. Treasury within ten (10) calendar days, in accordance with the instructions provided by NHTSA. Triumph will not be liable for the above amounts if Triumph demonstrates to NHTSA's reasonable satisfaction that it acted in good faith and exercised reasonable best efforts to comply.

34. NHTSA, in its sole discretion, may waive or reduce any portion or all of the Stipulated Penalty Amount that may become due under this Consent Order.

The Deferred Amount of the Civil Penalty

35. In accordance with this Consent Order, Triumph shall satisfactorily perform the obligations set forth in Paragraphs 38-57 and Attachment A. If Triumph has reasonably completed the performance obligations in Paragraphs 38-57 and Attachment A, then on the third

anniversary of this Consent Order, NHTSA will release Triumph from any and all obligations to pay the Deferred Amount, totaling five hundred thousand dollars ($500,000), described in Paragraph 28.

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

37. If any material violation of the Safety Act, not expressly identified in this Consent Order or otherwise brought to NHTSA's attention, occurs after the execution date of this Consent Order and during the pendency of this Consent Order, then the balance of the Deferred Amount shall become immediately due and owing, unless Triumph demonstrates that it acted in good faith and exercised reasonable best efforts to comply.

Performance Obligations and the Deferred Amount of the Civil Penalty

38. This Consent Order requires Triumph 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 Triumph's processes and procedures for timely and accurately complying with reporting requirements, for timely making safety-related defect determinations, for timely reporting of safety-related defects determinations to NHTSA, and for timely and accurately responding to agency inquiries. These performance obligations will be satisfied through the activities described in Attachment A ("General Performance Obligations"), which are incorporated herein by reference, and as set forth in Paragraphs 39-57, below.

39. No later than 90 calendar days after the execution of this Consent Order, Triumph shall submit a report to NHTSA confirming that, based upon a diligent search of its records, it

has submitted all previously unreported service bulletins required to be submitted under 49 C.F.R. §§ 579.5(a)-(b), issued between May 1, 2010 to the date of the execution of the Consent Order. Triumph shall promptly notify NHTSA if it discovers any previously unreported service bulletins that have not been reported in accordance with this Paragraph.

40. No later than 90 calendar days after the execution of this Consent Order, Triumph shall also submit a report to NHTSA, notifying the Agency of all safety-related defects of which it has actual knowledge or that are currently under review by Triumph, for which notice has not previously been given to NHTSA.

41. No later than 60 calendar days after the execution of this Consent Order, Triumph shall confirm to NHTSA that it has provided the Agency with all available information responsive to the Special Order dated April 29, 2015. To the extent that certain information may no longer be available, Triumph shall describe the efforts made to collect the information and shall ensure that its prospective processes and procedures are designed to ensure such information is obtained and retained in the future.

42. Triumph shall make best efforts to determine whether any reports of foreign safety campaigns were not reported to NHTSA as required, no later than 60 calendar days after the execution of this Consent Order. Triumph will provide NHTSA with a list of each known foreign safety campaign since January 1, 2005 that the company is able to identify. Triumph will describe the efforts made to collect the information and shall ensure that its prospective processes and procedures are designed to ensure such information is obtained and retained in the future.

43. No later than 60 calendar days after the execution of this Consent Order, Triumph will have completed its internal review of its processes for reporting under 49 C.F.R. Part 579

and its processes relating to notification and reporting requirements under 49 CFR Parts 573 and 577 ("internal review"). As part of the completion of its internal review, Triumph shall document its current processes and identified improvements no later than the 60 calendar days after the execution of this Consent Order. Triumph will perform an internal review of processes on an annual basis thereafter, for a total period of three years.

44. No later than 30 calendar days after the execution date of this Consent Order, Triumph shall, at its sole cost and expense, retain an independent third-party consultant ("Independent Third-Party Consultant") with expertise in motor vehicle safety and the requirements of the Safety Act. Triumph shall retain the Independent Third-Party Consultant for the term of this Consent Order. For good cause shown, NHTSA may extend for an additional 30 days the period to select the Independent Third-Party Consultant. Such extension shall not be unreasonably withheld. Failure to retain the Independent Third-Party Consultant shall not relieve Triumph of any obligation under this Consent Order.

45. Prior to retaining the Independent Third-Party Consultant, Triumph shall submit the name of the person whom it intends to retain as the Independent Third-Party Consultant to NHTSA for approval. Triumph will report to NHTSA in writing when it has retained the Independent Third-Party Consultant as set forth above, including the identity of the Independent Third-Party Consultant and the date upon which the Independent Third-Party Consultant was officially retained.

46. No later than 30 days after retaining the Independent Third-Party Consultant, Triumph will submit to NHTSA a work plan and schedule for the completion of the audit required by Paragraph 48.

47. No later than 90 calendar days after the execution date of this Consent Order, the Independent Third-Party Consultant shall review the results of Triumph's internal review and make recommendations. The Independent Third-Party consultant shall then periodically continue to review Triumph's processes for a period of three years and make recommendations as warranted.

48. No later than 90 calendar days after the execution date of this Consent Order, Triumph shall have the Independent Third-Party Consultant complete, under the terms and conditions set forth in this Consent Order, an audit entailing a comprehensive review and evaluation of Triumph's existing processes and procedures for complying with its reporting obligations under 49 C.F.R. Part 579, its processes and procedures for defect decision-making and reporting under 49 C.F.R. Part 573, its processes and procedures for complying with 49 C.F.R. Part 577, and its processes for quarterly reporting under 49 C.F.R. Part 573.

49. No later than 30 calendar days after the completion of the audit required in Paragraph 48, Triumph shall submit to NHTSA a written report from its Independent Third-Party Consultant detailing the final findings and recommendations of the audit. Triumph agrees that the report required in this Paragraph shall be publicly available. Triumph shall not claim any portion of the report is (i) subject to attorney-client privilege or attorney work product, or (ii) confidential business information, not subject to public disclosure by NHTSA.

50. No later than 30 calendar days after the completion of the audit required in Paragraph 48, Triumph shall submit to NHTSA new written procedures that address the results of the audit required by Paragraph 48 and the recommendations of the Independent Third-Party Consultant.

51. Triumph's new written procedures must contain, at a minimum, new written procedures for: (a) comprehensive reporting in compliance with 49 C.F.R. Part 579; (b) notifying dealers, owners, and purchasers of defects or noncompliances under 49 C.F.R. Part 577 and providing those notifications to NHTSA; (c) making safety-related defect or noncompliance determinations and notifying NHTSA of such safety-related defects or noncompliance in compliance with 49 C.F.R. Part 573; (d) providing quarterly reports under 49 C.F.R. Part 573; and (e) responding to NHTSA's requests for information (collectively, "Best Practices"). No later than 120 calendar days after execution of this Consent Order, Triumph shall provide a copy of such Best Practices to NHTSA. If NHTSA reasonably determines that any changes to the written procedures are warranted, Triumph shall revise its written procedures to incorporate NHTSA's feedback. Triumph shall provide a revised copy of the Best Practices to NHTSA no later than 30 calendar days after receiving any such feedback from NHTSA. Triumph agrees that the final version of the Best Practices required in this Paragraph shall be publicly available. Triumph shall not claim any portion of the Best Practices is (i) subject to attorney-client privilege or attorney work product, or (ii) confidential business information, not subject to public disclosure by NHTSA.

52. The Independent Third-Party Consultant shall advise and assist Triumph in developing the Best Practices developed under Paragraph 51 and the Training Plan developed under Paragraph 54. The Independent Third-Party Consultant shall also advise Triumph on all aspects of Triumph's reporting obligations under 49 C.F.R. Part 579 and all of Triumph's obligations under the Safety Act or regulations thereunder, as well as advise and assist Triumph in implementing the performance obligations set forth in this Consent Order and Attachment A hereto.

53. One year from the execution of this Consent Order, Triumph shall complete an independent third-party audit of all aspects of Triumph's Safety Act reporting and defects notification. The audit shall be conducted by someone other than the Independent Third-Party Consultant. No later than 30 calendar days after the completion of the audit, Triumph shall submit to NHTSA a report detailing the final findings of the audit. Triumph agrees that the audit report required in this Paragraph shall be publicly available. Triumph shall not claim any portion of the audit report is (i) subject to attorney-client privilege or attorney work product, or (ii) confidential business information, not subject to public disclosure by NHTSA.

54. Triumph shall train appropriate personnel on its Safety Act notification and reporting requirements and Best Practices. Triumph'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, Triumph shall submit a report detailing Triumph's training plan, including details on the subject matters 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 Triumph for further revision, if necessary.

55. No later than 180 calendar days after the execution of this Consent Order, Triumph shall submit a report detailing its efforts to implement the Best Practices specified in Paragraph 51 and the Training Plan specified in Paragraph 54.

56. The parties to this Consent Order agree that the value of Triumph's execution of the performance obligations set forth in Paragraphs 38-57 and Attachment A is at least five hundred thousand dollars ($500,000). In assessing the aggregate value of the Deferred Amount, reasonable continuing and future costs to Triumph associated with Triumph carrying out the performance obligations beyond the term of this Consent Order have been considered. To

substantiate completion of its performance, Triumph shall provide to NHTSA, on an annual basis for the term of this Consent Order, a declaration from an officer of the company documenting the completion of its obligations, as defined in Attachment A, during the prior year. The declaration shall be submitted to NHTSA pursuant to 28 U.S.C. § 1746.

57. In accordance with this Consent Order, Triumph is responsible for the satisfactory completion of the performance obligations set forth in Paragraphs 38-57 and Attachment A. No later than 30 days after the conclusion of the term of the Consent Order, Triumph shall submit a Completion Report to NHTSA and, at NHTSA's election, Triumph will make a presentation regarding how it satisfied its performance obligations under the Consent Order. The Completion Report shall address the metrics of success for each of the targeted performance obligations and objectives. If Triumph has reasonably completed the performance obligations in Paragraphs 38-57 and Attachment A, then NHTSA will release Triumph from any and all obligations to pay the Deferred Amount or any remaining portion thereof. If, however, Triumph has not reasonably achieved the requirements of the performance obligations set out in Paragraphs 38-57 and Attachment A, then the value for the unachieved portion of Triumph's performance obligation, as determined in good faith by the parties, shall become immediately due and owing. In the event obligations remain to be performed by Triumph notwithstanding Triumph's best efforts to complete same, NHTSA will not unreasonably deny a request by Triumph to extend the time to complete the performance obligations.

Monitoring

58. On a recurring quarterly basis, Triumph shall meet with NHTSA either in person, or by videoconference, as shall be mutually agreed by NHTSA and Triumph, to discuss the actions it has taken to satisfy Paragraphs 38-57 and Attachment A of this Consent Order. The

first meeting shall take place no later than 120 calendar days after the execution of this Consent Order, and subsequent meetings shall occur every 90 days thereafter.

59. Triumph shall comply with its obligations under the Safety Act, and regulations thereunder, and 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. Triumph agrees to undertake its reasonable best efforts to comply with all aspects of the Safety Act. Triumph'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 necessary to carry out or implement the performance requirements of this Consent Order.

60. Triumph 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 Frank Borris, Frank.Borris@dot.gov) and NHTSA's Assistant Chief Counsel for Litigation and Enforcement (currently Timothy H. Goodman, Tim.Goodman@dot.gov).

IV. TERM OF CONSENT ORDER

61. Unless otherwise specified, the term of this Consent Order and Triumph's performance obligations thereunder is three years from the date of execution, provided, however, that the commitments in Paragraphs 38-57 and Attachment A shall survive the term of this Consent Order until the obligations with respect to the Deferred Amount are reasonably satisfied.

V. AMENDMENT

62. 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 agreeing to be bound by the modification, amendment or waiver.

VI. MISCELLANEOUS

63. 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.

64. Upon receipt of the Non-Deferred Amount set forth in Paragraphs 27 and 30, and NHTSA's determination that Triumph has reasonably achieved all of the performance obligations set forth in Paragraphs 38-57 and Attachment A, on or before the third anniversary of this Consent Order, the Secretary of Transportation, by and through the Administrator of NHTSA, will release Triumph, 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 Triumph's Safety Act reporting obligations, including those expressly identified in this Consent Order or identified in any schedules and reports submitted pursuant to Paragraphs 38-57, occurring from the inception of the Safety Act through the execution date of this Consent Order, and NHTSA will release Triumph from any obligation to pay the Stipulated Penalty amount. Additionally, the Secretary of Transportation, by and through the Administrator of NHTSA, hereby waives any and all enforcement action or claims against Triumph (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 Paragraphs 20-60, and subject to Triumph's satisfactory fulfillment of its other obligations under this Consent Order.

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

66. None of the specific reporting obligations described in this Consent Order, including Attachment A, relieves Triumph of its obligation to submit any other reports required by the Safety Act or its corresponding regulations.

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

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

69. In the event of Triumph's breach of, or failure to perform, any term of this Consent Order, including Attachment A, 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.

70. 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.

71. Triumph 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 30, was made, if applicable, and/or (ii) that Triumph has substantially complied with the terms of this Consent Order.

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

73. 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 including Attachment A hereto.

74. 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.

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

76. 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, including Attachment A, 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 and the attachments thereto.

APPROVED AND SO ORDERED:

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

Dated: August 28, 2015

By: **// ORIGINAL SIGNED BY //**

Mark R. Rosekind, Ph.D.
Administrator

Dated: August 28, 2015

By: _____

Paul A. Hemmersbaugh
Acting Chief Counsel

Dated: August 28, 2015

By: _____

Timothy H. Goodman
Assistant Chief Counsel
for Litigation and Enforcement

Dated: August 28, 2015

By: _____

Sarah E. Sorg
Senior Trial Attorney

Dated: August 28, 2015

By: _____

Justine S. Casselle
Trial Attorney

AGREED:

TRIUMPH MOTORCYCLES (AMERICA), LTD.

Dated: August 28, 2015

By: _____

Donald Carleo
Chief Financial Officer

TRIUMPH MOTORCYCLES, LTD.

Dated: August 28, 2015

By: _____

Garry Clarke
Chief Financial Officer

Dated: August 28, 2015

By: Christopher H. Grigorian/cj

Christopher H. Grigorian
Foley & Lardner LLP
Counsel for Triumph Motorcycles America, Ltd.

ATTACHMENT A

General Performance Obligations

A. Purpose of the Performance Obligations.

NHTSA and Triumph agree that the performance obligations included below are intended to secure a significant benefit to the interests of public safety, and that the following performance obligations are consistent with the purpose of the National Traffic and Motor Vehicle Safety Act of 1966 as amended and recodified (the "Safety Act"), 49 U.S.C. § 30103, *et seq*.

B. Targeted Performance Obligations.

In executing the terms of the Consent Order, Triumph must complete certain performance obligations, which shall include the following improvements to Triumph's safety policies and procedures:

(1) Develop Best Practices for: (a) comprehensive reporting in compliance with 49 C.F.R. Part 579; (b) notifying dealers, owners, and purchasers or defects or noncompliances under 49 C.F.R. Part 577 and providing those notifications to NHTSA; (c) making safety-related defect determinations and notifying NHTSA of such safety-related defects in compliance with 49 C.F.R. Part 573; (d) providing quarterly reports under 49 C.F.R. Part 573; and (e) responding to NHTSA's requests for information. (*See* Consent Order ¶ 51.)

(2) Train appropriate personnel on Triumph's Safety Act reporting requirements and the written procedures for comprehensive reporting to ensure full and timely implementation of the procedures. Training shall be recurrent on at least an annual basis for all appropriate personnel. (*See* Consent Order ¶ 54.)

(3) Improve the process of Triumph's Central Warranty Team and Triumph's Recall Group to incorporate issues identified by the Independent Third-Party Consultant (if any) and the independent third party audit (if any), and in accordance with the Best Practices.

(4) To the extent applicable, ensure the integrity of the process of Triumph's Central Warranty Team and Triumph's Recall Group by requiring that all decision-making votes are from a majority vote to prevent unintended obstacles to safety.

(5) Improve Triumph's awareness and understanding of potential safety issues by establishing a position of a Compliance Officer, which is to be a separate position from the Head of Warranty, and allowing the Compliance Officer direct access to Triumph's Board of Directors and Executive Officers.

(6) Establish and make available to authorized U.S. dealers a toll-free technical support hotline and electronic mailbox to facilitate communications regarding technical and field issues.

(7) Ensure that any committee or individual responsible for decision making on safety recalls is informed of safety-related concerns in a reasonably expeditious manner, including by ensuring that Triumph's corporate structure enables its safety officers to promptly bring safety-related issues to the attention of committees and individuals with authority to make safety recall decisions.

(8) Ensure that Triumph does not delay holding any meeting to decide whether or not to recommend or conduct a safety recall because Triumph has not identified the precise cause of a defect, a remedy for the defect, or prepared a plan for remedying the defect.

(9) Triumph will provide information on its U.S. website, Facebook page, or other social media in the North American market with regard to how customers can reach Triumph and NHTSA to report concerns with their vehicles.

(10) For the term of this Consent Order, effective with the third quarter of 2015, Triumph will provide NHTSA with a report on each death or injury incident reportable under 49 C.F.R. Part 579 that includes the incident police report (if available), a summary of the incident, and Triumph's assessment of the incident without regard to attorney-client privilege or attorney work product. Each such report will be provided to NHTSA by Triumph within 45 days of the submission of the Part 579 quarterly report containing the death or injury incident information. Triumph shall not claim that any such report is confidential business information, not subject to public disclosure by NHTSA.

(11) Develop and implement a plan ensuring that, in safety-related litigation, Triumph uses its best efforts to include in any protective order, settlement agreement, or equivalent, a provision that explicitly allows Triumph to provide information and documents to NHTSA.

C. <u>Development of Written Plan and Procedures.</u>

As set forth in Paragraphs 51 and 54 of the Consent Order, Triumph will prepare Best Practices and a Training Plan, which includes a plan and procedures for comprehensive reporting, making safety-related defects determinations, and training appropriate personnel on the requirements of the Safety Act and Triumph's Best Practices. These documents shall be submitted to NHTSA no later than 120 calendar days after the execution of the Consent Order. NHTSA, at its option, may accept, reject or revise any part of the Best Practices and/or Training Plan at any time during the pendency of this Consent Order and may submit it back to Triumph for further revision, if necessary. NHTSA's approval shall not be unreasonably withheld.

No later than 120 days after the execution date of this Consent Order, Triumph shall provide NHTSA with a detailed update regarding implementation of performance obligations required by this Consent Order and Attachment A, including by demonstrating how Triumph's changed organization and processes will lead to compliance with the Safety Act.

ATTACHMENT B

Schedule of Certain Triumph Performance Obligations

Due Date	Description	Consent Order
30 days	Independent Third Party Consultant (ITPC) retained	Paragraph 44
60 days	Work plan and schedule for completion of the ITPC audit	Paragraph 46
60 days	Confirmation of completed response to Special Order	Paragraph 41
60 days	Foreign safety campaign report	Paragraph 42
60 days	Completion of internal review, documentation of processes and improvements	Paragraph 43
90 days	ITPC internal review and recommendation	Paragraph 47
90 days	ITPC audit completion	Paragraph 48
90 days	Report confirming that all unreported service bulletins have been submitted and identifying all safety-related defects currently under review	Paragraph 39
120 days	ITPC audit completion report to NHTSA	Paragraph 49
120 days	Best Practices	Paragraph 51
120 days	Training Plan	Paragraph 54
120 days	First quarterly meeting	Paragraph 58
120 days	Detailed update regarding implementation of performance obligations	Attachment A, Section C
180 days	Report detailing efforts to implement Best Practices and Training Plan	Paragraph 55
180 days	First payment of the Non-Deferred Amount	Paragraph 30
210 days	Second quarterly meeting	Paragraph 58
300 days	Third quarterly meeting	Paragraph 58
360 days	Second payment of the Non-Deferred Amount	Paragraph 30
365 days	Second audit (by a different company than ITPC)	Paragraph 53
365 days	Declaration regarding completion of performance obligations	Paragraph 56
390 days	Fourth quarterly meeting	Paragraph 58
395 days	Report detailing the findings of the second third party audit	Paragraph 53