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

In re:	)
	)
Graco Children's Products, Inc.	)
TQ14-004	)
	)

CONSENT ORDER

This Consent Order is entered into by the National Highway Traffic Safety Administration ("NHTSA"), an operating administration of the U.S. Department of Transportation, and Graco Children's Products, Inc., a subsidiary of Newell Rubbermaid, Inc. (collectively, "Graco") to resolve claims associated with Graco's untimely reporting of a safety related defect, 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). Violations of the Safety Act and regulations prescribed thereunder may result in the assessment of civil penalties and other remedial action by NHTSA. The NHTSA Administrator has been delegated the authority to compromise the amount of civil penalties assessed by NHTSA. *See* 49 U.S.C. § 30165(b); 49 C.F.R. § 1.95.

2. Under the Safety Act, a manufacturer of motor vehicles has a duty to notify NHTSA and owners, purchasers, and dealers of a vehicle if the manufacturer learns the vehicle contains a defect and decides in good faith that the defect is related to motor vehicle safety. 49

U.S.C. § 30118(c)(1). The manufacturer must provide this notice to NHTSA not more than five working days after a defect in 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 "Part 573 Report." 49 C.F.R. Part 573.

3. A person who violates the notification requirements of the Safety Act or a regulation prescribed 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).

4. Graco is a manufacturer of motor vehicle equipment within the meaning of the Safety Act, *see* 49 U.S.C. § 30102(a)(7), and a person within the meaning of 49 U.S.C. § 30165.

5. NHTSA opened Preliminary Engineering Investigation PE12-031 on October 15, 2012, to investigate consumer complaints of harness buckles sticking or becoming stuck in the latched position in certain models of Graco rear facing infant car seats, convertible car seats and booster seats which used a "QT," "QT3" or "Signature" style buckle (the "Subject Seats"). The complaints received by the Agency included reports of consumers cutting the harness straps on the Subject Seats or pulling the child free through the still buckled harness.

6. NHTSA elevated its investigation of this matter to an Engineering Analysis and opened EA13-001 on February 21, 2013. On January 14, 2014, NHTSA sent Graco a recall request letter, demanding that Graco recall the Subject Seats because they contained a defect related to motor vehicle safety. Graco declined to initiate a recall at that time.

7. Thereafter, on February 10, 2014, Graco filed a Part 573 Report concerning the harness buckles contained only in the affected models of Graco convertible car seats and booster

seats (the "Toddler Seats"). On February 11, 2014 and March 10, 2014, Graco filed amended Part 573 Reports declaring that a defect existed in the harness buckles of the Toddler Seats. The recall of the Toddler Seats was assigned NHTSA Recall No. 14C-001.

8. NHTSA initiated a Timeliness Query, TQ14-004, on December 1, 2014, to evaluate the timing of Graco's defect decision making and reporting of Recall No. 14C-001.

9. It is the mutual desire of NHTSA and Graco to resolve claims associated with TQ14-004, without the need for further action, 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.

10. Based on the agreement of the parties and pursuant to the authority of the Secretary of Transportation to compromise, 49 U.S.C. § 30165(b) (as delegated to the NHTSA Administrator, 49 C.F.R. § 1.95), it is ORDERED and AGREED as follows:

II. TERMS OF CONSENT ORDER

A. Graco's Admission of Violation of the Safety Act

11. Graco admits that it did not provide the required notice to NHTSA for the safety-related defect that is the subject of Recall No. 14C-001within 5 working days from when such notice was required pursuant to 49 U.S.C. § 30118(c)(1), 30119(c)(2) and 49 C.F.R. § 573.6(b). The parties agree that the failure to provide the requisite notice constitutes a violation of the Safety Act.

B. Civil Penalty

12. The United States has assessed a civil penalty against Graco in the total sum of ten million dollars ($10,000,000.00) for Graco's failure to provide notice to NHTSA of the safety-related defect that is the subject of Recall No. 14C-001 within five working days and to

encourage Graco to make timely notifications in the future (the "Total Civil Penalty"). The sum of three million dollars ($3,000,000.00) shall be paid in accordance with the instructions provided in paragraph 13 below (the "Non-Deferred Amount"). The payment of the sum of seven million dollars ($7,000,000.00) shall be deferred and held in abeyance by NHTSA pending Graco's satisfactory completion, as determined by NHTSA, of certain performance obligations described below and stated in Attachment A of this Consent Order (the "Deferred Amount"), which is attached hereto and incorporated herein.

13. Graco shall pay the Non-Deferred Amount in one lump-sum payment by electronic funds transfer to the U.S. Treasury in accordance with instructions provided by NHTSA, no later than 60 calendar days following execution of this Consent Order.

14. Graco admits that it owes a debt in the amount of ten million dollars ($10,000,000.00), 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.

15. If Graco fails to make the payment of the Non-Deferred Amount set forth in paragraph 12 above on or before the due date, Graco 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, Graco agrees: (1) not to contest any collection action undertaken by NHTSA or the United States pursuant to the Debt Collection Act and the U.S. Department of Transportation's regulations, 49 C.F.R. Part 89, either administratively or in any court and (2) affirmatively waives any and all defenses or right that would otherwise be available to Graco in any such proceeding. In addition, in such a proceeding, Graco shall pay the United States all reasonable costs of collection and enforcement, including attorneys' fees and expenses.

16. In accordance with this Consent Order, Graco is responsible for the satisfactory completion of the performance obligations set out in Attachment A. If Graco has reasonably achieved all of the performance obligations on or before April 1, 2020, NHTSA will not seek payment of the Deferred Amount. If, however, Graco has not reasonably achieved the requirements of the performance obligations set out in Attachment A by the end of the term of this Consent Order, the balance of the Deferred Amount shall become immediately due and owing to NHTSA.

C. Performance Obligations and the Deferred Amount of the Civil Penalty

17. This Consent Order requires Graco to execute certain performance obligations, the objectives of which are to further the goals of the National Traffic Motor Vehicle Safety Act (the "Safety Act"), 49 U.S.C. chapter 301, et seq., particularly with regard to issues concerning child passenger safety and the public's awareness of child passenger safety issues. The performance obligations will be satisfied through the activities described in Attachment A to this Consent Order and as set forth in the report described below.

18. Graco will prepare a report which includes a plan and procedures for addressing the targeted performance obligations set forth in Section B of Attachment A and submit this report to NHTSA no later than 60 calendar days after the execution of this Consent Order. NHTSA, at its option, may accept, reject or revise any part of the proposed report at any time during the pendency of this Consent Order, including on the basis that the proposed report does not include a sufficient number or variety of performance obligations and submit it back to Graco for further revision, if necessary. The proposed report shall include metrics of success for the performance obligations specified in the report. . NHTSA must give its full approval, which will not be unreasonably withheld, to the proposed report before work on any of the performance

obligations may begin. The parties to this Consent Order agree that the cost of Graco's execution of the performance obligations shall not be less than seven million dollars ($7,000,000.00). In documenting this figure, Graco shall provide to NHTSA, on an annual basis, a Declaration from an independent third party documenting the amount of dollars that Graco actually expended during the prior year in furtherance of its obligations under this Consent Order. The independent third party's declaration shall be submitted to NHTSA pursuant to 28 U.S.C. § 1746. In assessing whether Graco's expenditures associated with meeting the performance obligations reach the Deferred Amount of the civil penalty amount stated in paragraph 12, the independent third party may consider the reasonable continuing and future costs to Graco associated with Graco carrying out the performance obligations beyond the term of this Consent Order. At NHTSA's sole discretion, a reasonable amount of Graco's future costs for implementing the performance obligations may be counted towards the calculation of the Deferred Amount.

19. On a semi-annual recurring basis, Graco shall meet with NHTSA to discuss the actions it has taken to satisfy Paragraphs 17-20 of this Consent Order. The first meeting shall take place no later than 120 calendar days after execution of this Consent Order.

20. Graco shall use its best efforts to comply with its obligations under the Safety Act, and regulations thereunder, to take all actions and do all things necessary to comply with this Consent Order, and to cooperate with NHTSA in carrying out the requirements of this Consent Order. Graco'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.

21. Graco 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).

III. TERM OF CONSENT ORDER

22. Unless otherwise specified, the term of this Consent Order and Graco's performance obligations thereunder is five years, provided, however, that the commitments in paragraph 12 shall survive the term of this Consent Order until the obligations with respect to the Deferred Amount are satisfied.

IV. AMENDMENT

23. This Consent Order cannot be modified, amended or waived except by an instrument in writing signed by all parties, and no provision may be modified, amended or waived other than by a writing setting forth such modification, amendment or waiver and signed by the party making the modification, amendment or waiver.

V. INTERPRETATION CONSISTENT WITH FEDERAL LAW

24. 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

25. Upon receipt of the payment set forth in paragraph 12 and NHTSA's determination that Graco has reasonably achieved all of the performance obligations on or before

April 1, 2020, the Secretary of Transportation, by and through the Administrator of NHTSA, will release Graco, 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 the untimeliness of Recall No. 14C-001.

26. This Consent Order does not release Graco 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.

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

28. The parties shall each bear their own respective attorneys' fees, costs, and expenses, except as provided in paragraph 15 .

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

30. 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.

31. Graco expressly waives any and all defenses and agrees not to plead, argue, or otherwise raise any defenses other than that the payment of the Non-Deferred Amount set forth in paragraph 13 was made to NHTSA, if applicable.

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

33. 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 and Attachment A hereto sets forth the entire agreement between the parties with regard to the subject matter hereof. All agreements expressed or implied, oral or written, are contained herein.

34. 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 or Attachment A hereto.

35. In the event of Graco's breach of any term of this Consent Order or Attachment A hereto, NHTSA reserves the right to pursue any and all appropriate administrative and/or judicial remedies, including, but not limited to, assessing interest for untimely settlement payments and/or commencing litigation to enforce this Consent Order in any United States District Court.

36. 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:

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

Dated: March 19, 2015

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

MARK R. ROSEKIND, Ph.D.
Administrator

AGREED:

GRACO CHILDREN'S PRODUCTS, INC.

Dated: March 18, 2015

By: _____

John K. Stipancich
Corporate Secretary, Newell Rubbermaid, Inc.

By: _____

Jacqueline Glassman
Hogan Lovells US LLP
Counsel for Graco Children's Products, Inc.

AGREED:

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

Dated: March 19, 2015

By: _____

O. Kevin Vincent
Chief Counsel

Dated: March 18, 2015

By: _____

Timothy H. Goodman
Assistant Chief Counsel
for Litigation & Enforcement

Dated: March 19, 2015

By: _____

Christie L. Iannetta
Senior Trial Attorney

Attachment A

A. Purpose of the Performance Obligations.

NHTSA and Graco 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*.

Graco will prepare a report which includes a plan and procedures for addressing the following targeted performance obligations in order to reach the Deferred Amount set forth in the Consent Order, and will submit this report to NHTSA no later than 60 calendar days after the execution of this Consent Order. The proposed report shall include metrics of success for each of the performance obligations specified in the report. NHTSA, at its option, may accept, reject or revise any part of the proposed report and submit it back to Graco for further revision, if necessary. NHTSA must give its full approval, which will not be unreasonably withheld, to the proposed report before work on any of the performance obligations may begin.

B. Targeted Performance Obligations.

In executing the terms of the Consent Order, Graco's report may include the following performance obligations:

1. Improved Assessment of Potential Defect Trends in Car Seats.

- Aggressive assessment of defect trends in car seats in order to detect potential safety issues earlier. Sources of review may include, but are not limited to, internal consumer complaints, external complaint data and consumer dissatisfaction reports.

- Identification of potential emerging safety trends throughout the child car seat industry. Sources of information may include, but are not limited to, Graco consumer

complaints and consumer dissatisfaction reports; consumer complaints made with retailers; product reviews left at retail web-sites; review of accident kinematics to determine if any design elements could be considered in the development of new child restraint systems which would reduce the likelihood of serious injury.

- In addition, Graco agrees to initiate and to lead, to the extent third parties agree to participate, an annual child car seat industry meeting with an independent consumer safety organization in order to understand current trends in automobile accidents and what changes in automobile designs have resulted in reducing the likelihood of serious injury to children in car seats.

2. Enhancing Recall Effectiveness and Mitigating Impact of Recalls to Consumers.

- Graco will develop and scientifically test a program designed to increase the effectiveness of consumer product registration for car seats. The program should examine different techniques for registering car seats and assess which techniques provide the highest registration rates. This program will involve improvements to the registration cards themselves, the use of effective targeted messaging to car seat owners on registering the car seat with the manufacture, and the potential for registration at the point of sale.

- Graco will develop and scientifically test a program designed to increase consumer participation in the remedy program for car seats when such programs are announced.

- Graco has and will work with retailers in an effort to better ensure recalled units are promptly removed from saleable inventories, and work with retailers to provide better means for in-field remedies (where appropriate) of recalled products to ensure adequate availability of car seats to the public at all times.

- Graco will re-train its customer service representatives (including new personnel as they on-board) on Graco's revised procedures for addressing customer service complaints that concern actual or potential safety issues. Graco's training shall include recurring training on at least an annual basis. Graco has and will invest in more consumer services representatives during time periods of announcement of recalls to minimize the effort of consumers to register for replacement parts or to understand how to assess whether their car seat is affected.

- Graco has and will invest in capabilities and services to representatives during time periods of announcement of recalls to minimize the impact upon the availability of car seats by reworking car seats in the field. Graco's recent and ongoing investments in training consumer service representatives and in enhancing the consumer experience may be considered as such investments will inure to the benefit of future safety enhancement efforts.

- Graco will investigate and analyze various technologies and approaches to increase consumer registration of car seats through automatic mechanisms. This analysis may include, but should not be limited to, developing a smart phone app where QR code on package or POP can automatically register consumer into a database.

- Graco will evaluate the use of a Date of Manufacture ("DOM") label with more prominent notification asking consumers to check if a car seat has been recalled and to register their car seat

- Graco will collaborate with retailers to design a proposed system for registration of car seats at the time of sale.

- Graco will organize and lead a council to work with retail partners on programs to improve recall response rates.

- Graco will work to qualify and implement products from more component suppliers in an effort to mitigate the impact of recalls to consumers by ensuring replacement components are readily available or minimizing the extent of models at retail that could be affected by a recall.

3. Improving Child Passenger Safety by Reinforcing Key Safety Messaging.

- Graco will develop and disseminate safety messages to key audiences (i.e. parents and caregivers) that can be built into marketing or public relations programs. These messages can take the form of safety videos, posters, advertisements, retailer communications, e-mails to consumers and/or notices on websites.

- Graco will implement safety messages in other key areas, including but not limited to:

  - Enhancing parent knowledge and partner with key stakeholders (i.e. American Academy of Pediatrics, SafeKids, Car Seat advocates, and retailers) on topics such as: ease of use; proper installation and proper use; upgrading/updating car seats, discouraging second hand use of car seats, fit to car; fit to child; keep child facing 'Rear to 2 years'; risks of heatstroke to children left in vehicles and, keeping children in car seats longer, and other messages encouraging the purchase and use of appropriate, modern car seats.

  - Enhancing consumer awareness of National Child Passenger Safety week;

  - Creating info-graphics to share on social media, bloggers, on-line communities and car seat advocates concerning Installation tips, choosing the right car seat for your child, how to secure your child in a 5-point harness and how to correctly lock the seatbelt;

- Graco will collect information and analyze the potential risks involved, if any, of the use of car seats in a second hand environment and, as appropriate, working with Congress

and develop communications to consumers regarding the potential risks. Any work on this performance obligation is not intended to result in a wholesale prohibition on the second hand use of car seats.

- Graco will develop communications to encourage caregivers to check for any recalls on previously owned or car seats that were used with a previous child and will be reused.

C. Development of Written Plan and Procedures.

Graco will prepare a report which includes a plan and procedures for addressing each of the targeted performance obligations set forth in Section B above and submit this report to NHTSA no later than 60 calendar days after the execution of this Consent Order. The proposed report shall include metrics of success for each of the performance obligations contained in Attachment A. NHTSA, at its option, may accept, reject or revise any part of the proposed report at any time during the pendency of this Consent Order and submit it back to Graco for further revision, if necessary. NHTSA must give its full approval, which will not be unreasonably withheld, to the proposed report before work on any of the performance obligations may begin.

The performance obligations outlined in Attachment A may be carried out, at Graco's discretion, with the assistance and participation of other child seat manufacturers and/or the Juvenile Products Manufacturers Association.

On a semi-annual recurring basis, Graco shall meet with NHTSA to discuss the actions it has taken to satisfy Paragraphs 18-20 of the Consent Order and the performance obligations contained in Schedule A. The first meeting shall take place no later than 120 calendar days after execution of this Consent Order.

D. Costs Associated With the Performance Obligations.

The total expenditure of the performance obligations described above shall not be less than seven million ($7,000,000.00). In documenting this figure, Graco shall provide to NHTSA, on an annual basis, a Declaration from an independent third party documenting the amount of dollars that Graco actually expended during the prior year in furtherance of its obligations under this Consent Order. The independent third party's declaration shall be submitted to NHTSA pursuant to 28 U.S.C. § 1746.In the event of a dispute as to whether Graco has incurred any part of all of the $7 million dollars, NHTSA shall advise Graco of such in writing, to which Graco shall have fifteen days to respond. Upon receipt of Graco's response, should NHTSA still dispute any contested amount, NHTSA shall advise Graco in writing within fifteen days, and Graco shall hire, at its sole expense, a third-party, independent public accounting firm to assess Graco's costs incurred. The independent third party will evaluate whether or not the costs identified are accurate, they reache the cost of the Deferred Amount and are reasonably tailored to the exercise of the performance obligations. The independent third party will so advise NHTSA of its findings by submitting a declaration to NHTSA regarding these points pursuant to 28 U.S.C. § 1746.

E. Completion of Performance Obligations.

Consistent with paragraph 24 of the Consent Order, the term of the Consent Order and the timeline for the satisfactory completion of the performance obligations listed above is five years.

Thirty days after the conclusion of the term of this Consent Order, Graco will submit a Completion Report to NHTSA and, at NHTSA's election Graco will make a presentation of its work under this Consent Order. The Completion Report will address the metrics of

success for each of the performance obligations in order to allow NHTSA to evaluate whether Graco has reasonably achieved the performance obligations and objectives.

Graco is responsible for the satisfactory completion of the performance obligations in accordance with this Consent Order. If NHTSA concludes that Graco has reasonably achieved all of the performance obligations on or before April 1, 2020, NHTSA will not seek payment of the Deferred Amount. If, however, Graco has not reasonably achieved the requirements of the performance obligations of this Consent Order and as set out in Attachment A by the end of the term of this Consent Order, the entire Deferred Amount shall become immediately due and owing to NHTSA.