

known of a safety-related defect or noncompliance in its vehicles. *See* 49 C.F.R. § 573.6(b); *see also United States v. General Motors Corp.*, 656 F. Supp. 1555, 1559 n.5 (D.D.C. 1987); *United States v. General Motors Corp.*, 574 F. Supp. 1047, 1049-50 (D.D.C. 1983).

3. A manufacturer that has filed a DIR is required to notify owners, purchasers, and dealers of the defect or noncompliance. *See* 49 U.S.C. §§ 30118-30119. NHTSA’s regulations set forth the contents of the notification that must be sent to vehicle owners or purchasers, 49 C.F.R. § 577.5, and the manner in which they must be notified, *id.* § 577.7. Manufacturers are required to submit copies of their notices to owners, purchasers, and dealers, along with any bulletins or other communications related to the recall, to NHTSA within five days of when the notice is issued. 49 U.S.C. § 30166(f); 49 C.F.R. § 573.6(c)(10).

4. A manufacturer 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(a).

5. Manufacturers also are required to submit to NHTSA copies of all notices, bulletins, and other communications regarding any defect in its vehicles or items or equipment that are issued to more than one dealer, distributor, or customer, regardless of whether the communication relates to a safety issue. 49 U.S.C. § 30166(f); 49 C.F.R. § 579.5(a). These communications (“manufacturer communications”) must be submitted to NHTSA “not later than five working days after the end of the month in which it is issued.” 49 C.F.R. § 579.5(d).

6. For recalls 14V-364, 15V-007, 15V-066, and 17V-468, NHTSA asserted that Piaggio did not submit a DIR within five business days of when it knew or should have known

that a safety-related defect existed as required by 49 U.S.C. § 30118 and 49 C.F.R. § 573.6(b). Piaggio disagreed with certain of these assertions.

7. On June 23, 2014, Piaggio filed a DIR with NHTSA. This recall was assigned NHTSA recall number 14V-364. Piaggio recalled certain Model Year 2013 Vespa scooters for a defect that could cause a leak in the fuel line. The defective condition was previously identified by a manufacturer communication issued by Piaggio on May 15, 2014.

8. On January 9, 2015, Piaggio filed a DIR with NHTSA. This recall was assigned NHTSA recall number 15V-007. Piaggio recalled certain Model Year 2014-2015 Aprilia Shiver 750 motorcycles for a defect that could result in rear wheel lockup. The defective condition was previously identified by a manufacturer communication issued by Piaggio on December 12, 2014.

9. On February 3, 2015, Piaggio filed a DIR with NHTSA. This recall was assigned NHTSA recall number 15V-066. Piaggio recalled certain Model Year 2008-2011 Vespa scooters and Model Year 2009-2010 Piaggio motorcycles for a defect in the fuel pump that could cause stalling without the ability to restart the engine. The defective condition was previously identified by a manufacturer communication issued by Piaggio on November 20, 2014.

10. On July 22, 2017, Piaggio filed a DIR with NHTSA. This recall was assigned NHTSA recall number 17V-468. Piaggio recalled certain Model Year 2015-2017 Piaggio Fly scooters for a defect that could cause the brake screws to interfere with the fork leg resulting in wheel lockup. The DIR stated that Piaggio corrected the defect in production in September 2016.

11. On July 7, 2017, NHTSA issued a Special Order to Piaggio seeking information about apparent violations of the Safety Act and regulations related to submitting manufacturer

communications, submitting representative copies of recall communications, and filing quarterly recall reports.

12. Piaggio cooperated with NHTSA's information requests and agreed to resolve assertions through this Consent Order.

13. NHTSA issues this Consent Order pursuant to its authority under the Safety Act, 49 U.S.C. Chapter 301, and in accordance with the delegations at 49 C.F.R. §§ 1.95, 501.5(a), to compromise the amount of civil penalties, 49 U.S.C. § 30165(b), to inspect and investigate, 49 U.S.C. § 30166(b)(1), to ensure that defective vehicles and equipment are recalled, 49 U.S.C. §§ 30118-30120, and to require reports or answers to specific questions, 49 U.S.C. § 30166(e).

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

II. TERMS AND CONDITIONS OF CONSENT ORDER

Civil Penalty

14. In determining an appropriate civil penalty amount, NHTSA considered the civil penalty factors set forth in 49 U.S.C. § 30165(c) and Piaggio's views of how those factors should be applied. NHTSA has also taken into account Piaggio's cooperation with NHTSA's investigation and compliance actions since NHTSA issued the Special Order.

15. Subject to the terms in the remainder of this Paragraph, Piaggio admits that the United States is entitled to a civil penalty of up to seven hundred fifty thousand dollars (\$750,000) ("Total Civil Penalty") arising from activities under the jurisdiction of the U.S. Department of Transportation, subject to the provisions of this Consent Order and applicable law including the Federal Claims Collection Act of 1966, as amended and codified at 31 U.S.C. § 3791, *et seq.* (hereinafter the "Claims Collection Act").

- a. Of the Total Civil Penalty, the sum of two hundred seventy-five thousand dollars (\$275,000) (“Cash Amount”) shall be paid within sixty (60) calendar days of the Effective Date of this Consent Order in accordance with instructions provided by NHTSA.
- b. Of the Total Civil Penalty, fifty thousand dollars (\$50,000) (“Performance Obligation Amount”) shall be expended by Piaggio prior to expiration of the term of this Consent Order to fulfill the Industry Outreach obligation identified in Paragraphs 25 and 26 below.
- c. In the event that Piaggio commits material violations of the Safety Act, regulations thereunder, or this Consent Order, during the term of this Consent Order, Piaggio may be obligated to pay additional sums totaling up to a maximum of four hundred twenty-five thousand dollars (\$425,000) in accordance with the provisions set forth in Paragraphs 20-21 below (“Stipulated Civil Penalties”) and may be liable for additional civil penalties beyond the Stipulated Civil Penalties for those violations of the Safety Act and regulations thereunder.

16. If Piaggio fails to make the payment of the Cash Amount as set forth in Paragraph 15(a) above, or any payments of the Stipulated Civil Penalties as may be imposed in accordance with this Consent Order, on or before their respective due dates, Piaggio shall be in default of this Consent Order and the remaining balance of the Total Civil Penalty shall become due immediately. In that event: (i) Piaggio agrees not to contest any collection action undertaken by NHTSA or the United States pursuant to applicable law, including the Claims Collection Act and the U.S. Department of Transportation’s regulations, 49 C.F.R. Part 89, either administratively or

in any court, and (ii) Piaggio 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, Piaggio shall pay the United States all reasonable costs of collection and enforcement, including attorneys' fees and expenses. This provision does not preclude Piaggio from contesting the imposition of any of the Stipulated Civil Penalties in accordance with Paragraph 20 below.

17. Upon receipt of the Cash Amount and upon expiration of the Consent Order (including any extension), Piaggio, including its current and former directors, officers, employees, agents, successors, and assigns will be deemed released from liability for civil penalties pursuant to 49 U.S.C. § 30165 in connection with any and all violations of the Safety Act or regulations thereunder relating to the timeliness of NHTSA recall numbers 14V-364, 15V-007, 15V-066, and 17V-468, and the manufacturer communication and recall reporting issues addressed by NHTSA's July 7, 2017 Special Order, from the inception of the Safety Act through the Effective Date of this Consent Order.

18. Nothing in this Consent Order discharges Piaggio from any obligation to comply with the Safety Act or regulations thereunder, including the obligation to carry out recalls in accordance with law.

19. This Consent Order does not release Piaggio from liabilities, if any, that may be asserted by the United States, the U.S. Department of Transportation, NHTSA, or any governmental entity, other than the civil penalty liability under 49 U.S.C. § 30165 as described in Paragraph 17.

Stipulated Civil Penalties

20. NHTSA and Piaggio expect that Piaggio will fully comply with this Consent Order and the Safety Act, such that the Stipulated Civil Penalties will never become due and will

be released at the termination of this Consent Order. Should NHTSA receive notice or reasonably believe that Piaggio has materially violated the Safety Act, regulations thereunder, or the terms of this Consent Order, NHTSA shall provide written notice to Piaggio, including a statement regarding the Stipulated Civil Penalties that will be due if NHTSA makes a determination in accordance with this Paragraph. Piaggio will have thirty (30) calendar days, or such other time as mutually agreed by NHTSA and Piaggio, from the date on which the issue was communicated to Piaggio by NHTSA (“Evaluation Period”) to respond to the notice in writing. Piaggio’s response will provide its views, along with any supporting information and documentation, including whether Piaggio has corrected the violation. Should there be a reasonable dispute, the parties agree to reasonably discuss the alleged violation. If no mutually agreeable resolution is reached after discussion and NHTSA reasonably determines that Piaggio has materially violated the Safety Act, regulations thereunder, or the terms of this Consent Order, then Piaggio will be liable for the Stipulated Civil Penalties determined by NHTSA, to be paid in accordance with instructions from NHTSA within thirty (30) calendar days of such determination.

21. Piaggio shall only be liable for the payment of Stipulated Civil Penalties, as defined in Paragraph 15(c), in accordance with the conditions in Paragraph 20.

22. The Stipulated Civil Penalties are subject to release on the following schedule:

- a. If NHTSA does not make a determination that Piaggio has materially violated the Safety Act, regulations thereunder, or the terms of this Consent Order by the end of the first year of the Consent Order, one hundred thousand dollars (\$100,000) will be deemed released.

- b. If NHTSA does not make a determination that Piaggio has materially violated the Safety Act, regulations thereunder, or the terms of this Consent Order by the end of the second year of the Consent Order, one hundred thousand dollars (\$100,000) will be deemed released.
- c. If NHTSA does not make a determination that Piaggio has materially violated the Safety Act, regulations thereunder, or the terms of this Consent Order by the end of the third year of the Consent Order, and does not exercise its option for an additional year pursuant to Paragraph 30, the remainder of the Stipulated Civil Penalties will be deemed released.
- d. If NHTSA exercises its option for an additional year pursuant to Paragraph 30, and if NHTSA does not make a determination that Piaggio has materially violated the Safety Act, regulations thereunder, or the terms of this Consent Order by the end of the third year of the Consent Order, one hundred thousand dollars (\$100,000) will be deemed released.
- e. If NHTSA exercises its option for an additional year pursuant to Paragraph 30, and if NHTSA does not make a determination that Piaggio has materially violated the Safety Act, regulations thereunder, or the terms of this Consent Order by the end of the fourth year of the Consent Order, the remainder of the Stipulated Civil Penalties will be deemed released.

Performance Obligation Amount

- 23. This Consent Order requires Piaggio to expend fifty thousand dollars (\$50,000) (the “Performance Obligation Amount”) pursuant to the obligations set forth in Paragraphs 25-
- 26. If Piaggio has not expended the full Performance Obligation Amount by thirty-five (35)

months after the Effective Date of this Consent Order, the unexpended portion of the Performance Obligation Amount shall become immediately due and owing to the U.S. Treasury.

Performance Obligations

Report on Compliance Actions

24. No later than one hundred eighty (180) calendar days after the Effective Date of this Consent Order Piaggio shall submit to NHTSA a report describing changes that Piaggio has made to its compliance processes since receiving the Special Order including any training provided to employees on compliance with the Safety Act and regulations.

Industry Outreach

25. Piaggio will develop a set of best practices for compliance with the Safety Act and regulations for the motorcycle industry that can be distributed through the industry and be made publicly available by Piaggio (the “Best Practices”). Piaggio shall use its best efforts to promote the Best Practices within the motorcycle industry (the “Industry Outreach”).

26. Piaggio shall meet with NHTSA, either virtually or in person, no later than one hundred twenty (120) calendar days after the Effective Date of this Consent Order to discuss an initial plan for fulfilling its Industry Outreach obligation. Piaggio shall notify NHTSA of any material changes to its plan, and shall reasonably consider any feedback from NHTSA on the plan. Piaggio shall update NHTSA on the progress of fulfilling its Industry Outreach obligation during its meetings with the agency pursuant to Paragraph 29.

Audit of Property Damage and Death and Injury Reporting

27. Within one hundred twenty (120) calendar days of the Effective Date of this Consent Order, Piaggio shall complete a review of all correspondence received by Piaggio in which a request or demand for payment or other relief was asserted during the five (5) years prior to the Effective Date of this Consent Order to determine whether there are property damage

claims or death and injury claims that Piaggio did not report under NHTSA's early warning regulations, 49 C.F.R. Part 579, Subpart C. Piaggio shall submit the findings of this review to NHTSA. Any property damage or death and injury claims not previously reported under 49 C.F.R. Part 579, Subpart C, shall be reported via NHTSA's manufacturer early warning reporting portal as specified in 49 C.F.R. § 579.29.

28. Piaggio represents that it made reasonable, good faith efforts to identify and produce property damage or death and injury claims under 49 C.F.R. § 579.23 since the time of its response to the Special Order. Piaggio further represents, in good faith, that it is not presently aware of any property damage or death and injury claims since January 20, 2016 that it was previously required to submit under applicable law, but has not disclosed to NHTSA. Based on those representations and absent information that materially contradicts either of those representations, NHTSA hereby waives any and all enforcement action or claims against Piaggio for civil penalties with respect to potential violations of NHTSA's early warning regulations, 49 C.F.R. § 579.23 that may be disclosed (if any) pursuant to Paragraph 27. Pursuant to Paragraph 20 above, nothing in this Paragraph limits NHTSA's ability to pursue, the Stipulated Civil Penalties, a portion there of, or any of civil penalties for any other violation of law.

Periodic Meetings with NHTSA

29. Piaggio shall meet periodically with NHTSA, either virtually or in person, as needed to discuss Piaggio's compliance with this Consent Order, recall administration issues, and/or potential safety issues under consideration by NHTSA or Piaggio. These meetings shall occur not less than every one hundred eighty (180) calendar days during the term of this Consent Order.

III. TERM OF THE CONSENT ORDER

30. Unless otherwise specified, the term of this Consent Order is three years from the Effective Date; provided, however, that NHTSA may extend the term of this Consent Order for one (1) additional year if NHTSA reasonably determines that not all terms of the Consent Order have been met, that additional time is needed for Piaggio to meet obligations under this Consent Order, or that Piaggio needs additional time to comply with the Safety Act. NHTSA will notify Piaggio in writing at least thirty (30) days prior to the expiration of this Consent Order should NHTSA decide to extend the term of this Consent Order.

IV. AMENDMENT

31. 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.

32. The parties may agree, without need for an amendment as specified in Paragraph 31, to reasonable changes to specified report or meeting dates, schedules, or meeting cadences.

V. MISCELLANEOUS

33. Piaggio shall use its best efforts to take all actions and to do all things necessary to comply with this Consent Order, and to cooperate with NHTSA in carrying out the requirements of this Consent Order.

34. 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.

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

36. The parties shall each bear their own respective attorneys' fees, costs, and expenses, except as provided in Paragraph 16 above.

37. This Consent Order shall be effective upon its full execution by all individuals and parties listed as signatories below ("Effective Date"). Any breach of the obligations under this Consent Order, may, at NHTSA's option, be immediately enforceable in any United States District Court. Piaggio agrees that it will not raise any objection as to venue.

38. In the event of Piaggio's breach of, or failure to perform, any term of this Consent Order, NHTSA reserves the right to pursue any and all appropriate administrative and/or judicial remedies, including, but not limited to, assessing interest for untimely civil penalty payments and/or commencing litigation to enforce this Consent Order in any United States District Court.

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

40. 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.

41. In any legal action between the parties concerning the enforceability of this Consent Order, Piaggio 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 Cash Amount, set forth in

Paragraph 15(a), was made, if applicable, and/or (ii) that Piaggio has substantially complied with the terms of this Consent Order.

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

43. 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.

44. 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.

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

46. This Consent Order is a fully integrated agreement and shall in all respects be interpreted, enforced, and governed under the federal law of the United States. This Consent Order, which is fully incorporated hereto by reference, sets forth the entire agreement between the parties with regard to the subject matter hereof. There are no promises, agreements, or conditions, express or implied, other than those set forth in this Consent Order.

[SIGNATURE PAGES FOLLOW]

APPROVED AND SO ORDERED:

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

Dated: 8/26/21

By: _____
Steven S. Cliff, Ph.D.
Acting Administrator

Dated: 8/26/21

By: _____
Ann Carlson
Chief Counsel

Dated: 8/26/21

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

Dated: 8/26/21

By: _____
Thomas P. Healy
Senior Trial Attorney

AGREED:

PIAGGIO GROUP AMERICAS, INC.

Dated: 08/23/2021

By:



Mario Di Maria
Chairman and CEO
Piaggio Group Americas, Inc.

Dated: 08/23/2021

By:



Sarah Wilson
Covington & Burling LLP
Counsel for Piaggio Group Americas, Inc.