

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

In re:)
)
LDRV Holdings Corp. d/b/a Lazydays RV)
AQ17-003)
)

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into pursuant to the authority of the National Highway Traffic Safety Administration (“NHTSA”), an operating administration of the U.S. Department of Transportation. This Settlement Agreement sets forth the requirements agreed to by LDRV Holdings Corp. d/b/a Lazydays RV and all of its subsidiary companies (collectively, “Lazydays”), under the following terms and conditions.

I. NATURE OF THE ACTION

1. The National Traffic and Motor Vehicle Safety Act of 1966, as amended and recodified (the “Safety Act”), 49 U.S.C. Chapter 301, provides for regulation of motor vehicles and motor vehicle equipment by the Secretary of Transportation. The Secretary has delegated his authorities under the Safety Act to NHTSA. 49 C.F.R. §§ 1.95(a), 501.2; *see* 49 C.F.R. § 501.8(d).

2. The Safety Act prohibits a dealer from selling, introducing or delivering for introduction into interstate commerce, or delivering under sale or lease any new motor vehicle or motor vehicle equipment that contains a safety-related defect or does not comply with an applicable motor vehicle safety standard about which notice has been given under 49 U.S.C. § 30118(c) unless the defect or noncompliance is remedied before delivery under the sale or lease. *See* 49 U.S.C. §§ 30112, 30120(i).

3. A person who violates the requirements of the Safety Act, or a regulation thereunder, is liable to the United States Government for a civil penalty. 49 U.S.C. § 30165(a)(1); 49 C.F.R. § 578.6(a). A separate violation occurs for each motor vehicle and for each failure or refusal to allow or perform a required act. 49 U.S.C. § 30165(a)(1); 49 C.F.R. § 578.6(a)(1). The maximum penalty for each violation was \$7,000 from December 27, 2012 until March 17, 2016, at which point the maximum penalty for each violation was increased to \$21,000.¹ This maximum penalty continued and continues to be adjusted upward annually. *See* 49 C.F.R. § 578.6(a)(1).

4. Lazydays is a dealer of motor vehicles within the meaning of the Safety Act, *see* 49 U.S.C. § 30102(a)(2), and a person within the meaning of 49 U.S.C. § 30165.

5. NHTSA received a complaint that indicated that Lazydays may have delivered a new motor vehicle to a customer without having remedied a safety-related defect or a noncompliance about which the manufacturer had given notice to the dealer, as required by 49 C.F.R. § 577.7.

6. On June 20, 2017, NHTSA opened an audit query investigation (AQ17-003) to determine whether Lazydays violated the Safety Act by delivering new motor vehicles subject to a safety recall (“recall”) without having been remedied.

7. NHTSA’s inquiry led it to determine that Lazydays had violated the Safety Act by delivering new motor vehicles subject to a recall without having been remedied. The recalls involved had to do with a variety of safety issues, including ruptures of the liquid propane line. Lazydays represents that, since receiving notice of NHTSA’s audit query investigation, it has taken multiple actions to enhance its safety processes and procedures, described further below.

¹ *See* 77 Fed. Reg. 70710 (Nov. 27, 2012); 81 Fed. Reg. 15413 (Mar. 22, 2016).

II. LEGAL AUTHORITY

8. NHTSA enters into this Settlement Agreement pursuant to its authority under the Safety Act, 49 U.S.C. Chapter 301, as delegated by the Secretary of Transportation, 49 C.F.R. §§ 1.95, 501.2, and NHTSA, 49 C.F.R. § 501.8, including, among other things, its authority to compromise the amount of civil penalties, 49 U.S.C. § 30165(b); and ensure that defective and noncompliant vehicles are not delivered before being remedied, 49 U.S.C. §§ 30112(a), 30120(i).

9. In consideration of Lazydays' entry into this Settlement Agreement and its representations outlined below, it is AGREED by Lazydays and NHTSA as follows:

III. TERMS OF SETTLEMENT AGREEMENT

Safety Act Admission

10. Lazydays admits it violated the Safety Act by delivering certain new motor vehicles that were subject to a recall before the vehicles were remedied, as prohibited by 49 U.S.C. § 30120(i).

Civil Penalty

11. Lazydays shall pay a civil penalty in the sum of forty-five thousand dollars (\$45,000) ("Civil Penalty") in connection with the matters addressed in this Settlement Agreement. Lazydays shall pay this Civil Penalty in one lump-sum payment by electronic funds transfer to the U.S. Treasury in accordance with instructions provided by NHTSA, no later than 30 calendar days following execution of this Settlement Agreement.

Representations

12. Lazydays agrees to take, and represents that it has already undertaken, certain actions described herein to prevent the delivery of unremedied, recalled new motor vehicles as prohibited by the Safety Act.

13. Specifically, since receiving notice of NHTSA's audit query, Lazydays represents that it established processes for checking its vehicles for recalls three times in its new vehicle sale and delivery process: (1) upon the vehicle's arrival at the dealership; (2) when a new recall notice is received from a vehicle manufacturer pursuant to the requirements of 49 C.F.R. § 579.7(c), and (3) again prior to delivery. Lazydays represents that, when it receives notice from a vehicle manufacturer that a vehicle is subject to a recall before the vehicle has been sold, the vehicle is marked in the Lazydays inventory system as "not for delivery" and a line is added to a repair order for the vehicle directing that the recall be performed prior to delivery. Lazydays represents that when the remedy cannot be performed (*e.g.*, the necessary parts are not available or a repair has not been designed), the vehicle remains unavailable for delivery until the remedy can be performed. Lazydays further represents that if a recall notice is received pursuant to 49 C.F.R. § 579.7(c) after a sale but prior to delivery, the delivery is postponed until the recall remedy is completed on that vehicle. Lazydays also represents that it hired additional staff to check for all recalls. Lazydays represents that, after working with an outside consultant familiar with Safety Act requirements, it also improved its employee training on recalls, which is now presented annually to all sales and service personnel, and within 90 days of acquiring a new dealership. According to Lazydays, this mandatory training includes: instruction on the prohibition on delivering new vehicles with an open recall, the requirement to check all new vehicles in inventory for open recalls, the need to complete any open recall before a new vehicle can be delivered, the banning from delivery new vehicles whose recall remedies cannot be completed (*e.g.*, unavailability of parts), the need to complete a recall remedy before delivery when a new recall is issued after sale, the prohibition of delivering a new vehicle subject to an uncompleted recall to a consumer even if the consumer offers to sign a waiver, and the disciplinary action that will be issued for any failure to comply with these processes.

14. Lazydays further represents that it has implemented processes, including training as described above, to prevent the delivery of any unremedied new motor vehicles subject to a recall since at least September 21, 2017 , and is implementing the processes at newly acquired dealerships within 90 days of the acquisition

15. Lazydays represents that it will begin conducting dealership audits in 2022, consisting of quarterly audits reviewing a random sample of 50 motor vehicle sales, including multiple sales from each of its dealerships, to determine compliance. If issues are found during the audits, Lazydays will take additional actions to come into compliance.

IV. AMENDMENT

16. This Settlement Agreement cannot be modified, amended or waived except by an instrument in writing signed by all parties.

V. MISCELLANEOUS

17. **Application of Federal Law.** Nothing in this Settlement Agreement 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 Settlement Agreement, or as amended thereafter.

18. **Release.**

A. Upon payment of the Civil Penalty, the Secretary of Transportation, by and through the Administrator of NHTSA, will be deemed to have released Lazydays, 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 Lazydays' Safety Act obligations related to the specified investigation identified in the caption of this Settlement Agreement from the inception of the Safety Act through the execution date of this Settlement Agreement.

B. This Settlement Agreement does not release Lazydays 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 as described in this Settlement Agreement.

19. **Breach.** In the event of Lazydays' breach of, or failure to perform, any term of this Settlement Agreement, NHTSA reserves the right to pursue any and all appropriate remedies, including, but not limited to, actions compelling specific performance of the terms of this Settlement Agreement, assessing interest for untimely settlement payments, and/or commencing litigation to enforce this Settlement Agreement in any United States District Court. Lazydays agrees that, in any such enforcement action, it will not raise any objection as to venue. Lazydays expressly waives any and all defenses, at law or in equity, and agrees not to plead, argue, or otherwise raise any defenses other than (i) that the payment of the Civil Penalty was made to NHTSA as set forth herein, and (ii) that Lazydays has substantially complied with the terms of this Settlement Agreement.

20. **Attorneys' Fees.** The parties shall each bear their own respective attorneys' fees, costs, and expenses.

21. **Authority.** The parties who are the signatories to this Settlement Agreement have the legal authority to enter into this Settlement Agreement, and each party has authorized its undersigned to execute this Settlement Agreement on its behalf.

22. **Tax Deduction/Credit.** Lazydays agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, local, or foreign tax for any fine or civil penalty paid pursuant to this Settlement Agreement.

23. **Corporate Change.** This Settlement Agreement shall be binding upon, and inure to the benefit of, Lazydays and its current and former directors, officers, employees, agents,

parents, subsidiaries, affiliates, successors, and assigns. Lazydays 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 Lazydays and any of its parents, subsidiaries, or affiliates.

24. **Severability.** 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 Settlement Agreement and shall in no way affect, impair or invalidate any other provision of this Settlement Agreement.

25. **Third Parties.** This Settlement Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Settlement Agreement.

26. **Counterparts.** This Settlement Agreement may be executed in counterparts, each of which shall be considered effective as an original signature.

27. **Effective Date.** This Settlement Agreement shall be effective upon its full execution.

28. **Integration.** This Settlement Agreement is a fully integrated agreement and shall in all respects be interpreted, enforced and governed under the federal law of the United States. This Settlement Agreement 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 Settlement Agreement.

[SIGNATURES ON NEXT PAGE]

APPROVED AND AGREED:

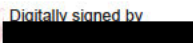
NATIONAL HIGHWAY TRAFFIC SAFETY
ADMINISTRATION,
U.S. DEPARTMENT OF TRANSPORTATION

Dated: May 3, 2022

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Date: 2022.05.03
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Ann Carlson
Chief Counsel

Dated: May 3, 2022

By:  Digitally signed by 
Date: 2022.05.03
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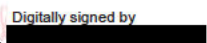
Kerry Kolodziej
Assistant Chief Counsel for
Litigation and Enforcement

Dated: May 3, 2022

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Date: 2022.05.03 13:32:43
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Jeffrey Eyres
Senior Trial Attorney

Dated: May 3, 2022

By:  Digitally signed by 
Date: 2022.05.03 13:15:23
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Michael Kuppersmith
Trial Attorney

AGREED:

LDRV HOLDINGS CORP. d/b/a LAZYDAYS RV

Dated: May 2, 2022

By:

Nicholas Tomashot
Chief Financial Officer

Dated: May 2, 2022

By:

Erika Jones
Mayer Brown LLP
Counsel to LDRV Holdings Corp.