INFORMATION REDACTED PURSUANT TOTHE FREEDOM OF INFORMATION ACT (FOIA), 5 U.S.C.552(B)(6)

U.S. Department of Transportation
National Highway Traffic Safety Administration

1200 New Jersey Avenue SE.
Washington, DC 20590

February 23, 2021

VIA EMAIL

Ms. Lisa LeBlanc
Quality & Compliance Director
UPPAbaby
276 Weymouth Street
Rockland, MA 02370
lleblanc@uppababy.com

NEF-108ew
AQ21-001

Dear Ms. LeBlanc:

This letter is to inform you that the Office of Defects Investigation (ODI) of the National Highway Traffic Safety Administration (NHTSA) has opened an Audit Query (AQ21-001) to determine whether UPPAbaby has complied with the National Traffic and Motor Vehicle Safety Act and related regulations at 49 U.S.C. § 30166 and 49 C.F.R. Part 579. Specifically, ODI is investigating UPPAbaby's untimely reporting and/or failure to report death and injury incidents, consumer complaints, manufacturer communications, and foreign recalls.

ODI was made aware of an April 24, 2020 communication from UPPAbaby to retailers, in which UPPAbaby issued an "immediate stop sale" of the UPPAbaby 2020 KNOX child restraint ("KNOX"), due to lateral movement of the restraint when rear facing. A copy of this communication is enclosed as Enclosure 1. UPPAbaby stated in its communication that there were no reports of injuries, but that it wanted to retrieve all KNOX seats from the marketplace. The communication also stated that consumers would be provided a full refund for the purchase price of the child restraint and an additional $50 for the inconvenience. In a separate letter to KNOX owners, UPPAbaby stated that this was a voluntary effort to retrieve the child restraints and was not a recall. This letter also stated that owners should stop using their KNOX immediately, and if the owner continued to use the child restraint they would be doing so at their own risk.

NHTSA contacted UPPAbaby regarding this stop sale and held a meeting on May 8th, 2020. During this meeting, UPPAbaby stated that 100% of the purchasers had been contacted, the seat was no longer being offered for sale in the United States, and that it had complied with the Safety Act and 49 C.F.R. Part 579 regulations. However, neither the April 24, 2020 retailer communication nor the owner letter had been reported as a manufacturer communication under 49 C.F.R. § 579.5. UPPAbaby submitted the owner letter on May 27, 2020, only after being requested to do so by Tanya Topka, the Trends Analysis Division Chief. UPPABaby has not submitted a copy of the retailer letter to NHTSA.

NHTSA corresponded with UPPAbaby from May until August 2020, and sent a formal information request letter requesting additional information about the KNOX child restraint on August 31, 2020. NHTSA requested UPPAbaby information about the KNOX, and on October 30, 2020, NHTSA received information from UPPAbaby that highlighted additional concerns and inconsistencies regarding UPPAbaby's reporting requirements (49 C.F.R. Part 579).

The Trends Analysis Division had a conversation with Ms. [redacted] on October 20, 2020, to discuss inconsistencies in UPPAbaby's quarterly aggregate submission as well as clarify other concerns regarding the reporting requirements under 49 C.F.R. Part 579. During this call, as well as an email dated October 21, 2020, Ms. LeBlanc stated that UPPAbaby did not have any additional information, including field reports, to report. However, after reviewing the information UPPAbaby submitted to NHTSA on October 30, 2020, NHTSA is investigating UPPAbaby's untimely reporting and/or failure to report manufacturer communications, field reports, death and injury incidents, consumer complaints, and foreign recalls.

Legal Authority for This Request

This letter is being sent to UPPAbaby pursuant to 49 U.S.C. § 30166, which authorizes NHTSA to conduct any investigation that may be necessary to enforce Chapter 301 of Title 49 and to request reports and the production of things. It constitutes a new request for information.

Instructions

Pursuant to this authority and to assist the Agency in evaluating UPPAbaby's compliance with 49 C.F.R. Part 579, please provide responses to the following numbered information requests, repeat the applicable information request verbatim above each response, and answer each sub-item separately.

When documents are produced, the documents shall be produced in an identified, organized manner that corresponds with each numbered information request, including the subpart. When documents are produced and the documents would not, standing alone, be self-explanatory, the production of documents shall be supplemented and accompanied by explanation. If you cannot respond to any item, please state the reason why you are unable to do so.

If on the basis of attorney-client, attorney work product, or other privilege, you withhold or redact requested documents or items of information in response to this information request, you must provide a privilege log identifying each document or item withheld or redacted, and stating the date, subject or title, the name and position of the person(s) from, and the person(s) to whom it was sent, and the name and position of any other recipient (to include all carbon copies or blind carbon copies), the nature of that information or material, and the basis for the claim of privilege and why that privilege applies.

Definitions

Unless otherwise stated in the text, the following definitions apply to these information requests:

- **"Child Restraint System"** means "any system that meets, or is offered for sale in the United States as meeting, any definition in S4 of § 571.213 of Chapter 49 of the Code of Federal Regulations (C.F.R.), or that is offered for sale as a child restraint system in a foreign country." *See* 49 C.F.R. § 579.4(c).

- **"Claim"** means "a written request or written demand for relief, including money or other compensation, assumption of expenditures, or equitable relief, related to a motor vehicle crash, accident, the failure of a component or system of a vehicle or an item of motor vehicle equipment, or a fire originating in or from a motor vehicle or a substance that leaked from a motor vehicle. Claim includes, but is not limited to, a demand in the absence of a lawsuit, a complaint initiating a lawsuit, an assertion or notice of litigation, a settlement, covenant not to sue or release of liability in the absence of a written demand, and a subrogation request. A claim exists regardless of any denial or refusal to pay it, and regardless of whether it has been settled or resolved in the manufacturer's favor. The existence of a claim may not be conditioned on the receipt of anything beyond the document(s) stating a claim. Claim does not include demands related to asbestos exposure, to emissions of volatile organic compounds from vehicle interiors, or to end-of-life disposal of vehicles, parts or components of vehicles, equipment, or parts or components of equipment." *See* 49 C.F.R. § 579.4(c).

- "**Defect**" means and includes "any defect in performance, construction, a component, or material of a motor vehicle or motor vehicle equipment." *See* 49 U.S.C. § 30102(a)(3); 49 C.F.R. § 579.4(a).

- **"Document(s)"** is used in the broadest sense of the word and shall mean all original written, printed, typed, recorded, or graphic matter whatsoever, however produced or reproduced, of every kind, nature, and description, and all non-identical copies of both sides thereof, including, but not limited to, papers, letters, memoranda, correspondence, communications, electronic mail (e-mail) messages (existing in hard copy and/or in electronic storage), faxes, mailgrams, telegrams, cables, telex messages, notes, annotations, working papers, drafts, minutes, records, audio and video recordings, data, databases, other information bases, summaries, charts, tables, graphics, other visual displays, photographs, statements, interviews, opinions, reports, newspaper articles, studies, analyses, evaluations, interpretations, contracts, agreements, jottings, agendas, bulletins, notices, announcements, instructions, blueprints, drawings, as-builts, changes, manuals, publications, work schedules, journals, statistical data, desk, portable and computer calendars, appointment books, diaries, travel reports, lists, tabulations, computer printouts, data processing program libraries, data processing inputs and outputs, microfilms, microfiches, statements for services, resolutions, financial statements, governmental records, business records, personnel records, work orders, pleadings, discovery in any form, affidavits, motions, responses to discovery, all transcripts, administrative filings and all mechanical, magnetic, photographic and electronic records or recordings of any kind, including any storage media associated with computers, including, but not limited to, information on hard drives, floppy disks, backup tapes, and zip drives, electronic communications, including but not limited to, the Internet and shall include any drafts or revisions pertaining to any of the foregoing, all other things similar

to any of the foregoing, however denominated by UPPAbaby, any other data compilations from which information can be obtained, translated if necessary, into a usable form and any other documents. For purposes of this request, any document which contains any note, comment, addition, deletion, insertion, annotation, or otherwise comprises a non-identical copy of another document shall be treated as a separate document subject to production. In all cases where original and any non-identical copies are not available, "document(s)" also means any identical copies of the original and all non-identical copies thereof. Any document, record, graph, chart, film or photograph originally produced in color must be provided in color. Furnish all documents whether verified by UPPAbaby or not. If a document is not in the English language, provide both the original document and an English translation of the document.

- **"Identical or Substantially Similar"** An item of motor vehicle equipment sold or in use outside the United States is identical or substantially similar to equipment sold or offered for sale in the United States if such equipment and the equipment sold or offered for sale in the United States have one or more components or systems that are the same, and the component or system performs the same function in vehicles or equipment sold or offered for sale in the United States, regardless of whether the part numbers are identical. *See* 49 C.F.R. § 579.4(d).

- **"Identify,"** when used with respect to a document, means to state (1) the type of document (e.g. letter, memorandum, hand-written note, facsimile, e-mail); (2) its date of origin or creation; (3) its author and addressee(s); (4) a brief description of its subject matter and size; and (5) any unique number, mark, or other designation (e.g., Bates number).

- **"Model"** means "the name that the manufacturer uses to identify child restraint systems with the same seat shell, buckle, base (if so equipped) and restraint system." *See* 49 C.F.R. § 579.4(c).

- **"Notice"** means "a document, other than a media article, that does not include a demand for relief, and that a manufacturer receives from a person other than NHTSA." *See* 49 C.F.R. § 579.4(c).

- **"Other Safety Campaign"** means "an action in which a manufacturer communicates with owners and/or dealers in a foreign country with respect to conditions under which motor vehicles or equipment should be operated, repaired, or replaced that relate to safety (excluding promotional and marketing materials, customer satisfaction surveys, and operating instructions or owner's manuals that accompany the vehicle or child restraint system at the time of first sale); or advice or direction to a dealer or distributor to cease the delivery or sale of specified models of vehicles or equipment." *See* 49 C.F.R. § 579.4(c).

- **"Safety Recall"** means "an offer by a manufacturer to owners of motor vehicles or equipment in a foreign country to provide remedial action to address a defect that relates to motor vehicle safety or a failure to comply with an applicable safety standard or

guideline, whether or not the manufacturer agrees to pay the full cost of the remedial action." 49 C.F.R. § 579.4(c).

- **"UPPAbaby"** means, all of its past and present officers and employees, whether assigned to their principal offices or any of their field or other locations, including all of their divisions, subsidiaries (whether or not incorporated) and affiliated enterprises and all of their headquarters, regional, zone and other offices and their employees, and all agents, contractors, consultants, attorneys and law firms and other persons engaged directly or indirectly (e.g., employee of a consultant) by or under the control of UPPAbaby, including any agent(s) designated for service of process.

- "**You**" or **"Your"** refers to UPPAbaby, as defined above.

Information Requests

1. Information submitted to NHTSA from UPPAbaby on October 30, 2020, identified 24 consumer complaints that UPPAbaby had received about the 2020 KNOX. For each of those 24 complaints, state whether they were reported to NHTSA pursuant to 49 C.F.R. § 579.25(c). For any complaint that was reported, indicate the date of the submission in which it was reported. For any complaint that was not reported pursuant to 49 C.F.R. § 579.25(c), explain why it was not reported.

2. Identify and produce the following information for all 24 consumer complaints identified in UPPAbaby's October 30, 2020 submission to NHTSA, and any other consumer complaints, warranty and non-warranty claims received for the 2020 KNOX child restraint:

   a. Date of manufacture;
   b. Serial number or UPPAbaby unique identifier for the child restraint system;
   c. Last name or unique identifier for the consumer/customer filing the claim;
   d. Date the complaint or claim was received by UPPAbaby;
   e. A summary regarding the concern(s) of the complaint or claim;
   f. UPPAbaby's disposition or conclusion of the complaint or claim; and
   g. All documentation received from, or in communication with, the consumer (e.g., emails, photos, videos, etc.) regarding the complaint or claim.

   Responses "a-f" should be submitted using Microsoft Excel entitled "QUESTION 2 DATA." Responses for "g" should be submitted in a Zipfile entitled "QUESTION 2 DOCUMENTS," and each complaint or claim should be saved in a separate folder that corresponds to the complaint or claim(s) within the "QUESTION 2 DATA" document.

3. The documentation UPPAbaby submitted to NHTSA on October 30, 2020, included a picture of an alleged injury from the 2020 KNOX child restraint harness strap. Further, the documentation included several complaints of child discomfort when in the KNOX seat. For this alleged injury and each of these complaints, state whether they were reported to NHTSA pursuant to 49 C.F.R. § 579.25(b). For any injury or complaint that was reported, indicate

the date of the submission in which it was reported. For any injury or complaint that was not reported pursuant to 49 C.F.R. § 579.25(c), explain why it was not reported.

4. Identify and produce the following information for all death and injury claims or notices received by UPPAbaby for the 2020 KNOX and any other UPPAbaby child restraint system models produced from 2015 to 2020 that were not previously submitted under 49 C.F.R. § 579.25(b):

   a. Date of manufacture;
   b. Serial number or UPPAbaby unique identifier for the child restraint system;
   c. Last name or unique identifier for the consumer filing the claim or notice;
   d. Date the claim or notice was received by UPPAbaby;
   e. A summary regarding the concern(s) of the claim or notice;
   f. UPPAbaby's disposition or conclusion of the claim or notice; and
   g. All documentation received from, or in communication with, the consumer (e.g., emails, photos, videos, etc.) regarding the claim or notice.

   Responses "a-f" should be submitted using Microsoft Excel entitled "DEATH AND INJURY DATA." Responses for "g" should be submitted in a Zipfile entitled "DEATH AND INJURY DOCUMENTS," and each claim or notice should be saved in a separate folder that corresponds to the claim or notice within the "DEATH AND INJURY DATA" document.

5. Describe UPPAbaby's process for receiving consumer complaints and claims. Your description should identify how the claims/complaints are documented and reported.

6. Describe the process(es) and procedure(s) that UPPAbaby uses to prepare and submit Early Warning Reporting aggregate data, pursuant to 49 C.F.R. § 579.25(b), and death and injury incident information, pursuant to 49 C.F.R. § 579.25(c). Produce a copy of any such written process(es) or procedure(s).

7. State whether the document enclosed as Enclosure 1 was sent by UPPAbaby to its retailers. If no, provide any additional explanatory information regarding this document. If yes, please state why it was not submitted to NHTSA pursuant to 49 C.F.R. § 579.5.

8. UPPAbaby's October 30, 2020 submission to NHTSA, included UPPAbaby correspondence with a customer who had a concern about the inlay fit of the KNOX child restraint. UPPAbaby responded to the customer with "new information" and messaging from the "R&D team" regarding fit requirements for the KNOX. State whether these fit requirements were sent to more than one owner, purchaser, distributor, or dealer. If no, provide any additional explanatory information. If yes, please state why it was not submitted to NHTSA pursuant to 49 C.F.R. § 579.5.

9. NHTSA is aware of a Canadian recall (February 21, 2018) for the 2015-2017 UPPAbaby MESA child restraint. State whether an identical or substantially similar child restraint system to the Canadian 2015-2017 UPPAbaby MESA child restraint system was sold or offered for sale in the United States. If yes, state whether the identical or substantially similar

child restraint system sold or offered for sale in the United States had the same warning label that was addressed in the Canadian recall. Provide a copy or PDF image of the warning label for the identical or substantially similar child restraint systems that were sold or offered for sale in the United States.

10. State whether UPPAbaby has conducted any foreign safety recalls or safety campaigns for any UPPAbaby child restraint systems since 2015, other than the Canadian recall identified in the preceding question. For each foreign safety recall or other safety campaign, state whether it was reported to NHTSA pursuant to 49 C.F.R. § 579.11 and explain why or why not.

Civil Penalties

UPPAbaby's failure to respond promptly and fully to this letter could subject UPPAbaby to civil penalties pursuant to 49 U.S.C. § 30165 or lead to an action for injunctive relief pursuant to 49 U.S.C. § 30163. (Other remedies and sanctions are available as well.) The Vehicle Safety Act, as amended, provides for civil penalties of up to $22,723 per violation per day, with a maximum of $113,611,635 for a related series of daily violations, for failing or refusing to perform an act required under 49 U.S.C. § 30166. *See* 49 U.S.C. § 30165(a)(3); 49 C.F.R § 578.6(a)(3). This includes failing to respond completely, accurately, and in a timely manner to ODI information requests.

If UPPAbaby cannot respond to any specific request or subpart(s) thereof, please state the reason why it is unable to do so. If on the basis of attorney-client, attorney work product, or other privilege, UPPAbaby does not submit one or more requested documents or items of information in response to this information request, UPPAbaby must provide a privilege log identifying each document or item withheld, and stating the date, subject or title, the name and position of the person(s) from, and the person(s) to whom it was sent, and the name and position of any other recipient (to include all carbon copies or blind carbon copies), the nature of that information or material, and the basis for the claim of privilege and why that privilege applies.

Confidential Business Information

If UPPAbaby claims that any of the information it submits in response to these Requests for Information is confidential business information or is otherwise protected from public disclosure, it must make that claim and submit that material in the following manner pursuant to the Agency's regulations.

All confidential business information must be submitted directly to the Office of Chief Counsel as described in the following paragraph and should not be sent to this office. In addition, do not submit any confidential business information in the body of the letter submitted to this office. Please reference **AQ21-001** in your response to this letter and in any confidentiality request submitted to the Office of Chief Counsel.

If UPPAbaby claims that any of the information or documents provided in response to these Requests for Information constitute confidential commercial material within the meaning of 5

U.S.C. § 552(b)(4), or are protected from disclosure pursuant to 18 U.S.C. § 1905, you must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with 49 C.F.R. Part 512, to Alexandra Cohen, Office of Chief Counsel, at alexandra.cohen@dot.gov.[1] *See* 5 U.S.C. § 552(b)(4); 49 C.F.R. § 512.5; *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356 (2019); https://www.nhtsa.gov/coronavirus/submission-confidential-business-information. UPPAbaby is required to submit a copy of the documents containing allegedly confidential information and a copy containing only the portions for which no claim of confidential treatment is made and from which those portions for which confidential treatment is claimed has been redacted. *See* 49 C.F.R. § 512.5. Please remember that the phrase "ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION" or "CONTAINS CONFIDENTIAL BUSINESS INFORMATION" (as appropriate) must appear at the top of each page containing information claimed to be confidential, and the information must be clearly identified in accordance with 49 C.F.R. § 512.6.

Due Date

UPPAbaby's response to this letter, together with a copy of any confidentiality request, must be submitted to Alexandra Cohen in the Office of Chief Counsel at alexandra.cohen@dot.gov by ***March 25, 2021***. UPPAbaby's response must include all non-confidential documents and a redacted version of all documents that contain confidential information.

If UPPAbaby finds that it is unable to provide all of the information requested within the time allotted, UPPAbaby must request an extension from me at (202) 366-5207 no later than five business days before the response due date. If UPPAbaby is unable to provide all of the information requested by the original deadline, it must submit a partial response by the original deadline with whatever information UPPAbaby then has available, even if an extension has been granted.

If you have any technical questions concerning this matter, please call Dr. Elizabeth Wolfe at 202-366-3976.

Sincerely,

[redacted]

Jeff Quandt, Chief
Trends Analysis Division
Office of Defects Investigation

Enclosure 1, April 24, 2020 retailer letter

[1] You may also contact Ms. Cohen at (202)853-0649 if you would like to arrange for a method of submission other than email.