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

THOMPSON HINE

February 14, 2025

Via Electronic Submission Only

Mr. Peter Simshauser
Chief Counsel
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Re: Request for Confidential Treatment:
Grand Design RV LLC's Complete Response to Information Request in Preliminary Evaluation (PE24-029)

Dear Mr. Simshauser:

On behalf of Grand Design RV LLC ("GDRV"), we request confidential treatment for certain information in GDRV's response to the National Highway Traffic Safety Administration's ("NHTSA") Office of Defect Investigation ("ODI") December 17, 2024 Information Request ("GDRV Response") in connection with the agency's Preliminary Evaluation ("PE") (PE24-029), which GDRV is submitting to NHTSA electronically and simultaneously with this request.

Specifically, GDRV seeks permanent confidential treatment for: (1) the information identified within brackets in the narrative response of GDRV; (2) the entirety of the information set forth in the Excel Spreadsheets provided in response to questions 1, 3, 5, 10, 11, and 12 of the IR; (3) the entirety of the information set forth in the documents provided in response to questions 4, 8, 9, 10, 11, and 12 (collectively "Confidential Information"). A certificate in support of this request is attached pursuant to 49 C.F.R. § 512.4(b).

In accordance with the instructions set forth in the IR and 49 C.F.R. § 512.6, GDRV has identified the Confidential Information, including the information in its narrative responses and the files and materials submitted to NHTSA in response to this IR. PDF files containing copies of the documents are labeled as "ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION" in the top margin as appropriate. If only a portion of a page is claimed to be confidential, that portion is designated by brackets and is marked with "CONTAINS CONFIDENTIAL BUSINESS INFORMATION" designations. To the extent GDRV was unable to add confidential marks due to the file's original format, such as Excel files, it identified confidential information using existing attributes within the file or renamed the file with a "_CBI" designation as appropriate. To the extent practicable, GDRV also marked confidential information with sequential identifiers. GDRV is also providing a separate public version of the responses as required under Part 512.

The Confidential Information qualifies for protection from public disclosure under 5 U.S.C. § 552(b)(4) ("Exemption 4"), 49 C.F.R. § 512.15 (b) and (e), the well-known standard set forth under *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), and its progeny, and the

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U.S. Supreme Court's decision in *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356 (2019).[1] Among other reasons, it includes confidential commercial information as described in more detail below. A certificate in support of this request is attached pursuant to 49 C.F.R. § 512.4(b).

The Confidential Information qualifies for protection from disclosure under Exemption 4 because it includes confidential commercial information. For the purposes of Exemption 4, commercial information includes information in which the submitter has a "commercial interest." *Pub. Citizen Health Research Grp. v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983). Information is confidential where it is customarily and actually treated as private by its owner, regardless of whether disclosure of the information would cause substantial competitive harm. *Argus Leader Media*, 139 S. Ct. at 2366.

Setting aside whether *National Parks* and its progeny even survived the U.S. Supreme Court's decision in *Argus Leader*, the information here squarely qualifies for confidential treatment under either standard. The Confidential Information contains information that is both commercial and confidential. This information includes details about, *inter alia*, GDRV's (i) suppliers and customers, (ii) manufacture and design of subject vehicles and system, (iii) paid warranty claims; and (iv) its internal procedures pertaining to or assessments about the alleged defect. As the manufacturer of subject vehicles, GDRV has a commercial interest in this information. GDRV customarily treats these types of information as confidential because they could be used to develop or market competing vehicles and the release of this information can damage GDRV's goodwill. Consistent with the customary handling of the types of information composing the Confidential Information, GDRV has treated the Confidential Information as confidential and does not make them available outside the company except under assurances that they will be kept confidential.

Protecting the Confidential Information from disclosure would also be consistent with the policy behind Exemption 4. Congress enacted Exemption 4 to prevent disclosures that would "eliminate much of the time and effort that would otherwise be required to bring to market a product competitive with the [submitter's] product." *Pub. Citizen Health Research Grp. v. FDA*, 185 F.3d 898, 905 (D.C. Cir. 1999). "Because competition in business turns on the relative costs and opportunities faced by members of the same industry, there is a potential windfall for competitors to whom valuable information is released under FOIA. If those competitors are charged only minimal FOIA retrieval costs for the information, rather than the considerable costs of private reproduction, they may be getting quite a bargain. Such bargains could easily have competitive consequences not contemplated as part of FOIA's principal aim of promoting openness in government." *Worthington Compressors, Inc. v. Costle*, 662 F.2d 45, 51 (D.C. Cir. 1981). The Confidential Information squarely falls within the Exemption 4 policy interests as well.

[1] Although NHTSA's confidentiality standard under 49 C.F.R. § 512.15(b) applies the "substantial competitive harm" test, NHTSA issued this standard before the Supreme Court rejected the *National Parks* "substantial competitive harm" test in *Argus Leader*. NHTSA thus should assess confidentiality consistent with *Argus Leader*.

Further, the Confidential Information includes personal information such as employee or customer names, addresses, telephone numbers, and complete Vehicle Identification Numbers (VINs). GDRV is producing such personal information to facilitate the Agency's investigation with the understanding and under the assurance that the Agency will not make such personal information available to the public under FOIA Exemption 6, 5 U.S.C. 552(b)(6).

If you receive a FOIA request for disclosure of the information for which confidential treatment is sought before you have completed your review of this request, GDRV respectfully requests notification of the FOIA request and an opportunity to provide further justification for confidential treatment, if warranted, and to allow GDRV to conduct a deeper review of the requested information.

Please contact me if you have any questions with regards to this request for confidential treatment.

Sincerely,

[redacted]

Kerem Bilge
Counsel

Counsel for Daimler Truck North America LLC

Enclosures:

Certificate in Support of Request for Confidentiality (GDRV)
GDRV Response (Confidential version)
GDRV Response (Public version)

Certificate in Support of Request for Confidentiality

I, Troy M. Cornell, pursuant to the provisions of 49 C.F.R. Part 512, state as follows:

1. I am the Director of Product Safety and Compliance in Winnebago Industries, Inc, and I am authorized by Grand Design RV LLC ("GDRV") to execute this certificate on its behalf;

2. I certify that the information contained in the attached materials, and for which GDRV seeks confidential treatment, is confidential and proprietary data and is being submitted with the claim that it is entitled to confidential treatment under 5 U.S.C. 552(b)(4) (as incorporated by reference in and modified by the statute under which the information is being submitted);

3. I hereby request that the information contained in the enclosed be protected on a permanent basis;

4. This certification is based on the information provided by the responsible GDRV personnel who have authority in the normal course of business to release the information for which a claim of confidentiality has been made to ascertain whether such information has ever been released outside GDRV;

5. Based upon that information, to the best of my knowledge, information and belief, the information for which GDRV has claimed confidential treatment has never been released or become available outside GDRV.

6. I make no representations beyond those contained in this certificate and, in particular, I make no representations as to whether this information may become available outside GDRV because of unauthorized or inadvertent disclosure (except as stated in paragraph 5); and

7. I certify under penalty of perjury that the foregoing is true and correct.

Executed this 14th day of February 2025.



Troy M. Cornell