

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties. This Settlement Agreement is entered into by and between Whitney R. Leeman, Ph.D. ("Leeman") and Bombardier Recreational Products Inc. ("Bombardier"), with Leeman and Bombardier each individually referred to as a "Party" and collectively as the "Parties." Leeman is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances in consumer products. Bombardier employs ten or more individuals, and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.5 *et seq.* ("Proposition 65").

1.2 General Allegations. Leeman alleges that Bombardier manufactures, imports, sells, or distributes for sale in the state of California, vinyl/PVC mud jackets and mud pants containing lead without first providing the clear and reasonable health hazard warning required by Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

1.3 Product Description. The products covered by this Settlement Agreement are vinyl/PVC mud jackets and mud pants that are imported, manufactured, sold, or distributed for sale in California by Bombardier, including, but not limited to, the *Can-Am Mud Jacket, Style 286127, #2861271200, #2861270993, #2451 and Can-Am Mud Pants, Style 286128, #2861280900, #2861280993* (collectively, "Products").

1.4 Notice of Violation. On June 19, 2013, Leeman served Bombardier and the requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice"), alleging that Bombardier violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to lead. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission. Bombardier denies the material, factual, and legal allegations made in the Notice, and maintains that all of the products it has sold in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Bombardier of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Bombardier of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Bombardier. This Section shall not, however, diminish or otherwise affect Bombardier's obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date. For purposes of this Settlement Agreement, the term "Effective Date" shall mean June 1, 2014.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulated Products. Commencing on the Effective Date, and continuing thereafter, Bombardier shall only manufacture, ship, sell, or distribute for sale in California, Reformulated Products. For purposes of this Settlement Agreement, "Reformulated Products" are Products that (a) contain no more than 90 parts per million ("ppm") lead content in any vinyl/PVC component analyzed pursuant to U.S. Environmental Protection Agency ("EPA") testing methodologies 3050B and 6010B; and (b) yield a maximum result of 1.0 micrograms (μg) of lead on any surface, sampled according to the NIOSH 9100 testing protocol and analyzed pursuant EPA testing methodologies 3050B and 6010B. In addition to or in lieu of the test methodologies provided by this Section, the parties may utilize equivalent methodologies employed by state and federal agencies to determine lead content in a solid substance.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments. Pursuant to Health and Safety Code section 25249.7(b), Bombardier shall pay \$7,500 in civil penalties. Each penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment ("OEHHA")

and the remaining 25% of the penalty paid to Leeman.

3.1.1 Initial Civil Penalty. Within five days of the Effective Date, Bombardier shall make an initial civil penalty payment of \$2,500. Bombardier shall provide its payment in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$1,875; and (b) "The Chanler Group in Trust for Whitney R. Leeman" in the amount of \$625.

3.1.2 Final Civil Penalty. On or before September 1, 2014, Bombardier will make a final civil penalty payment of \$5,000. Pursuant to title 11 California Code of Regulations section 3203(c), the final civil penalty payment will be waived in its entirety if, no later than August 15, 2014, Bombardier's Manager of Product Safety certifies in writing to Leeman's counsel that, as of such date, one-hundred percent (100%) of the Products that Bombardier manufactures, imports, purchases, or distributes for sale in California are Reformulated Products as defined by Section 2.1, and that Bombardier will continue to only offer Reformulated Products in California in the future. The option to certify timely reformulation in lieu of making the final civil penalty payment constitutes a material term of this Settlement Agreement, and time is of the essence.

3.2 Attorney Fees and Costs. The Parties reached an accord on the compensation due to Leeman and her counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, Bombardier shall pay \$21,500 for all fees and costs incurred investigating, bringing this matter to the attention of Bombardier's management, and negotiating a settlement in the public interest.

3.3 Payment Procedures. Except the final civil penalty payment required by Section 3.1.2, all payments owed under this Settlement Agreement are due within five days of the Effective Date.

3.3.1 Payment Address for Leeman and The Chanler Group. All payments and tax forms required for Leeman and her counsel under this Settlement Agreement shall be delivered to the following address:

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

3.3.2 Payment Addresses for OEHHA. All payments and tax forms required for OEHHA under this Settlement Agreement shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") to one of the following addresses, as appropriate:

For United States Postal Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-U.S. Postal Delivery or Courier:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95812-4010

3.3.3 Copy of Payments to OEHHA. Bombardier agrees to provide Leeman's counsel with a copy of the checks to OEHHA simultaneous with payment, to be delivered to the address provided in Section 3.3.1.

4. CLAIMS COVERED AND RELEASED

4.1 Leeman's Release of Bombardier. This Settlement Agreement is a full, final, and binding resolution between Leeman and Bombardier of any violation of Proposition 65 that was or could have been asserted by Leeman, on her behalf, or on behalf of her past and current agents, representatives, attorneys, successors, and assignees, against Bombardier, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Bombardier directly or indirectly distributes or sells the Products, including, without limitation, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative

members, and licensees (“Releasees”), based on unwarned exposures to lead from Products manufactured, sold or distributed for sale in California by Bombardier prior to the Effective Date.

In further consideration of the promises and agreements herein contained, Leeman, on her own behalf and on behalf of her past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that she may have against Bombardier and Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys’ fees arising under Proposition 65 for unwarned exposures to lead from Products manufactured, sold, or distributed for sale in California by Bombardier prior to the Effective Date.

4.2 Bombardier’s Release of Leeman. Bombardier, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have against Leeman and her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Leeman and her attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement, Bombardier may request in writing that Leeman draft and file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment providing a release for the Products in the public interest, and seek court approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If requested, Leeman and Bombardier agree to reasonably cooperate and to use their best efforts, and those of their counsel, to obtain an entry of judgment in accordance with the terms of this Settlement Agreement by a superior court in California in a timely manner.

Pursuant to Code of Civil Procedure sections 1021 and 1021.5, if so requested, Bombardier agrees to reimburse Leeman and her counsel for the reasonable fees and costs incurred in connection with work performed pursuant to this section in an amount not to exceed \$15,000, exclusive of fees and cost on appeal, if any. Bombardier agrees to remit payment to the address provided in section 3.3.1 within ten days of receiving an invoice from Leeman's counsel for work performed under this section,.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Bombardier may provide written notice to Leeman of any asserted change in the law, and have no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Products are so affected.

8. NOTICE

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Bombardier Recreational Products Inc.:

Marie-Claude Simard, Manager, Product Safety
Bombardier Recreational Products Inc.
726 Rue-Saint-Joseph
Valcourt, QC J0E 2L0
CANADA

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With a copy to:

R. Bryan Martin, Esq.
Haight Brown & Bonesteel, LLP
555 South Flower Street, 45th Floor
Los Angeles, CA 90071

For Leeman:

The Chanler Group
Attn: Proposition 65 Coordinator
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

Any Party may, from time to time, specify in writing to the other Party a change of address to which all notices and other communications shall be sent.

9. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts, and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. POST-EXECUTION ACTIVITIES

Leeman agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

11. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the Parties.

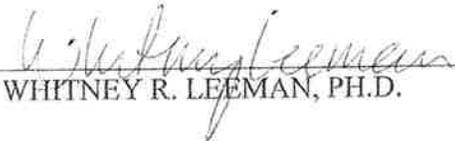
12. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.



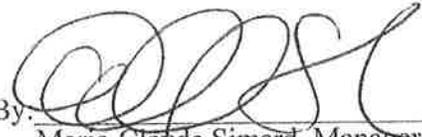
AGREED TO:

Date: 7/17/14

By: 
WHITNEY R. LEEMAN, PH.D.

AGREED TO:

Date: June 16, 2014

By: 
Marie-Claude Simard, Manager, Product
Safety
BOMBARDIER RECREATIONAL
PRODUCTS INC.