

1 Clifford A. Chanler, State Bar No. 135534
Josh Voorhees, State Bar No. 241436
2 Brian Johnson, State Bar No. 235965
THE CHANLER GROUP
3 2560 Ninth Street
Parker Plaza, Suite 214
4 Berkeley, CA 94710-2565
Telephone: (510) 848-8880
5 Facsimile: (510) 848-8118

6 Attorneys for Plaintiff
Dr. WHITNEY R. LEEMAN
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA
10 UNLIMITED CIVIL JURISDICTION

11 DR. WHITNEY R. LEEMAN

12 Plaintiff

13 v.

14 AMERICAN HONDA MOTOR CO., INC.,

15 Defendant.
16
17
18
19
20
21
22
23
24
25
26
27
28

Case No. 115CV288687

**[PROPOSED] CONSENT
JUDGMENT**

Action Filed: _December 3, 2015

1 **1. INTRODUCTION**

2 **1.1 Dr. Whitney R. Leeman and American Honda Motor Co., Inc.**

3 This [Proposed] Consent Judgment (“Consent Judgment”) is entered into by and between
4 plaintiff, Dr. Whitney R. Leeman (“Plaintiff” or “Leeman”), and defendant, American Honda
5 Motor Co., Inc. (“Defendant” or “Honda”). Plaintiff and Defendant are each individually referred
6 to as a “Party” and collectively referred to as the “Parties.”

7 **1.2 Dr. Whitney R. Leeman**

8 Leeman is an individual residing in the State of California who seeks to promote
9 awareness of exposure to toxic chemicals and improve human health by reducing or eliminating
10 hazardous substances contained in consumer and commercial products.

11 **1.3 Honda**

12 Honda employs ten or more persons and is a “person in the course of doing business” for
13 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
14 Safety Code Section 25249.5 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Leeman alleges that Honda manufactured, imported and/or distributed for sale in the
17 State of California vinyl/poly vinyl chloride (“PVC”) cords and clamp grips that may be
18 touched and handled by consumers and other individuals containing di(2-ethylhexyl)phthalate
19 (“DEHP”), Diisononyl phthalate (“DINP”), and di-n-butyl phthalate (“DBP”) without first
20 providing the exposure warning required by Proposition 65.

21 **1.5 Listed Chemicals**

22 DEHP is a phthalate chemical listed under Proposition 65 as a chemical known to the
23 State of California to cause cancer and birth defects or other reproductive harm. Other phthalate
24 chemicals listed under Proposition 65 as chemicals known to the State of California to cause
25 birth defects or other reproductive harm include, but are not limited to, DBP, butyl benzyl
26 phthalate (“BBP”), and Di-isodecyl phthalate (“DIDP”). In addition, DINP has been listed
27
28

1 under Proposition 65 as chemicals known to the State of California to cause cancer.¹

2 **1.6 Product Description**

3 The products that are covered by this Consent Judgment are: (a) vinyl/PVC cords and
4 clamp grips (including, but not limited to Honda Generators DC Charging Cord, P/N 32660-
5 894-BCX12H, UPC #7 86102 002776) that consumers may reasonably be expected to mouth or
6 handle, including, but not limited to those associated with cords used with Honda Generators,
7 which are manufactured imported, sold, offered for sale and/or distributed by Honda under its
8 own name or other brand names (the “Covered Products”), and (b) other pliable PVC-containing
9 accessories that consumers may reasonably be expected to mouth or handle and which are
10 components of or used with power equipment such as generators, lawn movers, pumps, and
11 tillers/trimmers, and which are manufactured by or for Honda (collectively the “Additional
12 Products”).

13 **1.7 Notices of Violation**

14 On or about August 20, 2015, Leeman served Honda, others and certain requisite public
15 enforcement agencies with a document entitled “60-Day Notice of Violation” under Proposition
16 65 that provided the recipients with notice that Honda was in violation of Proposition 65 for
17 failing to warn customers and consumers in California that the Covered Products expose users
18 to DEHP (the original “Notice”). On December 1, 2015, Leeman served Honda, others and
19 certain requisite public enforcement agencies with an additional document entitled
20 “Supplemental 60-Day Notice of Violation” under Proposition 65 that provided the recipients
21 with notice that Honda was in violation of Proposition 65 for failing to warn customers and
22 consumers in California that the Covered Products expose users to DINP and DBP in addition to
23 DEHP (the “Supplemental Notice”).²

24
25
26

¹ DEHP, BBP, DBP, DIDP and DINP are collectively referred to herein as the “Listed
27 Chemicals.”

28 ² The original Notice and Supplemental Notice are collectively referred to as the “Notices” herein.

1 **1.8 Complaint**

2 As no authorized public prosecutor of Proposition 65 filed a claim against Honda based
3 on the allegations set forth in the original Notice prior to the expiration of the 60 day notice
4 period, Leeman filed a complaint on December 3, 2015, in the Superior Court of California for
5 the County of Santa Clara (the “Court”), *Leeman v. American Honda Motor Co., Inc., et al.*,
6 Case No. 115CV288687, naming Honda as a defendant and alleging claims for violations of
7 Health and Safety Code section 25249.6, based on the alleged exposures to DEHP in vinyl/PVC
8 cords and clamp grips distributed for sale or sold by Honda in the State of California
9 (hereinafter “Action” or “Complaint”).³

10 **1.9 Consent to Jurisdiction**

11 For purposes of this Consent Judgment only, the Parties stipulate that the Court has
12 subject matter jurisdiction over the allegations in the Complaint and personal jurisdiction over
13 Honda as to the allegations in the Complaint, that venue is proper in the County of Santa Clara,
14 and that the Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

15 **1.10 No Admission**

16 Honda denies the material, factual and legal allegations contained in Leeman’s Notices
17 and Complaint and maintains that all products that it has sold, manufactured, imported and/or
18 distributed in California, including the Covered Products and Additional Products, have been
19 and are in compliance with all laws. Nothing in this Consent Judgment is or shall be construed
20 as an admission by the Parties of any fact, conclusion of law, issue of law or violation of law,
21 nor shall compliance with the Consent Judgment constitute or be construed as an admission by
22 Honda of any fact, conclusion of law, issue of law, or violation of law. This section shall not,
23 however, diminish or otherwise affect Honda’s obligations, responsibilities, and duties under
24 this Consent Judgment.

25 _____

26 ³ If no authorized public prosecutor of Proposition 65 files a claim against Honda based on the
27 allegations set forth in the Supplemental Notice within sixty-five (65) days of it having been served, then
28 the Complaint shall be deemed to have been amended to include Leeman’s allegations concerning DINP
and DBP in the Covered Products and the public liability release set forth in Section 4.1 below shall
likewise deem to have been amended to include DINP and DBP in addition to DEHP.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1.11 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” shall mean the date on which this Consent Judgment is approved by the Court, including any tentative ruling that is unopposed.

2. INJUNCTIVE RELIEF

2.1 Covered Products.

As of the Effective Date, Honda shall only distribute for sale or sell in California Covered Products that: (1) are “Phthalate Free”; or (2) carry a clear and reasonable Proposition 65 warning as specified in Section 2.1.B below.⁴

A. Reformulation

For purposes of this Settlement Agreement, “Phthalate Free” shall mean Covered Products containing less than or equal to 1,000 parts per million (“ppm”) each of DEHP, DINP and DBP when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methods approved by U.S. government agencies to measure the phthalate content of plastics or poly vinyl chloride.

B. Warnings

To the extent it does not address its obligations through reformulation meeting the criteria set forth in Section 2.1.A of this Consent Judgment, Honda shall address its Proposition 65 obligations for DEHP, DINP or DBP in Covered Products by affixing a warning to the packaging of, or, if no packaging exists, directly on, each non-reformulated Covered Product sold in California that states:

⁴ Covered Products that were acquired or supplied to third parties by Honda prior to the Effective Date shall be deemed exempted from the requirements of Sections 2.1.A and 2.1.B and permitted to be sold through as previously manufactured, packaged or labeled.

1 **WARNING:** This product contains one or more phthalate
2 chemicals known to the State of California
3 to cause cancer, and birth defects and other
4 reproductive harm.⁵

5 Any warning issued pursuant to this Section 2.1.B shall be prominently placed with such
6 conspicuousness as compared with other words, statements, designs, or devices as to render it
7 likely to be read and understood by an ordinary individual under customary conditions before
8 purchase.

9 **2.2 Additional Products.**

10 Within 120 days following the Effective Date, to the extent it already has not done so,
11 Honda shall undertake commercially reasonable efforts to require its suppliers of the Additional
12 Products (as delineated in Section 1.6 above) to address the same Phthalate Free requirements it
13 has imposed on its suppliers of the Covered Products. Honda shall not thereafter acquire, import,
14 distribute, or offer Additional Products for sale in California unless they are Phthalate Free or
15 carry a clear and reasonable Proposition 65 warning as specified in Section 2.1.B above.⁶

16 **3. MONETARY PAYMENTS**

17 **3.1 Civil Penalties Pursuant To Health & Safety Code § 25249.7(b)**

18 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the matters referred to
19 in this Consent Judgment and addressed in Section 2 above, Honda shall pay civil penalties
20 totaling \$40,000 in two separate installments. Each civil penalty payment Honda makes shall be
21 allocated according to Health & Safety Code § 25249.12(c)(1) and (d) with 75% of the penalty
22 amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”),
23 and the remaining 25% of the penalty paid to Leeman.

24 ⁵ Honda may modify the above warning language to delete the term “cancer, and” to the extent
25 that it is able to confirm that the level of DEHP and DINP in an associated product meets the Phthalate
26 Free standard set forth in Section 2.1.A above. Honda may also modify the above warning language to
27 change the term “phthalate chemicals” to “phthalates and other chemicals” to the extent it has reason to
28 believe an associated product contains chemicals listed under Proposition 65 that are not Listed Chemicals
as defined herein.

⁶ Additional Products that were acquired or supplied to third parties by Honda prior to the
Effective Date shall also be deemed exempted from the requirements of Section 2.2 and permitted to be
sold through as previously manufactured, packaged or labeled.

1 **3.2 Initial Civil Penalty**

2 Following the mutual execution of this Consent Judgment by the Parties, Honda shall, by
3 no later than January 15, 2016, deposit an initial civil penalty amount of \$10,000 in its counsel's
4 client trust account, which shall be held pending the Court's approval of this Consent Judgment.
5 Honda or its counsel shall provide The Chanler Group with written confirmation within five days
6 of the funds being so deposited. Within five days of the date that this Consent Judgment is
7 approved by the Court, counsel for Honda shall direct its client trust account to issue two separate
8 checks for the initial civil penalty payment to: (a) "OEHHA" in the amount of \$7,500; and (b) Dr.
9 Whitney R. Leeman, Client Trust Account" in the amount of \$2,500. The checks shall then be
10 transmitted to the address show in Section 3.3.A below.

11 **3.3 Final Civil Penalty**

12 Provided that this Consent Judgment has been approved and entered by the Court, Honda
13 will make a final civil penalty payment of \$30,000 by no later than December 31, 2016. Pursuant
14 to title 11 California Code of Regulations, section 3203(c), the final civil penalty payment shall
15 be waived, however, if by no later than November 30, 2016, a duly authorized official of Honda
16 certifies in writing to Plaintiff that it has implemented the requirements in Sections 2.1 and 2.2 as
17 to all of the Listed Chemicals in the Covered Products and Additional Products offered for sale in
18 California. Time is of the essence with respect to the dates identified for the provision of the
19 certification required in lieu of making the final civil penalty payment under this Section. Unless
20 waived entirely, all penalty payments shall be allocated according to Health & Safety Code §
21 25249.12(c)(1) and (d) with 75% of the penalty amount paid to OEHHA, and the remaining 25%
22 of the penalty paid to Leeman, and shall be delivered to the address listed in Section 3.3.A below.

23 **3.4 Reimbursement of Plaintiff's Fees and Costs**

24 The Parties acknowledge that Leeman and her counsel offered to resolve this dispute
25 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
26 leaving the issue to be resolved after the material terms of the agreement had been settled.
27 Shortly after all other settlement terms had been finalized, Honda expressed a desire to resolve
28 the fees and costs. The Parties then attempted to (and did) reach an accord on the compensation

1 due to Leeman and her counsel under general contract principles and the private attorney
2 general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed or to
3 be performed by Leeman and her counsel in this matter, exclusive of fees and costs incurred on
4 appeal, if any. Under these legal principles, following the mutual execution of this Consent
5 Judgment by the Parties, Honda shall, by no later than January 16, 2016, issue a check in the
6 amount of \$38,600 to its counsel's client trust account, which shall be held pending the Court's
7 approval of this Consent Judgment. Honda or its counsel shall provide The Chanler Group with
8 written confirmation within five days of the funds being deposited as specified above. Within
9 five days of the date that this Consent Judgment is approved by the Court, counsel for Honda
10 shall direct its client trust account to issue a check payable to "The Chanler Group" in the
11 amount of \$38,600 and send it to the address found in Section 3.3.A below.

12 **3.5 Payment Procedures**

13 **3.5.A Issuance of Payments.**

14 All payments owed pursuant to Section 3.1 and 3.2 shall be delivered to the following
15 address:

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

19 **3.3.B Court Approval; Reimbursement.**

20 If the Court does not approve the Consent Judgment, all funds tendered into any trust or
21 escrow account, or otherwise received by The Chanler Group from Honda in settlement of this
22 Action, shall be refunded in full as required by Section 6 below.

23 **4. CLAIMS COVERED AND RELEASED**

24 **4.1 Plaintiff's Public Release of Proposition 65 Claims**

25 In consideration of the promises and commitments contained herein, Plaintiff on behalf of
26 herself and in the public interest, hereby releases Honda, its parents, subsidiaries, affiliated
27 entities that are under common ownership or control, directors, officers, employees, and attorneys
28 ("Releasees"), and each entity to whom they directly or indirectly distribute or sell Covered

1 Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees,
2 cooperative members, licensors, and licensees (“Downstream Defendant Releasees”), from all
3 claims for violations of Proposition 65 based on unwarned exposure to DEHP from the Covered
4 Products acquired, distributed or sold by Honda prior to the Effective Date. Upon entry of this
5 Consent Judgment by the Court, going forward, Honda’s compliance with the terms of Section
6 2.1 of this Consent Judgment shall be deemed to constitute compliance with Proposition 65 with
7 respect to DEHP in the Covered Products.⁷

8 **4.2 Plaintiff’s Release of Additional Claims**

9 Plaintiff, in her individual capacity only and *not* in her representative capacity, also
10 provides a release to Honda, its Releasees, and its Downstream Defendant Releasees which shall
11 be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
12 obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of
13 Leeman of any nature, character or kind, whether known or unknown, suspected or unsuspected,
14 arising out of alleged or actual exposures to the Listed Chemicals in the Covered Products or
15 Additional Products acquired, distributed, or sold by Honda before the Effective Date. Upon
16 entry of this Consent Judgment by the Court, going forward, Honda’s compliance with the terms
17 of Section 2 of this Consent Judgment shall be deemed to constitute compliance with Proposition
18 65 with respect to Listed Chemicals in the Covered Products and Additional Products.

19 **4.3 Honda’s Release of Leeman**

20 Honda on behalf of itself, its past and current agents, representatives, attorneys, successors
21 and/or assignees, hereby waives any and all claims against Leeman, her attorneys, and other
22 representatives for any and all actions taken or statements made (or those that could have been
23 taken or made) by Leeman and her attorneys and other representatives, whether in the course of
24 investigating claims or otherwise seeking enforcement of Proposition 65 against Honda in this
25 matter.

26
27
28 ⁷ This Paragraph may also extend to DINP and DBP pursuant to footnote 3 above.

1 **5. SEVERABILITY**

2 If, subsequent to the Court’s approval of this Consent Judgment, any of the provisions
3 contained herein are held by a court to be unenforceable, the validity of the enforceable
4 provisions remaining shall not be adversely affected unless the Court finds that any unenforceable
5 provision is not severable from the remainder of the Consent Judgment.

6 **6. COURT APPROVAL**

7 This Consent Judgment is not effective until it is approved and entered by the Court and
8 shall be null and void if, for any reason, it is not approved and entered by Court within twelve
9 months of it being fully executed by the Parties, at which time, any funds being held in Trust or in
10 escrow for purposes of this agreement shall be fully reimbursed to Honda.

11 **7. GOVERNING LAW**

12 The terms of this Consent Judgment shall be governed by the laws of the State of
13 California and apply within the State of California. In the event that Proposition 65 is repealed or
14 otherwise rendered inapplicable by reason of law generally, or as to the Covered Products or the
15 Additional Products, then Honda shall provide written notice to Leeman of any asserted change in
16 the law, and shall have no further obligations pursuant to this Consent Judgment with respect to,
17 and to the extent that, the Covered Products or Additional Products are so affected. Nothing in
18 this Consent Judgment shall be interpreted to relieve Honda from any obligation to comply with
19 any other state or federal law.

20 **8. ENFORCEMENT**

21 Any Party may, by motion or application for an order to show cause before this Court,
22 enforce the terms and conditions contained in this Consent Judgment.

23 **9. FUTURE NOTICE**

24 Unless specified herein, all correspondence and notices required to be provided pursuant
25 to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
26 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
27 other party at the following:
28

1 To Leeman:
2 The Chanler Group
3 Attn: Proposition 65 Coordinator
4 Parker Plaza
5 2560 Ninth Street, Suite 214
6 Berkeley, CA 94710

7 To Honda:
8 Jack Alden
9 Senior Corporate Counsel
10 Honda North America, Inc.
11 700 Van Ness Avenue, Mail Stop 300-2-1D
12 Torrance, California 90501-1490

13 *with a copy to*

14 Robert Falk
15 Morrison & Foerster LLP
16 425 Market Street, 32nd Floor
17 San Francisco, CA 94105

18 Any Party may modify the person and address to whom the notice is to be sent by sending each
19 other Party notice by mail and/or other verifiable form of written communication.

20 **10. MODIFICATION**

21 Except as provided in this Section, this Consent Judgment may be modified only by a
22 written agreement of the Parties and upon entry of a modified Consent Judgment by the Court
23 thereon or by the Court upon motion for good cause shown and entry of a modified Consent
24 Judgment by the Court.

25 **11. ADDITIONAL POST-EXECUTION ACTIVITIES**

26 Leeman agrees to comply with the reporting form requirements referenced in Health and
27 Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to California Health
28 & Safety Code § 25249.7(f)(4), a noticed motion is required to obtain judicial approval of this
Consent Judgment. In furtherance of obtaining such approval, Leeman’s counsel shall take the
lead in drafting the required motion and the Parties and their respective counsel agree to
mutually employ their best efforts to support the entry of this agreement as a Consent Judgment
and obtain approval of the Consent Judgment by the Court in a timely manner. For purposes of
this paragraph, “best efforts” shall include, at a minimum, cooperating on the drafting and filing

1 of any papers in support of the required motion for judicial approval. If any third party
2 objection to the noticed motion is filed, Leeman and Honda shall work together to reply and
3 appear at any hearing before the Court. This provision is a material component of the Consent
4 Judgment and shall be treated as such in the event of a breach.

5 **12. ENTIRE AGREEMENT**

6 This Consent Judgment contains the sole and entire agreement and understanding of the
7 parties. No representations, oral or otherwise, express or implied, other than those contained
8 herein, have been made by any party hereto. No other agreements shall be deemed to exist or to
9 bind any of the parties.

10 **13. COUNTERPARTS, FACSIMILE SIGNATURES**

11 This Consent Judgment may be executed in counterparts and by facsimile or portable
12 document format (.pdf) signature, each of which shall be deemed an original, and all of which,
13 when taken together, shall be deemed to constitute one and the same document.

14 **14. AUTHORIZATION**

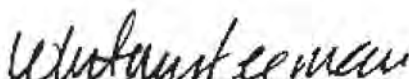
15 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the
16 Party he or she represents to stipulate to this Consent Judgment and to enter into and execute the
17 Consent Judgment on behalf of the Party represented and to legally bind that Party.


18
19 AGREED TO:

AGREED TO:

20
21 Date: December 18, 2015

Date: DECEMBER 15, 2015

22
23 By: 
24 Dr. Whitney B. Leeman

By: 
25 Scott Conner, Senior Vice President
26 Power Equipment Division,
27 American Honda Motor Co., Inc.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

