

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 17-cv-61150-DIMITROULEAS/Snow

BRIAN FELDMAN AND DANIEL
DICKERSON, individually and on behalf
of a class of similarly situated individuals,

Plaintiffs,

vs.

BRP US, INC., a BOMBARDIER
RECREATIONAL PRODUCTS, INC.
and BRP, INC.,

Defendant.

**ORDER PRELIMINARILY APPROVING CLASS SETTLEMENT AND NOTICE,
CERTIFYING SETTLEMENT CLASS, AND SCHEDULING FAIRNESS HEARING**

The above-styled matter come before the Court on Plaintiffs' Unopposed¹ Motion for Preliminary Approval of Class Action Settlement and Notice, Certifying Settlement Class, and Scheduling Fairness Hearing ("Motion for Preliminary Approval") [DE 58], filed August 9, 2018.

On considering the record of these proceedings, the memorandum submitted in support of the motion and accompanying filings, the proposed Stipulation and Settlement Agreement ("Settlement" or "Agreement"), the representations, argument, and recommendation of counsel for the moving parties, the requirements of law, and being otherwise fully advised,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Court has jurisdiction over the subject matter and parties to this proceeding.

¹ Defendants agree, for settlement purposes only, not to oppose the motion.

2. The Motion for Preliminary Approval [DE 58] is **GRANTED**. The proposed Agreement is hereby incorporated by reference in this Order and all terms defined in the Agreement will have the same meanings in this Preliminary Approval Order.

3. Pursuant to Federal Rule of Civil Procedure 23 and based upon the Court's review of the Plaintiffs' Motion for Preliminary Approval and accompanying submissions, the Court grants preliminary approval of the settlement memorialized in the Stipulation and Settlement Agreement and Release ("Settlement" or "Agreement") and all of its Exhibits, between Plaintiffs, BRIAN FELDMAN ("Feldman"), DANIEL DICKERSON ("Dickerson"), Deborah Dunn ("Dunn"), and DAVID LOMBARDI ("Lombardi") (collectively "Plaintiffs"), and Defendant, BOMBARDIER RECREATIONAL PRODUCTS, INC. ("BRP").

4. The Court finds the Agreement, together with all of its Exhibits, attached as Exhibit A to the Motion for Preliminary Approval, is fair, reasonable and adequate, entered into in good faith, free of collusion, and within the range of possible final judicial approval, such that notice thereof should be given to the Class Members.

5. Under Federal Rule of Civil Procedure 23(c) the Court hereby preliminarily certifies the following Class for settlement purposes only:

All current and former owners of the Subject Watercraft purchased in the states of Florida, New York, New Jersey, and Texas.

Excluded from the Class are: (1) Defendants, any entity or division in which Defendant has a controlling interest, and its legal representatives, officers, directors, assigns, and successors; and (2) the Judge to whom this case is assigned.

6. For settlement purposes only, Plaintiff meets all of the requirements for class certification under Federal Rule of Civil Procedure 23(a) and (b)(3).

7. Plaintiffs Feldman, Dickerson, Dunn and Lombardi are preliminarily appointed as representatives of the Settlement Class ("Class Representatives"). Plaintiffs and the Class Members share common predominant issues of fact and law and class treatment is a superior method of handling their claims. As Class Representatives, the Plaintiffs have claims typical of

those held by the Settlement Class, and the Court finds they have no conflicts that would render them unsuitable representatives. Being capable of representing and protecting the interests of the proposed class, Plaintiffs are adequate representatives of the Class.

8. The Court approves the appointment of the following attorneys as Class Counsel for the Class whom the Court finds meet the requirements of Federal Rule of Civil Procedure 23(g): Richard E. Norman and R. Martin Weber, Jr., CROWLEY NORMAN, LLP; Matthew R. Mendelsohn, MAZIE SLATER KATZ & FREEMAN, LLC; Edward H. Zebersky and Mark Fistos, ZEBERSKY PAYNE, LLP; and Britton D. Monts, THE MONTS FIRM. Being capable of representing and protecting the interests of the proposed Class, Class Counsel are adequate representatives of the Class. These counsel are experienced in complex, defective product, and class litigation, and they did substantial work identifying, investigating, prosecuting, and settling Plaintiffs' and Class Members' claims in the Action.

9. The Court approves the form and content of Notice, substantially in the form attached as Exhibit 2 to the Agreement.

10. The Court hereby approves and directs that Heffler Claims Group be confirmed to act as the Claims Administrator (as defined in the Agreement) and directs the Claims Administrator to disseminate the Notice as follows:

Within thirty (30) business days following the Court's signing of this Order, BRP shall cause the Claims Administrator to send a copy of the Notice and Claim Form attached as Exhibits 2 and 3 to the Agreement, to all Class Members via first class mail, as more specifically described in Paragraphs 57-59 of the Agreement.

11. All reasonable costs incurred in identifying and notifying Settlement Class Members as described in Paragraphs 16, and 57-59 of the Agreement shall be borne by BRP as required in the Agreement.

12. The Court approves the Notice plan, and the Court finds that the Notice plan, described in Paragraphs 17, and 57-59 of the Agreement, is the best notice practicable under the

circumstances. The Notice plan is reasonably calculated, under the circumstances, to apprise the Class Members of class certification for purposes of the Settlement, the terms of the proposed Settlement, the Fairness Hearing, and Class Counsel's application for fees and expenses, approval of the Settlement and the means by which to participate, opt out, and object; constitutes valid, due and sufficient notice to all Settlement Class Members, complying fully with the requirements of Federal Rule of Civil Procedure 23, the Due Process Clause, and the United States Constitution, and any other applicable law.

13. The Court directs that a hearing be scheduled for **Friday, November 16, 2018**, at 10:30 a.m., at the United States District Court for the Southern District of Florida, 299 East Broward Boulevard, Fort Lauderdale, Florida 33301 in Courtroom 205B before Judge William P. Dimitrouleas, as set forth in the Notice (the "Fairness Hearing") to assist the Court in finally determining whether the Settlement provided for in the Agreement is fair, reasonable and adequate; whether Final Judgment should be entered dismissing with prejudice the above-captioned Action; and whether Class Counsel's application for fees and expenses should be approved. Upon a showing of good cause, the Fairness Hearing may be postponed, adjourned or rescheduled by order of the Court without further notice to the members of the Class.

14. The Court further directs that only Class Members may object to the Settlement. Class Members who wish to object to the Settlement must file with the Court and serve on counsel for the Parties a written statement in the form of a letter or a pleading (not an email) objecting to the Settlement. The written statement must list the name, address and telephone number of the objecting Class Member and attach a copy of the title for the Subject Watercraft sufficient to prove membership in the Class. The written statement shall further detail the legal and factual bases for the objection. Such written statement must be mailed to the Claims Administrator at the address specified in Exhibit 2 to the Agreement with a copy served on Class Counsel and BRP's counsel at the addresses specified in Exhibit 2 to the Agreement no later than thirty (30) days after the Notice Date (the "Objection/Exclusion Deadline Date").

15. No Class Member shall be entitled to be heard at the final Fairness Hearing (whether individually or through separate counsel) or to object to the Settlement, and no written objections or briefs submitted by any Class Member shall be received or considered by the Court at the Fairness Hearing, unless written notice of the Class Member's intention to appear at the Fairness Hearing, and copies of any written objections or briefs, shall have been filed with the Court and served on counsel for the Parties on or before the Objection/Exclusion Deadline Date stated in Paragraphs 19, 61-63 of the Agreement. The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether an objection and/or intention to appear has been timely submitted. In the event that the postmark is illegible, the objection and/or intention to appear shall be deemed untimely unless it is received within five (5) calendar days of the Objection/Exclusion Deadline Date. Class Members who fail to file and serve timely written objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

16. If the Class Member has hired an attorney to represent the Class Member in asserting an objection to the Settlement, that attorney must file with his or her request to appear a statement that identifies all other class action cases in which the attorney has appeared either as counsel on behalf of an objecting class member or as lead counsel on behalf of a class, including the case style, case number, and court. Such statement shall detail the ultimate disposition of any objection filed by the attorney in any class action case and describe whether the objection was resolved for a payment of fees with no alteration to the underlying class action settlement agreement or, in the event the objection was resolved with an enhancement to the underlying class action settlement agreement, describe those enhancements and how the class action settlement was modified. Any notice and/or statement described in this paragraph shall be filed with the Court and shall be served upon Class Counsel and counsel for BRP by first-class mail and facsimile no later than the Objection/Exclusion Deadline Date stated in Paragraphs 19, 61-63 of the Agreement.

17. The Court further directs that any person within the Class definition who wishes to be excluded from the Class must send an “Exclusion Request” in the form of a letter sent by mail (not emailed). The letter must include: (a) the name of the case Case No. 17-cv-61150; *Brian Feldman, et al. v. Bombardier Recreational Products, Inc.*; in the United States District Court for the Southern District of Florida); (b) a sentence expressly stating that the Class Member wants to be excluded from the Class in this case, (c) the Class Member’s name, address, telephone number, and (d) the Class Member’s personal signature (not the signature of the Class Member’s attorney). The Exclusion Request must be returned by mail to the Claims Administrator at the address specified in Exhibit 2 to the Agreement and must be postmarked on or before the Objection/Exclusion Deadline Date. The date of the postmark on the return mailing envelope shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. In the event that the postmark is illegible, the request for exclusion shall be deemed untimely unless it is received within five (5) calendar days of the Objection/Exclusion Deadline Date.

18. Any Class Member who properly opts out of the Class using the foregoing procedure will not be entitled to any relief from the Settlement and will not be bound by the Settlement or have any right to object, appeal or comment thereon. Class Members who fail to submit a valid and timely request for exclusion on or before the Objection/Exclusion Deadline Date shall be bound by all terms of the Settlement and any Final Judgment entered in this Action if the Settlement is approved by the Court.

19. The Court further directs that the Claims Administrator will provide copies of all Exclusion Requests to Class Counsel and BRP not later than seven (7) days prior to the date of Fairness Hearing.

20. On or before seven (7) days prior to the Fairness Hearing, the Claims Administrator will submit to the Court a report identifying all persons making Exclusion Requests and the date on which each request was postmarked (or if there is no legible postmark

date, the date received by the Claims Administrator). The Claims Administrator is directed to provide a copy of the report to Class Counsel and BRP.

21. The Court finds that the Agreement, along with all related drafts, motions, court papers, conversations, negotiations and correspondence, constitutes an offer to compromise and a compromise. If the Agreement is, for any reason, not approved or the Effective Date does not occur, the Parties shall be returned to their respective status as of the date and time immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as if this Settlement Agreement had not been executed, except that all statute of limitations shall be tolled during the time this Agreement was on file.

22. Neither the Agreement, any document, statement, proceeding or conduct related to this Agreement, nor any reports or accounts thereof, shall in any event be construed as, offered or admitted in evidence as, received as, or deemed to be an admission for any purpose adverse to Plaintiffs or BRP (including, but not limited to, as evidence of a presumption, concession, indication or admission by BRP of any liability, fault, wrongdoing, omission, concession or damage) in the Action or in any other action or proceeding, except for the sole purposes of settling this Action pursuant to this Agreement, effectuating the terms of this Agreement, and enforcing the releases in this Agreement.

23. The Court further directs that the following deadlines are established by this Preliminary Approval Order:

Class Notice Deadline	September 12, 2018
Exclusion Deadline	October 19, 2018
Objection Deadline	October 19, 2018
Notice of Intent to Appear Deadline	October 19, 2018

24. The Court further directs that, pending final determination of whether the Agreement should be approved, neither the Plaintiffs, nor any Class Member that fails to exclude him/herself from the settlement, either directly, representatively, or in any other capacity, shall commence or prosecute any action or proceeding in any court or tribunal asserting any of the

Released Claims (as defined in the Agreement) against the Released Parties (as defined in the Agreement).

25. Counsel for the Parties and the Claims Administrator are hereby authorized to utilize all reasonable procedures in connection with the administration of the Settlement that are not materially inconsistent with either this Order or the terms of the Agreement.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida,
this 13th day of August, 2018.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:

Counsel of record