

**UNITED STATES OF AMERICA
CONSUMER PRODUCT SAFETY COMMISSION**

In the Matter of:)	
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BAD BOY ENTERPRISES, LLC)	CPSC Docket No.: <u>11-C0011</u>
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SETTLEMENT AGREEMENT

1. In accordance with 16 C.F.R. § 1118.20, Bad Boy Enterprises, LLC (“Bad Boy”) and staff (“Staff”) of the United States Consumer Product Safety Commission (“Commission”) hereby enter into this Settlement Agreement (“Agreement”) under the Consumer Product Safety Act (“CPSA”). The Agreement and the incorporated attached Order resolve Staff’s allegations set forth below.

THE PARTIES

2. Staff is the staff of the Commission, an independent federal regulatory agency established pursuant to, and responsible for, the enforcement of the CPSA, 15 U.S.C. §§ 2051–2089.

3. Bad Boy is a corporation, organized and existing under the laws of the State of Mississippi, with its principal corporate office located at 413 Liberty Road, Natchez, Mississippi 39120.

STAFF ALLEGATIONS

4. Between 2003 and October 2009, Bad Boy manufactured and distributed approximately nine thousand three hundred (9,300) off-road utility buggy vehicles (“Buggies”).

Buggies distributed by Bad Boy between 2003 and 2007, were manufactured with the Series motor, and an accelerator and controller system designed for the Series motor (“Series Buggies”). Buggies distributed by Bad Boy between 2007 and 2009, were manufactured with a “separately excited” motor, and an accelerator and controller system designed for the separately excited motor (“SePex Buggies”). Retailers and authorized Bad Boy distributors sold the Series and SePex Buggies nationwide for approximately between \$8,000 and \$12,000.

5. The Buggies are “consumer products” and, at all relevant times, Bad Boy was a “manufacturer” of these consumer products, which were “distributed in commerce,” as those terms are defined or used in sections 3(a)(5), (8), and (11) of the CPSA, 15 U.S.C. § 2052(a)(5), (8), and (11).

6. The Buggies are defective because they can accelerate suddenly during use or when the ignition is in the idle position, creating a runaway vehicle situation.

7. Bad Boy received its first complaint involving sudden acceleration of a Series Buggy in April 2005.

8. In spring 2007, Bad Boy began manufacturing and distributing SePex Buggies.

9. By spring 2008, Bad Boy was aware of at least 10 reports of sudden acceleration Buggies.

10. In May 2008, Bad Boy developed new software to remedy the sudden acceleration problem exhibited by the SePex Buggies. Bad Boy implemented the software repair program without notifying the Commission of the sudden acceleration problem. Despite knowledge of the information set forth in Paragraphs 5 through 9, Bad Boy did not report to the Commission until August 13, 2009. At that time, Bad Boy reported to the Commission about the SePex Buggies only. By that date, Bad Boy was aware of at least thirty two (32) reports

involving sudden acceleration of the SePex Buggies and aware of at least twenty two (22) sudden acceleration reports of the Series Buggies. Bad Boy recalled the SePex Buggies on October 21, 2009.

11. In May 2010, Bad Boy developed a second repair program for the SePex Buggies to address continued reports of sudden acceleration. On May 28, 2010, Bad Boy finally reported the Series Buggies and notified the Commission that the Firm was including them in the expanded repair program. By this time, Bad Boy was aware of thirty-three (33) reports of sudden acceleration involving the Series Buggies. On December 22, 2010, Bad Boy announced the recall of the Series Buggies along with the second SePex Buggy recall.

12. Although Bad Boy had obtained sufficient information to reasonably support the conclusion that the Buggies contained a defect which could create a substantial product hazard, or created an unreasonable risk of serious injury or death, Bad Boy failed to inform the Commission immediately of such defect or risk, as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. § 2064(b)(3) and (4). In failing to inform the Commission immediately of the defect or advising that the defect involved the Buggies, Bad Boy knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4), as the term “knowingly” is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

13. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, Bad Boy is subject to civil penalties for its knowing failure to report, as required under section 15(b) of the CPSA, 15 U.S.C. § 2064(b).

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RESPONSE OF BAD BOY ENTERPRISES LLC

14. Bad Boy denies the allegations of Staff that the Buggies contain a defect which could create a substantial product hazard or create an unreasonable risk of serious injury or death, and denies that it violated the reporting requirements of Section 15(b) of the CPSA, 15 U.S.C. § 2064(b).

AGREEMENT OF THE PARTIES

15. Under the CPSA, the Commission has jurisdiction over this matter and over Bad Boy.

16. In settlement of Staff's allegations, Bad Boy shall pay a civil penalty in the amount of seven hundred fifteen thousand dollars (\$715,000.00) within twenty (20) calendar days of receiving service of the Commission's final Order accepting the Agreement. The payment shall be made electronically to the CPSC via www.pay.gov.

17. The parties enter into this Agreement for settlement purposes only. The Agreement does not constitute an admission by Bad Boy or a determination by the Commission that Bad Boy violated the CPSA's reporting requirements.

18. Upon provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the *Federal Register* in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date it is published in the *Federal Register*, in accordance with 16 C.F.R. § 1118.20(f).

19. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Bad Boy knowingly, voluntarily, and completely waives any rights it may have in

this matter to the following: (a) an administrative or judicial hearing; (b) judicial review or other challenge or contest of the Commission's actions; (c) a determination by the Commission of whether Bad Boy failed to comply with the CPSA and the underlying regulations; (d) a statement of findings of fact and conclusions of law; and (e) any claims under the Equal Access to Justice Act.

20. The Commission may publicize the terms of the Agreement and the Order.

21. The Agreement and the Order shall apply to, and be binding upon, Bad Boy and each of its successors and/or assigns until the obligations described in Paragraph 16 have been fulfilled to the satisfaction of the Commission.

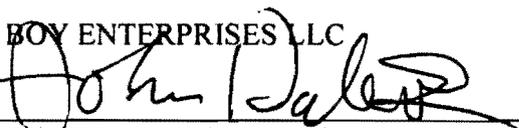
22. The Commission issues the Order under the provisions of the CPSA, and a violation of the Order may subject Bad Boy and each of its successors and/or assigns to appropriate legal action until the obligations described in Paragraph 16 have been fulfilled to the satisfaction of the Commission.

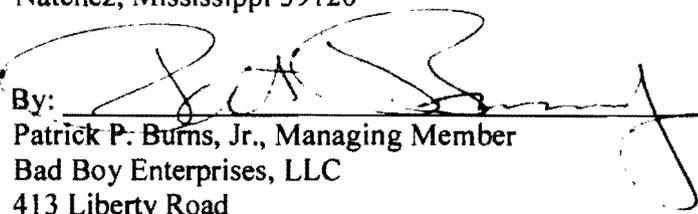
23. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict the terms of the Agreement and the Order. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto, executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

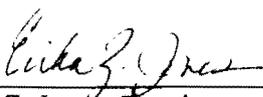
24. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall

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remain in full force and effect, unless the Commission and Bad Boy agree that severing the provision materially affects the purpose of the Agreement and Order.

Dated: 7/26/11 By: 
BAD BOY ENTERPRISES LLC
John Dale, IV, Managing Member
Bad Boy Enterprises, LLC
413 Liberty Road
Natchez, Mississippi 39120

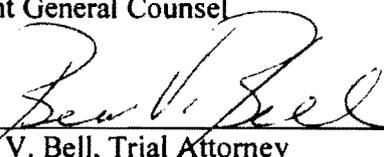
Dated: 7/26/11 By: 
Patrick P. Burns, Jr., Managing Member
Bad Boy Enterprises, LLC
413 Liberty Road
Natchez, Mississippi 39120

Dated: 8/1/2011 By: 
Erika Z. Jones, Esquire
Mayer Brown LLP
1999 K Street, N.W.
Washington, DC 20006-1101
Counsel for Bad Boy Enterprises LLC

U.S. CONSUMER PRODUCT SAFETY
COMMISSION STAFF

Cheryl A. Falvey
General Counsel

Mary B. Murphy
Assistant General Counsel

Dated: 9/6/2011 By: 
Belinda V. Bell, Trial Attorney
Division of Compliance
Office of the General Counsel

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CONSUMER PRODUCT SAFETY COMMISSION**

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ORDER

Upon consideration of the Settlement Agreement entered into between Bad Boy Enterprises, LLC. (“Bad Boy”), and the U.S. Consumer Product Safety Commission (“Commission”) staff, and the Commission having jurisdiction over the subject matter and over Bad Boy, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

ORDERED that the Settlement Agreement be, and is, hereby, accepted; and it is

FURTHER ORDERED, that Bad Boy shall pay a civil penalty in the amount of seven hundred fifteen thousand dollars (\$715,000.00) within twenty (20) days of service of the Commission’s final Order accepting the Settlement Agreement upon counsel for Bad Boy identified in the Settlement Agreement. The payment shall be made electronically to the CPSC via www.pay.gov. Upon the failure of Bad Boy to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Bad Boy at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b).

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Provisionally accepted and provisional Order issued on the 16th day of September, 2011.

BY ORDER OF THE COMMISSION:

A handwritten signature in black ink, appearing to read "Todd A. Stevenson". The signature is written in a cursive style with a horizontal line underneath it.

Todd A. Stevenson, Secretary
U.S. Consumer Product Safety Commission