

# **SETTLEMENT AGREEMENT**

AG No. 2020-02031

## **1. INTRODUCTION**

### **1.1 Vinocur and Neoteric Solution, Inc.**

This settlement agreement (Settlement Agreement) is entered into by and between Laurence Vinocur (Vinocur) and Neoteric Solution, Inc., d/b/a WowParts (Neoteric or Settling Entity) with Vinocur and Neoteric referred to as the “Parties.” Vinocur 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 contained in consumer products. Neoteric is a responsible party selling the products at issue set forth in subsection 1.3 below to California consumers which it states uses an online e-commerce platform offered by Walmart, Inc. and its affiliates in the course of doing business which the Settling Entity has reason to believe sell into the California marketplace (customers) for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§25249.5, *et seq.* (Proposition 65).

### **1.2 General Allegations**

Vinocur alleges that the Settling Entity manufactures, imports, distributes, retails and/or otherwise facilitates for sale in California the Product defined below, and that it does so without providing the health hazard warning required by Proposition 65 for consumer exposures to lead. Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

### **1.3 Product Description**

The product covered by this Settlement Agreement is *TSV 263pcs Fishing Accessories Kit, Pocket Edition Lure Kit with Fishing Terminal Tackle Box, Barrel Swivels, Snaps, Fishing Sinker Weights, Space Beans, Single Double Barrel Crimp Sleeves, Hooks*, supplied by Neoteric

and sold through Walmart.com, that was imported, purchased, distributed, retailed or otherwise facilitated for sale in California by the Settling Entity, hereinafter the “Product.”

#### 1.4 Notice of Violation

On or about August 8, 2020, Vinocur served Walmart, Inc. and certain requisite public enforcement agencies with a 60-Day Notice of Violation (Notice), alleging that Walmart, Inc. violated Proposition 65 when it failed to warn customers or consumers in California that the Product exposes 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

The Settling Entity denies the material, factual and legal allegations contained in the Notice and maintains that all products that were sold and distributed in California, including the Product, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by the Settling Entity of any fact, finding, issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by the Settling Entity of any fact, finding, conclusion, issue of law or violation of law. This section shall not, however, diminish or otherwise affect the obligations, responsibilities, and duties under this Settlement Agreement.

#### 1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean October 20, 2020.

### 2. **INJUNCTIVE RELIEF**

#### 2.1 Reformulation Commitment

The Settling Entity no longer intends to sell the Product and promises not to sell the Product in the future directly to consumers in California or to downstream customers whom it has reason to believe sells the Product in California, unless it uses a lead-free substitute (Reformulated Product under subsection 2.2 below).

## 2.2 Reformulation Standards

“Reformulated Product” is a Product that: (a) contains lead in concentrations that do not exceed 90 parts per million (ppm), equivalent to 0.009%, in any exterior parts analyzed pursuant to U.S. Environmental Protection Agency (EPA) testing methodologies 3050B and 6010B; and (b) yield a result of no more than 1.0 micrograms of lead when sampled according to NIOSH 9100 protocol and analyzed according to EPA 6010B. In addition to the above test methodologies, the Settling Entity may use equivalent methodologies utilized by a state or federal agency to determine lead content in a solid substance or the amount of the bioavailability of lead through a wipe test, respectively.

## 2.3 Voluntary Compliance; Injunctive Relief

The Parties agree that the Notice of Violation and this Settlement Agreement is addressed only to the Product described in subsection 1.3. Notwithstanding, Neoteric voluntarily agrees to comply with the terms and conditions set forth in Section 2 (Injunctive Relief) as to fishing weights containing lead, unless they are Reformulated Products.

# 3. **MONETARY SETTLEMENT TERMS**

## 3.1 Civil Fines

Pursuant to Health and Safety Code §25249.7(b), and in settlement of all claims alleged in the Notice, the Settling Entity agrees to pay a total of \$500 in civil fines. This payment will be allocated in accordance with California Health and Safety Code §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 amount paid to and retained by Vinocur.

The Settling Entity will deliver its civil penalty payment to the address in subsection 3.3 by overnight courier, with a tracking number, such that payment is received by Vinocur’s counsel on or before the October 22, 2020. The Settling Entity shall provide two checks made payable to: (a) “OEHHA” in the amount of \$375; and (b) “Laurence Vinocur” in the amount of

\$125. Thereafter, Vinocur's counsel shall send the portions of the penalties paid by the Settling Entity to OEHHA and Vinocur.

### 3.2 Reimbursement of Attorneys' Fees and Costs

The Parties acknowledge that Vinocur and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, the Settling Entity expressed a desire to resolve Vinocur's fees and costs. The Parties then negotiated a resolution of the compensation due to Vinocur's counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure §1021.5. For all work performed through the Effective Date, the Settling Entity shall reimburse Vinocur's counsel \$4,500. The Settling Entity will deliver its payment to the address in subsection 3.3 by overnight courier, with a tracking number, such that payment is received by Vinocur's counsel on or before October 22, 2020, in the form of a check payable to "Chanler, LLC." The reimbursement shall cover all fees and costs incurred by Vinocur investigating, bringing this matter to the Settling Entity's attention, negotiating a settlement of the matter, and de-listing the Product as of the Effective Date in furtherance of the public interest.

### 3.3 Payment Address

All payments required by this Settlement Agreement shall be delivered to the following address:

Chanler, LLC  
Attn: Proposition 65 Controller  
72 Huckleberry Hill Road  
New Canaan, CT 06840

#### **4. CLAIMS COVERED AND RELEASED**

##### **4.1 Vinocur's Release of The Settling Entity**

This Settlement Agreement is a full, final and binding resolution between Vinocur, as an individual (and not on behalf of the public yet furthers its health interest), and the Settling Entity and Walmart, Inc., of any violation of Proposition 65 that was or could have been asserted by Vinocur on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against the Settling Entity and/or Walmart, Inc., its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom the Settling Entity directly or indirectly distribute or sell the Product including, but not limited, to downstream distributors, wholesalers, customers (including Walmart, Inc.), retailers, franchisees, cooperative members, and licensees (collectively, Releasees), based on their failure to warn about alleged exposures to lead contained in the Product that was manufactured, distributed, sold and/or offered for sale by the Settling Entity and its Releasees in California before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Vinocur as an individual on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of his rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, attorneys' fees as alleged in the Notice, sold by the Settling Entity before the Effective Date against the Settling Entity and its Releasees.

The Parties further understand and agree that this subsection 4.1 release shall not extend upstream to any entities that manufactured the Product or any component parts thereof, or any distributors or suppliers who sold the Product or any component parts thereof to the Settling Entity. Nothing in this subsection affects Vinocur's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve the Product.

#### 4.2 The Settling Entity's Release of Vinocur

The Settling Entity, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Vinocur and his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Vinocur and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 in connection with the Notice or Product.

#### 5. SEVERABILITY

If, subsequent to its execution, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

#### 6. 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 if any of the provisions of this Settlement Agreement are rendered inapplicable by reason of law specifically as to the Product, then the Settling Entity shall provide written notice to Vinocur of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Product is so affected. Nothing in this Settlement Agreement shall be interpreted to relieve the Settling Entity from any obligation to comply with any pertinent state or federal toxics control law.

7. **NOTICE**

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

For the Settling Entity:

Junmin Zhao, CEO  
Neoteric Solution, Inc.  
3120 Osgood Ct  
Fremont, CA 94539

With a Copy to:

Danning Jiang, Esq.  
Law Offices of Danning Jiang  
271 North First Street  
San Jose, California 95113

For Vinocur:

Proposition 65 Coordinator  
Chanler, LLC  
72 Huckleberry Hill Road  
New Canaan, CT 06840

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

8. **COUNTERPARTS; FACSIMILE AND SIGNATURES**

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

9. **COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

Vinocur agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f). The parties agree that all settlement communications exchanged between them shall remain confidential under Evidence Code §1152 and that, other than reporting of this

settlement agreement as required, no further publication of such information shall be made by each of them except to the extent it is required by law, regulation or court order.

**10. MODIFICATION**

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

**11. AUTHORIZATION**


The undersigned are authorized to execute this Settlement Agreement and have read, understood, and agreed to all of the terms and conditions contained herein.

**AGREED TO:**

**AGREED TO:**

Date: October 20, 2020

Date: October \_\_, 2020

By:   
\_\_\_\_\_  
Laurence Vinocur

By: \_\_\_\_\_  
Junmin Zhao, Chief Executive Officer  
Neoteric Solution, Inc.



settlement agreement as required, no further publication of such information shall be made by each of them except to the extent it is required by law, regulation or court order.

10. **MODIFICATION**

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

11. **AUTHORIZATION**

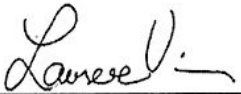
The undersigned are authorized to execute this Settlement Agreement and have read, understood, and agreed to all of the terms and conditions contained herein.

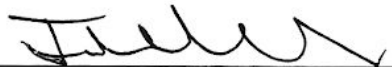
**AGREED TO:**

**AGREED TO:**

Date: October 20, 2020

Date: October 20, 2020

By:   
Laurence Vinocur

By:   
Junmin Zhao, Chief Executive Officer  
Neoteric Solution, Inc.