

SETTLEMENT AGREEMENT

AG Notice Nos. 2020-02032, 02033, 02034 (Walmart) and
Supplemental AG Notice No. 2020-02923 (Walmart)

1. INTRODUCTION

1.1 Parties

This settlement agreement (Settlement Agreement) is entered into by and between Laurence Vinocur (Vinocur) and “JD” which is defined as Jingdong E-Commerce (Trade) Hong Kong Corporation Limited, including the e-commerce stores Joy Buy and Joy Buy Express which it operates (hereinafter, JD or Settling Entity), with Vinocur and JD 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. JD asserts that it operates the e-commerce store(s) selling the products at issue set forth in subsection 1.3 below to California consumers, including through an e-commerce platform hosted by Walmart Inc. Vinocur asserts that Walmart is a person in the course of doing business which conducts commerce through, among other channels, brick and mortar stores, as well as online through internet websites. Vinocur also claims that Walmart, in certain instances, is an importer of lead fishing sinkers. The Parties dispute the role of Walmart Inc. in this matter but have agreed to resolve Vinocur’s claims as set forth herein. The Settling Entity has reason to believe that the products at issue set forth in subsection 1.3 below were or are offered for sale to California consumers directly and/or indirectly through downstream entities in the course of doing business (hereinafter, “customers”) to the California marketplace 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 Products defined below, and that it does so without providing the health hazard warning required by Proposition 65 for consumer exposures to lead.



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Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

The Settling Entity entered into this Settlement Agreement on behalf of the noticed alleged violator described in subsection 1.4 below, with whom such Settling Entity has a contract for the sale of the product at issue which contains indemnity clauses. The Settling Entity has accepted such tender from the noticed alleged violator. Additionally, the Settling Entity approached Vinocur to resolve any of the noticed alleged violator's (and Settling Entity's) alleged liability. And, the Settling Entity is resolving any alleged liability for such alleged violator pursuant to its contractual obligations and is making additional voluntary commitments in furtherance of the public interest set forth below, including these expressed in subsection 2.7 contained herein.

1.3 Product Description

The products covered by this Settlement Agreement are the *Leo Fishing 50pcs Fishing Lead Fall Olive Shaped Sinker Hook Connector Opening Mouth Line Weights Round Shot Split*, the *matoen Fishing Egg Bullet Rig Sinkers Angling Lead Weight Split Shot Box*, and the *drunkilk Fishing Egg Bullet Rig Sinkers Angling Lead Weight Split Shot Box* ("Products") that were manufactured, imported, purchased, distributed, retailed, or otherwise facilitated for sale in California by the Settling Entity, including through Settling Entity's customers and through the website Walmart.com.

1.4 Notices of Violation

On or about August 8, 2020, Vinocur served Walmart Inc. and certain requisite public enforcement agencies with three 60-Day Notices of Violation, alleging that Walmart Inc. violated Proposition 65 when it failed to warn customers or consumers in California that the Products expose users to lead.

A fourth notice dated October 30, 2020, was issued to Walmart Inc. and certain requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation, alleging that Walmart Inc. violated Proposition 65 when it failed to warn customers or consumers in



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California that additional products, including the Products listed above, expose users to lead. The August 8 and October 30, 2020, notices shall be referred to as the “Notices.”

To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notices.

1.5 No Admission

The Settling Entity, both on its behalf and on behalf of Walmart Inc., denies the material, factual and legal allegations contained in the Notices and maintains that all products that were sold and/or distributed 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 the Settling Entity, on its behalf or on behalf of Walmart Inc., 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, on its behalf or on behalf of Walmart Inc., 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. Nothing in this Settlement Agreement shall prejudice, waive, or impair any right, argument, or defense that the Parties may have with respect to the allegations contained in the Notices or with respect to any other future legal proceedings, except as otherwise provided herein.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean December 23, 2020.

2. **INJUNCTIVE RELIEF: WARNINGS OR REFORMULATION**

2.1 Injunctive Relief

If not reformulated per subsection 2.2 below, the Products sold in, distributed into, or offered for sale throughout California after January 13, 2021 shall be labeled with a clear and reasonable warning as set forth in subsections 2.3 through 2.7.

2.2 Reformulation Standards




“Reformulated Products” are Products that: (a) contain 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 Warnings and Methods: Overview

Commencing on or before January 13, 2021 JD shall provide clear and reasonable warnings for all units of the Products sold, distributed, or offered for sale to consumers in California or to customers which sell, distribute, or offer for sale the Products in California in accordance with this subsection as well as subsections 2.4 through 2.7. Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use and shall be provided in a manner such that it is clearly associated with the specific Product to which the warning applies.

(a) **Warning.** The warning shall consist of the following statement (Warning):

 **WARNING:** This product can expose you to chemicals including lead, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

or

 **WARNING:** This product can expose you to chemicals including lead, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.


(b) **Short-Form Warning.** The Settling Entity may, but is not required to, use the following short-form warning as set forth in this subsection 2.3(b) (Short-Form Warning) so long



as it is consistent with the implementing regulations, and subject to the additional requirements in subsections 2.5 and 2.6, as follows:

 **WARNING:** Reproductive Harm – www.P65Warnings.ca.gov

or

 **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov

(c) Foreign Language Requirement. Where a product sign, label or shelf tag used to provide a warning includes consumer information in a language other than English, the warning must also be provided in that language in addition to English.

2.4 On-Product Warning Methods

For Products sold, distributed, or offered for sale via in-store retail outlets by the Settling Entity to consumers in California or to customers which sell, distribute, or offer for sale the Products in California, the Settling Entity shall affix a warning to the Product labels¹ or otherwise directly on each unit of the Products. The entire warning shall appear in a type size of at least 6-point type and no smaller than the largest type size used for other consumer information² on the product. The warning shall consist of either the Warning, or the Short-Form Warning described above in subsection 2.3(a) or (b), respectively, and be consistent with 2.3(c) above if it applies.

2.5 Mail Order Catalog Warning Methods

In the event that, after January 13, 2021, the Settling Entity prints new catalogs and sells units of the Products via mail order through such catalogs to California consumers or customers, the Settling Entity shall provide a warning for each unit of the Products both on the Product labels in accordance with subsection 2.4, and in the catalog in a manner that clearly associates

¹ For the purpose of this Settlement Agreement, “Product label” means a display of written, printed or graphic material that is printed on or affixed to a Product or its immediate container.

² “Consumer information” as used in this Settlement Agreement includes warnings, directions for use, ingredient lists, and nutritional information. “Consumer information” does not include the brand name, product name, company name, location of manufacture, or product advertising.



the warning with the specific Product being purchased. Any warning provided in a mail order catalog shall be in the same type size or larger than other consumer information provided for the Products within the catalog and shall be provided on the same page and in the same location as the display and/or description of the Products. The catalog warning may use the Short-Form Warning content described in subsection 2.3(b) if the warning provided on the Product labels also uses the Short-Form Warning content. The Settling Entity shall also follow subsection 2.3(c) if applicable for such catalog warnings.

2.6 Internet Warning Methods

If, after January 13, 2021, JD sells, distributes, or offers for sale any units of the Products via the internet (including through the e-commerce stores which it operates): (i) to customers that directly, or indirectly through other entities that JD has reason to believe, sell to downstream persons in California; or (ii) to consumers or businesses in California, JD shall provide warnings for each unit of the Products by prominently displaying the warning to such party prior to completing the purchase or during the purchase of the Products. The warning (or a clearly marked hyperlink to the warning using the symbol “⚠” and the bolded word “**WARNING**”) given in conjunction with the sale of the Products via the internet shall appear either: (a) prominently placed on the Products’ display page; (b) on the same web page as the order form for the Products; or (c) on one or more web pages displayed to a purchaser during the checkout process. The internet warning must comply with the requirements set forth in subsections 2.1 and 2.3, including subsection 2.3(c) if applicable for such online warning. The internet warning may use the Short-Form Warning content described in subsection 2.3(b) if there is also a warning provided on the Product labels which also uses the Short-Form Warning content.

2.7 Voluntary Compliance; Injunctive Relief – Related Products

The Parties agree that the Notices of Violation and this Settlement Agreement are addressed only to the Products described in subsection 1.3. Notwithstanding, JD voluntarily agrees to comply, not later than January 13, 2021, with the terms and conditions set forth in Section 2 (Injunctive Relief) as to all fishing weights containing lead that are sold, distributed, or



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offered for sale in California by (a) Settling Entity, (b) the stores which it operates (such as Joy Buy and Joy Buy Express), or (c) by Settling Entity to its customers (Related Products), unless they are reformulated pursuant to Section 2.2. Related Products include, but are not limited to: 5pcs Fishing Tackle Accessories Quick Insert Lead Sinker Round Ball Weight 2-10g; 50Pcs 10G Water Drop Shape Weights Lead Sinker with Ring Fishing Tackle Tool; 100 Premium Fishing-Egg Bullet Rig Sinkers Angling Lead Weight Split Shot Box; Coerni 100 Premium Fishing-Egg Bullet Rig Sinkers Angling Lead Weight Split Shot Box Mask; the Wocleiliy 100 Premium Fishing-Egg Bullet Rig Sinkers Angling Lead Weight Split Shot Box, Bescita 100 Premium Fishing-Egg Bullet Rig Sinkers Angling Lead Weight Split Shot Box, Coerni 100 Premium Fishing-Egg Bullet Rig Sinkers Angling Lead Weight Split Shot Box, Tusocom 100 Premium Fishing-Egg Bullet Rig Sinkers Angling Lead Weight Split Shot Box, Tusocom Fishing Egg Bullet Rig Sinkers Angling Lead Weight Split Shot Box, Lida 5pcs Fishing Tackle Accessories Quick Insert Lead Sinker Round Ball Weight, UHUSE 50Pcs 10G Water Drop Shape Weights Lead Sinker with Ring Fishing Tackle Tool, Megawheels 12PCS Boxed Japanese Style Convenient Fishing Lead Plummets, Mojoyce 9pcs Lead Sinker Luminous Water Droplets Lead Weight Fishing Tackle(20g), Tusocom 5pcs Fishing Tackle Accessories Quick Insert Lead Sinker Round Ball Weight 2-10g, Bescita Fishing Bait Set Fishing Set Crank Hook Lead Pendant Accessories 177PCS, Lyinloo Fishing Bait Set Fishing Set Crank Hook Lead Pendant Accessories 177PCS, and Staron Fishing Bait Set Fishing Set Crank Hook Lead Pendant Accessories 177PCS.

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 Notices, the Settling Entity agrees to pay a total of \$20,000 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



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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 December 30, 2020. The Settling Entity shall provide two checks made payable to: (a) "OEHHA" in the amount of \$15,000; and (b) "Laurence Vinocur" in the amount of \$5,000. Thereafter, Vinocur's counsel shall send the portions of the penalties paid by the Settling Entity to OEHHA and Vinocur. However, if payment by check is commercially unfeasible, the civil penalty payment may be made through ACH/wire transfer to Vinocur's counsel, to be distributed to OEHHA and Laurence Vincour as specified herein.

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 agreed 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 mutual execution of this agreement, the Settling Entity shall reimburse Vinocur's counsel \$68,000. 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 December 30, 2020 in the form of a check payable to "Chanler, LLC." However, if payment by check is commercially unfeasible, the payment may be made through ACH/wire transfer to Vinocur's counsel. The reimbursement shall cover all fees and costs incurred by Vinocur investigating, bringing this matter to the Settling Entity's attention and negotiating a settlement of the matter in furtherance of the public interest.

3.3 Payment Address



All payments required by this Settlement Agreement to be made by check 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, of any alleged 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, its parents, subsidiaries, affiliated entities under common ownership (including any such entities listed in subsection 1.1), directors, officers, shareholders, employees, assignees, attorneys, and each entity to or through which the Settling Entity directly or indirectly distributes, sells, or offers for sale the Products including, but not limited, to Walmart Inc. and/or Walmart.com, downstream distributors, wholesalers, customers, retailers, franchisees, marketplaces, cooperative members, and licensees (collectively, Releasees), based on their alleged failure to warn about alleged exposures to lead contained in the Products that were manufactured, distributed, hosted, sold and/or offered for sale by the Settling Entity and its Releasees in California on or before January 13, 2021, as alleged in the Notices.

In further consideration of the promises and agreements herein contained, Vinocur as an individual and not on behalf of the public, 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, investigation fees, expert fees, and attorneys' fees arising under



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Proposition 65 with respect to lead in the Products or Related Products, as alleged in any sixty-day notice issued by Vinocur and as identified in this Settlement Agreement, manufactured, distributed, sold and/or offered for sale by JD, on or before January 13, 2021 (collectively Claims), against JD 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 Products or any component parts thereof, or any distributors, importers or suppliers who sold the Products 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 Products or Related Products.

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 in connection with the Notices and/or the instant Settlement Agreement, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 in connection with the Notices or Products.

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, AND ENFORCEMENT OF THE SETTLEMENT AGREEMENT

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. For purposes of this Settlement Agreement only, Jingdong E-Commerce (Trade) Hong Kong Corporation Limited ("JD") stipulates that the



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Superior Court of California shall have personal jurisdiction over it for the limited and sole purpose of an action to enforce the terms of this Settlement Agreement, brought without joinder of other claims. The Parties agree that this Settlement Agreement shall not be construed as a consent to personal jurisdiction or venue in any other context; nor to waive, abridge or otherwise affect any challenge to jurisdiction or venue in any other context; and JD reserves all defenses to jurisdiction and venue in all contexts other than an action to enforce the terms of this Settlement Agreement brought without joinder of other claims. The Parties further agree that this Settlement Agreement shall not be construed to waive, abridge or otherwise affect, in any way, the jurisdictional, venue or other defenses of any entity other than Jingdong E-Commerce (Trade) Hong Kong Corporation Limited. 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 or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Product, then JD 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 Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve JD from any obligation to comply with any other 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:

Erika Schulz, Esq.
Blank Rome LLP
2029 Century Park East
6th Floor
Los Angeles, CA 90067



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).

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: December __, 2020

Date: _____, 2020

By: _____
Laurence Vinocur

By: _____
Ling Yan
Jingdong E-Commerce (Trade) Hong Kong
Corporation Limited



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.

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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: December 9, 2020

Date: Dec 8, 2020

By: Laurence Vinocur
Laurence Vinocur

By: Ling Yan
Ling Yan
Jingdong E-Commerce (Trade) Hong Kong Corporation Limited

