

# **SETTLEMENT AGREEMENT**

AG Notice No. 2020-02035  
(Walmart Inc.)

## **1. INTRODUCTION**

### **1.1 Vinocur and Louisiana Outdoors LLC**

This settlement agreement (Settlement Agreement) is entered into by and between Laurence Vinocur (Vinocur) and Louisiana Outdoors LLC (Louisiana Outdoors or Settling Entity) with Vinocur and Louisiana Outdoors 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. Settling Party has sold the products at issue set forth in subsection 1.3 below to downstream entities (such as Walmart Inc.) which Vinocur contends sold the product 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). However, Louisiana Outdoors has never had possession of units of the product prior to their delivery to consumers; instead, the product units have been in possession of an upstream distributor, which shipped them directly at Louisiana Outdoors’ request.

### **1.2 Vinocur’s 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 cancer and birth defects and other reproductive harm. As set forth below, Louisiana Outdoors denies violations of Proposition 65. Furthermore, Louisiana Outdoors asserts that while it is a company, pursuant to Health & Safety Code §25249.11, it is not a “Person in the course of doing business” as defined therein.

The Settling Entity entered into this Settlement Agreement on behalf of the noticed violator described in subsection 1.4 below, with whom such Settling Entity has a contract for the product at issue which contains indemnity and defense clauses. The Settling Entity has accepted a tender from the noticed violator. Additionally, the Settling Entity approached Vinocur to resolve the noticed violator’s alleged liability. And, the Settling Entity is making additional voluntary commitments as set forth below, including those expressed in subsection 2.7 contained herein.

### **1.3 Product Description**

The product covered by this Settlement Agreement is Bullet Weights Fishing Sinkers 1 oz. Bank Sinker, *UPC 0 89186 51502 7; PBBL1*, (hereinafter the “Product”) sold by Walmart Inc., that were purchased by Walmart, Inc. from the Settling Entity, who purchased the product from an upstream distributor who shipped it. Louisiana Outdoors has no Product in inventory and no intention of future sales of the Product in 2021.

#### **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 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 January 22, 2021.

## **2. INJUNCTIVE RELIEF: WARNINGS**

### **2.1 Injunctive Relief**

The Settling Entity shall notify the manufacturer, upstream distributor and Walmart, Inc. that unless it is a Reformulated Product, the Product shall be labeled with a clear and reasonable warning as set forth in subsection 2.3.

### **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. The Settling Entity shall notify the manufacturer, upstream distributor and Walmart, Inc. of this standard, and that in addition to the above test methodologies, they 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. This and all notifications and advice provided for in this Settlement Agreement shall be in writing.

### **2.3 Clear and Reasonable Warnings**


Commencing on or before the Effective Date, Louisiana Outdoors shall notify the manufacturer, upstream distributor and Walmart, Inc. that unless it is a Reformulated Product, they must provide clear and reasonable warnings for all units of the Product for sale to California consumers or customers in accordance with this subsection. They shall be advised that each warning must 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. Louisiana Outdoors shall further notify the manufacturer, upstream distributor and Walmart, Inc. of the following requirements:

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

 **WARNING:** This product can expose you to 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](http://www.P65Warnings.ca.gov).

Or

 **WARNING:** This product can expose you to 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](http://www.P65Warnings.ca.gov).

**(b) Short-Form Warning.**

The Settling Entity shall also notify the manufacturer, upstream distributor and Walmart, Inc. that they may, but are 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](http://www.P65Warnings.ca.gov)

Or

 **WARNING:** Cancer and Reproductive Harm –[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

**(c) Statute or Regulation Changes.**

The Settling Entity shall also notify the manufacturer, upstream distributor and Walmart, Inc. that if the California State Legislature, or a California State Agency, or the California State Voters enact statutes or regulations or other laws that require, or permit different warnings for lead in these products, use of such warnings will be in full compliance with this Settlement Agreement.

**(d) 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 Product Warnings**

The Settling Entity shall also notify the manufacturer, distributor and Walmart, Inc. that one of them must affix a warning to the Product label or otherwise directly on each unit of the Product provided through in-store retail outlets in California or sold via mail order catalog and/or online to customers or consumers in California. 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. The Settling Party shall point out that 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 information on the product. The Settling Entity shall also notify the manufacturer, upstream distributor and Walmart, Inc. that the warning shall consist of either the Warning, or the Short-Form Warning described above in subsection 2.3(a) or (b), or other warnings as permitted or required in statutes or regulations as described above in subsection 2.3(c) respectively, and be consistent with 2.3(d) above if it applies.

## **2.5 Mail Order Catalog Warnings**

The Settling Entity does not sell the product through Mail Order Catalogs. However, within thirty days of the Effective Date, it shall notify the manufacturer, distributor, and Walmart, Inc. that if they print new catalogs after such notification, and sell units of the Product via mail order through such catalogs to California consumers or customers, such companies shall provide a warning for each unit of the Product in the catalog in a manner that clearly associates the warning with the specific Product being purchased. Its notification shall advise the manufacturer, distributor and Walmart, Inc. that any warning provided in a mail order catalog shall be in the same type size or larger than other consumer information provided for the Product within the catalog and shall be provided on the same page and in the same location as the display and/or description of the Product. The notification shall point out that the catalog warning may use the Short-Form Warning content described in subsection 2.3(b) if the warning provided on the Product label also uses the Short-Form Warning content and following subsection.

## **2.6 Internet Warnings**

Within thirty days of the Effective Date, the Settling Party shall notify the Manufacturer, distributor, and Walmart, Inc. that if they sell the Product through the Internet to any California customers, they shall prominently displaying the warning to the California customer on the Internet prior to completing the purchase or during the purchase of the Product without requiring the potential purchasers to seek out the warning. The Settling Entity shall notify the manufacturer, distributor and Walmart, Inc. that the warning or a clearly marked hyperlink to the warning using the word "WARNING" given in conjunction with the sale of the Products via the internet shall appear either: (a)

on the same web page on which the Product is displayed; (b) on the same web page as the order form for the Product; or(c) on one or more web pages displayed to a purchaser during the checkout process. The notification shall state that the internet warning may use the Short-Form Warning content described in subsection 2.3(b) if the warning provided on the Product label also uses the Short-Form Warning content.

### **2.7 Voluntary Compliance; Injunctive Relief –Related Products**

The Parties agree that the Notice of Violation and this Settlement Agreement are addressed only to the Product described in subsection 1.3. Notwithstanding, Louisiana Outdoors voluntarily agrees to meet Proposition 65 warning requirements as to fishing weights containing lead, that it sells hereafter, unless they are Reformulated Products (Related 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 \$800 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, with checks issued and sent no later than the effective date. The Settling Entity shall provide two checks made payable to: (a) “OEHHA” in the amount of \$600; and (b) “Laurence Vinocur” in the amount of \$200.



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 mutual execution of this agreement, the Settling Entity shall reimburse Vinocur's counsel \$3,800 with a check payable to "Chanler, LLC." . The Settling Entity will deliver its payment to the address in subsection 3.3 by overnight courier, with a tracking number, the check issued and sent no later than the effective date. 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 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 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, directors, officers, employees, attorneys, and each entity to or through whom the Settling Entity directly or indirectly distribute or sell the Product to or through including, but not limited, to downstream distributors, wholesalers, customers, retailers (including, but not limited to, Walmart Inc.), franchisees, cooperative members, and licensees (collectively, Releasees), based on their failure to warn about alleged exposures to lead contained in the Product and in any fishing weight product that was distributed, sold and/or offered for sale by the Settling Entity 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 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 Proposition 65 with respect to lead in the Product, as

alleged in the Notice, and in any fishing weight product distributed, sold and/or offered for sale by Louisiana Outdoors, before the Effective Date(collectively, Claims), against Louisiana Outdoors 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 or any fishing weight product sold or distributed by Louisiana Outdoors.

#### **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, unless such a ruling substantially eliminates a party's contractual benefits from this Settlement Agreement.

## **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 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 Louisiana Outdoors 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 Louisiana Outdoors 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:

Bradley John Ripp, President  
Louisiana Outdoors LLC  
36389 Frank Jackley Road  
Pear River, LA 70452

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**

Date: January 11, 2021

By:   
Laurence Vinocur

**AGREED TO**

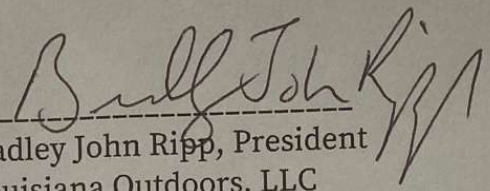
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By: \_\_\_\_\_  
Bradley John Ripp, President  
Louisiana Outdoors, LLC

Date: \_\_\_\_\_

Date: 1/11/21

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

By:   
Bradley John Ripp, President  
Louisiana Outdoors, LLC