

SETTLEMENT AGREEMENT

AG Notice No. 2020-02036

1. INTRODUCTION

1.1 Vinocur and BPS Direct, LLC

This settlement agreement (Settlement Agreement) is entered into by and between Laurence Vinocur (Vinocur) and BPS Direct, LLC (Bass Pro or Settling Entity) with Vinocur and Bass Pro 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. Bass Pro is a responsible party selling the products at issue set forth in subsection 1.3 below to California consumers and/or downstream entities 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 *Cabela's Lead Split-Shot Assortment*, UPC 0 92229 77852 5; Model SSA-MED; SKU#2771306, that was manufactured, 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 Bass Pro and certain requisite public enforcement agencies with a 60-Day Notice of Violation (Notice), alleging that Bass Pro 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 26, 2020.

2. INJUNCTIVE RELIEF: WARNINGS

2.1 Injunctive Relief

The Product shall be labeled with a clear and reasonable warning as set forth in subsection 2.3. If, after the Effective Date, the Settling Entity sells the Product without being reformulated via mail order catalog and/or online to California consumers or through its customers, the Settling Entity shall also provide health hazard warning for the Product by identifying the specific Product to which the warning applies as set forth in subsections 2.3 through 2.6 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 Clear and Reasonable Warnings

Commencing on or before the Effective Date, Bass Pro shall provide clear and reasonable warnings for all units of the Product for sale to California consumers or its customers in accordance with this subsection. 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 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.

(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), and subject to the additional requirements in subsections 2.5 and 2.6, as follows:

 **WARNING:** 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 Product Warnings

The Settling Entity shall 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 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 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 Warnings

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

For purposes of compliance with subsection 2.6, if after November 30, 2020, Bass Pro offers for sale any units of the Product via the internet: (i) to customers that directly, or indirectly through other entities that Bass Pro has reason to believe, sell to downstream persons in California; or (ii) to consumers in California, Bass Pro shall provide warnings for each unit of the Product both on the Product label, and by prominently displaying the warning to the customer prior to completing the purchase or during the purchase of the Product without requiring the potential purchasers to seek out the warning. 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 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. The Settling Entity shall also follow subsection 2.3(c) if applicable for such online warning.

2.7 Voluntary Compliance; Injunctive Relief – Related Products

The Parties agree that the Notice of Violation and this Settlement Agreement is addressed only to the Product described in subdivision 1.3. Notwithstanding, Bass Pro 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 (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 \$1,800 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, such that payment is received by Vinocur's counsel on or before the Effective Date. The Settling Entity shall provide two checks made payable to: (a) "OEHHA" in the amount of \$1,350; and (b) "Laurence Vinocur" in the amount of \$450. 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 \$24,700. 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 the Effective Date, 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 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 (including, but not limited to, Bass Pro, LLC, Bass Pro Outdoor World, L.L.C., Cabela's Wholesale, L.L.C., and Cabela's LLC), 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, 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 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, manufactured, distributed, sold and/or offered for sale by Bass Pro, before the Effective Date (collectively, Claims), against Bass Pro 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 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 Bass Pro 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 Bass Pro 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:

Kevin Maliszewski, Chief Financial Officer
BPS Direct, LLC
Attention: Marsha Green, Paralegal
2500 E. Kearney Street,
Springfield, MO 65898

With a Copy to:

Michael J. Stump, Esq.
Borton Petrini LLP
5060 California Avenue, Suite 700
Bakersfield, CA 93309

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

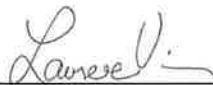
The undersigned are authorized to execute this Settlement Agreement and have read, understood, and agreed to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: October 19, 2020

Date: October 19, 2020

By: 

Laurence Vinocur

By: 

Kevin Maliszewski, Chief Financial Officer
BPS, Direct, LLC