

SETTLEMENT AGREEMENT

AG Notice No. 2020-02039

(Dick's Sporting Goods, Inc.)

1. INTRODUCTION

1.1 Vinocur and Dick's Sporting Goods, Inc.

This settlement agreement (Settlement Agreement) is entered into by and between Laurence Vinocur (Vinocur) and Dick's Sporting Goods, Inc. (DSG or Settling Entity) with Vinocur and DSG 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. DSG is a responsible party selling the products at issue set forth in subsection 1.3 below to California consumers in the course of doing business 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, wholesales, 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 as well as birth defects and other reproductive harm.

1.3 Product Description

The product covered by this Settlement Agreement is the *Voss Twisted Weight 1/8 oz, UPC 7 00587 09696 9; VWVTW18*, that was manufactured, imported, purchased, distributed, retailed, or otherwise facilitated for sale in California by the Settling Entity, hereinafter the "Product."

As of January 31, 2021, this Settlement Agreement, and the scope of the release contained herein, shall be deemed amended *nunc pro tunc* to include all of the allegations in the

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supplemental notice issued on November 17, 2020, as described in subsection 1.4 below relating to all Voss-branded fishing weights (aka “sinkers”) containing lead.

1.4 Notices of Violation

On or about August 8, 2020, Vinocur served DSG and certain requisite public enforcement agencies with a 60-Day Notice of Violation (August Notice), alleging that DSG violated Proposition 65 when it failed to warn consumers in California that the Product exposes users to lead and its potential reproductive effects. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the August Notice.

On or about November 17, 2020, Vinocur served DSG and certain requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation (November Notice), alleging that DSG violated Proposition 65 when it failed to warn consumers in California that the Product as well as other lead-based fishing sinkers expose users to lead. To the best of the Parties’ knowledge, no public enforcer has yet to commence, and diligently prosecute the allegations set forth in the November Notice as to lead fishing sinkers sold under the Voss brand name. The August Notice and the November Notice shall be referred to hereinafter as the “Notices.”

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 nor compliance with its terms shall be construed as an admission by the Settling Entity of any fact, finding, conclusion of law, issue of law, or violation of law wrongdoing, or liability by and Settling Entity, its officers, directors, employees, or parents, subsidiaries or affiliated corporations, or be offered or admitted as evidence in any administrative or judicial proceeding or litigation in any court, agency, or forum.; This section shall not, however, diminish or otherwise affect the obligations, responsibilities, and duties under this Settlement Agreement.

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1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean December 29, 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 January 31, 2021, the Settling Entity sells the Product without being reformulated via mail order catalog and/or online to California consumers, 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 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 Clear and Reasonable Warnings

Commencing on or before January 31, 2021, DSG shall provide clear and reasonable warnings for all units of the Product for sale to California consumers 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 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:** 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 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.

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2.5 Mail Order Catalog Warnings

In the event that, after January 31, 2021, 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 January 31, 2021, DSG offers for sale any units of the Product via the internet to consumers directly in California, DSG shall provide warnings for each unit of the Product both on the Product Label, and by prominently displaying the warning without requiring 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 Product 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 August Notice and this Settlement Agreement are addressed only to the Product described in subsection 1.3. Notwithstanding, DSG voluntarily agrees to comply with the terms and conditions set forth in Section 2 (Injunctive Relief) as to fishing

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sinkers containing lead branded solely under the Voss trade name (Related Products), unless they are Reformulated Products no later than January 31, 2021.

2.8 Products in the Stream of Commerce

The injunctive requirements of Section 2 shall not apply to Product that are already in the stream of commerce as of the Effective Date, since the parties agree that DSG has already undertaken commercially reasonable efforts to comply with Section 2 upon receiving the August Notice.

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 three thousand dollars (\$3,000.00) 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 parties agree that the imposition of the fines does not relive any non-released parties set forth in subsection 4.1 below for their share of any penalties to be potentially assessed under §252497(b).

The Settling Entity will deliver its civil penalty payment to the address in subsection 3.3 by ACH or Wire Transfer upon receipt of necessary W-9s and Settlement Agreement signatures, such that payment is received by Vinocur's counsel on or before January 7, 2021. The Settling Entity shall provide two checks made payable to: (a) "OEHHA" in the amount of two thousand two hundred fifty dollars (\$2,250); and (b) "Laurence Vinocur" in the amount of seven hundred fifty dollars (\$750). Thereafter, Vinocur's counsel shall send the portions of the penalties paid by the Settling Entity to OEHHA and Vinocur.

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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 nineteen thousand five hundred dollars (\$19,500). 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 January 7, 2021, 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. The parties agree that the fee and cost reimbursement covers only a portion of plaintiff counsel's lodestar related to the violations alleged in the Notices. Further, Vinocur and his counsel may seek any unreimbursed, reasonable attorneys' fees and costs from any non-released entity or entities.

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 whom the Settling Entity directly or indirectly distribute or sell the Product including, but not limited to, customers, its retail outlets (brick and mortar as well as through the internet), franchisees, cooperative members, and licensees (collectively, Releasees), based on their failure to warn about alleged exposures to lead contained in the Product that were manufactured, distributed, sold and/or offered for sale by the Settling Entity and its Releasees in California before January 31, 2021, as alleged in the Notices. As of January 31, 2021, this subsection shall be deemed amended *nunc pro tunc* to include the Related Products.

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 Notices, manufactured, distributed, sold and/or offered for sale by DSG, before January 31, 2021 (collectively, Claims), against DSG and its Releasees.

The Parties further understand and expressly agree that this subsection 4.1 release shall not extend upstream to any entities that manufactured the Product or any component parts

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thereof, or to any wholesalers, distributors or suppliers who sold the Product or any component parts thereof to the Settling Entity. Further, nothing in this subsection affects Vinocur's right to commence or prosecute an action under Proposition 65 against DSG or its Releasees that does not involve the Product 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, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 in connection with the Notices or Product.

4.3 California Civil Code § 1542.

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Product will develop or be discovered. The Parties acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims up through January 31, 2021, including all rights of action therefor. The Parties acknowledge that the claims asserted in the Notices as they pertain solely to Voss-branded lead fishing sinkers released in §§ 4.1 and 4.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims as to such products. California Civil Code § 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

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The Parties each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542 in that it applies to the potential claims asserted in the Notices as to all Voss-branded fishing weights (aka “sinkers”) containing lead.

4.4 Deemed Compliance with Proposition 65.

The Parties agree that compliance by the Settling Entity with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to lead from use of the 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 DSG 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 DSG 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:

Todd O. Maiden, Esq.
Reed Smith LLP
101 Second Street, Suite 1800
San Francisco, California 94105

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.

12. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

If a dispute arises with respect to either Party's compliance with the terms of this Settlement Agreement, the Parties shall meet and confer in person, or by telephone, and/or in writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed in the absence of such a good faith attempt to resolve the dispute for a period of no less than 90 calendar days after the party alleging the breach has notified the other party of the asserted issue in writing beforehand.

AGREED TO:

Date: December 29, 2020

By: 

Laurence Vinocur

AGREED TO:

Date: December 29, 2020

By: 

Dick's Sporting Goods, Inc.