

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Audrey Donaldson (“Donaldson”), on the one hand, and Bass Pro Outdoor World, L.L.C. and BPS Direct, LLC (collectively, “Bass Pro”) and Aurora World, Inc. (“Aurora”), as indemnitor to Bass Pro, on the other hand. Donaldson, Bass Pro and Aurora shall each be referred to as a “Party” and collectively as the “Parties.” Donaldson is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. Aurora is a supplier of consumer products to Bass Pro, among others that do business in California. Donaldson hereby alleges that Bass Pro and Aurora are each a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Donaldson alleges that Bass Pro and Aurora manufacture, sell and/or distribute for sale in California, plush toys with PVC components containing the phthalate chemical di(2-ethylhexyl) phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Donaldson alleges that Bass Pro and Aurora failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP.

1.3 Product Description

The products covered by this Settlement Agreement are the *Bass Pro Shops “My First Hunting Trip Baby Talk”, Plush Toy, UPC: 092943816978* manufactured, sold, or distributed for sale in California by Bass Pro and Aurora (hereinafter the “Products”).



1.4 Notice of Violation

On November 3, 2020, Donaldson served Bass Pro and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Bass Pro violated Proposition 65 by failing to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from the Products. Aurora was subsequently identified as the supplier of the Products to Bass Pro and entered into negotiations with Donaldson as indemnitor to Bass Pro to resolve Donaldson’s claims concerning the Products, including with respect to those set forth against Bass Pro in the Notice. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Aurora and Bass Pro deny the material, factual, and legal allegations contained in the Notice and maintain that all of the products that they have sold and 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 Bass Pro or Aurora of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Bass Pro or Aurora of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Bass Pro and Aurora. This Section shall not, however, diminish or otherwise affect Bass Pro’s and Aurora’s obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean March 8, 2021.



2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standards

“Reformulated Products” are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or any other methodologies utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

2.2 Reformulation Commitment

As of the Effective Date, Bass Pro and Aurora shall not manufacture or import for sale in California Products unless they are Reformulated Products pursuant to Section 2.1.

2.3 Interim Warnings For Existing Inventory

As of the Effective Date, Bass Pro and Aurora shall not sell or distribute for sale Products in California that were manufactured or imported before the Effective Date unless such Products bear a clear and reasonable warning pursuant to this Section. Bass Pro and Aurora further agrees that the warning will be prominently placed with such conspicuousness when 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 of use. For purposes of this Settlement, a clear and reasonable warning for the Product shall consist of a warning affixed directly to the Product or Product packaging, label, or tag, for any Product sold in California and contain one of the following statements:

**⚠ WARNING: Reproductive Harm- www.P65Warnings.ca.gov
OR**

⚠ WARNING: This product can expose you to chemicals including DEHP, 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

2.4 Interim Warning Sunset

As of December 31, 2022, Bass Pro and Aurora shall not sell or distribute for sale Products in California unless they are Reformulated Products pursuant to Section 2.1.

2.5 The Parties agree and intend that compliance with the terms of this Settlement Agreement shall constitute compliance with Proposition 65 with respect to exposures to DEHP from the Products.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Aurora agrees to pay, or cause to be paid, no later than March 8, 2021, \$4,000 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Donaldson and delivered to the address in Section 3.3 herein. Payment shall be made in two checks as follows: (1) “OEHHA” in the amount of \$3,000; and (2) “Audrey Donaldson” in the amount of \$1,000.

3.2 Attorneys’ Fees and Costs

The Parties acknowledge that Donaldson and her 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 reached, Bass Pro and Aurora expressed a desire to resolve Donaldson’s fees and costs. The Parties reached an accord on the compensation due to Donaldson’s counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, Aurora agrees



to pay, or cause to be paid, \$21,000, no later than March 8, 2021, in the form of a check made payable to "Voorhees & Bailey, LLP," for all fees and costs incurred investigating, bringing this matter to the attention of Aurora's management, and negotiating a settlement.

3.3 Payment Address

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

Voorhees & Bailey, LLP
990 Amarillo Avenue
Palo Alto, CA 94303

4. CLAIMS COVERED AND RELEASED

4.1 Donaldson's Release of Proposition 65 Claims

Donaldson acting on her own behalf, and *not* on behalf of the public, releases Bass Pro and Aurora, their parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Aurora and/or Bass Pro directly or indirectly distribute or sell the Products, including, but not limited to, downstream distributors, including but not limited to, Bass Pro Outdoor World, L.L.C., Bass Pro, LLC, BPS Direct, LLC, Cabela's Wholesale, L.L.C. and Cabela's LLC, wholesalers, customers, retailers, franchisees, cooperative members, importers, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date relating to unwarned exposures to DEHP in the Products. The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Aurora.



4.2 Donaldson's Individual Release of Claims

Donaldson, in her individual capacity only and *not* in her representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of Donaldson of any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to DEHP in the Products manufactured, imported, distributed, or sold by Aurora and/or Bass Pro prior to the Effective Date. The Parties further understand and agree that this Section 4.2 release shall not extend upstream to any entities that manufactured the Products, or any component parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof to Aurora.

4.3 Bass Pro and Aurora's Release of Donaldson

Bass Pro and Aurora, on their own behalf, and on behalf of their past and current agents, representatives, attorneys, successors, and/or assignees, hereby waive any and all claims against Donaldson and her attorneys and other representatives, for any and all actions taken or statements made by Donaldson and her attorneys and other representatives, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. SEVERABILITY

If, after the execution of this Settlement Agreement, any provision of this Settlement Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions 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 as to the Products, then Bass Pro and Aurora may provide written notice to Donaldson 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.

7. NOTICE

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Aurora:

Henry Gweon
Vice President of Operations
Aurora World, Inc.
8820 Mercury Lane
Pico Rivera, CA 90660

For Donaldson:

Voorhees & Bailey, LLP
Proposition 65 Coordinator
990 Amarillo Avenue
Palo Alto, CA 94303

For Bass Pro:

Kevin Maliszewski, CFO
Bass Pro, LLC
Attention: Marsha Green, Paralegal
2500 E. Kearney Street
Springfield, MO 65898

With Copy to:

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

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

8. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (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)**

Donaldson and her attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

10. **MODIFICATION**

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

11. **ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

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12. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

Date:

By: 
Kevin Maliszewski, CFO, for
Bass Pro, LLC


AGREED TO:

Date:

By: _____
Audrey Donaldson

AGREED TO:

Date: 3/1/21

By: 
Henry Gweon, V.P. of Operations
for Aurora World, Inc.

12. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

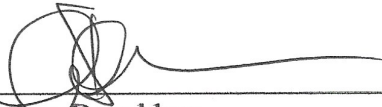
AGREED TO:

Date:

By: _____
Kevin Maliszewski, CFO, for
Bass Pro, LLC

AGREED TO:

Date: 25 FEB 21

By:  _____
Audrey Donaldson

AGREED TO:

Date:

By: _____
Henry Gweon, V.P. of Operations
for Aurora World, Inc.