

# **SETTLEMENT AGREEMENT**

AG Notice Nos. 2021-00274, 2021-00610 & 2021-00955

(Walmart)

## **1. INTRODUCTION**

### **1.1 Vinocur and DropAir**

This settlement agreement (Settlement Agreement) is entered into by and between Laurence Vinocur and DropAir (Settling Entity) with Vinocur and the Settling Entity 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. The Settling Entity is a responsible party selling the products at issue set forth in subsection 1.3 below to California consumers, or downstream entities in the course of doing business which the Settling Entity has reason to believe sell into the California marketplace (Customers), California Health & Safety Code §§25249.5, *et seq.* (Proposition 65).

### **1.2 General Allegations**

The Settling Entity enters 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 one or more of the products 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 accepting any alleged liability for such violator and is making commitments in furtherance of the public interest set forth below.

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.

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

### 1.3 Product Description

The products covered by this Settlement Agreement are solder wire containing lead offered for sale by the Settling Entity including, but not limited to, *J.W. Harris Wire Solders, Spool, Resin Core, 1/16 in, 60% Tin, 40% Lead* offered at walmart.com, hereinafter the “Product” or “Products.”

### 1.4 Notices of Violation

On or about February 5, March 11 and April 29, 2021, Vinocur served Walmart Inc. and certain requisite public enforcement agencies with 60-Day Notices of Violation (notices), alleging that Walmart Inc. violated Proposition 65 when it failed to warn Customers or consumers in California that the Products expose 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 notices.

### 1.5 No Admission

The Settling Entity (and on behalf of the noticed violator described in subsection 1.4 above) denies the material, factual and legal allegations contained in the notices 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 (and/or Walmart Inc., Wal-Mart Stores East L.P., Wal-Mart Stores, Inc., each of their respective parents, subsidiaries, affiliates, past and current agents, directors, officers, employees, representatives, attorneys, successors, assignees, and/or anyone else acting on their behalf, collectively “Walmart”) 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 (and/or Walmart) of any fact, finding, conclusion, issue of law or violation of law. This subsection 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 August 16, 2021.

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

### 2.1 Injunctive Relief

The Settling Entity agrees to provide the requisite health hazard warning as set forth in subsections 2.3 through 2.6 below for each Product unless it is reformulated.


### 2.2 Reformulation Standards

A “reformulated” product (a) contains lead in concentrations that do not exceed 90 parts per million, equivalent to 0.009%, in any exterior parts analyzed pursuant to U.S. Environmental Protection Agency (EPA) 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 tests, the Settling Entity may use equivalent methods utilized by any California or federal agency to determine lead content in a solid substance or the amount of the bioavailability of the toxicant through a wipe test, respectively.

### 2.3 Clear and Reasonable Warnings

Commencing on or before August 10, 2021 (the compliance date), the Settling Entity shall provide clear and reasonable warnings for all units of the Products offered for sale to California consumers or its Customers. 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](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 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](http://www.P65Warnings.ca.gov)

or

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

**(c) Foreign Language Requirement.** Where a product label used to provide a warning includes consumer information in a language other than English, the warning shall also be provided in such language.


#### 2.4 On-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 online to California consumers or through its Customers. 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 language 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, the Settling Entity prints new catalogs and sells units of the Products via mail order through such catalogs to California consumers or through its Customers, the Settling Entity shall provide a warning for each unit of such Product both on the label in accordance with subsection 2.4 above, 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 conveyed for such Product within the catalog and shall be located on the same display page of the item. The catalog warning may use the Short-Form Warning content described in subsection 2.3(b) if the language provided on the Product label also uses the Short-Form Warning.

## 2.6 Internet Warnings

If the Settling Entity offers for sale any of the Products through online retail sellers, it shall ensure that the required warning (with the language set forth in subsection 2.3 above) is prominently displayed to the purchaser prior to completion of the transaction without requiring the potential buyer to use considerable effort to be made aware of the health hazard advisory. The warning (or a clearly marked hyperlink to the warning using the word “**WARNING**”) given in conjunction with the online sale of the Products shall appear either: (a) prominently placed on the page in which the Product’s initial photograph and price are displayed; (b) on the same web page as the order form for the Products; or (c) on the web page displayed to the purchaser during the checkout process. The Settling Entity may also place the symbol “” adjacent to “**WARNING.**” 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 obligation to transmit online warnings extends to Customers that offer any of the Products for sale in California.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Fines**

Pursuant to Health & Safety Code §25249.7(b), and in settlement of all claims alleged in the notices, the Settling Entity agrees to pay a total of \$1,000 in civil fines. This payment will be allocated in accordance with Health & Safety Code §25249.12(c)(1) and (d), with 75% of the penalty amount paid to 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, or through an automatic electronic transfer 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 \$750; and (b) "Laurence Vinocur" in the amount of \$250. 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 \$8,700. The Settling Entity will deliver its payment to the address in subsection 3.3 by overnight courier, with a tracking number, or through an automatic electronic transfer 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 and Effect of Non-Payment

All non-electronic 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

Should the payments due under Section 3 not clear within two business days from the Effective Date, then this Settlement Agreement shall be null and void.

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 and each of its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom the Settling Entity directly or indirectly distributes or sells the Products including, but not limited, to downstream distributors, wholesalers, Customers, online and brick & mortar retailers such as Walmart, franchisees, cooperative members, and licensees (releasees), based on their failure to warn about alleged exposures to lead contained in the Products that were sold and/or offered for sale in California before the Effective Date, 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 Proposition 65 with respect to lead in the Products, sold and/or offered for sale by the Settling Entity, before the Effective Date, against the Settling Entity and the 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 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 branded by the Settling Entity.

#### 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 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 & ENFORCEMENT**

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, the Settling Entity stipulates that the 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. Nothing in this Settlement Agreement shall be interpreted to relieve the Settling Entity from any obligation to comply with any pertinent state or federal toxics control law.

The Parties agree that if the Office of Environmental Health Hazard Assessment (OEHHA) changes its warning regulations affecting subsections 2.3 through 2.6 below, then the Settling Entity may either conform with the revised law or continue to conform with the terms provided in this Settlement Agreement if the new implementing regulations so allow. In doing so, the Settling Entity will be in compliance with this Settlement Agreement as long as it continues to fulfill any warning obligations unaffected by such new changes.

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 Products, then the Settling Entity 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.

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; (c) sent by overnight courier; or (d) electronically transmitted to one party by the other party at the following addresses:

For the Settling Entity:

DropAir LLC  
1375 US Highway 1  
Suite 5  
Vero Beach, FL 32960

With a Copy to:

John Conkle, Esq.  
Conkle, Kremer & Engel, PLC  
3130 Wilshire Blvd., Suite 500  
Santa Monica, CA 90403  
j.conkle@conklelaw.com

For Vinocur:

Proposition 65 Coordinator  
Chanler, LLC  
72 Huckleberry Hill Road  
New Canaan, CT 06840  
clifford@chanlerLLC.com

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: August 12, 2021

Date: August 12, 2021

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

By:   
\_\_\_\_\_  
Westin Flower, Chief Executive Officer  
DropAir LLC