

SETTLEMENT AGREEMENT

AG Notice No.
2021-02099

[Walmart]

1. INTRODUCTION

1.1 Vinocur and DeysUs, Inc.

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

1.2 General Allegations

Vinocur alleges that Walmart Inc. 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.

The Settling Entity enters into this Settlement Agreement following its acceptance of a tender of defense and indemnity from Walmart Inc. The Settling Entity accepted the tender and approached Vinocur to resolve Walmart Inc.’s alleged liability. Additionally, the Settling Entity is making commitments in furtherance of the public interest as set forth below. The Parties agree and understand that Walmart Inc. is not a party to this Settlement Agreement and that this Settlement Agreement imposes no obligations on Walmart Inc.

1.3 Product Description

The products covered by this Settlement Agreement are lead solder products limited to the following UPC 0082279265253, with the description “Bar Solder, Tin/Lead, 7/16 In. Diameter,” which was sold by the Settling Entity at walmart.com, hereinafter the “Product” or “Products.”

1.4 Notices of Violation

On or about August 24, 2021, Vinocur served Walmart Inc. and certain requisite public enforcement agencies with various 60-Day Notices of Violation (Notice), 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 Notice.

1.5 No Admission

The Settling Entity (and on behalf of Walmart Inc.) 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 (or Walmart Inc.) 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 (or Walmart Inc.) 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 25, 2022.

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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 2.5 below for each Product that does not have a clear and reasonable Proposition 65 warning 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) yields 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 Website Warnings

Commencing on or before August 31, 2022, (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.

(a) Warning. The warning shall consist of the following or other message that is in compliance with California Health and Safety Code Chapter 6.6 Sections 25249.5 to 25249.14 (Proposition 65) and 27 California Code of Regulations Division 4 Chapter 1 (Implementing Regulations):

 **WARNING:** This product can expose you to chemicals including 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.

or

⚠ WARNING: This product can expose you to chemicals including 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 use the following short-form warning, subject to the additional requirements in subsection 2.6, or another short-form warning as long as it is in compliance with Proposition 65 and the Implementing Regulations:

⚠ WARNING: Reproductive Harm – www.P65Warnings.ca.gov

or

⚠ WARNING: Cancer and Reproductive Harm – www.P65Warnings.ca.gov

(c) Foreign Language Requirement. Where a product sign or label used to provide a warning includes consumer information in a language other than English, the warning shall also be provided in such language in compliance with Proposition 65 and the Implementing Regulations.

2.4 On-Product Warnings

The Settling Entity shall affix a warning to the Product in compliance with and as required by Proposition 65 and the Implementing Regulations.

2.5 Internet Warnings

Internet warnings shall comply with Proposition 65 and the Implementing Regulations. If the Settling Entity sells any of the Products through online marketplaces, including through walmart.com, the Settling Entity shall provide the clear and reasonable warning to the purchaser prior to or during the purchase of the Product, as required by Proposition 65 and the Implementing Regulations. 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 as long as it is in compliance with Proposition 65 and the Implementing Regulations. The URL "www.P65Warnings.ca.gov" in the Warning may be substituted with an equivalent

reference to the official "Proposition 65 Warnings Website," if the Settling Entity is prevented from including such URL in the appropriate location as agreed above in this paragraph.

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 Notice, the Settling Entity agrees to pay a total of \$1,500 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. For non-electronic payments the Settling Entity shall provide two checks made payable to: (a) "OEHHA" in the amount of \$1,125; and (b) "Laurence Vinocur" in the amount of \$375. 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, Proposition 65 implementing regulations codified at 11 California Code of Regulations §3201 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 \$12,700. 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. 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 assignees, against the Settling Entity, Walmart Inc., Wal-Mart Stores, Inc., Wal-Mart Stores East, Inc., Wal-Mart Stores East, LP, Walmart Apollo, LLC, Wal-Mart.com, Inc., Wal-Mart.com USA, LLC, and each of their respective parents, direct and indirect subsidiaries, affiliates, past and current agents, directors, officers, employees, representatives, attorneys, successors, and assignees (collectively, "Released Parties"), based on their failure to warn about alleged exposures to lead contained in the Products that were sold or offered for sale in California by the Settling Entity, or that were offered for sale by Walmart Inc. or the other Walmart-related entities referenced above, through walmart.com 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 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, and expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to lead in the Products sold or offered for sale by the Settling Entity on walmart.com or in Walmart, or offered for sale by Walmart Inc. or the other Walmart-related entities referenced above, before the Effective Date, against the Settling Entity, Walmart Inc., the other Walmart-related entities references above, and the Released Parties.

The Parties further understand and agree that this subsection 4.1 release shall not extend to sales of the Products sold or offered for sale on walmart.com by third-party sellers and suppliers.

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 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, 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:

DeysUs, Inc.
Syed I Ahmed
DeysUs Inc.
111 E 17th St # 13204
Austin, TX 78701-9997
Syed@deysus.com

With a Copy to:

Kenneth Eade, Esq.
Amazon Sellers Attorney, Ltd.
9350 Wilshire Blvd., Suite 203
Beverly Hills, CA 90212
info@amazonsellers.attorney

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

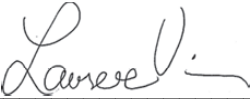
This Settlement Agreement may be modified only by a written agreement of the Parties.

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:

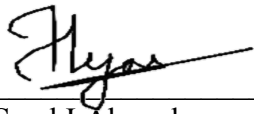
Date: August 23, 2022

By: 

Laurence Vinocur

AGREED TO:

Date: August 25, 2022

By: 

Syed I Ahmed
President
DeysUs, Inc.