

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 The Parties**

This Settlement Agreement (“Settlement Agreement”) is entered into by and between Safe Products for Californians LLC (“SPFC”) and Wilderness Sports Warehouse LLC (“Wilderness Sports”) with SPFC and Wilderness Sports collectively referred to as the “Parties.” SPFC is a limited liability California company with its principal place of business within the State of California, County of Santa Clara, 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. Wilderness Sports is a California limited liability company that employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.5 *et seq.* (“Proposition 65”).

### **1.2 General Allegations**

SPFC alleges that Wilderness Sports manufactures, imports, sells and/or distributes for sale in California, products containing diisononyl phthalate (“DINP”), and that it does so without providing the health hazard warning that SPFC alleges is required by Proposition 65. DINP is listed pursuant to Proposition 65 as a chemical known to the state of California to cause cancer.

### **1.3 Product Description**

The products that are covered by this Settlement Agreement are soft plastic lures containing DINP including, but not limited to, *Smallie Beaver 3.5”UPC# 83680900274*, and *Smallie Beaver 3.5”UPC# 836809001623* that are manufactured, imported and distributed by Wilderness Sports’ vendors, and sold and/or offered for sale by Wilderness Sports in the state of California, hereinafter the “Products.”

### **1.4 Notice of Violation**

On or about October 5, 2017, SPFC served Wilderness Sports, and certain requisite

public enforcement agencies, with a 60-Day Notice of Violation (“Notice”), alleging that Wilderness Sports violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to DINP. 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**

Wilderness Sports denies the material, factual and legal allegations contained in the Notice and maintains that all products that it has manufactured, imported, sold and/or distributed for sale in California, including the Products, have been and are in compliance with all applicable laws and regulations. Nothing in this Settlement Agreement shall be construed as an admission by Wilderness Sports 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 Wilderness Sports of any fact, finding, conclusion, issue of law or violation of law. Notwithstanding the foregoing, nothing in this Section 1.5 shall diminish or otherwise affect the obligations, responsibilities and duties of either Party under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date on which this document has been signed by all Parties.

## **2. INJUNCTIVE RELIEF: LABELING**

### **2.1 Product Labeling**

Wilderness Sports has caused the labeling of the Products with a warning contained in this section. As of the Effective Date, Wilderness Sports shall not directly sell in California, or ship for sale in California any Products, unless the Products are accompanied by one of the following warnings:

1. “WARNING: This product contains chemicals, including diisononyl phthalate (DINP), known to the State of California to cause cancer.”

- a. If Wilderness Sports believes that the products should bear warnings for one or more other listed chemicals designated as reproductive toxicants, then the warning may state “WARNING: This product contains chemicals, including DINP, known to the State of California to cause cancer and birth defects or other reproductive harm.”
2. “**WARNING:** Cancer – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).”
  - a. If Wilderness Sports believes the products should bear warnings for one or more listed chemicals designated as reproductive toxicants, then it may use the short form combination warning “**WARNING: Cancer and Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)**”
3. “**WARNING:** This product can expose you to chemicals including diisononyl phthalate (DINP), which are known to the State of California to cause cancer. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).”
  - a. If Wilderness Sports believes the products should bear warnings for one or more listed chemicals designated as reproductive toxicants, then it may use the combination warning as set forth in Title 27, California Code of Regulations, Section 25603(a)(2)(C).
  - b. If Wilderness Sports believes the products should bear warnings for one or more listed chemicals designated as both carcinogens and reproductive toxicants, then it may use the combination warning as set forth in Title 27, California Code of Regulations, Section 25603(a)(2)(D) and identify only such chemical and not DINP.

If Wilderness Sports elects to use the warning statements identified in either (2) or (3) above, it may also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the sign, label or shelf tag for the product warning is not printed using the color yellow, the symbol may be printed in black and white.

The warning(s) provided pursuant to Section 2.1 shall be provided via one of the following methods: product labels, signage at the point of display, other electronic process or

device, or website and catalogs, in a manner so as to render it likely to be seen, read and understood by an ordinary individual under customary conditions of purchase or use. A warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the product and shall be at least the same size as those other safety warnings.

### **3. MONETARY PAYMENTS**

#### **3.1 Civil Penalty**

Pursuant to Health and Safety Code section 25249.7(b), Wilderness Sports shall pay civil penalties in the amount of \$2,000.00. The penalty payment shall be allocated according to Health and Safety Code section 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 paid to SPFC. SPFC’s counsel shall be responsible for remitting Wilderness Sports’ penalty payment under this Settlement Agreement to OEHHA. Within two (2) business days of this Agreement being signed by the Parties, Wilderness Sports shall issue a check payable to “Mission Law Firm, A.P.C., Trust Account” in the amount of \$500.00, and a check payable to OEHHA in the amount of \$1,500.00. These penalty payments shall be delivered to the address listed in Section 3.3 below.

#### **3.2 Reimbursement of Attorneys’ Fees and Costs**

The Parties acknowledge that SPFC and its 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, Wilderness Sports expressed a desire to resolve SPFC’s fees and costs. The Parties then negotiated a resolution of the compensation due to SPFC and its counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5. For all work performed through the mutual execution of this agreement, Wilderness Sports shall reimburse SPFC and their counsel \$11,829.41 within two (2) business days of this Agreement being signed by the

Parties. Wilderness Sports' payment shall be delivered to the address in Section 3.3 in the form of a check payable to "Mission Law Firm." The reimbursement shall cover all fees and costs incurred by SPFC investigating, bringing this matter to Wilderness Sports' attention and negotiating a settlement of the matter in the public interest.

### **3.3 Payment Address**

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

Mission Law Firm, A.P.C.  
Attn: Proposition 65 (SPFC)  
332 North Second Street  
San Jose, California 95112

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 SPFC's Release of Proposition 65 Claims**

SPFC, acting on its own behalf, and *not* on behalf of the public, releases Wilderness Sports, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Wilderness Sports directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, marketplace hosts, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 prior to, through, and including the Effective Date based on unwarned exposures to DINP in the Products, as set forth in the Notice. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DINP from the Products, as set forth in the Notice. 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 Wilderness Sports.

#### **4.2 SPFC's Individual Releases of Claims**

SPFC, in its individual capacity only and *not* in its 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 SPFC of any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to DINP in the Products manufactured, imported, distributed, or sold by Wilderness Sports prior to, through, and including 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 Wilderness Sports. Nothing in this Section 4.2 affects SPFC's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve the Products.

It is possible that other claims not known to SPFC arising out of the facts contained in the Notice relating to the Products will hereafter be discovered or developed. SPFC, on behalf of itself only acknowledges that this Settlement Agreement is expressly intended to cover and include all such claims through and including the Effective Date, including all rights of action therefor. SPFC acknowledges that the claims released in Sections 4.1 and 4.2 may include unknown claims, and nevertheless intends to release such claims. SPFC expressly waives its rights under California Civil Code § 1542 which reads as follows:

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

SPFC understands and acknowledges that the significance and consequence of this waiver of California Civil Code § 1542 is that even if SPFC suffers future damages arising out of or resulting from, or related to, in whole or in part, the Products, including but not limited to any exposure to, or failure to warn with respect to exposure to DINP in the Products, SPFC will not be able to make any claim for those damages against any of the Releasees.

#### **4.3 Wilderness Sports' Release of SPFC**

Wilderness Sports, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against SPFC and its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by SPFC and their attorneys and other representatives, whether in the course of investigating claims, or otherwise seeking to enforce Proposition 65 against it, in this matter with respect to the Products.

#### **5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, 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 Products, then Wilderness Sports shall provide written notice to SPFC 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. Nothing in this Settlement Agreement shall be interpreted to relieve Wilderness Sports 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: (i) personally delivered; (ii) sent by first-class (registered or certified) mail, return receipt requested; or (iii) sent by overnight courier, to one Party by the other Party at the following addresses:

For Wilderness Sport:

Ann Grimaldi  
Grimaldi Law Offices  
535 Mission Street, 14th Floor  
San Francisco, CA 94105

With a copy to:

Ziyad I. Naccasha  
Carmel & Naccasha LLP  
1410 Marsh Street  
San Luis Obispo, CA 93401

For SPFC:

Proposition 65 Coordinator  
Mission Law Firm, A.P.C.  
332 N 2<sup>nd</sup> Street  
San Jose, CA 95112

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. **ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by either Party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.



**9. 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.

**10. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

SPFC agrees to comply with the reporting requirements referenced in Health & Safety Code section 25249.7(f).

**11. MODIFICATION**

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

**12. BINDING EFFECT**

This Agreement shall inure to the benefit of, and shall be binding upon the Parties hereto and their respective legal representatives, including the Parties' successors and assigns, past and present parents, subsidiaries, affiliates, predecessors, successors, assigns, officers, directors, employees, attorneys, agents, representatives, heirs, executors, guardians ad litem and administrators, and each of them.

**13. NO ASSIGNMENT OF CLAIMS BY THE PARTIES**

Except as set forth in this Agreement, the Parties represent and warrant that they have made no assignment of the claims released herein.

**14. NO PARTY DEEMED DRAFTER**

This Agreement shall be construed fairly as to all Parties and not in favor of or against any of the Parties, regardless of which party actually prepared this Agreement. The Parties waive all applicable rules of construction to the extent that any provision of this Agreement should or could be construed against its drafter. The Parties further agree that all provisions of this Agreement shall be construed as a whole, according to the fair meaning of the language used.

**15. REPRESENTATION**

The Parties hereto acknowledge that they have been represented by independent counsel of their own choosing throughout all of the negotiations that preceded the preparation and

execution of this Agreement, have been fully advised by such counsel of their rights and duties hereunder, have read this Agreement in its entirety, have had this Agreement and each of its parts fully explained to them by their counsel, and are fully aware of the contents of this Agreement and its legal effect. The Parties have relied only on the representations contained in and expressly set forth in this Agreement in entering into the same.

**16. AUTHORIZATION**

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

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Randy Moore, Operating Manager  
Safe Products for Californians LLC

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Rich Zeilenga, Manager/Chief Operations  
Officer  
Wilderness Sports Warehouse LLC

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**16. AUTHORIZATION**

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

**AGREED TO:**

Date: \_\_\_\_\_

4/20/18

By: \_\_\_\_\_

Randy Moore, Operating Manager  
Safe Products for Californians LLC

**AGREED TO:**

Date: \_\_\_\_\_

4/25/18

By: \_\_\_\_\_

Rich Zeilenga, Manager/Chief Operations  
Officer  
Wilderness Sports Warehouse LLC