

American Sportfishing Association

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PROP 65 FISHING LURE OPT-IN SETTLEMENT AGREEMENT FAQs

What does the proposed settlement cover?

The proposed settlement addresses four Prop 65-listed phthalates in soft plastic fishing lures: BBP, DEHP, DIDP, and DINP ("Listed Chemicals"). It was negotiated by the American Sportfishing Association (ASA) and Kingpun Cheng (Cheng), the plaintiff in a previous settlement between a Prop 65 enforcer and several companies that sold fishing lures titled *Cheng v. Zoom Bait*.

According to the Memorandum of Understanding between ASA and Cheng, Fishing Lures means the category of bait composed in whole or part of soft plastic substrate and intended for fishing. The proposed settlement does *not* apply to lures that are made of materials other than soft plastic and does not apply to other fishing tackle.

PLEASE NOTE: ASA strongly recommends that you label everything. This opt-in settlement is only for soft plastic fishing lures containing BBP, DEHP, DIDP, and DINP. This Opt-in Settlement does not apply to other products or other phthalates.

Who can participate in the settlement?

Businesses that manufacture, distribute, or sell Fishing Lures ("bait composed in whole or part of soft plastic substrate and intended for use in fishing") can agree to opt-in to this industry-wide settlement. Businesses are ineligible if (i) they have received a Prop 65 60-day notice over alleged exposure to the Listed Chemicals in Fishing Lures within the prior year or (ii) if they are currently a defendant in a Prop 65 enforcement action alleging exposure to Listed Chemicals in Fishing Lures.

Businesses that are exempt from Proposition 65 because they have fewer than 10 employees should consider participating if their customers are potentially at risk for enforcement, as they can provide a release from liability for those customers.

What does the settlement do?

Participating companies that meet defined standards for the listed chemicals in Fishing Lures will not need to provide Prop 65 warnings. The standards are set by either content (50 percent by weight) or a standardized wipe test. The settlement defines how warnings must be provided for Fishing Lures that do not meet the reformulation standards. Warnings will not be required until one year after the settlement is approved by the court.

Businesses that comply with the settlement will be deemed to comply with Prop 65 and protected from lawsuits by other private enforcers over the same chemicals in Fishing Lures that they sell or distribute before the reformulation date. The settlement will also release claims against downstream retailers and distributors for Fishing Lures supplied by participating companies.

How does this settlement impact recent changes to Prop 65's warning regulations?

Companies that participate in this settlement will have a court order stating that if they comply with the terms of this settlement, they will comply with Prop 65 over the listed chemicals in Fishing Lures, even if the terms of the settlement differ from the regulations. Under the new regulations, a court-approved settlement is deemed clear and reasonable under Proposition 65.

How does this settlement impact the earlier settlement over lead in fishing tackle?

Companies that participated in that settlement are provided with the ability to comply with the warning requirement for phthalate chemicals in this settlement by providing the same warnings they are already providing.

How much does the settlement cost?

Settlement costs depend on a business's average annual retail sales of Fishing Lures in California in 2016 through 2018.

1. Businesses that only sell Fishing Lures at retail should average their California retail sales in 2016, 2017 and 2018.
2. For businesses that do not sell Fishing Lures at retail in California, California sales are defined as six percent of the business's average annual wholesale sales of Fishing Lures in the United States in 2016 through 2018 ((2016 sales + 2017 sales +2018 sales/3))
3. Businesses that sell to retail customers in California and also sell to wholesale customers should calculate their California sales by combining: (i) their direct California sales under the formula in #1 and (ii) six percent of their annual average wholesale sales under the formula in #2.

Settlement costs include defined amounts of civil penalties, plaintiff's attorney's fees, court and filing fees, and costs incurred by ASA in negotiating and implementing the settlement.

The payment to ASA is to offset costs incurred to develop the exposure assessment that supports the reformulation/warning levels in the settlement, as well as significant attorney's fees in negotiating the original settlement and the opt-in settlement. A portion of the payment will cover ASA's attorney's fees in implementing and obtaining approval of the opt-in settlement.

California Sales*	Settlement Payment (ASA Payment + Civil Penalties + Plaintiff's Fees)	Payment to ASA	Civil Penalties	Plaintiff's Attorney Fees	Filing Fee	Total (Settlement Payment + Filing Fee)
≤ \$25,000	\$2,150.00	\$752.50	\$430.00	\$967.50	\$850.00	\$3,000.00
≤ \$50,000	\$5,150.00	\$1,802.50	\$1,030.00	\$2,317.50	\$850.00	\$6,000.00
≤ \$100,000	\$11,150.00	\$3,902.50	\$2,230.00	\$5,017.50	\$850.00	\$12,000.00
≤ \$250,000	\$29,150.00	\$10,202.50	\$5,830.00	\$13,117.50	\$850.00	\$30,000.00
≤ \$500,000	\$44,150.00	\$15,452.50	\$8,830.00	\$19,867.50	\$850.00	\$45,000.00

Companies that only sold Fishing Lures in California at retail or wholesale (i.e., did not manufacture) are required to pay ½ of the amount otherwise required under the agreement, except for the \$850 filing fee.

How do I participate?

To participate, a business must fill out an opt-in stipulation containing basic information and submit the stipulation along with its payments by April 17, 2019. The business will then receive a Prop 65 60-day notice and will be included in the settlement when it is submitted to the court for approval.

What happens once the opt-in period expires?

Cheng will file a motion to seek approval of the proposed settlement. The court will need to approve (i) the Prop 65 warnings required by the settlement, (ii) the civil penalties, and (iii) the plaintiff's attorney's fees, and find that the settlement is in the public interest.

What happens if the settlement is not approved?

Cheng and ASA have agreed to attempt to negotiate a revised settlement that resolves any concerns raised by the court should it not approve the settlement.

You may also contact ASA's attorney for Prop 65 issues *only* at:

Jeffrey Margulies

Norton Rose Fulbright US LLP

555 South Flower Street, 41st Floor

Los Angeles, CA 90071

213-892-9286

jeff.margulies@nortonrosefulbright.com