

1 Brian C. Johnson, State Bar No. 235965  
2 Josh Voorhees, State Bar No. 241436  
3 THE CHANLER GROUP  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710  
7 Telephone: (510) 848-8880  
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff  
10 LAURENCE VINOUCUR

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF ALAMEDA

14 UNLIMITED CIVIL JURISDICTION

15 LAURENCE VINOUCUR

16 Plaintiff,

17 v.

18 WESTFIELD OUTDOOR, INC., *et al.*,

19 Defendants.

Case No. RG15754189

**[PROPOSED] CONSENT JUDGMENT  
BETWEEN PLAINTIFF LAURENCE  
VINOUCUR AND DEFENDANT MARMOT  
MOUNTAIN, LLC**

(Health & Safety Code § 25249.6 *et seq.* and  
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur  
4 (“Vinocur”) and defendant Marmot Mountain, LLC (“Marmot”), with Vinocur and Marmot each  
5 referred to individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Vinocur is a resident of the State of California who seeks to promote awareness of  
8 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful  
9 substances contained in consumer and commercial products.

10 **1.3 Defendants**

11 Marmot employs ten or more persons and is a person in the course of doing business for  
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and  
13 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Vinocur alleges that Marmot manufactures, imports, sells and/or distributes for sale in  
16 California, tent and/or shelter fabrics that contain tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”)  
17 without providing the health hazard warning required by Proposition 65.

18 **1.5 Product Description**

19 The products covered by this Consent Judgment are tent and/or shelter fabrics containing  
20 TDCPP, including, but not limited to, the fabric components of the *Marmot Aspen 2P Tent, #93600*,  
21 *UPC #7 85562 40560 9* (collectively, “Products”).

22 **1.6 Notice of Violation**

23 On October 24, 2014, Vinocur served Marmot and the requisite public enforcement agencies  
24 with a 60-Day Notice of Violation (“Notice”), alleging that Marmot violated Proposition 65 when it  
25 failed to warn its customers and consumers in California that the Products expose users to TDCPP.  
26 To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently  
27 prosecuting an action to enforce the allegations set forth in the Notice.  
28

1           **1.7    Complaint**

2           On January 9, 2015, Vinocur commenced the instant action. Thereafter, on February 3,  
3 2015, Plaintiff filed a First Amended Complaint (“Complaint”), the operative pleading in this  
4 action, adding Marmot as a defendant for the alleged violations of Proposition 65 that are the  
5 subject of the Notice.

6           **1.8    No Admission**

7           Marmot denies the material, factual, and legal allegations contained in the Notice and  
8 Complaint, and maintains that all of the products that it has sold or distributed for sale in California,  
9 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent  
10 Judgment shall be construed as an admission by Marmot of any fact, finding, conclusion of law,  
11 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be  
12 construed as an admission by Marmot of any fact, finding, conclusion of law, issue of law, or  
13 violation of law. This Section shall not, however, diminish or otherwise affect Marmot’s  
14 obligations, responsibilities, and duties under this Consent Judgment.

15           **1.9    Jurisdiction**

16           For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
17 jurisdiction over Marmot as to the allegations in the Complaint, that venue is proper in Alameda  
18 County, and that the Court has jurisdiction to enter and enforce the provisions of this Consent  
19 Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

20           **1.10   Effective Date**

21           For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that  
22 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5.

23 **2.    INJUNCTIVE SETTLEMENT TERMS**

24           Commencing June 15, 2016 and continuing thereafter, Marmot shall only manufacture for  
25 sale, or purchase for sale in California, Reformulated Products. For purposes of this Consent  
26 Judgment, “Reformulated Products” are defined as Products with a maximum TDCPP, tris(2-  
27 chloroethyl) phosphate (“TCEP”), and/or tris(2,3-dibromopropyl)phosphate (“TDBPP”)  
28 concentration of no more than 25 parts per million each, when analyzed pursuant to U.S.

1 Environmental Protection Agency testing methodologies 8141, 3545 and/or 8270C, or other  
2 methodologies utilized by state or federal agencies for the purpose of determining TDCPP content  
3 in a solid substance.

4 **3. MONETARY SETTLEMENT TERMS**

5 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

6 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the  
7 claims referred to in this Consent Judgment, Marmot shall pay \$30,000 in civil penalties in  
8 accordance with this Section. Each penalty payment will be allocated in accordance with California  
9 Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California  
10 Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the  
11 penalty remitted to Vinocur. Vinocur’s counsel shall be responsible for remitting Marmot’s penalty  
12 payment(s) under this Consent Judgment to OEHHA.

13 **3.1.1 Initial Civil Penalty.** Marmot shall make an initial civil penalty payment of  
14 \$9,000.00. Marmot shall provide its payment in a single check made payable to “Laurence  
15 Vinocur, Client Trust Account” to be delivered to the address provided in Section 3.4, below.

16 **3.1.2 Final Civil Penalty.** On May 1, 2016, Marmot shall make a final civil  
17 penalty payment of \$21,000.00. Pursuant to title 11 California Code of Regulations, section  
18 3203(c), Vinocur agrees that the final civil penalty payment shall be waived in its entirety if, no  
19 later than April 15, 2016, an officer of Marmot provides Vinocur with a signed declaration  
20 certifying that all of the Products it ships for sale or distributes for sale in California as of the date if  
21 its certification are Reformulated Products, and that Marmot will continue to offer only  
22 Reformulated Products in California in the future. The option to provide a declaration certifying its  
23 complete early reformulation of the Products in lieu of making the final civil penalty payment  
24 otherwise required by this Section is a material term, and time is of the essence.

25 **3.2 Reimbursement of Attorneys’ Fees and Costs**

26 The Parties acknowledge that Vinocur and his counsel offered to resolve this dispute  
27 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
28 the issue to be resolved after the material terms of the agreement had been settled. After finalizing

1 the other settlement terms, the Parties then negotiated a resolution of the compensation due to  
2 Vinocur and his counsel under general contract principles and the private attorney general doctrine  
3 codified at California Code of Civil Procedure § 1021.5. For all work performed through the  
4 mutual execution of this agreement and the Court’s approval of the same, but exclusive of fees and  
5 costs on appeal, if any, Marmot shall reimburse Vinocur and his counsel \$34,000.00. Marmot’s  
6 payment shall be in the form of a check payable to “The Chanler Group.” The reimbursement  
7 covers all fees and costs incurred by Vinocur investigating, bringing this matter to Marmot’s  
8 attention, litigating, and negotiating a settlement of the matter in the public interest and obtaining  
9 court approval of the same.

10 **3.3 Payment Timing / Enforcement of Payment Terms**

11 With the exception of the final civil penalty payment required by Section 3.1.2, Marmot  
12 shall deliver all payments required by this Consent Judgment to Vinocur’s counsel within five days  
13 of the Effective Date. In the event that any payment required by this Consent Judgment, including  
14 the Section 3.1.2 final civil penalty, is untimely, the Parties agree and acknowledge that (a)  
15 Marmot shall be liable to Vinocur for 10% simple interest on any unpaid amount(s); (b) Vinocur  
16 may seek to enforce Marmot’s payment obligations under general contract principles and Code of  
17 Civil Procedure sections 664.6; and (c) Vinocur shall be entitled to any fees incurred recovering  
18 such settlement payments pursuant to general contract principles and Code of Civil Procedure  
19 section 1021.5.

20 **3.4 Payment Address**

21 All payments required by this Consent Judgment shall be delivered to:

22 The Chanler Group  
23 Attn: Proposition 65 Controller  
24 2560 Ninth Street  
25 Parker Plaza, Suite 214  
26 Berkeley, CA 94710

25 **4. CLAIMS COVERED AND RELEASED**

26 **4.1 Vinocur’s Release of Proposition 65 Claims**

27 Vinocur, acting on his own behalf and in the public interest, releases Marmot and its  
28 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,

1 and attorneys (“Releasees”) and each entity to whom Marmot directly or indirectly distributes or  
2 sells the Products including, but not limited to, its downstream distributors, wholesalers, customers  
3 (including, without limitation, Dick’s Sporting Goods, Inc.), retailers, franchisers, cooperative  
4 members, licensors and licensees (“Downstream Releasees”) for any violations arising under  
5 Proposition 65 for unwarned exposures to TDCPP from the Products manufactured, imported,  
6 distributed or sold by Marmot prior to the Effective Date, as set forth in the Notice. Compliance  
7 with the terms of this Consent Judgment constitutes compliance with Proposition 65 by Marmot  
8 with respect to exposures to TDCPP from Products manufactured, sold or distributed for sale by  
9 Marmot after the Effective Date.

#### 10 **4.2 Vinocur’s Individual Release of Claims**

11 Vinocur, in his individual capacity only and *not* in his representative capacity, also provides  
12 a release to Defendants, Releasees, and Downstream Releasees which shall be effective as a full and  
13 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,  
14 attorneys’ fees, damages, losses, claims, liabilities and demands of Vinocur of any nature, character  
15 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual  
16 exposures to TDCPP, TCEP, and/or TDBPP in Products manufactured, imported, distributed or  
17 sold by Marmot before the Effective Date.

#### 18 **4.3 Marmot’s Release of Vinocur**

19 Marmot, on its own behalf and on behalf of its past and current agents, representatives,  
20 attorneys, successors and/or assignees, hereby waives any and all claims against Vinocur and his  
21 attorneys and other representatives, for any and all actions taken or statements made by Vinocur  
22 and his attorneys and other representatives in the course of investigating claims, seeking to enforce  
23 Proposition 65 against it in this matter, or with respect to the Products.

### 24 **5. COURT APPROVAL**

25 This Consent Judgment is not effective until it is approved and entered by the Court and  
26 shall be null and void if, for any reason, it is not approved and entered by the Court within one year  
27 after it has been fully executed by all Parties. Vinocur and Marmot agree to support the entry of  
28 this agreement as a judgment, and to obtain the Court’s approval of their settlement in a timely

1 manner. The Parties acknowledge that, pursuant to California Health and Safety Code section  
2 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which  
3 motion Vinocur shall draft and file and Marmot shall support, appearing at the hearing if so  
4 requested. If any third-party objection to the motion is filed, Vinocur and Marmot agree to work  
5 together to file a reply and appear at any hearing. This provision is a material component of the  
6 Consent Judgment and shall be treated as such in the event of a breach.

7 **6. SEVERABILITY**

8 If, subsequent to the Court’s approval and entry of this Consent Judgment as a judgment,  
9 any provision of this Consent Judgment is held by a court to be unenforceable, the validity of the  
10 remaining provisions shall not be adversely affected.

11 **7. GOVERNING LAW**

12 The terms of this Consent Judgment shall be governed by the laws of the State of California  
13 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or  
14 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Marmot  
15 may provide Vinocur with written notice of any asserted change in the law, and shall have no  
16 further obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the  
17 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Marmot  
18 from its obligation to comply with any pertinent state or federal law or regulation.

19 **8. NOTICE**

20 Unless specified herein, all correspondence and notice required by this Consent Judgment  
21 shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail,  
22 return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the  
23 following addresses:

24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

To Marmot:

Mark Martin, President  
Marmot Mountain, LLC  
5789 State Farm Drive, Suite 100  
Rohnert Park, CA 94928

with a copy to Marmot’s counsel:

Elizabeth V. McNulty, Esq.  
Archer Norris, LLP  
4695 MacArthur Court, Suite 350  
Newport Beach, CA 92660

To Vinocur:

Attn: Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

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

**9. DISMISSAL OF DEFENDANTS**

Vinocur shall file a request for dismissal without prejudice as to Jarden Corporation within 10 days of the date of execution of this Consent Judgment. Thereafter, within 10 days of the Effective Date, Vinocur shall file a Request for Dismissal without prejudice as to defendant Dick’s Sporting Goods, Inc.

**10. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

This Consent Judgment 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.

**11. COMPLIANCE WITH REPORTING REQUIREMENTS**

Vinocur and his counsel agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

**12. MODIFICATION**

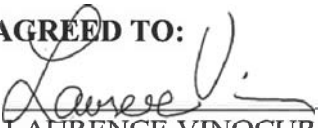
This Consent Judgment may be modified only by: (i) a written agreement of the Parties and the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of any party and the entry of a modified Consent Judgment by the Court thereon.



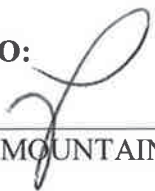
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**13. AUTHORIZATION**

The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

**AGREED TO:**  
  
\_\_\_\_\_  
LAURENCE VINOUCUR

Dated: 2/9/16

**AGREED TO:**  
  
\_\_\_\_\_  
MARMOT MOUNTAIN, LLC  
By: MARK MARTIN  
(Print Name)  
Its: PRESIDENT  
(Title)  
Dated: FEB. 9, 2016