

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 Plaintiffs
10 ANTHONY E. HELD, PH.D., P.E. and
11 LAURENCE VINOCUR

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION

15 ANTHONY E. HELD, Ph.D., P.E., *et al.*,

16 Plaintiffs,

17 v.

18 COLUMBIA SPORTSWEAR COMPANY,
19 *et al.*,

20 Defendants.

Case No. RG15761080

*Assigned for All Purposes to the Honorable
George C. Hernandez, Jr., Superior Court Judge
Department 17*

**[PROPOSED] CONSENT JUDGMENT AS
TO DEFENDANT COLUMBIA
SPORTSWEAR COMPANY**

(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 Columbia Sportswear Company (“Columbia”), with Vinocur and
5 Columbia each 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 Defendant**

11 Columbia 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 Columbia manufactures, imports, sells and/or distributes for sale in
16 California, tent fabrics that contain tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”) and tris(2-
17 chloroethyl) phosphate (“TCEP”) without providing the health hazard warning required by
18 Proposition 65. TDCPP and TCEP are each listed pursuant to Proposition 65 as a chemical that is
19 known to cause cancer.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are tent fabrics purchased for sale or
22 manufactured for sale in California by Columbia that contain TDCPP and/or TCEP, including, but
23 not limited to, the *Mountain Hardwear Optic 2.5*, #1545161456, #004592676, OU9660-456, UPC
24 #8 87487 42641 3 (collectively, “Products”).

25 **1.6 Notice of Violation**

26 On September 30, 2014, Vinocur served Columbia and the requisite public enforcement
27 agencies with a 60-Day Notice of Violation (“Notice”), alleging that Columbia violated Proposition
28 65 when it failed to warn its customers and consumers in California of the health hazards associated

1 with exposures to TDCPP and TCEP in the Products. To the best of the Parties' knowledge, no
2 public enforcer has commenced and is diligently prosecuting an action to enforce the allegations set
3 forth in the Notice.

4 **1.7 Complaint**

5 On March 5, 2015, Vinocur commenced the instant action ("Complaint"), naming Columbia
6 as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

7 **1.8 No Admission**

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

16 **1.9 Jurisdiction**

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

21 **1.10 Effective Date**

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

24 **2. INJUNCTIVE SETTLEMENT TERMS**

25 Commencing December 1, 2015 and continuing thereafter, Columbia shall only
26 manufacture for sale, or purchase for sale in California, Reformulated Products. For purposes of
27 this Consent Judgment, "Reformulated Products" are defined as Products with a maximum TDCPP,
28 TCEP and/or tris(2, 3-dibromopropyl)phosphate ("TDBPP") concentration of 25 parts per million

1 each when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies
2 8141, 3545 and/or 8270C, or other methodologies utilized by state or federal agencies for the
3 purpose of determining TDCPP, TCEP, and/or TDBPP content in a solid substance. Enforcement
4 of the terms and conditions of this Section 2 shall be brought exclusively pursuant to Section 13.2
5 of this Consent Judgment.

6 **3. MONETARY SETTLEMENT TERMS**

7 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

8 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
9 claims referred to in this Consent Judgment, Columbia shall pay \$25,500 in civil penalties in
10 accordance with this Section. Each penalty payment will be allocated in accordance with California
11 Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California
12 Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the
13 penalty remitted to Vinocur. Vinocur’s counsel shall be responsible for remitting Columbia’s
14 penalty payment(s) under this Consent Judgment to OEHHA.

15 **3.1.1 Initial Civil Penalty.** Columbia shall make an initial civil penalty payment
16 of \$8,500. Columbia shall provide its payment in a single check made payable to “Laurence
17 Vinocur, Client Trust Account” to be delivered to the address provided in Section 3.4, below.

18 **3.1.2 Final Civil Penalty; Waiver for Early Reformulation.** On November 1,
19 2015, Columbia shall make a final civil penalty payment of \$17,000. Pursuant to title 11 California
20 Code of Regulations, section 3203(c), Vinocur agrees that the final civil penalty payment shall be
21 waived in its entirety if, no later than October 15, 2015, an officer of Columbia provides Vinocur
22 with a signed declaration certifying that all of the Products it manufactures for sale or purchases for
23 sale in California as of the date if its certification are Reformulated Products, and that Columbia
24 will continue to offer only Reformulated Products in California in the future. The option to provide
25 a declaration certifying its complete early reformulation of the Products in lieu of making the final
26 civil penalty payment otherwise required by this Section is a material term, and time is of the
27 essence.

1 **3.2 Reimbursement of Attorneys' Fees and Costs**

2 The Parties acknowledge that Vinocur and his counsel offered to resolve this dispute
3 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
4 the issue to be resolved after the material terms of the agreement had been settled. After finalizing
5 the other settlement terms the Parties then negotiated a resolution of the compensation due to
6 Vinocur and his counsel under general contract principles and the private attorney general doctrine
7 codified at California Code of Civil Procedure § 1021.5. For all work performed through the
8 mutual execution of this agreement and the Court's approval of the same, but exclusive of fees and
9 costs on appeal, if any, Columbia shall reimburse Vinocur and his counsel \$35,250. Columbia's
10 payment shall be in the form of a check payable to "The Chanler Group." The reimbursement
11 covers all fees and costs incurred by Vinocur investigating, bringing this matter to Columbia's
12 attention, litigating, and negotiating a settlement of the matter in the public interest and obtaining
13 court approval of the same.

14 **3.3 Payments Held In Trust**

15 With the exception of the final civil penalty payment required by Section 3.1.2, Columbia
16 shall deliver all payments required by this Consent Judgment to its counsel within three weeks of
17 the date that this agreement is fully executed by the Parties. Columbia's counsel shall confirm
18 receipt of settlement funds in writing to Vinocur's counsel and, thereafter, hold the amounts paid
19 in trust until such time as the Court grants the motion for approval of the Parties' settlement.
20 Within seven days of the Effective Date, Columbia's counsel shall deliver all settlement payments
21 it has held in trust to Vinocur's counsel at the address provided in Section 3.4. In the event the
22 final civil penalty payment required by Section 3.1.2 becomes due prior to the Effective Date, then
23 Columbia shall deliver the final civil penalty payment to its attorney to be held in trust until, and
24 disbursed within two days after, the Effective Date.

25 **3.4 Payment Address**

26 All payments required by this Consent Judgment shall be delivered to the following
27 address:
28

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

4. CLAIMS COVERED AND RELEASED

4.1 Vinocur's Release of Proposition 65 Claims

Vinocur, acting on his own behalf and in the public interest, releases Columbia and its parents, subsidiaries, affiliated entities under common ownership (including, but not limited to, Mountain Hardwear, Inc.), directors, officers, employees, and attorneys ("Releasees") and each entity to whom Columbia directly or indirectly distributes or sells the Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for any violations arising under Proposition 65 for unwarned exposures to TDCPP and/or TCEP from the Products manufactured, imported, distributed or sold by Columbia prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 by Columbia with respect exposures to TDCPP and/or TCEP from Products manufactured, sold or distributed for sale by Columbia after the Effective Date.

4.2 Vinocur's Individual Release of Claims

Vinocur, in his individual capacity only and *not* in his representative capacity, also provides a release to Defendants, Releasees, and Downstream Releasees 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 Vinocur of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to TDCPP, TCEP, and/or TDBPP in Products manufactured, imported, distributed or sold by Columbia before the Effective Date.

4.3 Columbia's Release of Vinocur

Columbia, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Vinocur and his attorneys and other representatives, for any and all actions taken or statements made by Vinocur

1 and his attorneys and other representatives in the course of investigating claims, seeking to enforce
2 Proposition 65 against it in this matter, or with respect to the Products.

3 **5. COURT APPROVAL**

4 This Consent Judgment is not effective until it is approved and entered by the Court and
5 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
6 after it has been fully executed by all Parties. Vinocur and Columbia agree to support the entry of
7 this agreement as a judgment, and to obtain the Court's approval of their settlement in a timely
8 manner. The Parties acknowledge that, pursuant to California Health and Safety Code section
9 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which
10 motion Vinocur shall draft and file and Columbia shall support, appearing at the hearing if so
11 requested. If any third-party objection to the motion is filed, Vinocur and Columbia agree to work
12 together to file a reply and appear at any hearing. This provision is a material component of the
13 Consent Judgment and shall be treated as such in the event of a breach.

14 **6. SEVERABILITY**

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

18 **7. GOVERNING LAW**

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

26 **8. NOTICE**

27 Unless specified herein, all correspondence and notice required by this Consent Judgment
28 shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail,

1 return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the
2 following addresses:

3 To Columbia:

To Vinocur:

4 Peter Bragdon, Executive Vice President
5 Columbia Sportswear Company
6 14375 Northwest Science Park Drive
7 Portland, OR 97229

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

7 with a copy to:

8 Julie Schwartz, Esq.
9 Perkins Coie LLP
10 3150 Porter Drive
11 Palo Alto, California 94304

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

14 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

15 This Consent Judgment may be executed in counterparts and by facsimile or portable
16 document format (pdf) signature, each of which shall be deemed an original and, all of which, when
17 taken together, shall constitute one and the same document.

18 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

21 **11. MODIFICATION**

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

25 **12. AUTHORIZATION**

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

1 **13. ENFORCEMENT**

2 **13.1** Any Party may, after meeting and conferring, by motion or application for an order
3 to show cause before this Court, enforce the terms and conditions contained in this Consent
4 Judgment.

5 **13.2 Notice of Violation.** Vinocur may seek to enforce the requirements of Section 2 by
6 issuing a Notice of Violation.

7 **13.2.1 Service of Notice.** Vinocur shall serve the Notice of Violation on Columbia
8 within 30 days of the date the alleged violation(s) was or were observed, provided, however that
9 Vinocur may have up to an additional 30 days to provide Columbia with the test data required by
10 Section 13.2.2 below if it has not obtained it from its laboratory.

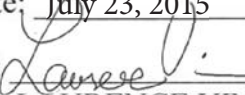
11 **13.2.2 Supporting Documentation.** The Notice of Violation shall, at a minimum,
12 set forth for each Product: (1) the date(s) the alleged violation(s) was or were observed, (2) the
13 location at which the Product was purchased or offered for sale, (3) a description of the Product
14 giving rise to the alleged violation, including a picture of the Product and/or other identifying
15 information such as tags and labels, and (4) any laboratory test data obtained by Vinocur regarding
16 the Product and related supporting documentation, including all laboratory reports, quality
17 assurance reports and quality control reports associated with the testing of the Product. Such Notice
18 of Violation shall be based on the same testing methods specified in Section 2.

19 **13.3 Opportunity to Cure.** Columbia may cure the alleged breach identified in the
20 Notice of Violation within 45 days after receipt of the Notice of Violation, or within such a
21 reasonable time as may be required to cure the breach to Vinocur's reasonable satisfaction,
22 provided the acts to cure the breach are commenced within 30 days and thereafter diligently
23 pursued to completion (the "Cure Period"). Vinocur agrees to meet and confer with Columbia for a
24 period of not less than 45 days following service of a Notice of Violation on Columbia and into the
25 Cure Period prior to seeking to enforce the terms of this Consent Judgment. Thereafter, Vinocur
26 may, without further notice, bring a motion or application for an order to show cause before this
27 Court.

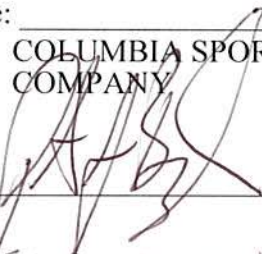
28 ///

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

AGREED TO:

Date: July 23, 2015
By: 
LAURENCE VINO CUR

AGREED TO:

Date: _____
COLUMBIA SPORTSWEAR
COMPANY
By: 
Its: EVP, CAO and General Counsel