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9 LAURENCE VINOCUR

10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF SAN FRANCISCO  
13 UNLIMITED CIVIL JURISDICTION  
14

15 LAURENCE VINOCUR,  
16 Plaintiff,  
17  
18 v.  
19 COLUMBIA TWO, INC.; *et al.*,  
20 Defendants.

Case No. CGC-19-572935

**[PROPOSED] CONSENT JUDGMENT**

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

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CONSENT JUDGMENT

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 Two, Inc. (“Columbia Two”), with Vinocur and Columbia  
5 Two 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 exposures  
8 to toxic chemicals, and to improve human health by reducing or eliminating harmful substances  
9 contained in consumer products.

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Vinocur alleges that Columbia Two manufactures, imports, sells and/or distributes for sale in  
16 California portfolio cases with vinyl components containing di(2-ethylhexyl)phthalate (DEHP), and  
17 that it does so without providing the health hazard warning Vinocur alleges is required by  
18 Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of  
19 California to cause birth defects and other reproductive harm.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are portfolio cases with vinyl components  
22 that are manufactured, imported, sold or offered for sale in California by Columbia Two, including,  
23 but not limited to, the *Tran by Columbia Two, Inc. Portfolio Marker Case, 1381T-PMC, #71658*  
24 *00809 and the Pencil Case, 1380T-PPC* (hereinafter, collectively, the “Products”).

25 **1.6 Notice of Violation**

26 On September 26, 2018, Vinocur served Columbia Two, the California Attorney General,  
27 and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging  
28 Columbia Two violated Proposition 65 when it failed to warn its customers and consumers in

1 California that the Products expose users to DEHP. To the best of the Parties' knowledge, no public  
2 enforcer has commenced and/or is diligently prosecuting an action to enforce the allegations set forth  
3 in the Notice.

4 **1.7 Complaint**

5 On January 17, 2019, Vinocur commenced the instant action ("Complaint"), naming  
6 Columbia Two as one of the defendants for the alleged violations of Proposition 65 that are the  
7 subject of the Notice.

8 **1.8 No Admission**

9 Columbia Two denies the material, factual, and legal allegations contained in the Notice and  
10 Complaint, and maintains that all of the products that it has sold or distributed for sale in California,  
11 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent  
12 Judgment shall be construed as, nor shall compliance with this Consent Judgment constitute or be  
13 construed as, an admission by Columbia Two 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 Two'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 this Court has jurisdiction  
18 over Columbia Two as to the allegations contained in the Complaint, venue is proper in the County  
19 of San Francisco, and the Court has jurisdiction to enter and enforce the provisions of this Consent  
20 Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this  
23 Consent Judgment is approved by the Court, including an unopposed tentative ruling.

24 **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

25 **2.1 Commitment to Reformulate or Provide Warnings**

26 Commencing on the Effective Date and continuing thereafter, Columbia Two shall only  
27 manufacture for sale, import for sale, sell, distribute for sale or otherwise offer for sale, in California,  
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1 Products that are either: (a) reformulated to meet the standard as defined in Section 2.2, below; or (b)  
2 Products bearing a clear and reasonable health hazard warning, pursuant to Sections 2.3 through 2.5.

### 3 **2.2 Reformulation Standard**

4 "Reformulated Products" are Products containing DEHP in concentrations of less than 0.1  
5 percent (1,000 parts per million) in each accessible component (i.e. any component that may be  
6 touched or handled during a reasonably foreseeable use) when analyzed by a laboratory accredited  
7 by the State of California, a federal agency, or a nationally recognized accrediting organization. For  
8 purposes of compliance with this reformulation standard, testing samples shall be prepared and  
9 extracted using Consumer Product Safety Commission (CPSC) methodology CPSC-CH-C1001.09.3  
10 and analyzed using U.S. Environmental Protection Agency (EPA) methodology 8270D, or other  
11 methodologies utilized by federal or state government agencies to determine phthalate content in a  
12 solid substance.

### 13 **2.3 Clear and Reasonable Warnings**

14 Commencing on or before the Effective Date, for all Product that are not Reformulated  
15 Products and that are to be sold or offered for sale in California, Columbia Two shall provide clear  
16 and reasonable health hazard warnings for all Products, in accordance with this Section and/or Title  
17 27, California Code of Regulations, § 25600, *et seq.*, as amended from time to time. Each warning  
18 shall be prominently placed with such conspicuousness as compared with other words, statements,  
19 designs, or devices as to render it likely to be read and understood by an ordinary individual under  
20 customary conditions before purchase or use and shall be provided in a manner such that it is clearly  
21 associated with the specific Product to which the warning applies. Columbia Two shall affix a  
22 warning to the Product label or otherwise directly on each Product provided for sale to consumers or  
23 customers located in California. For the purpose of this Consent Judgment, "Product label" means a  
24 display of written, printed or graphic material that is printed on or affixed to a Product or its  
25 immediate container or wrapper. The entire warning shall appear in a type size of at least 6-point  
26 type and in no event smaller than the largest type size used for other consumer information on the  
27 product. Such warning will consist of one of the following:

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1                    **⚠ WARNING:** This product can expose you to DEHP, which is  
2                    known to the State of California to cause birth  
3                    defects or other reproductive harm. For more  
4                    information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

5                    **⚠ WARNING:** Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

6                    If Columbia Two opts to utilize the second option warning, or the “short-form”  
7                    warning, they agree to comply with the additional requirements of such use, pursuant to and as  
8                    detailed in the following sections.

9                    **2.4 Internet and Mail Order Catalog Warnings**

10                   If, after the Effective Date, Columbia Two sells Products via the internet to customers or  
11                   consumers located in California, Columbia Two agrees to provide warnings for each Product both on  
12                   the Product label, in accordance with Section 2.3, supra, and by prominently displaying the warning  
13                   to the customer prior to or during the purchase process for Products, such that the customer does not  
14                   have to seek out the warning. Warnings given in conjunction with the sale of the Products via the  
15                   internet shall appear either: (a) on the same web page on which the Product is displayed; (b) on the  
16                   same web page as the order form for the Product; or (c) on one or more web pages displayed to a  
17                   purchaser during the checkout process. The warning shall appear in any of the above instances  
18                   adjacent to or immediately following the display or description of the Product for which it is given in  
19                   the same type size or larger than the Product description text. Columbia Two may also comply with  
20                   this section by providing the warning using a clearly marked hyperlink that includes the word  
21                   “**WARNING**” on the same web page and in the same location as the display and/or description of  
22                   the Product.

23                   In the event that, after the Effective Date, Columbia Two prints new catalogs and sells  
24                   Products via mail order through such catalogs to customers located in California, Columbia Two  
25                   agrees to provide a warning for each Product both on the Product label, in accordance with Section  
26                   2.3, supra, and in the catalog in a manner that clearly associates the warning with the specific  
27                   Product being purchased. Such warning shall be in the same type size or larger than other consumer  
28                   information provided for the Product within the catalog and shall be provided on the same page and  
29                   in the same location as the display and/or description of the Product.

1 Columbia Two may utilize the short form warning for Products sold via catalogues or  
2 through the internet, provided the warning on the Product label also consists of the short-form  
3 warning.

4 **3. MONETARY SETTLEMENT TERMS**

5 **3.1 Civil Penalty Payments**

6 Pursuant to Health and Safety Code § 25249.7(b), and specifically taking into consideration  
7 all of the factors identified in Health and Safety Code § 25249.7(b)(2), and in settlement of all  
8 claims referred to in the Notice, Complaint, and this Consent Judgment, Columbia Two agrees to  
9 pay \$2,000.00 in total civil penalties. Columbia Two's civil penalty payment will be allocated  
10 according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of  
11 the penalty paid to the California Office of Environmental Health Hazard Assessment (OEHHA),  
12 and the remaining twenty-five percent (25%) of the penalty payment retained by Vinocur. Columbia  
13 Two shall issue its payment in two checks made payable to (a) "OEHHA" in the amount of  
14 \$1,500.00; and (b) "Laurence Vinocur, Client Trust Account" in the amount of \$500.00. Vinocur's  
15 counsel shall be responsible for delivering OEHHA's portion of the penalty payment.

16 **3.2 Reimbursement of Attorneys' Fees and Costs**

17 The parties acknowledge that Vinocur and his counsel offered to resolve this dispute without  
18 reaching terms on their fees and costs. Shortly after the Parties finalized the other settlement terms,  
19 they negotiated the compensation to be paid to Vinocur and his counsel under general contract  
20 principles and the private attorney general doctrine, codified at California Code of Civil Procedure  
21 § 1021.5, for all work performed through the mutual execution of this Consent Judgment and court  
22 approval of the same, but exclusive of fees and costs on appeal, if any. Columbia Two agrees to pay  
23 \$17,500.00 by a check made payable to "The Chanler Group" for all fees and costs incurred in  
24 investigating, bringing this matter to Columbia Two's attention, litigating, and negotiating a  
25 settlement in the public interest.

26 **3.3 Payment Timing; Payments Held in Trust**

27 All payments due under this Consent Judgment shall be held in trust until the Court approves  
28 the Parties' settlement. Columbia Two shall deliver its civil penalty and attorneys' fee

1 reimbursement payments to its counsel, Ambrose Law Group LLC, within fifteen (15) days of the  
2 date that this Consent Judgment is fully executed by the Parties. Columbia Two's counsel shall  
3 provide Vinocur's counsel with written confirmation following its receipt of the settlement funds.  
4 Thereafter, Columbia Two's counsel shall hold the settlement funds in trust until the Court grants the  
5 motion for approval of this Consent Judgment contemplated by Section 5 and shall disburse the  
6 funds to Vinocur's counsel within five (5) days after the Effective Date.

7 **3.4 Payment Address**

8 All payments required by this Consent Judgment shall be delivered to the following address:

9 The Chanler Group  
10 Attn: Proposition 65 Controller  
11 2550 Ninth Street, Suite 205  
Berkeley, CA 94710

12 **4. CLAIMS COVERED AND RELEASED**

13 **4.1 Vinocur's Release of Proposition 65 Claims**

14 Vinocur, acting on his own behalf and in the public interest, releases Columbia Two and its  
15 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and  
16 attorneys (Releasees) and each entity to whom Columbia Two directly or indirectly distributes or  
17 sells the Products including, but not limited to, its downstream distributors, wholesalers, customers,  
18 retailers, franchisers, cooperative members, licensors and licensees (Downstream Releasees) for any  
19 violations arising under Proposition 65 for unwarned exposures to DEHP from the Products  
20 manufactured, imported, distributed or sold by Columbia Two prior to the Effective Date, as set  
21 forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance  
22 with Proposition 65 by Columbia Two with respect to the alleged or actual failure to warn about  
23 exposures to DEHP from Products manufactured, sold or distributed for sale by Columbia Two after  
24 the Effective Date.

25 **4.2 Vinocur's Individual Release of Claims**

26 Vinocur, in his individual capacity only and *not* in his representative capacity, also provides a  
27 release to Columbia Two, Releasees, and Downstream Releasees which shall be effective as a full  
28 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,

1 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Vinocur of any nature,  
2 character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or  
3 actual exposures to DEHP in Products manufactured, imported, distributed or sold by Columbia Two  
4 before the Effective Date. Nothing in Section 4 affects Vinocur's right to commence or prosecute an  
5 action under Proposition 65 against a Releasee or Downstream Releasee that does not involve  
6 Columbia Two's Products.

7 **4.3 Columbia Two's Release of Vinocur**

8 Columbia Two, on its own behalf and on behalf of its past and current agents,  
9 representatives, attorneys, successors and/or assignees, hereby waive any and all claims against  
10 Vinocur and his attorneys and other representatives, for any and all actions taken or statements made  
11 (or those that could have been taken or made) by Vinocur and his attorneys and other representatives  
12 in the course of investigating claims with respect to the Products, seeking to enforce Proposition 65  
13 against it in this matter, or with respect to the Products.

14 **5. COURT APPROVAL**

15 This Consent Judgment shall be null and void if, for any reason, it is not approved and  
16 entered by the Court within one year after it has been fully executed by all Parties. Vinocur and  
17 Columbia Two agree to support the entry of this agreement as a judgment, and to obtain the Court's  
18 approval of their settlement in a timely manner. The Parties acknowledge that, pursuant to  
19 California Health and Safety Code § 25249.7(f)(4), a noticed motion is required for judicial approval  
20 of this Consent Judgment, which motion Vinocur shall draft and file. In furtherance of obtaining  
21 such approval, the Parties agree to mutually employ their best efforts, and those of their counsel, to  
22 support the entry of this agreement as a judgment, and to obtain judicial approval of their settlement  
23 in a timely manner. For purposes of this Section, "best efforts" shall include, at a minimum,  
24 supporting the motion for approval, responding to any objection that any third-party may file or  
25 lodge, and appearing at the hearing before the Court if so requested.

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1 **6. SEVERABILITY**

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

5 **7. GOVERNING LAW**

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

13 **8. NOTICE**

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

18 To Columbia Two:

19 Bang Van Tran, President  
20 Columbia Two, Inc.  
21 1515 East Burnside Street  
22 Portland, OR 97214

To Vinocur:

Attn: Proposition 65 Coordinator  
The Chanler Group  
2550 Ninth Street, Suite 205  
Berkeley, CA 94710-2565

23 With a Copy To:

24 Christopher R. Ambrose, Esq.  
25 Ambrose Law Group LLC  
312 NW 10<sup>th</sup> Avenue, Suite 200  
Portland, OR 97209

26 Any Party may, from time to time, specify in writing to the other Party a change of address to  
27 which all notices and other communications shall be sent.  
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1 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

5 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

8 **11. ENTIRE AGREEMENT**

9 This Consent Judgment contains the sole and entire agreement and understanding of the  
10 Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
11 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and  
12 therein. There are no warranties, representations, or other agreements between the Parties except as  
13 expressly set forth herein. No representations, oral or otherwise, express or implied, other than those  
14 specifically referred to in this Consent Judgment have been made by any Party hereto. No other  
15 agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to  
16 exist or to bind any of the Parties hereto.

17 **12. MODIFICATION**

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

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1 **13. AUTHORIZATION**

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

5  
6 **AGREED TO:**

7 Date: 10/7/19

8  
9 By:   
10 LAURENCE VINO CUR

**AGREED TO:**

Date: 10-2-2019

By:   
BANG VAN TRAN, PRESIDENT  
COLUMBIA TV O, INC.

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