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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 GABRIEL ESPINOZA,

12 Plaintiff,

13 v.

14 COLUMBIA SPORTSWEAR COMPANY,

15 Defendant.

Case No.: CGC-22-600138

CONSENT JUDGMENT

Judge: Richard B. Ulmer Jr.

Dept.: 302

Hearing Date: August 5, 2022

Hearing Time: 9:30 AM

Reservation #:

1 **1. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between Gabriel
3 Espinoza acting on behalf of the public interest (hereinafter “Espinoza”) and Columbia Sportswear
4 Company (“Columbia” or “Defendant”) with Espinoza and Defendant collectively referred to as
5 the “Parties” and each of them as a “Party.” Espinoza is an individual residing in California that
6 seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing
7 or eliminating hazardous substances contained in consumer products. Columbia is alleged to be a
8 person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code
9 §§ 25249.6 et seq.

10 **1.2 Allegations and Representations.** Espinoza alleges that Defendant has exposed
11 individuals to chromium (hexavalent compounds) (“chromium VI” or “(CrVI)”) from its sales of
12 gloves with leather components, including but not limited to Mountain Hardwear gloves without
13 providing a clear and reasonable exposure warning pursuant to Proposition 65. CrVI is listed under
14 Proposition 65 as a chemical known to the State of California to cause cancer and adverse
15 developmental effects in both males and females.

16 **1.3 Notice of Violation/Complaint.** On or about March 1, 2021, Espinoza served
17 Columbia, and various public enforcement agencies with documents entitled “60-Day Notice of
18 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant
19 violated Proposition 65 for failing to warn consumers and customers that use of Mountain Hardwear
20 gloves expose users in California to CrVI. No public enforcer has brought and is diligently
21 prosecuting the claims alleged in the Notice. On June 13, 2022, Espinoza filed a complaint (the
22 “Complaint”) in the matter.

23 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 jurisdiction over Defendant as to the allegations contained in the Notice filed in this matter, that
25 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
26 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
27
28

of all claims which were, or could have been raised in the Complaint based on the facts alleged therein and/or in the Notice.

1.5 Defendant denies the material allegations contained in the Notice and Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Defendant. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Defendant under this Consent Judgment.

2. DEFINITIONS


2.1 **Covered Products.** The term “Covered Products” means gloves with leather components, including but not limited to Mountain Hardwear gloves, that are manufactured, distributed and/or offered for sale in California by Columbia.

2.2 **Effective Date.** The term “Effective Date” means the date Columbia’s counsel receives notice that this Consent Judgment is entered as a Judgment of the Court.


3. INJUNCTIVE RELIEF: WARNINGS

3.1 **Clear and Reasonable Warning.** Commencing on the Effective Date, Defendant shall provide a clear and reasonable exposure warning as set forth in this §§ 3.1 and 3.2 for all Covered Products that contain leather components that are tanned with chromium compounds that Defendant distributes or sells in California. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 3.1(a) or (b), respectively:

(a) **Warning.** The “Warning” shall consist of the statement:

 **WARNING:** This product can expose you to chemicals including chromium (hexavalent compounds), which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

(b) **Alternative Warning:** Columbia may, but is not required to, use the alternative short-form warning as set forth in this § 3.1(b) (“**Alternative Warning**”) as follows:

 **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

1 3.2 A **Warning** or **Alternative Warning** provided pursuant to § 3.1 must print the word
2 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
3 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
4 triangle with a black outline, except that if the sign or label for the Covered Product does not use
5 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
6 than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the
7 Covered Product’s packaging or labeling or provided for internet sales by including either the
8 warning or a clearly marked hyperlink using the word “WARNING” on the product display page,
9 or by otherwise prominently displaying the warning to the purchaser prior to completing the
10 purchase. The warning must be displayed with such conspicuousness, as compared with other
11 words, statements, or designs as to render it likely to be read and understood by an ordinary
12 individual under customary conditions of purchase or use.

13 **4. Compliance with Warning Regulations.** Defendant shall be deemed to be in compliance
14 with this Consent Judgment by either adhering to §§ 3.1 and 3.2 of this Consent Judgment or by
15 complying with warning regulations approved or adopted by the State of California’s Office of
16 Environmental Health Hazard Assessment (“OEHHA”), or by any other State of California agency
17 authorized to issue regulations approving or adopting warnings as implementation of Proposition
18 65, or by statutes adopted by the California State Legislature or by the California voters after the
19 Effective Date. **MONETARY TERMS**

20 4.1 Within thirty (30) days of the Effective Date, Columbia shall pay the total sum of
21 \$25,000 as a settlement payment, as further set forth and allocated in this Section.

22 4.2 **Civil Penalty.** Columbia shall pay \$2,000.00 as a Civil Penalty pursuant to Health
23 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
24 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the
25 Civil Penalty remitted to Espinoza, as provided by California Health & Safety Code § 25249.12(d).

26 4.2.1 Within thirty (30) days of the Effective Date, Columbia shall issue two
27 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$1,500.00; and
28

1 to (b) "Brodsky & Smith in Trust for Espinoza" in the amount of \$500.00. Payment owed to
2 Espinoza pursuant to this Section shall be delivered to the following payment address:

3 Evan J. Smith, Esquire
4 Brodsky & Smith
5 Two Bala Plaza, Suite 805
6 Bala Cynwyd, PA 19004

6 Payment owed to OEHHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
7 to OEHHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

8 For United States Postal Service Delivery:

9 Mike Gyurics
10 Fiscal Operations Branch Chief
11 Office of Environmental Health Hazard Assessment
12 P.O. Box 4010
13 Sacramento, CA 95812-4010

12 For Non-United States Postal Service Delivery:

13 Mike Gyurics
14 Fiscal Operations Branch Chief
15 Office of Environmental Health Hazard Assessment
16 1001 I Street
17 Sacramento, CA 95814

16 A copy of the check payable to OEHHHA shall be mailed to Brodsky & Smith at the address set
17 forth above as proof of payment to OEHHHA.

18 4.3 **Attorneys' Fees.** Within thirty (30) days of the Effective Date, Columbia shall pay
19 \$23,000.00 to Brodsky & Smith ("Brodsky & Smith") as complete reimbursement for Espinoza's
20 attorneys' fees and costs incurred as a result of investigating, bringing this matter to Columbia's
21 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
22 interest, pursuant to Code of Civil Procedure § 1021.5.

23 **5. RELEASE OF ALL CLAIMS**

24 5.1 This Consent Judgment is a full, final, and binding resolution between Espinoza
25 acting on his own behalf, and on behalf of the public interest, and Columbia, and its parents,
26 shareholders, members, directors, officers, managers, employees, representatives, agents,
27 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
28

1 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
2 directly or indirectly obtain ("Upstream Releasees") and to whom they directly or indirectly
3 distribute or sell Covered Products, including but not limited to manufacturers, suppliers,
4 distributors, wholesalers, customers, licensors, licensees, retailers, franchisees, and cooperative
5 members ("Downstream Releasees"), of all claims for violations of Proposition 65 based on
6 exposure to CrVI from Covered Products as set forth in the Notice, with respect to any Covered
7 Products manufactured, distributed, or sold by Columbia prior to the Effective Date. Defendant
8 Releasees' compliance with the terms of this Consent Judgment constitutes compliance with
9 Proposition 65 with regard to exposure to CrVI from the Covered Products.

10 5.2 In addition to the foregoing, Espinoza, on behalf of himself, his past and current
11 agents, representatives, attorneys, and successors and/or assignees, and not in his representative
12 capacity, hereby releases Defendant Releasees, Upstream Releasees and Downstream Releasees
13 from all claims that he has asserted or could have asserted against said Releasees arising out of
14 Proposition 65. Espinoza acting on behalf of himself, his past and current agents, representatives,
15 attorneys, and successors and/or assignees, and not in his representative capacity further waives all
16 rights to institute or participate in, directly or indirectly, any form of legal action and releases
17 Columbia, Defendant Releasees, Upstream Releasees and Downstream Releasees from any and all
18 manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
19 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of
20 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
21 future, with respect to any alleged violations of Proposition 65 related to or arising from Covered
22 Products manufactured, distributed, or sold by Columbia, Defendant Releasees, Upstream
23 Releasees or Downstream Releasees. With respect to the foregoing waivers and releases in this
24 paragraph, Espinoza hereby specifically waives any and all rights and benefits which he now has,
25 or in the future may have, conferred by virtue of the provisions of § 1542 of the California Civil
26 Code, which provides as follows:

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
28 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO

1 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
2 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
3 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
4 DEBTOR OR RELEASED PARTY.

5 5.3 Columbia waives any and all claims against Espinoza, his attorneys and other
6 representatives, for any and all actions taken or statements made by Espinoza and his attorneys and
7 other representatives, whether in the course of investigating claims or otherwise seeking
8 enforcement of Proposition 65 against it in this matter, and/or with respect to Covered Products.

9 5.4 Notwithstanding any other provision of this Consent Judgment, Covered Products
10 that were manufactured before the Effective Date shall be subject to a full release of all liability
11 pursuant to this Consent Judgment, without regard to when such Covered Products were, or are in
12 the future, distributed or sold to customers. Any obligations of the Releasees to provide warnings
13 or otherwise comply with Proposition 65 do not apply to Covered Products manufactured before
14 the Effective Date. Claims concerning those earlier-manufactured Covered Products are released
15 nonetheless.

16 **6. INTEGRATION**

17 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
18 any and all prior negotiations and understandings related hereto shall be deemed to have been
19 merged within it. No representations or terms of agreement other than those contained herein exist
20 or have been made by any Party with respect to the other Party or the subject matter hereof.

21 **7. GOVERNING LAW**

22 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
23 California and apply within the State of California. In the event that Proposition 65 is repealed or
24 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
25 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
26 to the extent that, Covered Products are so affected.

27 **8. NOTICES**

28 8.1 Unless specified herein, all correspondence and notices required to be provided
pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) either

1 first-class, (registered or certified mail) return receipt requested, or overnight courier on any party;
2 and (ii) electronic mail, by the other party at the following addresses:

3 For Defendant:

4 Julie E. Schwartz
5 JSchwartz@perkinscoie.com
6 Jasmine W. Wetherell
7 JWetherell@perkinscoie.com
8 Perkins Coie LLP
1888 Century Park East Suite 1700
Los Angeles, CA 90067

9 And

10 For Espinoza:

11 Evan Smith
12 Brodsky & Smith
9595 Wilshire Blvd., Ste. 900
Beverly Hills, CA 90212

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

15 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

16 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
17 which shall be deemed an original, and all of which, when taken together, shall constitute one and
18 the same document.

19 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
20 **APPROVAL**

21 10.1 Espinoza agrees to comply with the requirements set forth in California Health &
22 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
23 Defendant agrees it shall support approval of such Motion.

24 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
25 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
26 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
27 days, the case shall proceed on its normal course.

1 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
2 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
3 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
4 its normal course on the trial court's calendar.

5 **11. MODIFICATION**

6 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
7 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

8 11.2 **Alternative Compliance Standards.** If either: (i) the Attorney General, Espinoza,
9 or another private enforcer enters into a court-approved settlement or a court enters a final judgment
10 in a Proposition 65 enforcement action over exposure to CrVI from leather that includes injunctive
11 relief defining the conditions under which Proposition 65 warnings are required for exposure to
12 CrVI in gloves with leather components, including but not limited to a reformulation standards
13 based on CrVI content or tannery process controls; or (ii) the State of California adopts a standard
14 or takes some other regulatory action defining the conditions under which Proposition 65 warnings
15 are required for exposure to CrVI in gloves with leather components, or (iii) if a court of competent
16 jurisdiction or an agency of the federal government states through any guidance, regulation, or other
17 legally binding act that federal law has preemptive effect on any of the requirements of this Consent
18 Judgment, the Parties will meet and confer in good faith on conforming modifications to this
19 Consent Judgment. If the Parties are unable to reach agreement, either Party may move the Court
20 to modify the Consent Judgment.

21 **12. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

22 12.1 If a dispute arises with respect to either Party's compliance with the terms of this
23 Consent Judgment entered by the Court, the Parties shall meet and confer in person, or by telephone,
24 and/or in writing and endeavor to resolve the dispute in an amicable manner. Columbia shall be
25 given a reasonable opportunity to cure any purported violation. No action or motion may be filed
26 in the absence of such a good faith attempt to resolve the dispute beforehand and an opportunity to
27 cure the purported violation.
28

1 **13. ATTORNEY'S FEES**

2 13.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
3 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

4 13.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
5 pursuant to law.

6 **14. RETENTION OF JURISDICTION**

7 14.1 This Court shall retain jurisdiction of this matter to implement or modify the
8 Consent Judgment.

9 **15. AUTHORIZATION**

10 15.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
11 respective Parties and have read, understood and agree to all of the terms and conditions of this
12 document and certify that he or she is fully authorized by the Party he or she represents to execute
13 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
14 explicitly provided herein each Party is to bear its own fees and costs.

15
16 **AGREED TO:**

17 Date: 6/17/22

18 By: 
19 GABRIEL ESPINOZA

AGREED TO:

17 Date: August 28, 2022

18 By: 
19 COLUMBIA SPORTSWEAR COMPANY

20
21
22 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

23
24 Dated: _____

Judge of Superior Court