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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

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

3 1.5 Defendant denies the material allegations contained in the Notice and Complaint  
4 and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be  
5 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor  
6 shall compliance with this Consent Judgment constitute or be construed as an admission by  
7 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically  
8 denied by Defendant. However, this section shall not diminish or otherwise affect the obligations,  
9 responsibilities, and duties of Defendant under this Consent Judgment.

## 10 **2. DEFINITIONS**


11 2.1 **Covered Products.** The term “Covered Products” means gloves with leather  
12 components, including but not limited to Mountain Hardwear gloves, that are manufactured,  
13 distributed and/or offered for sale in California by Columbia.

14 2.2 **Effective Date.** The term “Effective Date” means the date Columbia’s counsel  
15 receives notice that this Consent Judgment is entered as a Judgment of the Court.

## 16 **3. INJUNCTIVE RELIEF: WARNINGS**

17 3.1 **Clear and Reasonable Warning.** Commencing on the Effective Date, Defendant  
18 shall provide a clear and reasonable exposure warning as set forth in this §§ 3.1 and 3.2 for all  
19 Covered Products that contain leather components that are tanned with chromium compounds that  
20 Defendant distributes or sells in California. The warning shall consist of either the **Warning** or  
21 **Alternative Warning** described in §§ 3.1(a) or (b), respectively:

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

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

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

28  **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://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           3.3     **Compliance with Warning Regulations.** Defendant shall be deemed to be in  
14    compliance with this Consent Judgment by either adhering to §§ 3.1 and 3.2 of this Consent  
15    Judgment or by complying with warning regulations approved or adopted by the State of  
16    California’s Office of Environmental Health Hazard Assessment (“OEHHA”) applicable to the  
17    product and the exposure at issue.

18  
19    **4. 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

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

9 For United States Postal Service Delivery:

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

15 For Non-United States Postal Service Delivery:

16 Mike Gyurics  
17 Fiscal Operations Branch Chief  
18 Office of Environmental Health Hazard Assessment  
19 1001 I Street  
20 Sacramento, CA 95814

21 A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith at the address set  
22 forth above as proof of payment to OEHHA.

23 4.3 **Attorneys’ Fees.** Within thirty (30) days of the Effective Date, Columbia shall pay  
24 \$23,000.00 to Brodsky & Smith (“Brodsky & Smith”) as complete reimbursement for Espinoza’s  
25 attorneys’ fees and costs incurred as a result of investigating, bringing this matter to Columbia’s  
26 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public  
27 interest, pursuant to Code of Civil Procedure § 1021.5.

## 28 **5. RELEASE OF ALL CLAIMS**

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

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

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

For Defendant:

Julie E. Schwartz  
[JSchwartz@perkinscoie.com](mailto:JSchwartz@perkinscoie.com)  
Jasmine W. Wetherell  
[JWetherell@perkinscoie.com](mailto:JWetherell@perkinscoie.com)  
Perkins Coie LLP  
1888 Century Park East Suite 1700  
Los Angeles, CA 90067

And

For Espinoza:

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

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

**9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

10.2 This Consent Judgment shall not be effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30 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  
18 Date: 6-17-2022

19 By: 

20 GABRIEL ESPINOZA

16 **AGREED TO:**

17 Date:  28, 2022

19 By: 

20 COLUMBIA SPORTSWEAR COMPANY

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

23  
24 Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court