

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 VINOCUR

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

LAURENCE VINOCUR
Plaintiff,
v.
WESTFIELD OUTDOOR, INC., *et al.*,
Defendants.

Case No. RG15754189

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

**[PROPOSED] CONSENT JUDGMENT AS
TO DEFENDANT WESTFIELD
OUTDOOR, INC.**

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

10 **1.3 Defendant**

11 Westfield 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 Westfield sells and distributes for sale in California, tent/shelter fabrics
16 that contain tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”), and that it does so without providing a
17 health hazard warning in violation of Proposition 65. TDCPP is listed pursuant to Proposition 65 as a
18 chemical that is known to cause cancer.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are tent/shelter fabrics containing TDCPP
21 that are manufactured, sold and/or distributed for sale in California by Westfield including, but not
22 limited to, the *Alpine Design Solitude Tent, SKU #34405891, Style: TSA-8532, UPC # 8 44093 01961*
23 *3* (collectively, “Products”).

24 **1.6 Notice of Violation**

25 On July 30, 2014, Vinocur served Westfield and the requisite public enforcement agencies
26 with a 60-Day Notice of Violation (“Notice”), alleging that Westfield violated Proposition 65 when it
27 failed to warn its customers and consumers in California that the Products expose users to TDCPP.

28

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

3 **1.7 Complaint**

4 On January 9, 2015, Vinocur commenced the instant action naming Westfield, among others,
5 as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.
6 Thereafter on February 3, 2015, Vinocur filed a First Amended Complaint, the operative pleading in
7 this action ("Complaint").

8 **1.8 No Admission**

9 Westfield 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 an admission by Westfield of any fact, finding, conclusion of law,
13 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
14 construed as an admission by Westfield of any fact, finding, conclusion of law, issue of law, or
15 violation of law, the same being specifically denied by Westfield. This Section shall not, however,
16 diminish or otherwise affect Westfield's obligations, responsibilities, and duties under this Consent
17 Judgment.

18 **1.9 Jurisdiction**

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

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that the
25 Court grants the motion for approval of this Consent Judgment contemplated by Section 5.
26
27
28

1 **2. INJUNCTIVE SETTLEMENT TERMS**

2 **2.1 Commitment to Provide Warnings or Reformulate Products**

3 Commencing on the Effective Date and continuing thereafter, Westfield shall only
4 manufacture for sale, or purchase for sale in California, (1) Reformulated Products; or (2) Products
5 that are sold or offered for sale with a clear and reasonable warning pursuant to Section 2.2, below.
6 For purposes of this Consent Judgment, "Reformulated Products" are defined as Products with a
7 maximum TDCPP, tris(2-chloroethyl) phosphate ("TCEP"), and/or tris(2,
8 3-dibromopropyl)phosphate ("TDBPP") concentration of no more than 25 parts per million
9 each when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 8141,
10 3545 and/or 8270C, or other methodologies utilized by state or federal agencies for the purpose of
11 determining TDCPP content in a solid substance.

12 **2.2 Clear and Reasonable Warnings**

13 Commencing on the Effective Date and continuing thereafter, for all Products that do not
14 meet the definition of Reformulated Products set forth above, Westfield agrees to provide a clear and
15 reasonable health hazard warning in accordance with this Section. Westfield further agrees that any
16 warning utilized will be prominently placed with such conspicuousness when compared with other
17 words, statements, designs, or devices as to render it likely to be read and understood by an ordinary
18 individual under customary conditions before purchase or use. For purposes of this Consent
19 Judgment, a clear and reasonable warning shall consist of a warning affixed to the packaging, label,
20 tag, or directly to the exterior of a Product sold in California containing one of the following
21 statements:

22 **WARNING:** This product contains TDCPP a chemical
23 that is known to the state of California to
cause cancer.

24 or

25 **WARNING:** This product contains chemicals that are
26 known to the State of California to
cause cancer.

27
28

1 **3. MONETARY SETTLEMENT TERMS**

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

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

10 **3.2 Reimbursement of Attorneys' Fees and Costs**

11 The Parties acknowledge that Vinocur and his counsel offered to resolve this dispute without
12 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
13 be resolved after the material terms of the agreement had been settled. After finalizing the other
14 settlement terms, the Parties negotiated a resolution of the compensation due to Vinocur and his
15 counsel under general contract principles and the private attorney general doctrine codified at
16 California Code of Civil Procedure section 1021.5. For all work performed through the mutual
17 execution of this agreement and the Court's approval of the same, but exclusive of fees and costs on
18 appeal, if any, Westfield shall reimburse Vinocur and his counsel \$32,500. Westfield's payment
19 shall be due within five calendar days of the Effective Date, and delivered to the address in Section
20 3.4 in the form of a check payable to "The Chanler Group." The reimbursement shall cover all fees
21 and costs incurred by Vinocur investigating, bringing this matter to Westfield's attention, litigating,
22 and negotiating a settlement of the matter in the public interest.

23 **3.3 Payments Held In Trust**

24 With the exception of the final civil penalty payment required by Section 3.1.2, Westfield
25 shall deliver all payments required by this Consent Judgment to its counsel within one week of the
26 date that this agreement is fully executed by the Parties. Westfield's counsel shall confirm receipt of
27 settlement funds in writing to Vinocur's counsel and, thereafter, hold the amounts paid in trust until
28 such time as the Court grants the motion for approval of the Parties' settlement contemplated by

1 Section 5. Within five calendar days of the Effective Date, Westfield's counsel shall deliver all
2 settlement payments it has held in trust to Vinocur's counsel at the address provided in Section 3.4.

3 **3.4 Payment Address**

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

5 The Chanler Group
6 Attn: Proposition 65 Controller
7 2560 Ninth Street
8 Parker Plaza, Suite 214
9 Berkeley, CA 94710

8 **4. CLAIMS COVERED AND RELEASED**

9 **4.1 Vinocur's Release of Proposition 65 Claims**

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

21 **4.2 Vinocur's Individual Release of Claims**

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

1 **4.3 Westfield's Release of Vinocur**

2 Westfield, on its own behalf and on behalf of its past and current agents, representatives,
3 attorneys, successors and/or assignees, hereby waives any and all claims against Vinocur and his
4 attorneys and other representatives, for any and all actions taken or statements made by Vinocur and
5 his attorneys and other representatives in the course of investigating claims, seeking to enforce
6 Proposition 65 against it in this matter, or with respect to the Products.

7 **5. COURT APPROVAL**

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

18 **6. 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 is
21 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Westfield may
22 provide Vinocur with written notice of any asserted change in the law, and shall have no further
23 obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products are
24 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Westfield from its
25 obligation to comply with any pertinent state or federal law or regulation.

26 **7. 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, return

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

3 To Westfield:

4 Charlie Kai, C.E.O.
5 Westfield Outdoor, Inc.
6 8675 Purdue Road
7 Indianapolis, IN 46268

To Vinocur:

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

7 with a copy to:

8 Gary A. Wexler, Esq.
9 Thompson Coburn LLP
10 2029 Century Park East, 19th Floor
11 Los Angeles, CA 90067

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

14 **8. 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 **9. 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 **10. 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.

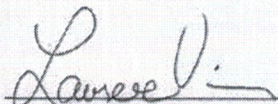
25 **11. AUTHORIZATION**

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

1 Consent Judgment.

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:



LAURENCE VINO CUR

Dated: 9/9/15

AGREED TO:



WESTFIELD OUTDOOR, INC.

By: CHARLIE CBI
(Print Name)

Its: CEO
(Title)

Dated: 9/1/2015