

1 O'Neil Dennis, SBN 256636
2 O'Neil Law Firm
3 385 Grand Avenue, Suite 300
4 Oakland, CA 94610
5 Tel: (510) 272-9737
6 E-Mail: lawofficeofoneilgdennis@gmail.com
7 Attorney for Alicia Chin

ENDORSED
FILED
ALAMEDA COUNTY

NOV 15 2016

CLERK OF THE SUPERIOR COURT
By Lanette Buffin, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
UN-LIMITED CIVIL

10 ALICIA CHIN,
11 Plaintiff,

12 vs.

13 HARBOR FREIGHT TOOLS USA, INC.;
14 CENTRAL PURCHASING, INC.; and
15 Does 1-30, inclusive
16 Defendants

Case No. *RG* 16838949

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES

Cal. Health & Safety Code §25249.6 *et seq*

17 Plaintiff complains and alleges the following in the public interest of the State of California:

18 INTRODUCTION

19 1. This Complaint is a representative action brought by plaintiff ALICIA CHIN in the
20 public interest of the citizens of the State of California to enforce the People's right to be
21 informed about exposures to Lead, a toxic chemical that is found in and on the brass components
22 of the CentralPnuematic Air Hose, # 61962, sold in California, and exposures to Di-n-butyl
23 Phthalate ("DBP"), a toxic chemical that is found in One Stop Gardens, Ladies Gardening Gloves,
24 # 0714-06, sold in California.

25 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to warn
26 California citizens about the risks of exposures to the Lead present in and on the brass
27 components of the CentralPnuematic Air Hose, # 61962, and DBP present in the One Stop
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1 Gardens, Ladies Gardening Gloves, # 0714-06, both imported, manufactured, distributed, and
2 offered for sale or use to consumers throughout the State of California.

3 3. Detectable levels of Lead are commonly found in and on the brass components of
4 the CentralPnuematic Air Hose, #61962, that defendants import, manufacture, distribute, ship,
5 sell and offer for sale to consumers throughout the State of California. Detectable levels of
6 DBP are commonly found in PVC dots on the surface of the One Stop Gardens, Ladies
7 Gardening Gloves, # 0714-06, that defendants import, manufacture, distribute, ship, sell and
8 offer for sale to consumers throughout the State of California .

9 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
10 Health & Safety Code §25249.6 et seq. (“Proposition 65”), “[n]o person in the course of doing
11 business shall knowingly and intentionally expose any individual to a chemical known to the
12 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning
13 to such individual” Health & Safety Code §25249.6.

14 5. Pursuant to Proposition 65, on February 2, 1987, California identified and listed
15 Lead as a chemical known to cause birth defects and other reproductive harm, and on October
16 1, 1992, California identified and listed Lead as a chemical known to cause cancer. Lead
17 became subject to the “clear and reasonable warning” requirements of the act one year later on
18 February 2, 1988 and October 1, 1993, respectively. Cal. Code Regs. tit. 27, § 27001(c);
19 Health & Safety Code §§ 25249.8 & 25249.10(b).

20 6. Pursuant to Proposition 65, on December 2, 2005, California identified and listed
21 DBP as a chemical known to cause birth defects and other reproductive harm. DBP became
22 subject to the “clear and reasonable warning” requirements of the act one year later on
23 December 2, 2006. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
24 25249.10(b).

25 7. Defendants manufacture, distribute, import, sell, and offer for sale without warning
26 in California, air hoses, containing Lead, and ladies gardening gloves, containing DBP,
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1 including, but not limited to, the CentralPnuematic Air Hose, #61962 and One Stop Gardens,
2 Ladies Gardening Gloves, # 0714-06. All such air hoses containing Lead in the brass
3 components and ladies gardening gloves containing DBP, are referred to collectively
4 hereinafter as the ("PRODUCTS").

5 8. Defendants' failure to warn workers, consumers and other individuals in California
6 of the harms associated with exposures to Lead, and DBP in conjunction with defendants' sales
7 of the PRODUCTS containing Lead, and DBP are violations of Proposition 65, and subject
8 defendants to enjoiment of such conduct, as well as civil penalties for each violation. Health
9 & Safety Code §25249.7(a) & (b)(1).

10 9. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
11 permanent injunctive relief to compel defendants to provide purchasers or users of the
12 PRODUCTS with the required warning regarding the health hazards associated with exposures
13 to Lead, and DBP. Health & Safety Code §25249.7(a).

14 10. Pursuant to Health & Safety Code §25249.7(b), plaintiff also seeks civil penalties
15 against defendants, and each of them, for each violation of Proposition 65.

16 PARTIES

17 11. Plaintiff ALICIA CHIN is a citizen of the State of California who is dedicated to
18 protecting the health of California citizens through the elimination or reduction of harmful
19 exposures to toxic chemicals from consumer products. She brings this action in the public
20 interest pursuant to Health & Safety Code §25249.7(d).

21 12. Defendant HARBOR FREIGHT TOOLS USA, INC. ("HARBOR FREIGHT") is
22 a person in the course of doing business within the meaning of Health & Safety Code
23 §§25249.6 & 25249.11.

24 13. HARBOR FREIGHT manufactures, imports, distributes, sells, and/or offers the
25 PRODUCTS for sale or use in the State of California, or it implies by its conduct that it
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1 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
2 State of California.

3 14. Defendant CENTRAL PURCHASING, INC. ("CENTRAL PURCHASING") is a
4 person in the course of doing business within the meaning of Health & Safety Code §§25249.6 &
5 25249.11.

6 15. CENTRAL PURCHASING manufactures, imports, distributes, sells, and/or
7 offers the One Stop Gardens, Ladies Gardening Gloves, # 0714-06 for sale or use in the State of
8 California, or it implies by its conduct that it manufactures, imports, distributes, sells, and/or
9 offers the One Stop Gardens, Ladies Gardening Gloves, # 0714-06 for sale or use in the State of
10 California.

11 16. Defendants DOES 1-10 ("MANUFACTURER DEFENDANTS") are each a
12 person in the course of doing business within the meaning of Health & Safety Code §§25249.6
13 & 25249.11.

14 17. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
15 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
16 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
17 California.

18 18. Defendants DOES 11-20 ("DISTRIBUTOR DEFENDANTS") are each a person
19 in the course of doing business within the meaning of Health & Safety Code §§25249.6 and
20 25249.11.

21 19. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and
22 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
23 in the State of California.

24 20. Defendants DOES 21-30 ("RETAILER DEFENDANTS") are each a person in
25 the course of doing business within the meaning of Health & Safety Code §§25249.6 and
26 25249.11.
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1 21. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
2 State of California.

3 22. At this time, the true names of defendants DOES 1 through 30, inclusive, are
4 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
5 Code of Civil Procedure §474. Plaintiff is informed and believes, and on that basis alleges,
6 that each of the fictitiously named defendants is responsible for the acts and occurrences
7 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

8 23. HARBOR FREIGHT, CENTRAL PURCHASING, MANUFACTURER
9 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS are
10 hereinafter collectively referred to as "DEFENDANTS."

11 **VENUE AND JURISDICTION**
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13 24. Venue is proper in the County of Alameda, pursuant to Code of Civil Procedure
14 §§393, 395, and 395.5, because this Court is a court of competent jurisdiction, because plaintiff
15 seeks civil penalties against DEFENDANTS, because one or more instances of wrongful
16 conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS
17 conducted, and continue to conduct, business in Alameda with respect to the PRODUCTS.

18 25. The California Superior Court has jurisdiction over this action pursuant to
19 California Constitution Article VI, section 10, which grants the Superior Court "original
20 jurisdiction in all causes except those given by statute to other trial courts." The statute under
21 which this action is brought does not specify any other basis of subject matter jurisdiction.

22 26. The California Superior Court has jurisdiction over DEFENDANTS based on
23 plaintiff's information and good faith belief that each defendant is a person, firm, corporation
24 or association that is a citizen of the State of California, has sufficient minimum contacts in the
25 State of California, and/or otherwise purposefully avails itself of the California market.
26 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
27 California courts consistent with traditional notions of fair play and substantial justice.
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1 **FIRST CAUSE OF ACTION**

2 **(Violation of Proposition 65 - Against All Defendants, except CENTRAL PURCHASING)**

3 27. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 26, inclusive.

5 28. In enacting Proposition 65, in the preamble to the Safe Drinking Water and
6 Toxic Enforcement Act of 1986, the People of California expressly declared their right “[t]o be
7 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
8 harm.”

9 29. Proposition 65 states, “[n]o person in the course of doing business shall
10 knowingly and intentionally expose any individual to a chemical known to the state to cause
11 cancer or reproductive toxicity without first giving clear and reasonable warning to such
12 individual” Health & Safety Code §25249.6.

13 30. On August 15, 2016, plaintiff’s sixty-day notice of violation, together with the
14 requisite certificate of merit, was provided to HARBOR FREIGHT, and the requisite public
15 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the CentralPnuematic
16 Air Hose, #61962, containing Lead, workers, consumers and other individuals in the State of
17 California are being exposed to Lead resulting from their reasonably foreseeable use of the
18 CentralPnuematic Air Hose, # 61962, without the individual purchasers and users first having
19 received a “clear and reasonable warning” regarding such toxic exposures, as required by
20 Proposition 65.

21 31. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
22 and offering of the CentralPnuematic Air Hose, # 61962, for sale or use in violation of Health
23 & Safety Code §25249.6, and DEFENDANTS’ violations have continued to occur beyond
24 their receipt of plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations
25 are ongoing and continuous in nature, and, unless enjoined, will continue to occur in the future.

26 32. After receiving plaintiff’s sixty-day notice of violation, to plaintiff’s best
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1 information and belief, the appropriate public enforcement agencies have failed to commence
2 and diligently prosecute a cause of action against DEFENDANTS under Proposition 65.

3 33. The CentralPnuematic Air Hose, # 61962, manufactured, imported, distributed,
4 sold, and offered for sale or use in California by DEFENDANTS contain Lead in such a way
5 that the reasonably foreseeable uses of these products result in exposures that require a "clear
6 and reasonable" warning under Proposition 65.

7 34. DEFENDANTS knew or should have known that the CentralPnuematic Air
8 Hose, # 61962, they manufacture, import, distribute, sell, and offer for sale or use in California
9 contain Lead.

10 35. Lead is present in or on the CentralPnuematic Air Hose, # 61962, in such a way
11 as to expose individuals through dermal contact and/or ingestion and/or inhalation during
12 reasonably foreseeable use.

13 36. The normal and reasonably foreseeable use of the CentralPnuematic Air Hose, #
14 61962, has caused, and continues to cause, consumer exposures to Lead, as such exposures are
15 defined by title 27 of the California Code of Regulations, §25602(b).

16 37. DEFENDANTS have knowledge that the normal and reasonably foreseeable use
17 of the CentralPnuematic Air Hose, # 61962, exposes individuals to Lead through dermal
18 contact and/or ingestion and/or inhalation.

19 38. DEFENDANTS intend for such exposures to Lead from the reasonably
20 foreseeable use of the CentralPnuematic Air Hose, # 61962, to occur by their deliberate, non-
21 accidental participation in the manufacture, distribution, sale, and offering of the
22 CentralPnuematic Air Hose, # 61962, for sale or use to individuals in the State of California.

23 39. DEFENDANTS failed to provide a "clear and reasonable warning" to those
24 workers, consumers and other individuals in California who have been, or will be, exposed to
25 Lead.
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27 40. Contrary to the express policy and statutory prohibition of Proposition 65
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1 enacted directly by California voters, consumers, and other individuals exposed to Lead
2 through dermal contact and/or ingestion and/or inhalation, resulting from the reasonably
3 foreseeable use of the CentralPneumatic Air Hose, # 61962, sold by DEFENDANTS without a
4 “clear and reasonable warning,” have suffered, and continue to suffer, irreparable harm for
5 which they have no plain, speedy, or adequate remedy at law.

6 41. Pursuant to Health & Safety Code §25249.7(b), as a consequence of the above-
7 described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day for
8 each violation.

9 42. As a consequence of the above-described acts, Health & Safety Code
10 §25249.7(a) also specifically authorizes the Court to grant injunctive relief against
11 DEFENDANTS.

12 **SECOND CAUSE OF ACTION**

13 **(Violation of Proposition 65 - Against All Defendants)**

14 43. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
15 Paragraphs 1 through 26, inclusive.

16 44. In enacting Proposition 65, in the preamble to the Safe Drinking Water and
17 Toxic Enforcement Act of 1986, the People of California expressly declared their right “[t]o be
18 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
19 harm.”
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21 45. Proposition 65 states, “[n]o person in the course of doing business shall
22 knowingly and intentionally expose any individual to a chemical known to the state to cause
23 cancer or reproductive toxicity without first giving clear and reasonable warning to such
24 individual” Health & Safety Code §25249.6.

25 46. On September 9, 2016, plaintiff’s sixty-day notice of violation, together with the
26 requisite certificate of merit, was provided to HARBOR FREIGHT and CENTRAL
27 PURCHASING, and the requisite public enforcement agencies stating that, as a result of
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1 DEFENDANTS' sales of the One Stop Gardens, Ladies Gardening Gloves, # 0714-06 containing
2 DBP, workers, consumers and other individuals in the State of California are being exposed to
3 DBP resulting from their reasonably foreseeable use of the One Stop Gardens, Ladies Gardening
4 Gloves, # 0714-06, without the individual purchasers and users first having received a "clear and
5 reasonable warning" regarding such toxic exposures, as required by Proposition 65.

6 47. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
7 and offering of the One Stop Gardens, Ladies Gardening Gloves, # 0714-06 for sale or use in
8 violation of Health & Safety Code §25249.6, and DEFENDANTS' violations have continued
9 to occur beyond their receipt of plaintiff's sixty-day notice of violation. As such,
10 DEFENDANTS' violations are ongoing and continuous in nature, and, unless enjoined, will
11 continue to occur in the future.

12 48. After receiving plaintiff's sixty-day notice of violation, to plaintiff's best
13 information and belief, the appropriate public enforcement agencies have failed to commence
14 and diligently prosecute a cause of action against DEFENDANTS under Proposition 65.

15 49. The One Stop Gardens, Ladies Gardening Gloves, # 0714-06, manufactured,
16 imported, distributed, sold, and offered for sale or use in California by DEFENDANTS contain
17 DBP in such a way that the reasonably foreseeable uses of these products result in exposures
18 that require a "clear and reasonable" warning under Proposition 65.

19 50. DEFENDANTS knew or should have known that the One Stop Gardens, Ladies
20 Gardening Gloves, # 0714-06, they manufacture, import, distribute, sell, and offer for sale or
21 use in California contain DBP.

22 51. DBP is present in or on the One Stop Gardens, Ladies Gardening Gloves, #
23 0714-06, in such a way as to expose individuals through dermal contact during reasonably
24 foreseeable use.

25 52. The normal and reasonably foreseeable use of the One Stop Gardens, Ladies
26 Gardening Gloves, # 0714-06, has caused, and continues to cause, consumer exposures to
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1 Lead, as such exposures are defined by title 27 of the California Code of Regulations,
2 §25602(b).

3 53. DEFENDANTS have knowledge that the normal and reasonably foreseeable use
4 of the One Stop Gardens, Ladies Gardening Gloves, # 0714-06, exposes individuals to DBP
5 through dermal contact.

6 54. DEFENDANTS intend for such exposures to DBP from the reasonably
7 foreseeable use of the One Stop Gardens, Ladies Gardening Gloves, # 0714-06, to occur by
8 their deliberate, non-accidental participation in the manufacture, distribution, sale, and offering
9 of the One Stop Gardens, Ladies Gardening Gloves, # 0714-06, for sale or use to individuals in
10 the State of California.

11 55. DEFENDANTS failed to provide a "clear and reasonable warning" to those
12 workers, consumers and other individuals in California who have been, or will be, exposed to
13 DBP.

14 56. Contrary to the express policy and statutory prohibition of Proposition 65
15 enacted directly by California voters, consumers, and other individuals exposed to DBP
16 through dermal contact, resulting from the reasonably foreseeable use of the One Stop
17 Gardens, Ladies Gardening Gloves, # 0714-06, sold by DEFENDANTS without a "clear and
18 reasonable warning," have suffered, and continue to suffer, irreparable harm for which they
19 have no plain, speedy, or adequate remedy at law.

20 57. Pursuant to Health & Safety Code §25249.7(b), as a consequence of the above-
21 described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day for
22 each violation.

23 58. As a consequence of the above-described acts, Health & Safety Code
24 §25249.7(a) also specifically authorizes the Court to grant injunctive relief against
25 DEFENDANTS.
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1 **PRAYER FOR RELIEF**

2 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

3 A. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil penalties
4 against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation;

5 B. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and
6 permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the
7 PRODUCTS for sale or use in California without first providing a “clear and reasonable
8 warning” as defined by title 27 of the California Code of Regulations, §25601 et seq., as to the
9 harms associated with exposures to Lead, and DBP;

10 C. That the Court grant plaintiff her reasonable attorneys’ fees and costs of suit; and

11 D. That the Court grant such other and further relief as may be just and proper.
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14 Date: November 14, 2016

O’Neil Law Firm

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17 By: 
18 O’Neil Dennis
19 Attorney for Alicia Chin
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