

ENDORSED
FILED
ALAMEDA COUNTY

MAR 27 2012

K. McCoy, Exec. Off./Clerk

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2 THE CHANLER GROUP
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5 Attorneys for Plaintiff
RUSSELL BRIMER
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ALAMEDA
11 UNLIMITED CIVIL JURISDICTION

12 RUSSELL BRIMER,

13 Plaintiff,

14 v.
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16 CENTRAL PURCHASING, LLC, HARBOR
FREIGHT TOOLS USA, INC., and DOES 1-
17 150, inclusive,

18 Defendants.
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Case No. RG11565734

[Signature]
**[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AGREEMENT**

Action Filed : March 15, 2011

1 In the above-entitled action, Plaintiff RUSSELL BRIMER and Defendants CENTRAL
2 PURCHASING, LLC and HARBOR FREIGHT TOOLS USA, INC., having agreed through their
3 respective counsel that a judgment be entered pursuant to the terms of the Consent To Judgment
4 entered into by the parties in resolution of this Proposition 65 action, and following the issuance of an
5 order approving the Parties' Consent to Judgment on this day, IT IS HEREBY ORDERED,
6 ADJUDGED AND DECREED that pursuant to Health & Safety Code § 25249.7(f)(4) and Code of
7 Civil Procedure § 664.6, judgment is hereby entered in accordance with the terms of the Consent To
8 Judgment attached hereto as Exhibit A. By stipulation of the parties, the Court will retain jurisdiction
9 to enforce the settlement under Code of Civil Procedure § 664.6.
10

11 IT IS SO ORDERED.

12
13 Dated: March 27, 2012

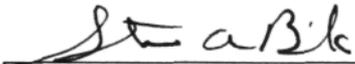
14 
15 JUDGE OF THE SUPERIOR COURT
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EXHIBIT A

1 Clifford A. Chanler, State Bar No. 135534
2 Gregory M. Sheffer, State Bar No. 173124
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2562
7 Telephone: 510-848-8880
8 Facsimile: 510-848-8118

9 Attorneys for Plaintiff
10 RUSSELL BRIMER

11 HUNTON & WILLIAMS LLP
12 MALCOLM C. WEISS (State Bar No. 112476)
13 IAN M. FORREST (State Bar No. 240403)
14 550 South Hope Street, Suite 2000
15 Los Angeles, California 90071-2627
16 Telephone: 213 • 532 • 2000
17 Facsimile: 213 • 532 • 2020

18 Attorneys for Defendants
19 CENTRAL PURCHASING, LLC and
20 HARBOR FREIGHT TOOLS USA, INC.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,
Plaintiff,

v.

CENTRAL PURCHASING, LLC,
HARBOR FREIGHT TOOLS USA, INC.
and DOES 1-150,

Defendants.

Case No. RG11565734

CONSENT TO JUDGMENT

Health & Safety Code § 25249.6

1 **1. INTRODUCTION**

2 **1.1 Plaintiff Russell Brimer and Defendants Central Purchasing, LLC and Harbor**
3 **Freight Tools USA, Inc.**

4 This Consent To Judgment is entered into by and between Plaintiff Russell Brimer (“Brimer”
5 or “Plaintiff”) and Defendants Central Purchasing, LLC (“Central Purchasing”) and Harbor Freight
6 Tools USA, Inc. (“Harbor Freight”) (individually and collectively, Central Purchasing and Harbor
7 Freight may be referred to as “Defendants”). Brimer and Defendants are collectively referred to as
8 the “Parties.”

9 **1.2 Plaintiff**

10 Brimer is an individual residing in California who seeks to promote awareness of exposures to
11 toxic chemicals and improve human health by reducing or eliminating hazardous substances
12 contained in consumer products.

13 **1.3 Defendants Central Purchasing and Harbor Freight**

14 Defendants each employ ten or more persons and are persons in the course of doing business
15 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
16 Safety Code § 25249.6 *et seq.* (“Proposition 65”).

17 **1.4 General Allegations**

18 Brimer alleges that Defendants have manufactured, distributed, and/or sold in the State of
19 California tape measures with accessible components containing lead without providing the requisite
20 Proposition 65 warnings. Defendants admit nothing and specifically deny this allegation for, among
21 other reasons, Defendants’ own allegation that clear and reasonable Proposition 65 warning signs
22 were present in its stores at all relevant times. Lead is listed pursuant to Proposition 65 as a chemical
23 known to the State of California to cause birth defects and other reproductive harm. Lead is referred
24 to herein as the “Listed Chemical.”

25 **1.5 Product Description**

26 The products that are covered by this Consent To Judgment are defined as follows: tape
27 measures composed of materials containing lead including, but not limited to, the *Cen-Tech 100 Ft.*
28 *Tape Measure, Item 36818*. All such items shall be referred to herein as the “Covered Products.”

1 1.6 **Notice of Violation**

2 On October 15, 2010, Brimer served Defendants and all required public enforcement agencies
3 with a document entitled “60-Day Notice of Violation” (“Notice”) that provided Defendants and such
4 public enforcers with notice that Defendants were alleged to be in violation of California Health &
5 Safety Code § 25249.6 for failing to warn employees and consumers that the Covered Products
6 caused exposures in California to the Listed Chemical. To the best of the Parties’ knowledge, no
7 public enforcer has commenced and/or diligently prosecuted the allegations set forth in the 60-Day
8 Notice of Violation.

9 1.7 **Complaint**

10 On March 15, 2011, Brimer, acting in the interest of the general public in California, filed the
11 instant action naming Central Purchasing and Harbor Freight as Defendants and alleging violations of
12 Health & Safety Code §§ 25249.6, *et seq.* based on, *inter alia*, alleged occupational and consumer
13 exposures to the Listed Chemical contained in the Covered Products sold in California (“Complaint”)
14 without the clear and reasonable warning required by Proposition 65.

15 1.8 **No Admission**

16 Defendants deny the material, factual, and legal allegations contained in Brimer’s Notice and
17 Complaint, and maintain that all of the products it has manufactured, distributed, and/or sold in
18 California, including the Covered Products, have been, and are, in compliance with all laws. Nothing
19 in this Consent To Judgment shall be construed as an admission by Defendants of any fact, finding,
20 conclusion of law, issue of law, or violation of law; nor shall compliance with this Consent To
21 Judgment constitute or be construed as an admission by Defendants of any fact, finding, conclusion
22 of law, issue of law, or violation of law, the same being specifically denied by Defendants. However,
23 this section shall not diminish or otherwise affect the obligations, responsibilities and duties of
24 Defendants under this Consent To Judgment.

25 1.9 **Consent to Jurisdiction**

26 For purposes of this Consent To Judgment only, the Parties stipulate that this Court has
27 jurisdiction over Defendants and Russell Brimer as to the allegations contained in the Complaint, that
28 venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the

1 provisions of this Consent To Judgment. As an express part of this Agreement, pursuant to C.C.P.
2 §664.6 the Court in which this action was filed shall retain jurisdiction over the parties to enforce the
3 settlement until performance in full of the terms of the settlement.

4 **1.10 Effective Date**

5 For purposes of this Consent To Judgment, the term “Effective Date” shall mean the date
6 Defendants receive notice from the Plaintiff that the Court has entered an order granting approval of
7 this Consent To Judgment.

8 **1.11 Court**

9 For purposes of this Consent To Judgment, the term “Court” shall mean the Superior Court of
10 California for the County of Alameda presiding over case RG11565734.

11 **2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS**

12 **2.1 Reformulated Covered Products**

13 “Reformulated Covered Products” are defined as those Covered Products containing materials
14 or other components that may be handled, touched or mouthed by a consumer, and which
15 components yield less than 300 parts per million lead content when analyzed pursuant to
16 Environmental Protection Agency testing methodologies 3050B and 6010B (Digest Test).

17 **2.2 Product Warnings**

18 Commencing on the Effective Date, Defendants shall, for all Covered Products that are not
19 Reformulated Covered Products, provide clear and reasonable warnings as set forth in subsections
20 2.2(a) and (b) below. Such labeling is not in any manner required for Reformulated Covered
21 Products. Each warning shall be prominently placed with such conspicuousness as compared with
22 other words, statements, designs, or devices as to render it likely to be read and understood by an
23 ordinary individual under customary conditions before purchase or use. Each warning shall be
24 provided in a manner such that the consumer or user understands to which *specific* Covered Product
25 the warning applies, so as to minimize the risk of consumer confusion.

26 **(a) Retail Store Sales.**

27 **(i) Product Labeling.** Defendants may affix a warning to the packaging,
28 labeling, or directly on each Covered Product sold in retail outlets in California by Defendants or any

1 Covered Products sold via mail order catalog or the Internet to California residents: (1) in the mail
2 order catalog; or (2) on the website. Warnings given in the mail order catalog or on the website shall
3 identify the *specific* Covered Product to which the warning applies as further specified in Sections
4 2.2(b)(i) and (ii).

5 (i) **Mail Order Catalog Warning.** Any warning provided in a mail order
6 catalog must be in the same type size or larger than the Covered Product description text within the
7 catalog. The following warning is the minimum required warning language to be provided on the
8 same page and in the same location as the display and/or description of the Covered Product:

9 **WARNING:** This product contains lead, a chemical known to
10 the State of California to cause birth defects and
11 other reproductive harm.

12 Where it is impracticable to provide the warning on the same page and in the same location as
13 the display and/or description of the Covered Product, Defendants may utilize a designated symbol to
14 cross reference the applicable warning and shall define the term “designated symbol” with the
15 following language on the inside of the front or rear cover of the catalog or on the same page as any
16 order form for the Covered Product(s):

17 **WARNING:** Certain products identified with this symbol ▼
18 and offered for sale in this catalog contain lead,
19 a chemical known to the State of California to
20 cause birth defects and other reproductive harm.

21 The designated symbol must appear on the same page and in close proximity to the display and/or
22 description of the Covered Product. On each page where the designated symbol appears, Defendants
23 must provide a header or footer directing the consumer to the warning language and definition of the
24 designated symbol.

25 The warnings in this section may contain additional language, provided such additional
26 language is truthful and does not render the warnings unclear or unreasonable with regard to the
27 Covered Products.

28 If Defendants elect to provide warnings in the mail order catalog, then the warnings must be
included in all catalogs distributed in California and offering to sell one or more Covered Products

1 printed after the Effective Date.

2 (ii) **Internet Website Warnings.** A warning may be given in conjunction
3 with the sale of the Covered Products via the Internet, provided it appears either: (a) on the same
4 web page on which a Covered Product is displayed; (b) on the same web page as the order form for a
5 Covered Product; (c) on the same page as the price for any Covered Product; or (d) on one or more
6 web pages or pop-up windows displayed to a purchaser during the product review or checkout
7 process. The following warning statement is the minimum required warning language to be used and
8 shall appear in any of the above instances adjacent to or immediately following the display,
9 description, or price of the Covered Product for which it is given in the same type size or larger than
10 the Covered Product description text:

11 **WARNING:** This product contains lead, a chemical known to
12 the State of California to cause birth defects and
13 other reproductive harm.

14 Alternatively, the designated symbol may appear adjacent to or immediately following the
15 display, description, or price of the Covered Product for which a warning is being given, provided
16 that the following warning statement also appears elsewhere on the same web page, as follows:

17 **WARNING:** Covered Products identified on this page with
18 the following symbol ▼ contain chemicals,
19 including lead, known to the State of California
20 to cancer and/or cause birth defects and other
21 reproductive harm.

22 The warnings in this section may contain additional language, provided such additional language is
23 truthful and does not render the warnings unclear or unreasonable with regard to the Covered
24 Products.

25 3. **MONETARY PAYMENTS**

26 3.1 **Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

27 Defendants shall make a payment of \$15,000 to be apportioned in accordance with Health &
28 Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked for
the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the
remaining 25% of these penalty monies earmarked for Brimer.

1 Section 3.1.1 is secured);

2 (b) One check made payable to “The Chanler Group in Trust for Brimer” in the
3 amount of \$3,750 (or \$1,500 if the conditional penalty waiver under Section
4 3.1.1 is secured); and

5 (c) One check made payable to “The Chanler Group in Trust” in the amount of
6 \$50,500.00.

7 Payments delivered to Hunton & Williams LLP shall be made payable, as follows:

8 (a) One check made payable to “Hunton & Williams LLP in Trust for OEHHA”
9 in the amount of \$11,250 (or \$4,500 if the conditional penalty waiver under
10 Section 3.1.1 is secured);

11 (b) One check made payable to “Hunton & Williams LLP in Trust for [Plaintiff]”
12 in the amount of \$3,750 (or \$1,500 if the conditional penalty waiver under
13 Section 3.1.1 is secured); and

14 (c) One check made payable to “Hunton & Williams LLP in Trust for The
15 Chanler Group” in the amount of \$50,500.00.

16 If Defendants elects to deliver payments to its attorney of record, the attorney of record shall
17 confirm, in writing within five days of deposit, that the funds have been deposited in a trust account.

18 Within five days of the Effective Date, the payments being held in trust by the attorney of
19 record for the Defendants shall be delivered to The Chanler Group in three separate checks payable,
20 as follows:

21 (a) One check made payable to “The Chanler Group in Trust for OEHHA” in the
22 amount of \$11,250 (or \$4,500 if the conditional penalty waiver under Section
23 3.1.1 is secured);

24 (b) One check to “The Chanler Group in Trust for Brimer” in the amount of
25 \$3,750 (or \$1,500 if the conditional penalty waiver under Section 3.1.1 is
26 secured); and

27 (c) One check to “The Chanler Group” in the amount of \$50,500.00.
28

1 Any failure to deliver the above-referenced payments to The Chanler Group within fifteen
2 (15) days after the Effective Date shall result in imposition of a 10% simple annual interest
3 assessment on the amount of the undelivered payment(s) from the date payment was due until the
4 date of actual delivery.

5 **3.3.2 Issuance of 1099 Forms.** After the Consent To Judgment has been approved
6 and the settlement funds have been transmitted to plaintiff's counsel, paying Defendant(s) shall issue
7 three separate 1099 forms, as follows:

- 8 (a) The first 1099 shall be issued to the Office of Environmental Health Hazard
9 Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in
10 the amount of \$11,250 (or \$4,500 if the conditional penalty waiver under
11 Section 3.1.1 is secured);
- 12 (b) The second 1099 shall be issued to Brimer in the amount of \$3,750 (or \$1,500
13 if the conditional penalty waiver under Section 3.1.1 is secured), whose
14 address and tax identification number shall be furnished upon request; and
- 15 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-3171522) in
16 the amount of \$50,500.00.

17 **3.3.3 Payment Address:** All payments to the Chanler Group shall be delivered to
18 the following payment address:

19 The Chanler Group
20 Attn: Proposition 65 Controller
21 2560 Ninth Street
22 Parker Plaza, Suite 214
Berkeley, CA 94710

23 **3.3.4 Provision of Completed Form W-9:** In support of the payments required by
24 Sections 3.1 and 3.2, on or before February 15, 2012, the Chanler Group shall deliver an executed
25 copy of U.S. Department of the Treasury, Internal Revenue Service Form W-9, *Request for*
26 *Taxpayer Identification Number and Certification.*

1 **3.4 Breach Of Material Terms**

2 Either party may seek appropriate remedies from this Court in the event the other commits a
3 material breach of any term of this Consent To Judgment and fails to remedy such breach within
4 thirty days of receiving written notice of the existence thereof. The Parties agree that Defendants
5 have provided information regarding the approximate number of sales of the Covered Products to
6 California consumers. The Parties hereby acknowledge that this information regarding sales of the
7 Covered Products is a material term of this Consent To Judgment. For purposes of this Consent To
8 Judgment, a “material breach” shall include the finding that this sales information provided by
9 Defendants underestimated actual California sales by fifteen percent (15%) or more.

10 **4. RELEASE OF ALL CLAIMS**

11 This Consent To Judgment is a full, final, and binding resolution between Brimer, on behalf
12 of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in
13 the interest of the general public, Defendants and each of their parents, subsidiaries, affiliates,
14 officers, directors, attorneys, representatives, shareholders, managers, members, agents, successors,
15 assigns, and employees (“Defendant Releasees”), and all entities to whom Defendants directly or
16 indirectly distribute or sell Covered Products, including but not limited to downstream distributors,
17 auctioneers, wholesalers, dealers, customers, retailers, franchisors, franchisees, cooperative members,
18 licensors, licensees, purchasers, users, and their respective officers, directors, attorneys,
19 representatives, shareholders, managers, members, agents, and employees, and sister, affiliated, and
20 parent entities (“Downstream Defendant Releasees”) of any violation of Proposition 65 that has been
21 or could have been asserted against Defendant Releasees and Downstream Defendant Releasees
22 regarding the failure to warn about exposure to the Listed Chemical arising in connection with
23 Covered Products manufactured, sourced, distributed, or sold by Defendant Releasees prior to the
24 Effective Date. Defendants’ compliance with this Consent To Judgment shall constitute compliance
25 with Proposition 65 with respect to the Listed Chemical in the Covered Products after the Effective
26 Date.

27 The Court shall retain jurisdiction with respect to all Parties’ compliance with this Consent To
28 Judgment.

1 **4.1 Brimer’s Release of Central Purchasing and Harbor Freight**

2 In further consideration of the promises and agreements herein contained, and for the
3 payments to be made pursuant to Section 3 above, Brimer, on behalf of himself, his past and current
4 agents, representatives, attorneys, successors and/or assignees, and in the interest of the general
5 public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal
6 action and releases all claims, including, without limitation, all actions, and causes of action, in law
7 or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or
8 expenses (including, but not limited to, investigation fees, expert fees and attorneys’ fees) of any
9 nature whatsoever, fixed or contingent (collectively “Claims”), against Defendant Releasees and
10 Downstream Defendant Releasees that arise under Proposition 65 or any other statutory or common
11 law claims that were or could have been asserted in the public interest, as such claims relate to
12 Defendant Releasees’ and Downstream Defendant Releasees’ alleged failure to warn about exposures
13 to the Listed Chemical contained in the Covered Products.

14 This release is expressly limited to those claims that arise under Proposition 65, as such
15 claims relate to Defendant’s alleged failure to warn about exposures to or identification of the Listed
16 Chemical contained in the Covered Products and as such claims are identified in the Proposition 65
17 60-Day Notice to Defendant.

18 Brimer also, in his individual capacity only and *not* in his representative capacity for the
19 interest of the general public, provides Defendants a general release herein which shall be effective as
20 a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
21 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Brimer of any nature,
22 character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of
23 this Action. Brimer acknowledges that he is familiar with Section 1542 of the California Civil Code,
24 which provides as follows:

25 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
26 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME
27 OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
28 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

 Brimer expressly waives and relinquishes any and all rights and benefits that it may have

1 under, or which may be conferred on it by the provisions of Section 1542 of the California Civil Code
2 as well as under any other state or federal statute or common law principle of similar effect, to the
3 fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters. In
4 furtherance of such intention, the release hereby given shall be and remain in effect as a full and
5 complete release notwithstanding the discovery or existence of any such additional or different claims
6 or facts arising out of the released matters.

7 The Parties further understand and agree that this release shall not generally extend
8 upstream to any entities, other than Defendant Releasees, that manufactured the Covered Products or
9 any component parts thereof, or any distributors or suppliers who sold the Covered Products or any
10 component parts thereof to Defendant Releasees.

11 This release is expressly limited to the extent that any alleged violations occur prior to thirty
12 (30) days after the Effective Date. This Release does not release any person, party or entity from any
13 liability for any violation of Proposition 65 regarding the Covered Products that occurs more than
14 thirty (30) days after the Effective Date.

15 Brimer agrees and the Court rules that compliance with this Consent To Judgment shall be
16 deemed to constitute compliance with Proposition 65 for the Covered Products with respect to Listed
17 Chemical, both in the past and in the future.

18 **4.2 Central Purchasing and Harbor Freight's Release of Brimer**

19 Defendants waive any and all claims against Brimer, his attorneys and other representatives,
20 for any and all actions taken or statements made (or those that could have been taken or made) by
21 Brimer and his attorneys and other representatives, whether in the course of investigating the Claims
22 or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the
23 Covered Products.

24 Defendants each also provide Brimer a general release herein which shall be effective as a full
25 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
26 attorneys' fees, damages, losses, claims, liabilities and demands of Defendants of any nature,
27 character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of
28

1 the Action. Defendants acknowledge that they are familiar with Section 1542 of the California Civil
2 Code, which provides as follows:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
4 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME
5 OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
6 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

7 Defendants expressly waive and relinquish any and all rights and benefits that it may have
8 under, or which may be conferred on it by the provisions of Section 1542 of the California Civil Code
9 as well as under any other state or federal statute or common law principle of similar effect, to the
10 fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters. In
11 furtherance of such intention, the release hereby given shall be and remain in effect as a full and
12 complete release notwithstanding the discovery or existence of any such additional or different claims
13 or facts arising out of the released matters.

13 **5. COURT APPROVAL**

14 This Consent To Judgment is not effective until it is approved and entered by the Court and
15 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
16 after it has been fully executed by all Parties, in which event any monies that have been provided to
17 Brimer, or his counsel pursuant to Section 3 above, shall be refunded within thirty (30) days of
18 receiving written notice from Defendants that the Court has denied the approval of this [Proposed]
19 Consent To Judgment or one-year period has expired.

20 **6. SEVERABILITY**

21 If, subsequent to the execution of this Consent To Judgment, any of the provisions of this
22 Consent To Judgment are held by a court to be unenforceable, the validity of the enforceable
23 provisions remaining shall not be adversely affected.

24 **7. GOVERNING LAW**

25 The terms of this Consent To Judgment shall be governed by the laws of the State of
26 California and apply within the State of California. In the event that Proposition 65 is repealed,
27 preempted, or is otherwise alleged to have been rendered inapplicable by reason of law generally, or
28 as to the Covered Products, then Defendants shall make a motion to the Court to be relieved of their

1 obligations under this agreement and shall provide proper written notice to Brimer of any asserted
2 change in the law. Unless and until a Judge of this Court orders that Defendants are released from
3 their obligations under this Consent To Judgment, each Harbor Freight and Central Purchasing shall
4 continue to be obligated to comply with this Consent To Judgment with respect to, and to the extent
5 that, the Covered Products are so affected.

6
7 **8. NOTICES**

8 Unless specified herein, all correspondence and notices required to be provided pursuant to
9 this Consent To Judgment shall be in writing via e-mail and personally delivered or sent by: (i) first-
10 class, registered or certified mail, return receipt requested; or (ii) overnight courier on any party by
11 the other party at the following addresses:

12 For Defendants:

13 Malcolm C. Weiss, Esq.
14 Ian M. Forrest, Esq.
15 Hunton & Williams, LLP
16 550 South Hope Street
17 Suite 2000
18 Los Angeles, CA 90071
19 mweiss@hunton.com
20 iforrest@hunton.com

with a copy to: Marc Friedman
General Counsel
Central Purchasing LLC &
Harbor Freight Tools USA, Inc.
26541 Agoura Road
Calabasas, CA 91302
mfriedman@harborfreight.com

21 For Brimer:

22 Proposition 65 Coordinator
23 The Chanler Group
24 2560 Ninth Street
25 Parker Plaza, Suite 214
26 Berkeley, CA 94710
27 greg@chanler.com

28 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

This Consent To 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

1 document.

2
3 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

4 Brimer agrees to comply with the reporting form requirements referenced in California Health
5 & Safety Code § 25249.7(f) and to file a motion for approval of this Consent To Judgment.

6 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

7 The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed motion
8 is required to obtain judicial approval of this Consent To Judgment. In furtherance of obtaining such
9 approval, Brimer and Defendants and their respective counsel agree to mutually employ their best
10 efforts to support the entry of this agreement as a Consent To Judgment and obtain approval of the
11 Consent To Judgment by the Court in a timely manner. For purposes of this paragraph, “best efforts”
12 shall include, at a minimum, cooperating on the drafting and filing of any papers in support of the
13 required motion for judicial approval. Any effort by Plaintiff or Defendants to impede, or not timely
14 pursue judicial approval of this Consent To Judgment shall subject such party to liability for
15 reasonable attorney fees and costs incurred by the opposing party or their counsel in their counsel’s
16 efforts to meet or oppose such conduct.

17 **12. MODIFICATION**

18 This Consent To Judgment may be modified only: (1) by written agreement of the Parties and
19 upon entry of a modified consent to judgment by the Court thereon; or (2) upon a successful motion
20 of any party and entry of a modified consent to judgment by the Court.

21 **13. ENTIRE AGREEMENT**

22 This Consent To Judgment contains the sole and entire agreement and understanding of the
23 Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
24 commitments, and understandings related hereto. No representations, oral or otherwise, express or
25 implied, other than those contained herein have been made by any Party hereto. No other agreements
26 not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the
27 Parties.

1 **14. ATTORNEY'S FEES**

2 A Party who unsuccessfully brings or contests an action arising out of this Consent To
3 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs unless
4 the unsuccessful Party has acted with substantial justification. For purposes of this Consent To
5 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
6 Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

7 Except as specifically provided in the above paragraph and in Section 3, each Party shall bear
8 its own costs and attorney's fees in connection with this action.

9 Nothing in this Section 15 shall preclude a Party from seeking an award of sanctions pursuant
10 to law.

11 **15. AUTHORIZATION**

12 The undersigned are authorized to execute this Consent To Judgment and have read,
13 understood, and agree to all of the terms and conditions hereof.

14 **AGREED TO:**

15 Date: 1-30-12

16
17 By: 
18 RUSSELL BRIMER

AGREED TO:

Date: _____

By: _____

_____,
CENTRAL PURCHASING LLC

AGREED TO:

Date: _____

By: _____

_____,
HARBOR FREIGHT TOOLS USA, INC.

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14. ATTORNEY'S FEES

A Party who unsuccessfully brings or contests an action arising out of this Consent To Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs unless the unsuccessful Party has acted with substantial justification. For purposes of this Consent To Judgment, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

Except as specifically provided in the above paragraph and in Section 3, each Party shall bear its own costs and attorney's fees in connection with this action.

Nothing in this Section 15 shall preclude a Party from seeking an award of sanctions pursuant to law.

15. AUTHORIZATION

The undersigned are authorized to execute this Consent To Judgment and have read, understood, and agree to all of the terms and conditions hereof.

AGREED TO:

Date: _____

By: _____

RUSSELL BRIMER

AGREED TO:

Date: _____

By: _____

ROBERT RENE
CHIEF OPERATING OFFICER
CENTRAL PURCHASING LLC

AGREED TO:

Date: _____

By: _____

ROBERT RENE
CHIEF OPERATING OFFICER
HARBOR FREIGHT TOOLS USA, INC.