

ENDORSED  
FILED  
ALAMEDA COUNTY

DEC 15 2017

CLERK THE SUPERIOR COURT  
By JIANNE HYATT Deputy

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

ALICIA CHIN,  
Plaintiff,  
vs.

HARBOR FREIGHT TOOLS USA, INC.;  
CENTRAL PURCHASING, LLC; and  
Does 1-30, inclusive  
Defendants

Case No.: RG16838949

*Proposed* CONSENT JUDGMENT

Cal. Health & Safety Code §25249.6 *et seq* &  
Code of Civil Procedure §664.6

**INTRODUCTION**

**1.1 Parties**

This Consent Judgment is entered into by and between plaintiff Alicia Chin ("Chin") and defendants Harbor Freight Tools, USA, Inc. and Central Purchasing, LLC (together, "Harbor Freight"), with Chin, and Harbor Freight each referred to individually as a "Party" and jointly as the "Parties."

**1.2 Plaintiff**

Chin is a resident of the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful substances contained in consumer and commercial products.

1           **1.3 Defendants**

2 Harbor Freight employs ten or more persons and is a person in the course of doing business  
3 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health  
4 and Safety Code section 25249.5 *et seq.* ("Proposition 65").

5           **1.4 General Allegations**

6 Chin alleges that Harbor Freight manufactures, imports, sells and/or distributes for sale in  
7 California the Central Pneumatic Air Hose containing lead, and Ladies Gardening Gloves  
8 containing Di-n-butyl Phthalate (DBP). Chin alleges that Harbor Freight does so without  
9 providing the health hazard warning that Chin alleges is required by Proposition 65.

10           **1.5 Product Description**

11 The products covered by this Consent Judgment are the Central Pneumatic Air Hose, #  
12 61962, containing lead, and One Stop Gardens - Ladies Gardening Gloves, # 65678, containing  
13 Di-n-butyl Phthalate (DBP) (together, "Products").

14           **1.6 Notice of Violation**

15 On August 15, 2016, Chin served Harbor Freight and the requisite public enforcement  
16 agencies with a 60-Day Notice of Violation ("Notice"), alleging that Harbor Freight violated  
17 Proposition 65 when it failed to warn its customers and consumers in California that the Products  
18 expose users to Lead. No public enforcer has commenced and is diligently prosecuting an action  
19 to enforce the allegations set forth in the Notice.

20 On September 9, 2016, Chin served Harbor Freight and Central Purchasing and the requisite  
21 public enforcement agencies with a 60-Day Notice of Violation ("Notice"), alleging that Harbor  
22 Freight violated Proposition 65 when it failed to warn its customers and consumers in California  
23 that the Products expose users to DBP. This 60-Day Notice of Violation was amended on or  
24 about December 19, 2016. No public enforcer has commenced and is diligently prosecuting an  
25 action to enforce the allegations set forth in the Notice.

1           **1.7 Complaint**

2           On November 15, 2016, Chin commenced the instant action, naming as defendant Harbor  
3 Freight and Central Purchasing, among others, alleging violations of Proposition 65 that are the  
4 subject of the Notice. The complaint was amended on April 4, 2017—which is referred to herein  
5 as the “Complaint.”

6           **1.8 No Admission**

7           Harbor Freight denies the material, factual, and legal allegations contained in the Notices and  
8 Complaint, and maintains that the sale of the products which are the subject of the Complaint  
9 complied with all applicable laws, including Proposition 65. Nothing in this Consent Judgment  
10 shall be construed as an admission by Harbor Freight of any fact, finding, conclusion of law,  
11 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or  
12 be construed as an admission by Harbor Freight of any fact, finding, conclusion of law, issue of  
13 law, or violation of law. This Section shall not, however, diminish or otherwise affect Harbor  
14 Freight’s obligations, responsibilities, and duties under this Consent Judgment.  
15

16           **1.9 Jurisdiction**

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

22           **1.10 Effective Date**

23           For purposes of this Consent Judgment, the term “Effective Date” shall mean the date  
24 that the Court enters judgment in this action.

25           **2. INJUNCTIVE RELIEF:**

26           **2.1 Injunctive Provision**

27           **Within 90 days of the Effective Date**, Harbor Freight and Central Purchasing agree not  
28 to sell in California the Central Pneumatic Air Hose, # 61962 and One Stop Gardens - Ladies

1 Gardening Gloves, # 65678 unless those specific products are "Reformulated Products" or carry  
2 a clear and reasonable within the meaning of Proposition 65. For purposes of this Consent  
3 Judgment, "Reformulated Products" means a product containing no more than 1,000 parts per  
4 million (0.1%) lead or DBP content when analyzed pursuant to U.S. Environmental Protection  
5 Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by state  
6 or federal agencies to determine lead or DBP content in a solid substance.

7  
8 **3. MONETARY SETTLEMENT TERMS**

9 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

10 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the  
11 claims referred to in this Consent Judgment, Harbor Freight shall pay in total a single payment of  
12 \$1,500.00 to address Chin's claim for civil penalties. Each penalty payment will be allocated in  
13 accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds  
14 remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and  
15 the remaining 25% of the penalty remitted to Chin. Chin's counsel shall be responsible for  
16 remitting Harbor Freight and Central Purchasing's penalty payment(s) under this Consent  
17 Judgment to OEHHA.

18 **3.1.1 Civil Penalty Payments**

19 (i) a check shall be delivered to "OEHHA" in the amount of \$1,125.00, at the  
20 address of "Mike Gyurics, Fiscal Operations Branch Chief, Office of  
21 Environmental Health Hazard Assessment, P. O. Box 4010, Sacramento, CA  
22 95812-4010";

23 (ii) a check payable to Alicia Chin in the amount of \$375.00, at the address of  
24 "O'Neil Dennis, Esquire, 385 Grand Avenue, Suite 300, Oakland, California,  
25 94610".  
26

27 **3.2 Reimbursement of Attorneys' Fees and Costs**

28 The Parties acknowledge that Chin and his counsel offered to resolve this dispute

1 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby  
2 leaving the issue to be resolved after the material terms of the agreement had been settled.  
3 Shortly after the other settlement terms had been finalized, Harbor Freight expressed a desire to  
4 resolve Chin's fees and costs. The Parties then negotiated a resolution of the compensation due  
5 to Chin and his counsel under general contract principles and the private attorney general  
6 doctrine codified at California Code of Civil Procedure § 1021.5. For all work performed  
7 through the mutual execution of this agreement and the Court's approval of the same, Harbor  
8 Freight shall pay to Chin and his counsel \$17,500.00 as reimbursement for reasonable fees and  
9 costs incurred in connection with this action. Harbor Freight's payment shall be delivered to the  
10 address in Section 3.4 in the form of a check payable to "O'Neil Dennis, Esq." The  
11 reimbursement shall cover all fees and costs incurred by Chin investigating, bringing this matter  
12 to Harbor Freight's attention, litigating, and negotiating a settlement of the matter in the public  
13 interest.  
14

### 15 **3.3 Payment Timing; Payments Held In Trust**

16 Harbor Freight shall deliver all payments required by this Consent Judgment to Chin's  
17 counsel within 30 days of the Effective date.

### 18 **3.4 Payment Address**

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

21 O'Neil Dennis, Esq.  
22 385 Grand Ave., Ste. 300  
23 Oakland, CA 94610

## 24 **4. CLAIMS COVERED AND RELEASED**

### 25 **4.1 Chin's Release of Proposition 65 Claims**

26 This Consent Judgment is a full, final, and binding resolution between Chin and Harbor  
27 Freight and Central Purchasing and each of their past and present parents, affiliates, subsidiaries,  
28 divisions, predecessors, successors, and assigns, and each of their respective owners, officers,

1 directors, board members, trustees, shareholders, managers, members, employees, agents,  
2 insurers, attorneys, auditors, accountants, experts, stockholders, representatives, partners, and  
3 any other persons acting on their behalf ("Released Parties") concerning or in any way relating to  
4 the claims that have been or could have been asserted against Harbor Freight and Central  
5 Purchasing and/or the Released Parties up through the Effective Date, provided that such claims  
6 are based on or relate to the facts alleged in the Complaint. Upon entry of this Consent  
7 Judgment by the Court, going forward, compliance with the terms of this Consent Judgment shall  
8 be deemed to constitute compliance with Proposition 65 by Harbor Freight or Central Purchasing  
9 or any other Released Party with respect to the products covered by the Complaint.

#### 10 **4.2 Chin's Individual Release of Claims**

11 Chin, in her individual capacity only and not in any representative capacity, also provides  
12 a release to Harbor Freight, Central Purchasing, and the Released Parties, which shall be  
13 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,  
14 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of  
15 any nature, character or kind, whether known or unknown, suspected or unsuspected that have  
16 been or could have been asserted based on the allegations in the Complaint.

#### 17 **4.3 Harbor Freight and Central Purchasing's Release of Chin**

18 Harbor Freight and Central Purchasing, on its own behalf and on behalf of its past and  
19 current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all  
20 claims against Chin and his attorneys and other representatives, for any and all actions taken or  
21 statements made (or those that could have been taken or made) by Chin and his attorneys and  
22 other representatives in the course of investigating claims, seeking to enforce Proposition 65  
23 against it in this matter, or with respect to the Products.

#### 24 **5. NOTICE**

25 Unless specified herein, all correspondence and notice required by this Consent Judgment  
26 shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail,  
27  
28



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

3 To Harbor Freight and Central Purchasing:

To Chin:

4  
5 Tammy Stafford  
6 Associate General Counsel  
7 Harbor Freight Tools  
8 26541 Agoura Road  
9 Calabasas, CA 91302

O'Neil Dennis, Esq.  
385 Grand Ave., Ste. 300  
Oakland, CA 94610

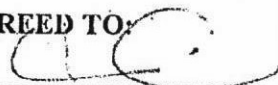
10 Navi Dhillon, Esq.  
11 Morrison & Foerster LLP  
12 425 Market St.  
13 San Francisco, CA 94105

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

16 **6. AUTHORIZATION**

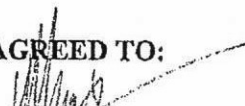
17 The undersigned are authorized to execute this Consent Judgment on behalf of their  
18 respective Parties and have read, understood, and agree to all of the terms and conditions of this  
19 Consent Judgment.

20 **AGREED TO:**

21   
ALICIA CHIN

22 Dated: 8/13/17

23 **AGREED TO:**

24   
HARBOR FREIGHT TOOLS, USA, INC.

25 By:      Marc Friedman

26 Its:      General Counsel

27 Dated: 8/10/17

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CENTRAL PURCHASING, INC.

By:      Marc Friedman

Its:      General Counsel

Dated: 8/10/17



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3 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:  
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6  
7 DENNO HAYASHI 12-14-17

8 Judge of the Superior Court  
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