



FILED
ALAMEDA COUNTY

APR 1 2 2021

CLERK OF THE SUPERIOR COURT

By Nancy R. Rose
NANCY ROSE, Deputy

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: oneil@ogdlaw.com
7 Attorney for Alicia Chin

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF ALAMEDA**
10 **UNLIMITED CIVIL**

11 ALICIA CHIN,
12 Plaintiff,
13 vs.

) Case No.: HG19028334

) ^{DH}
~~Proposed~~ CONSENT JUDGMENT

14 TOWA (USA), INC.; PROTECTIVE
15 INDUSTRIAL PRODUCTS, INC.; FULL
16 SOURCE, LLC.; and
17 Does 1-30, inclusive
18 Defendants

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

19 **INTRODUCTION**

20 **1.1 Parties**

21 This Consent Judgment is entered into by and between plaintiff Alicia Chin ("Chin") and
22 defendant TOWA (USA), Inc. ("TOWA"), with Chin and TOWA each referred to individually
23 as a "Party" and collectively as the "Parties."

24 **1.2 Plaintiff**

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

28 **1.3 Defendants**

1 TOWA is a corporation that manufactures, distributes and/or sells Products (as defined
2 herein) that are sold in the State of California.

3 **1.4 General Allegations**

4 Chin alleges that TOWA manufactures, imports, sells and/or distributes for sale in California,
5 the vinyl sleeves containing di(2-ethylhexyl)phthalate ("DEHP"). Chin alleges that TOWA does
6 so without providing the health hazard warning that Chin alleges is required by the Safe
7 Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section
8 25249.5 *et seq.* ("Proposition 65").

9 **1.5 Product Description**

10 The class of products covered by this Consent Judgment are PVC gloves, which allegedly
11 contain di(2-ethylhexyl)phthalate ("DEHP"), and are exemplified by the product identified in the
12 Notice of Violation, the Xtra Tuff PVC gloves (Item # PIP-58-8657-S) (Xtra Tuff 58-8657)
13 (UPC #01616314206701) (collectively, the "Products").

14 **1.6 Notice of Violation**

15 On March 17, 2019, Chin served TOWA (USA), Inc.; Protective Industrial Products, Inc.;
16 Full Source, LLC, and the requisite public enforcement agencies with a 60-Day Notice of
17 Violation ("Notice"), alleging that TOWA (USA), Inc.; Protective Industrial Products, Inc.; Full
18 Source, LLC violated Proposition 65 when it failed to warn its customers and consumers in
19 California that the Products expose users to DEHP. To the best of the Parties' knowledge, no
20 public enforcer has commenced and is diligently prosecuting an action to enforce the allegations
21 set forth in the Notice.
22

23 **1.7 Complaint**

24 On July 24, 2019, Chin commenced the instant action, naming TOWA (USA), Inc.;
25 Protective Industrial Products, Inc.; Full Source, LLC, among others, as a defendant for the
26 alleged violations of Proposition 65 that are the subject of the Notice.

27 **1.8 No Admission**

1 TOWA denies the material, factual, and legal allegations contained in the Notice and
2 Complaint, and maintains that all of the products that it has sold or distributed for sale in
3 California, including the Products, have been, and are, in compliance with all laws. Nothing in
4 this Consent Judgment shall be construed as an admission by TOWA of any fact, finding,
5 conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent
6 Judgment constitute or be construed as an admission by TOWA of any fact, finding, conclusion
7 of law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise
8 affect TOWA's obligations, responsibilities, and duties under this Consent Judgment.

9
10 **1.9 Jurisdiction**

11 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
12 jurisdiction over TOWA as to the allegations contained in the Complaint, that venue is proper in
13 the County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of
14 this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

15 **1.10 Effective Date**

16 For purposes of this Consent Judgment, the term "Effective Date" shall mean five (5)
17 days after notice of entry of order/judgment granting the motion for approval of this Consent
18 Judgment contemplated by Section 5.

19 **2. INJUNCTIVE RELIEF:**




20 **2.1 Reformulated Products**

21 Commencing on the Effective Date, and continuing thereafter, TOWA agrees to only import,
22 manufacture, distribute for sale, ship for sale, sell, and/or offer for sale in California (a)
23 "Reformulated Products" or (b) Products with a clear and reasonable warning, as defined by the
24 California Code of Regulations, Title 27, Div. 4, Chap. 1, Art. 6 (commencing at §25600) For
25 purposes of this Settlement Agreement, "Reformulated Products" are Products containing DEHP
26 in concentrations of less than 0.1 percent (1,000 parts per million) when analyzed pursuant to
27 U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other
28

1 methodology utilized by federal or state government agencies for the purpose of determining
2 DEHP content in a solid substance.

3 **2.2 Clear and Reasonable Warning**

4 For purposes of this Consent Judgment and commencing on the Effective Date, TOWA shall,
5 for all Products it imports, manufactures, distributes for sale, ships for sale, sell, and/or offer for
6 sale in California that are not Reformulated Products, provide clear and reasonable warnings for
7 DEHP consistent with the statutory language in effect. For purposes of this agreement, the
8 language as set forth in subsection 2.2(a) below is an acceptable warning language. When
9 TOWA employs the use of the warning symbol, it shall consist of a black exclamation point in a
10 yellow equilateral triangle with a bold black outline, provided in subsection 2.2(a) below. The
11 warning symbol must be placed to the left of the text of the warning in a size no smaller than the
12 height of the word "WARNING". The warning shall be prominently placed with such
13 conspicuousness as compared with other words, statements, designs, or devices as to render it
14 likely to be read and understood by an ordinary individual under customary conditions before
15 purchase or use. Each warning shall be provided in a manner such that the customer or user
16 understands to which specific Products the warning applies, so as to minimize the risk of
17 customer confusion. Examples of alternative compliant warnings follows:
18

- 19
- 20 (a)  **WARNING:** This product contains a chemical known to the
21 state of California to cause cancer and birth defects or other
22 reproductive harm.
- 23  **WARNING:** This product contains DEHP, a chemical known
24 to the State of California to cause cancer and birth defects or other
25 reproductive harm.
- 26  **WARNING:** This product can expose you to chemicals
27 including DEHP, which is known to the State of California to cause
28

1
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

birth defects and other reproductive harm and cancer. For more information go to www.P65Warnings.ca.gov.

⚠ WARNING: Cancer or Reproductive Harm - www.P65Warnings.ca.gov."

3. MONETARY SETTLEMENT TERMS

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

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the claims referred to in this Consent Judgment, TOWA shall pay **\$5000** in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Chin. Chin's counsel shall be responsible for remitting TOWA's penalty payment(s) under this Consent Judgment to OEHHA.

3.1.1 Civil Penalty Payments

(i) a check shall be delivered to "OEHHA" in the amount of \$3750, at the address of "Mike Gyurics, Fiscal Operations Branch Chief, Office of Environmental Health Hazard Assessment, P. O. Box 4010, Sacramento, CA 95812-4010";

(ii) a check payable to Alicia Chin in the amount of \$1250, at the address of "O'Neil Dennis, Esquire, 385 Grand Avenue, Suite 300, Oakland, California, 94610".

3.2 Reimbursement of Attorneys' Fees and Costs

The Parties acknowledge that Chin and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, TOWA expressed a desire to resolve

1 Chin's fees and costs. The Parties then negotiated a resolution of the compensation due to Chin
2 and her counsel under general contract principles and the private attorney general doctrine
3 codified at California Code of Civil Procedure § 1021.5. For all work performed through the
4 mutual execution of this agreement and the Court's approval of the same, but exclusive of fees
5 and costs on appeal, if any, TOWA shall reimburse Chin and her counsel \$11,500. TOWA's
6 payment shall be delivered to the address in Section 3.4 in the form of a check payable to
7 "O'Neil Dennis, Esq." The reimbursement shall cover all fees and costs incurred by Chin
8 investigating, bringing this matter to TOWA's attention, litigating, and negotiating a settlement
9 of the matter in the public interest.

10
11 **3.3 Payment Timing; Payments Held In Trust**

12 Within two days of the Effective Date, TOWA's counsel shall deliver all settlement
13 payments it has held in trust to Chin's counsel at the address provided in Section 3.4.

14 **3.4 Payment Address**

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

17 O'Neil Dennis, Esq.
18 385 Grand Ave., Ste. 300
Oakland, CA 94610

19 **4. CLAIMS COVERED AND RELEASED**

20 **4.1 Chin's Release of Proposition 65 Claims**

21 Chin, acting on her own behalf and in the public interest, hereby waives and releases
22 TOWA and their parents, subsidiaries, affiliated entities under common ownership, directors,
23 officers, employees, shareholders, successors, assigns, and attorneys ("Releasees") and each
24 entity to whom they directly or indirectly distribute or sell the Products including, but not limited
25 to, their downstream distributors, wholesalers, customers, retailers, franchisers, cooperative
26 members, licensors and licensees, ("Downstream Releasees") for any violations arising under
27 Proposition 65 for unwarned exposures to DEHP from the Products manufactured, imported,
28

1 distributed or sold by TOWA prior to the Effective Date, as set forth in the Notice. Compliance
2 with the terms of this Consent Judgment constitutes compliance with Proposition 65 by TOWA
3 with respect to the alleged or actual failure to warn about exposures to DEHP from Products
4 manufactured, sold or distributed for sale by TOWA after the Effective Date.

5 **4.2 Chin's Individual Release of Claims**

6 Chin, in her individual capacity only and *not* in her representative capacity, also hereby
7 waives and releases Defendants, Releasees, and Downstream Releasees from, which shall be
8 effective as a full and final accord and satisfaction, all actions, causes of action, obligations,
9 costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Chin of any
10 nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of
11 alleged or actual exposures to DEHP in Products manufactured, imported, distributed or sold by
12 TOWA before the Effective Date.
13

14 **4.3 TOWA's Release of Chin**

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

21 **4.4 General Release**

22 The parties acknowledge that the claims released above may include unknown claims, and
23 with respect to the foregoing waivers and releases in this agreement, the parties waive any and
24 all rights they may have under Civil Code Section 1542 which Provides as follows:
25

26 "A general release does not extend to claims which the creditor does
27 not know or suspect to exist in his or her favor at the time of
28 executing the release, which if known by him or her must have
materially affected his or her settlement with the debtor."

1 The parties acknowledge and understand the significance and consequences of this specific
2 waiver of California Civil Code section 1542.

3 **5. COURT APPROVAL**

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

14 **6. SEVERABILITY**

15 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
16 provision of this Consent Judgment is held by a court to be unenforceable, the validity of the
17 remaining provisions shall not be adversely affected.

18 **7. 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,
21 or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then
22 TOWA may provide Chin with written notice of any asserted change in the law, and shall have
23 no further obligations pursuant to this Consent Judgment, with respect to, and to the extent that,
24 the Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve
25 TOWA from its obligation to comply with any pertinent state or federal law or regulation.
26
27
28

1 **8. NOTICE**

2 Unless specified herein, all correspondence and notice required by this Consent Judgment
3 shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail,
4 return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the
5 following addresses:

6 To TOWA (USA), Inc.:

To Chin:

7 David Metres, Esq.
8 Barg Coffin Lewis & Trapp, LLP
9 600 Montgomery St., Ste. 525
10 San Francisco, CA 94111

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

11
12 Any Party may, from time to time, specify in writing to the other Party a change of
13 address to which all notices and other communications shall be sent.

14 **9. 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,
17 when taken together, shall constitute one and the same document.

18 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

19 Chin and his counsel agree to comply with the reporting form requirements referenced in
20 California Health and Safety Code section 25249.7(f).

21 **11. 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
24 of any party and the entry of a modified Consent Judgment by the Court thereon.

25 **12. 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

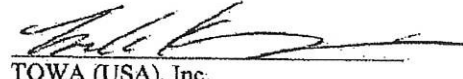
4 **AGREED TO:**

AGREED TO:

5

6





7

ALICIA CHIN

TOWA (USA), Inc.

8

Dated: 12/16/19

By: Masahiko Kawano
(Print Name)

9

10

Its: President
(Title)

11

12

Dated: Dec. 12, 2019

13

14

15

16

17

18

19

20

21

22

23

24

25

26

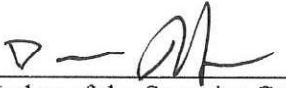
27

28

1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

2 That this Consent Judgment is the final Judgment of this Court.

3 APR 12 2020

4 

5 Judge of the Superior Court

6 Dennis Hayashi

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28