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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,	)	Case No. RG-14728823
a non-profit corporation,	)	
	)	
Plaintiff,	)	<b>[PROPOSED] CONSENT JUDGMENT</b>
	)	<b>AS TO HARBOR FREIGHT TOOLS</b>
vs.	)	<b>USA, INC. AND CENTRAL</b>
	)	<b>PURCHASING, LLC</b>
HARBOR FREIGHT TOOLS USA, INC., <i>et al.</i> ,	)	
	)	
Defendants.	)	
	)	

**1. INTRODUCTION**

1.1 This Consent Judgment is entered into by Plaintiff Center For Environmental Health (“CEH”), a California non-profit corporation, and Defendants Harbor Freight Tools USA, Inc. and Central Purchasing, LLC (collectively, “Defendants”) to settle certain claims asserted by CEH against Defendants as set forth in the operative complaint in the matter entitled *Center for Environmental Health v. Harbor Freight Tools USA, Inc., et al.*, Alameda County Superior Court Case No. RG-14728823 (the “Action”).

1.2 On February 7, 2014, CEH served a Notice of Violation (the “Tool Bags Notice”) relating to the California Safe Drinking Water and Toxic Enforcement Act of 1986

1 (“Proposition 65”) on Defendants, the California Attorney General, the District Attorneys of  
2 every county in California, and the City Attorneys of every California city with a population  
3 greater than 750,000, regarding the presence of lead and lead compounds (collectively referred to  
4 herein as “Lead”) in tool bags made with vinyl-coated nylon manufactured, distributed, and/or  
5 sold by Defendants.

6 1.3 On February 7, 2014, CEH served a second Notice of Violation (the “Farm  
7 Jacks Notice”) relating to Proposition 65 on Defendants, the California Attorney General, the  
8 District Attorneys of every county in California, and the City Attorneys of every California city  
9 with a population greater than 750,000, regarding the presence of Lead in farm jacks with painted  
10 handles manufactured, distributed, and/or sold by Defendants. The Tool Bags Notice and the  
11 Farm Jacks Notice are collectively referred to herein as the “Notices.”

12 1.4 On June 12, 2014, CEH filed the Complaint against Defendants in the Action.

13 1.5 Defendants are each corporations that employ 10 or more persons, and that  
14 manufacture, distribute, and/or sell (1) tool bags made with vinyl-coated nylon and (2) farm jacks  
15 with painted handles (hereinafter referred to, collectively, as “Covered Products”) in the State of  
16 California.

17 1.6 Defendants claim that, prior to receiving the Notices, Defendants provided  
18 warnings to certain California consumers regarding the carcinogenic and reproductive harms  
19 associated with Lead in the Covered Products. Since receiving the Notices, Defendants claim to  
20 have taken steps towards reformulating their Covered Products to vitiate any need for providing a  
21 clear and reasonable warning regarding Lead under Proposition 65. Defendants submit that they  
22 can achieve full compliance with the Lead Limits set forth in this Consent Judgment, exercising  
23 all reasonable diligence, by June 1, 2015.

24 1.7 For purposes of this Consent Judgment only, CEH and Defendants (the  
25 “Parties”) stipulate that this Court has jurisdiction over the allegations of violations contained in  
26 the Complaint and personal jurisdiction over Defendants as to the acts alleged in the Complaint,  
27 that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter this  
28 Consent Judgment as a full and final resolution of all claims which were or could have been

1 raised in the Complaint based on the facts alleged therein with respect to Covered Products  
2 manufactured, distributed, and/or sold by Defendants.

3 1.8 CEH and Defendants enter into this Consent Judgment as a full and final  
4 settlement of all claims that were raised in the Complaint, or which could have been raised in the  
5 Complaint, arising out of the facts or conduct related to Defendants alleged therein. By execution  
6 of this Consent Judgment and agreeing to comply with its terms, the Parties do not admit any  
7 facts or conclusions of law including, but not limited to, any facts or conclusions of law  
8 suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law,  
9 or equitable requirements. Nothing in this Consent Judgment is or shall be construed as an  
10 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall  
11 compliance with the Consent Judgment constitute or be construed as an admission by the Parties  
12 of any fact, conclusion of law, issue of law, or violation of law. Defendants deny the material  
13 factual and legal allegations in CEH's Complaint and expressly deny any wrong doing  
14 whatsoever. Nothing in this Consent Judgment shall prejudice, waive, or impair any right,  
15 remedy, argument, or defense the Parties may have in this or any other pending or future legal  
16 proceedings. This Consent Judgment is the product of negotiation and compromise and is  
17 accepted by the Parties solely for purposes of settling, compromising, and resolving issues  
18 disputed in this Action.

19 1.9 For purposes of this Consent Judgment, the term "Effective Date" shall mean  
20 June 1, 2015.

## 21 **2. INJUNCTIVE RELIEF**

22 2.1 **Reformulation of Covered Products.** As of the Effective Date, Defendants  
23 shall not manufacture, ship, sell, or offer for sale any Covered Product in California unless such  
24 Covered Product complies with the following Lead Limits:

25 2.1.1 "Paint or other Surface Coatings," as that term is defined in 16 C.F.R.  
26 § 1303.2(b): no more than 0.009 percent Lead by weight (90 parts per million ("ppm")).

27 2.1.2 Polyvinyl chloride ("PVC") components: no more than 0.02 percent Lead  
28 by weight (200 ppm).

2.1.3 All other components: no more than 0.03 percent Lead by weight (300 ppm).

### 3. ENFORCEMENT

3.1 **Enforcement.** Any Party may, by motion or application for an order to show cause before this Court, enforce the terms and conditions contained in this Consent Judgment.

### 4. PAYMENTS

4.1 **Payments From Defendants.** Within twenty (20) days of the entry of this Consent Judgment, Defendants shall pay the total sum of \$55,000 as a settlement payment.

4.2 **Allocation of Payments.** The total settlement amount for Defendants shall be paid in three separate checks delivered to the offices of the Lexington Law Group (Attn: Howard Hirsch), 503 Divisadero Street, San Francisco, California 94117, and made payable and allocated as follows:

4.2.1 Defendants shall pay the sum of \$7,250 as a penalty pursuant to Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12. The penalty check shall be made payable to the Center for Environmental Health.

4.2.2 Defendants shall pay the sum of \$10,900 as payment to CEH in lieu of penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3202(b). CEH will use such funds to continue its work educating and protecting people from exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such funds to monitor compliance with the reformulation requirements of this and other similar Consent Judgments and to purchase and test Covered Products to confirm compliance with such reformulation requirements. In addition, as part of its *Community Environmental Action and Justice Fund*, CEH will use four percent of such funds to award grants to grassroots environmental justice groups working to educate and protect people from exposures to toxic chemicals. The method of selection of such groups can be found at the CEH web site at [www.ceh.org/justicefund](http://www.ceh.org/justicefund). The payment in lieu of penalty check shall be made payable to the Center for Environmental Health.

1                   4.2.3 Defendants shall pay the sum of \$36,850 as reimbursement of reasonable  
2 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made  
3 payable to the Lexington Law Group.

4       **5.       MODIFICATION AND DISPUTE RESOLUTION**

5                   5.1           **Modification.** This Consent Judgment may be modified from time to time by  
6 express written agreement of the Parties, with the approval of the Court, or by an order of the  
7 Court upon motion and in accordance with law.

8                   5.2           **Notice; Meet and Confer.** Any Party seeking to modify this Consent  
9 Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a  
10 motion to modify the Consent Judgment.

11       **6.       CLAIMS COVERED AND RELEASE**

12                  6.1           This Consent Judgment is a full, final, and binding resolution between CEH  
13 and Defendants and each of their past and present parents, affiliates, subsidiaries, divisions,  
14 predecessors, successors, and assigns, and each of their respective owners, officers, directors,  
15 board members, trustees, shareholders, managers, members, employees, agents, insurers,  
16 attorneys, auditors, accountants, experts, stockholders, representatives, partners, and any other  
17 persons acting on their behalf ("Released Parties") concerning or in any way relating to the claims  
18 that have been or could have been asserted against Defendants and/or the Released Parties up  
19 through the date on which this Consent Judgment is entered, provided that such claims are based  
20 on or relate to the facts alleged in the operative complaint in the Action.

21                  6.2           CEH, acting on its own behalf and in the public interest pursuant to Health &  
22 Safety Code § 25249.7(d), releases, waives, and forever discharges any and all claims against  
23 Defendants and/or the Released Parties arising from any violation of Proposition 65 or any other  
24 statutory or common law claims that have been or could have been asserted in the public interest  
25 regarding the failure to warn about exposure to Lead arising in connection with Covered Products  
26 manufactured, distributed, or sold by Defendant prior to the date on which this Consent Judgment  
27 is entered.

6.3 Compliance with the terms of this Consent Judgment by Defendants and the Released Parties shall constitute compliance with Proposition 65 by Defendants and the Released Parties with respect to any alleged failure to warn about Lead in Covered Products manufactured, distributed, or sold by Defendants after the date on which this Consent Judgment is entered.

## **7. PROVISION OF NOTICE**

7.1 When any Party is entitled to receive any notice under this Consent Judgment, the notice shall be sent by first class and electronic mail as follows:

7.1.1 **Notices to Defendants.** The persons for Defendants to receive notices pursuant to this Consent Judgment shall be:

Tammy Stafford  
Senior Counsel, Litigation and Risk  
Harbor Freight Tools  
26541 Agoura Road  
Calabasas, CA 91302  
Email: [TStafford@harborfreight.com](mailto:TStafford@harborfreight.com)

Peter Hsiao  
PHsiao@mofo.com  
Navi Dhillon  
NDhillon@mofo.com  
MORRISON & FOERSTER LLP  
425 Market Street  
San Francisco, California 94105-2482

7.1.2 **Notices to Plaintiff.** The persons for CEH to receive notices pursuant to this Consent Judgment shall be:

Howard Hirsch  
Joseph Mann  
Lexington Law Group  
503 Divisadero Street  
San Francisco, CA 94117  
[hhirsch@lexlawgroup.com](mailto:hhirsch@lexlawgroup.com)  
[jmann@lexlawgroup.com](mailto:jmann@lexlawgroup.com)

7.2 Any Party may modify the person and address to whom the notice is to be sent by sending the other Party notice by first class and electronic mail.

## **8. COURT APPROVAL**

8.1 This Consent Judgment shall become effective on the date of its entry by the

1 Court, provided however, that CEH shall prepare and file a Motion for Approval of this Consent  
2 Judgment and Defendants shall support approval of such Motion.

3 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or  
4 effect and shall not be introduced into evidence or otherwise used in any proceeding for any  
5 purpose.

6 **9. GOVERNING LAW AND CONSTRUCTION**

7 9.1 The terms of this Consent Judgment shall be governed by the laws of the State  
8 of California.

9 **10. ENTIRE AGREEMENT**

10 10.1 This Consent Judgment contains the sole and entire agreement and  
11 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior  
12 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
13 merged herein and therein. There are no warranties, representations, or other agreements between  
14 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or  
15 implied, other than those specifically referred to in this Consent Judgment have been made by any  
16 Party hereto. No other agreements not specifically contained or referenced herein, oral or  
17 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements  
18 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind  
19 any of the Parties hereto only to the extent that they are expressly incorporated herein. No  
20 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding  
21 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions  
22 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other  
23 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

24 **11. RETENTION OF JURISDICTION**

25 11.1 This Court shall retain jurisdiction of this matter to implement or modify the  
26 Consent Judgment.

1 **12. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

2 12.1 Each signatory to this Consent Judgment certifies that he or she is fully  
3 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into  
4 and execute the Consent Judgment on behalf of the Party represented and legally to bind that  
5 Party.

6 **13. NO EFFECT ON OTHER SETTLEMENTS**

7 13.1 Nothing in this Consent Judgment shall preclude CEH from resolving any  
8 claim against another entity on terms that are different from those contained in this Consent  
9 Judgment.

10 **14. EXECUTION IN COUNTERPARTS**

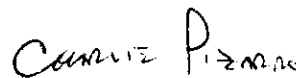
11 14.1 The stipulations to this Consent Judgment may be executed in counterparts  
12 and by means of facsimile, which taken together shall be deemed to constitute one document.  
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14 **IT IS SO STIPULATED:**

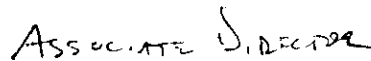
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16 Dated: April 29, 2015

**CENTER FOR ENVIRONMENTAL HEALTH**

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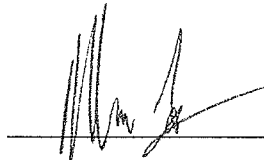
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Dated: MAY 1, 2015

HARBOR FREIGHT TOOLS USA, INC.



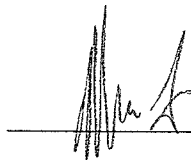
Printed Name

**MARC FRIEDMAN**  
**SECRETARY**

Title

Dated: MAY 1, 2015

CENTRAL PURCHASING, LLC



Printed Name

**MARC FRIEDMAN**  
**SECRETARY**

Title

**IT IS SO ORDERED, ADJUDGED,  
AND DECREED**

Dated: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT OF THE  
STATE OF CALIFORNIA