

O'Neil Dennis, SBN 256636
O'Neil Law Firm
385 Grand Avenue, Suite 300
Oakland, CA 94610
Tel: (510) 272-9737
E-Mail: oneil@ogdlaw.com

Attorney for Alicia Chin

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

ALICIA CHIN,

Plaintiff,

vs.

INTERNATIONAL SOURCING
COMPANY, INC.; PREFERRED SAFETY
PRODUCTS, LLC.; and
Does 1-30, inclusive
Defendants

Case No.: RG17-861156

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 defendant International Sourcing Company, Inc. ("International Sourcing"), with Chin and International Sourcing each referred to individually as a "Party" and collectively 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.

1.3 Defendants

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

4 **1.4 General Allegations**

5 Chin alleges that International Sourcing manufactures, imports, sells and/or distributes for
6 sale in California, the vinyl sleeves containing di(2-ethylhexyl)phthalate ("DEHP"). Chin alleges
7 that International Sourcing does so without providing the health hazard warning that Chin alleges
8 is required by Proposition 65.

9 **1.5 Product Description**

10 The products covered by this Consent Judgment are vinyl sleeves, cordova safety products
11 vinyl sleeves # RS06B (blue) and RS06C (clear) containing di(2-ethylhexyl)phthalate ("DEHP")
12 (collectively, "Products").

13 **1.6 Notice of Violation**

14 On March 9, 2017, Chin served International Sourcing Company, Inc. & Preferred Safety
15 Products, LLC and the requisite public enforcement agencies with a 60-Day Notice of Violation
16 ("Notice"), alleging that International Sourcing Company, Inc. & Preferred Safety Products,
17 LLC violated Proposition 65 when it failed to warn its customers and consumers in California
18 that the Products expose users to DEHP. To the best of the Parties' knowledge, no public
19 enforcer has commenced and is diligently prosecuting an action to enforce the allegations set
20 forth in the Notice.

21 **1.7 Complaint**

22 On May 22, 2017, Chin commenced the instant action, naming International Sourcing
23 Company, Inc. & Preferred Safety Products, LLC, among others, as a defendant for the alleged
24 violations of Proposition 65 that are the subject of the Notice.

25 **1.8 No Admission**

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

10 **1.9 Jurisdiction**

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

16 **1.10 Effective Date**

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

20 **2. INJUNCTIVE RELIEF:**


21 **2.1 Reformulated Products**


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

2.2 Clear and Reasonable Warning

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

(a)  **WARNING:** This product contains a chemical known to the state of California to cause cancer and birth defects or other reproductive harm.

 **WARNING:** This product contains DEHP, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

 **WARNING:** This product can expose you to chemicals including DEHP, which is known to the State of California to cause

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

3 **3. MONETARY SETTLEMENT TERMS**

4 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

5 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
6 claims referred to in this Consent Judgment, International Sourcing shall pay \$2000 in civil
7 penalties in accordance with this Section. Each penalty payment will be allocated in accordance
8 with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to
9 the California Office of Environmental Health Hazard Assessment ("OEHHA") and the
10 remaining 25% of the penalty remitted to Chin. Chin's counsel shall be responsible for remitting
11 International Sourcing's penalty payment(s) under this Consent Judgment to OEHHA.

12 **3.1.1 Civil Penalty Payments**

13 (i) a check shall be delivered to "OEHHA" in the amount of \$1500, at the
14 address of "Mike Gyurics, Fiscal Operations Branch Chief, Office of
15 Environmental Health Hazard Assessment, P. O. Box 4010, Sacramento, CA
16 95812-4010";

17 (ii) a check payable to Alicia Chin in the amount of \$500, at the address of
18 "O'Neil Dennis, Esquire, 385 Grand Avenue, Suite 300, Oakland, California,
19 94610".

20 **3.2 Reimbursement of Attorneys' Fees and Costs**

21 The Parties acknowledge that Chin and his counsel offered to resolve this dispute
22 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
23 leaving the issue to be resolved after the material terms of the agreement had been settled.
24 Shortly after the other settlement terms had been finalized, International Sourcing expressed a
25 desire to resolve Chin's fees and costs. The Parties then negotiated a resolution of the
26 compensation due to Chin and his counsel under general contract principles and the private
27 attorney general doctrine codified at California Code of Civil Procedure § 1021.5. For all work
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1 performed through the mutual execution of this agreement and the Court's approval of the
2 same, but exclusive of fees and costs on appeal, if any. International Sourcing shall reimburse
3 Chin and her counsel \$15,500.00. International Sourcing's payment shall be delivered to the
4 address in Section 3.4 in the form of a check payable to "O'Neil Dennis, Esq." The
5 reimbursement shall cover all fees and costs incurred by Chin investigating, bringing this matter
6 to International Sourcing's attention, litigating, and negotiating a settlement of the matter in the
7 public interest.

8 **3.3 Payment Timing; Payments Held In Trust**

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

11 **3.4 Payment Address**

12 All payments required by this Consent Judgment shall be delivered to the following
13 address:

14
15 O'Neil Dennis, Esq.
16 385 Grand Ave., Ste. 300
17 Oakland, CA 94610

18 **4. CLAIMS COVERED AND RELEASED**

19 **4.1 Chin's Release of Proposition 65 Claims**

20 Chin, acting on her own behalf and in the public interest, releases International Sourcing
21 and their parents, subsidiaries, affiliated entities under common ownership, directors, officers,
22 employees, and attorneys ("Releasees") and each entity to whom they directly or indirectly
23 distribute or sell the Products including, but not limited to, their downstream distributors,
24 wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees,
25 inclusive of Preferred Safety Products, LLC. ("Downstream Releasees") for any violations
26 arising under Proposition 65 for unwarned exposures to DEHP from the Products manufactured,
27 imported, distributed or sold by International Sourcing prior to the Effective Date, as set forth in
28 the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with

1 Proposition 65 by International Sourcing with respect to the alleged or actual failure to warn
2 about exposures to DEHP from Products manufactured, sold or distributed for sale by
3 International Sourcing after the Effective Date.

4 **4.2 Chin's Individual Release of Claims**

5 Chin, in her individual capacity only and *not* in her representative capacity, also provides
6 a release to Defendants, Releasees, and Downstream Releasees, inclusive of Preferred Safety
7 Products, LLC, which shall be effective as a full and final accord and satisfaction, as a bar to all
8 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
9 liabilities and demands of Chin of any nature, character or kind, whether known or unknown,
10 suspected or unsuspected, arising out of alleged or actual exposures to DEHP in Products
11 manufactured, imported, distributed or sold by International Sourcing before the Effective Date.
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13 **4.3 International Sourcing's Release of Chin**

14 International Sourcing, on its own behalf and on behalf of its past and current agents,
15 representatives, attorneys, successors and/or assignees, hereby waives any and all claims against
16 Chin and his attorneys and other representatives, for any and all actions taken or statements made
17 (or those that could have been taken or made) by Chin and his attorneys and other representatives
18 in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter,
19 or with respect to the Products.
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21 **4.4** The parties waive any rights they may have under Civil Code Section 1542 which
22 Provides as follows:

23 "A general release does not extend to claims which the creditor does
24 not know or suspect to exist in his or her favor at the time of
25 executing the release, which if known by him or her must have
26 materially affected his or her settlement with the debtor."
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1 **5. COURT APPROVAL**

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

13 **6. SEVERABILITY**

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

17 **7. GOVERNING LAW**

18 The terms of this Consent Judgment shall be governed by the laws of the State of California
19 and apply within the State of California. In the event that Proposition 65 is repealed, preempted,
20 or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then
21 International Sourcing may provide Chin with written notice of any asserted change in the law,
22 and shall have no further obligations pursuant to this Consent Judgment, with respect to, and to
23 the extent that, the Products are so affected. Nothing in this Consent Judgment shall be
24 interpreted to relieve International Sourcing from its obligation to comply with any pertinent
25 state or federal law or regulation.
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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 International Sourcing:

7 Gary A. Wexler, Esq.
8 Thompson Coburn
9 2029 Century Park East, 19th Floor
10 Los Angeles, CA 90067

To Chin:

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

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

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12. AUTHORIZATION

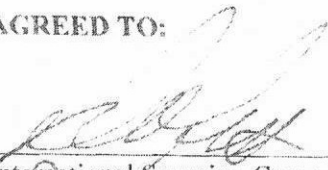
The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:


ALICIA CHIN

Dated: 12.21.17

AGREED TO:


International Sourcing Company, Inc.

By: Daniel J. Left
(Print Name)

Its: Secretary
(Title)

Dated: December 21, 2017

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2 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED
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9 Judge of the Superior Court
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