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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 HARBOR FREIGHT TOOLS USA, INC.,

15 Defendant.

Case No.: RG19045974

CONSENT JUDGMENT

Judge: Paul D. Herbert

Dept.: 20

Hearing Date: March 5, 2020

Hearing Time: 3:00 PM

Reservation #: R-214501

1 **1. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between Anthony
3 Ferreiro acting on behalf of the public interest (hereinafter “Ferreiro”) and Harbor Freight Tools
4 USA, Inc. (“Harbor Freight” or “Defendant”) with Ferreiro and Defendant collectively referred to
5 as the “Parties” and each of them as a “Party.” Ferreiro is an individual residing in California that
6 seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing
7 or eliminating hazardous substances contained in consumer products. Harbor Freight is alleged to
8 be a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety
9 Code §§ 25249.6 et seq.

10 **1.2 Allegations and Representations.** Ferreiro alleges that Defendant has exposed
11 individuals to chromium VI (CrVI) from its sales of leather gloves, including Hardy Pigskin leather
12 work gloves, UPC #792363641739 without providing a clear and reasonable exposure warning
13 pursuant to Proposition 65. CrVI is listed under Proposition 65 as a chemical known to the State of
14 California to cause cancer and reproductive toxicity.

15 **1.3 Notice of Violation/Complaint.** On or about July 23, 2019, Ferreiro served Harbor
16 Freight, and various public enforcement agencies with documents entitled “60-Day Notice of
17 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant
18 violated Proposition 65 for failing to warn consumers and customers that use of Hardy Pigskin
19 leather work gloves, UPC #792363641739 expose users in California to CrVI. No public enforcer
20 has brought and is diligently prosecuting the claims alleged in the Notice. On December 6, 2019,
21 Ferreiro filed a complaint (the “Complaint”) in the matter.

22 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
24 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
25 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
26 claims which were or could have been raised in the Complaint based on the facts alleged therein
27 and/or in the Notice.
28

1 1.5 Defendant denies the material allegations contained in the Notice and Complaint
2 and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be
3 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor
4 shall compliance with this Consent Judgment constitute or be construed as an admission by
5 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
6 denied by Defendant. However, this section shall not diminish or otherwise affect the obligations,
7 responsibilities, and duties of Defendant under this Consent Judgment.

8 **2. DEFINITIONS**

9 2.1 **Covered Products.** The term “Covered Products” means leather gloves, including
10 Hardy Pigskin leather work gloves, UPC #792363641739 that are manufactured, distributed and/or
11 offered for sale in California by Harbor Freight.

12 2.2 **Effective Date.** The term “Effective Date” means the date Harbor Freight’s counsel
13 receives notice that this Consent Judgment is entered as a Judgment of the Court.

14 **3. INJUNCTIVE RELIEF: WARNINGS**

15 3.1 **Clear and Reasonable Warning.** No later than three months after the date this
16 Consent Judgment is issued by the Court, and continuing thereafter, a clear and reasonable exposure
17 warning as set forth in this §§ 3.1 and 3.2 must be provided for all Covered Products that Defendant
18 manufacturers, imports, distributes, sells, or offers for sale in California that is not a Reformulated
19 Product. There shall be no obligation for Defendant to provide a warning for Covered Products that
20 enter the stream of commerce prior three months after the date this Consent Judgment is issued by
21 the Court. The warning shall consist of either the **Warning** or **Alternative Warning** described in
22 §§ 3.1(a) or (b), respectively:

23 (a) **Warning.** The “Warning” shall consist of the statement:

24 ⚠ **WARNING:** This product can expose you to chemicals including chromium VI
25 (CrVI), which is known to the State of California to cause cancer and birth defects
26 or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

27 (b) **Alternative Warning:** Harbor Freight may, but is not required to, use the alternative
28 short-form warning as set forth in this § 3.1(b) (“**Alternative Warning**”) as follows:

1 ▲ **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

2 3.2 A **Warning** or **Alternative Warning** provided pursuant to § 3.1 must print the word
3 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
4 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
5 triangle with a black outline, except that if the sign or label for the Covered Product does not use
6 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
7 than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the
8 Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or
9 automatic process, providing that the warning is displayed with such conspicuousness, as compared
10 with other words, statements, or designs as to render it likely to be read and understood by an
11 ordinary individual under customary conditions of purchase or use. A warning may be contained
12 in the same section of the packaging, labeling, or instruction booklet that states other safety
13 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as
14 those other safety warnings.

15 If Harbor Freight sells Covered Products via an internet website to customers located in
16 California, the warning requirements of this section shall be satisfied if the foregoing warning
17 appears either: (a) on the same web page on which a Covered Product is displayed and/or described;
18 (b) on the same page as the price for the Covered Product; or (c) on one or more web pages
19 displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol
20 consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent
21 to or immediately following the display, description, price, or checkout listing of the Covered
22 Product, if the warning statement appears elsewhere on the same web page in a manner that clearly
23 associates it with the product(s) to which the warning applies.

24 3.3 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
25 compliance with this Consent Judgment by either adhering to §§ 3.1 and 3.2 of this Consent
26 Judgment or by complying with warning regulations approved or adopted by the State of
27 California’s Office of Environmental Health Hazard Assessment (“OEHHA”), or by any other State
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1 of California agency authorized to issue regulations approving or adopting warnings as
2 implementation of Proposition 65, or by statutes adopted by the California State Legislature or by
3 the California voters after the Effective Date.

4 **4. MONETARY TERMS**

5 4.1 **Civil Penalty.** Harbor Freight shall pay \$4,000.00 as a Civil Penalty pursuant to
6 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
7 & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of
8 the Civil Penalty remitted to Ferreiro, as provided by California Health & Safety Code
9 § 25249.12(d).

10 4.1.1 Within ten (10) days of the Effective Date, Harbor Freight shall issue two
11 separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$3,000.00; and
12 to (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$1,000.00. Payment owed
13 to Ferreiro pursuant to this Section shall be delivered to the following payment address:

14 Evan J. Smith, Esquire
15 Brodsky & Smith, LLC
16 Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

17 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
18 to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

19 For United States Postal Service Delivery:

20 Mike Gyurics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

23 For Non-United States Postal Service Delivery:

24 Mike Gyurics
25 Fiscal Operations Branch Chief
26 Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

1 A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith, LLC at the address
2 set forth above as proof of payment to OEHHA.

3 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Harbor Freight shall
4 pay \$32,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for
5 Ferreiro's attorneys' fees and costs incurred as a result of investigating, bringing this matter to
6 Harbor Freight's attention, litigating and negotiating and obtaining judicial approval of a settlement
7 in the public interest, pursuant to Code of Civil Procedure § 1021.5.

8 **5. RELEASE OF ALL CLAIMS**

9 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
10 acting on his own behalf, and on behalf of the public interest, and Harbor Freight, and its parents,
11 shareholders, members, directors, officers, managers, employees, representatives, agents,
12 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
13 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
14 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
15 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
16 retailers, franchisees, and cooperative members ("Downstream Releasees"), of all claims for
17 violations of Proposition 65 based on exposure to CrVI from Covered Products as set forth in the
18 Notice, with respect to any Covered Products manufactured, distributed, or sold by Harbor Freight
19 prior to the Effective Date. This Consent Judgment shall have preclusive effect such that no other
20 person or entity, whether purporting to act in his, her, or its interests or the public interest shall be
21 permitted to pursue and/or take any action with respect to any violation of Proposition 65 that was
22 alleged in the Complaint, or that could have been brought pursuant to the Notice against Harbor
23 Freight and/or the Downstream Releasees of the Covered Products ("Proposition 65 Claims").
24 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
25 with regard to the Covered Products.

26 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current
27 agents, representatives, attorneys, and successors and/or assignees, and not in his representative
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1 capacity, hereby releases Defendant Releasees and Downstream Releasees from all claims that he
2 has asserted or could have asserted against said Releasees arising out of Proposition 65. Ferreiro
3 acting on behalf of himself, his past and current agents, representatives, attorneys, and successors
4 and/or assignees, and not in his representative capacity further waives all rights to institute or
5 participate in, directly or indirectly, any form of legal action and releases Harbor Freight, Defendant
6 Releasees, and Downstream Releasees from any and all manner of actions, causes of action, claims,
7 demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages,
8 charges, losses, costs, expenses, and attorneys' fees, of any nature whatsoever, known or unknown,
9 in law or equity, fixed or contingent, now or in the future, with respect to any alleged violations of
10 Proposition 65 related to or arising from Covered Products manufactured, distributed, or sold by
11 Harbor Freight, Defendant Releasees or Downstream Releasees. With respect to the foregoing
12 waivers and releases in this paragraph, Ferreiro hereby specifically waives any and all rights and
13 benefits which he now has, or in the future may have, conferred by virtue of the provisions of §
14 1542 of the California Civil Code, which provides as follows:

15 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
16 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
17 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
18 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.

19 5.3 Harbor Freight waives any and all claims against Ferreiro, his attorneys and other
20 representatives, for any and all actions taken or statements made (or those that could have been
21 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of
22 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
23 and/or with respect to Covered Products.

24 **6. INTEGRATION**

25 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
26 any and all prior negotiations and understandings related hereto shall be deemed to have been
27 merged within it. No representations or terms of agreement other than those contained herein exist
28 or have been made by any Party with respect to the other Party or the subject matter hereof.

1 **7. GOVERNING LAW**

2 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California and apply within the State of California. In the event that Proposition 65 is repealed or
4 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
5 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
6 to the extent that, Covered Products are so affected.

7 **8. NOTICES**

8 8.1 Unless specified herein, all correspondence and notices required to be provided
9 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
10 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
11 by the other party at the following addresses:

12 For Defendant:

13 Bruce Nye
14 Scali Rasmussen
15 1901 Harrison Street, 14th Floor
16 Oakland, CA 94612

17 And

18 For Ferreiro:

19 Evan Smith
20 Brodsky & Smith, LLC
21 9595 Wilshire Blvd., Ste. 900
22 Beverly Hills, CA 90212

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

25 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

26 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
27 which shall be deemed an original, and all of which, when taken together, shall constitute one and
28 the same document.

1 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
2 **APPROVAL**

3 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
4 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
5 Defendant agrees it shall support approval of such Motion.

6 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
7 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
8 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
9 30 days, the case shall proceed on its normal course.

10 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
11 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
12 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
13 its normal course on the trial court's calendar.

14 **11. MODIFICATION**

15 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
16 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

17 **12. ATTORNEY'S FEES**

18 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
19 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

20 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
21 pursuant to law.

22 **13. RETENTION OF JURISDICTION**

23 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
24 Consent Judgment.

25 **14. AUTHORIZATION**

26 14.1 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
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document and certify that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

AGREED TO:

AGREED TO:

Date:

12/19/19

Date:

12/10/19

By:

Anthony Ferreiro
ANTHONY FERREIRO

By:

[Signature]
HARBOR FREIGHT TOOLS USA, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court