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Attorneys for Defendants  
CENTRAL PURCHASING, LLC and  
HARBOR FREIGHT TOOLS USA, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA  
UNLIMITED CIVIL JURISDICTION

RUSSELL BRIMER,  
Plaintiff,

v.

CENTRAL PURCHASING, LLC,  
HARBOR FREIGHT TOOLS USA, INC.  
and DOES 1-150,

Defendants.

Case No. RG11565734

**CONSENT TO JUDGMENT**

Health & Safety Code § 25249.6

1     **1. INTRODUCTION**

2             **1.1 Plaintiff Russell Brimer and Defendants Central Purchasing, LLC and Harbor**  
3                     **Freight Tools USA, Inc.**

4             This Consent To Judgment is entered into by and between Plaintiff Russell Brimer (“Brimer”  
5     or “Plaintiff”) and Defendants Central Purchasing, LLC (“Central Purchasing”) and Harbor Freight  
6     Tools USA, Inc. (“Harbor Freight”) (individually and collectively, Central Purchasing and Harbor  
7     Freight may be referred to as “Defendants”). Brimer and Defendants are collectively referred to as  
8     the “Parties.”

9             **1.2 Plaintiff**

10            Brimer is an individual residing in California who seeks to promote awareness of exposures to  
11   toxic chemicals and improve human health by reducing or eliminating hazardous substances  
12   contained in consumer products.

13            **1.3 Defendants Central Purchasing and Harbor Freight**

14            Defendants each employ ten or more persons and are persons in the course of doing business  
15   for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &  
16   Safety Code § 25249.6 *et seq.* (“Proposition 65”).

17            **1.4 General Allegations**

18            Brimer alleges that Defendants have manufactured, distributed, and/or sold in the State of  
19   California tape measures with accessible components containing lead without providing the requisite  
20   Proposition 65 warnings. Defendants admit nothing and specifically deny this allegation for, among  
21   other reasons, Defendants’ own allegation that clear and reasonable Proposition 65 warning signs  
22   were present in its stores at all relevant times. Lead is listed pursuant to Proposition 65 as a chemical  
23   known to the State of California to cause birth defects and other reproductive harm. Lead is referred  
24   to herein as the “Listed Chemical.”

25            **1.5 Product Description**

26            The products that are covered by this Consent To Judgment are defined as follows: tape  
27   measures composed of materials containing lead including, but not limited to, the *Cen-Tech 100 Ft.*  
28   *Tape Measure, Item 36818*. All such items shall be referred to herein as the “Covered Products.”

1           **1.6       Notice of Violation**

2           On October 15, 2010, Brimer served Defendants and all required public enforcement agencies  
3 with a document entitled “60-Day Notice of Violation” (“Notice”) that provided Defendants and such  
4 public enforcers with notice that Defendants were alleged to be in violation of California Health &  
5 Safety Code § 25249.6 for failing to warn employees and consumers that the Covered Products  
6 caused exposures in California to the Listed Chemical. To the best of the Parties’ knowledge, no  
7 public enforcer has commenced and/or diligently prosecuted the allegations set forth in the 60-Day  
8 Notice of Violation.

9           **1.7       Complaint**

10          On March 15, 2011, Brimer, acting in the interest of the general public in California, filed the  
11 instant action naming Central Purchasing and Harbor Freight as Defendants and alleging violations of  
12 Health & Safety Code §§ 25249.6, *et seq.* based on, *inter alia*, alleged occupational and consumer  
13 exposures to the Listed Chemical contained in the Covered Products sold in California (“Complaint”)  
14 without the clear and reasonable warning required by Proposition 65.

15          **1.8       No Admission**

16          Defendants deny the material, factual, and legal allegations contained in Brimer’s Notice and  
17 Complaint, and maintain that all of the products it has manufactured, distributed, and/or sold in  
18 California, including the Covered Products, have been, and are, in compliance with all laws. Nothing  
19 in this Consent To Judgment shall be construed as an admission by Defendants of any fact, finding,  
20 conclusion of law, issue of law, or violation of law; nor shall compliance with this Consent To  
21 Judgment constitute or be construed as an admission by Defendants of any fact, finding, conclusion  
22 of law, issue of law, or violation of law, the same being specifically denied by Defendants. However,  
23 this section shall not diminish or otherwise affect the obligations, responsibilities and duties of  
24 Defendants under this Consent To Judgment.

25          **1.9       Consent to Jurisdiction**

26          For purposes of this Consent To Judgment only, the Parties stipulate that this Court has  
27 jurisdiction over Defendants and Russell Brimer as to the allegations contained in the Complaint, that  
28 venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the

provisions of this Consent To Judgment. As an express part of this Agreement, pursuant to C.C.P. §664.6 the Court in which this action was filed shall retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

#### **1.10 Effective Date**

For purposes of this Consent To Judgment, the term “Effective Date” shall mean the date Defendants receive notice from the Plaintiff that the Court has entered an order granting approval of this Consent To Judgment.

#### **1.11 Court**

For purposes of this Consent To Judgment, the term “Court” shall mean the Superior Court of California for the County of Alameda presiding over case RG11565734.

### **2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS**

#### **2.1 Reformulated Covered Products**

“Reformulated Covered Products” are defined as those Covered Products containing materials or other components that may be handled, touched or mouthed by a consumer, and which components yield less than 300 parts per million lead content when analyzed pursuant to Environmental Protection Agency testing methodologies 3050B and 6010B (Digest Test).

#### **2.2 Product Warnings**

Commencing on the Effective Date, Defendants shall, for all Covered Products that are not Reformulated Covered Products, provide clear and reasonable warnings as set forth in subsections 2.2(a) and (b) below. Such labeling is not in any manner required for Reformulated Covered Products. Each 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 consumer or user understands to which *specific* Covered Product the warning applies, so as to minimize the risk of consumer confusion.

##### **(a) Retail Store Sales.**

**(i) Product Labeling.** Defendants may affix a warning to the packaging, labeling, or directly on each Covered Product sold in retail outlets in California by Defendants or any

1 person authorized to sell its Covered Products. The minimum required warning language is:

2           **WARNING:** This product contains lead, a chemical  
3                               known to the State of California to cause  
4                               birth defects and other reproductive harm.

5 This warning may contain additional language, provided such additional language is truthful and does  
6 not render the warning unclear or unreasonable with regard to the Covered Products.

7           **(ii) Point-of-Sale Warnings.** Alternatively, Defendants may provide  
8 warning signs in the form below to retail outlets in California, which retail outlet stores they are  
9 reasonably aware of having sold the Covered Products or having inventory or orders of the Covered  
10 Products, with instructions to post the warnings in close proximity to the point of display of the  
11 Covered Products. The minimum required warning sign language is:

12           **WARNING:** This product contains lead, a chemical  
13                               known to the State of California to cause  
14                               birth defects and other reproductive harm.

15 Where more than one Covered Product is sold in proximity to other like items or to those that do not  
16 require a warning (*e.g.*, Reformulated Covered Products as defined in Section 2.1), the minimum  
17 required warning sign language is:<sup>1</sup>

18           **WARNING:** The following products contain lead, a chemical  
19                               known to the State of California to cause birth  
20                               defects and other reproductive harm:

21                               *[list products for which warning is required]*

22 The warning signs in this section may contain additional language, provided such additional language  
23 is truthful and does not render the warning signs unclear or unreasonable with regard to the Covered  
24 Products.

25           **(b) Mail Order Catalog and Internet Sales.** In the event that Defendants sell  
26 Covered Products via mail order catalog or internet to customers located in California after the  
27 Effective Date that are not Reformulated Covered Products, Defendants shall provide a warning for  
28

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<sup>1</sup>For purposes of the Consent To Judgment, “sold in proximity” shall mean that the Covered Product and another product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, probably could not reasonably determine which of the two products is subject to the warning sign.

1 Covered Products sold via mail order catalog or the Internet to California residents: (1) in the mail  
2 order catalog; or (2) on the website. Warnings given in the mail order catalog or on the website shall  
3 identify the *specific* Covered Product to which the warning applies as further specified in Sections  
4 2.2(b)(i) and (ii).

5 (i) **Mail Order Catalog Warning.** Any warning provided in a mail order  
6 catalog must be in the same type size or larger than the Covered Product description text within the  
7 catalog. The following warning is the minimum required warning language to be provided on the  
8 same page and in the same location as the display and/or description of the Covered Product:

9 **WARNING:** This product contains lead, a chemical known to  
10 the State of California to cause birth defects and  
11 other reproductive harm.

12 Where it is impracticable to provide the warning on the same page and in the same location as  
13 the display and/or description of the Covered Product, Defendants may utilize a designated symbol to  
14 cross reference the applicable warning and shall define the term “designated symbol” with the  
15 following language on the inside of the front or rear cover of the catalog or on the same page as any  
16 order form for the Covered Product(s):

17 **WARNING:** Certain products identified with this symbol ▼  
18 and offered for sale in this catalog contain lead,  
19 a chemical known to the State of California to  
20 cause birth defects and other reproductive harm.

21 The designated symbol must appear on the same page and in close proximity to the display and/or  
22 description of the Covered Product. On each page where the designated symbol appears, Defendants  
23 must provide a header or footer directing the consumer to the warning language and definition of the  
24 designated symbol.

25 The warnings in this section may contain additional language, provided such additional  
26 language is truthful and does not render the warnings unclear or unreasonable with regard to the  
27 Covered Products.

28 If Defendants elect to provide warnings in the mail order catalog, then the warnings must be  
included in all catalogs distributed in California and offering to sell one or more Covered Products

1 printed after the Effective Date.

2 (ii) **Internet Website Warnings.** A warning may be given in conjunction  
3 with the sale of the Covered Products via the Internet, provided it appears either: (a) on the same  
4 web page on which a Covered Product is displayed; (b) on the same web page as the order form for a  
5 Covered Product; (c) on the same page as the price for any Covered Product; or (d) on one or more  
6 web pages or pop-up windows displayed to a purchaser during the product review or checkout  
7 process. The following warning statement is the minimum required warning language to be used and  
8 shall appear in any of the above instances adjacent to or immediately following the display,  
9 description, or price of the Covered Product for which it is given in the same type size or larger than  
10 the Covered Product description text:

11 **WARNING:** This product contains lead, a chemical known to  
12 the State of California to cause birth defects and  
13 other reproductive harm.

14 Alternatively, the designated symbol may appear adjacent to or immediately following the  
15 display, description, or price of the Covered Product for which a warning is being given, provided  
16 that the following warning statement also appears elsewhere on the same web page, as follows:

17 **WARNING:** Covered Products identified on this page with  
18 the following symbol ▼ contain chemicals,  
19 including lead, known to the State of California  
20 to cancer and/or cause birth defects and other  
21 reproductive harm.

22 The warnings in this section may contain additional language, provided such additional language is  
23 truthful and does not render the warnings unclear or unreasonable with regard to the Covered  
24 Products.

### 25 3. **MONETARY PAYMENTS**

#### 26 3.1 **Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

27 Defendants shall make a payment of \$15,000 to be apportioned in accordance with Health &  
28 Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds earmarked for  
the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the  
remaining 25% of these penalty monies earmarked for Brimer.

1                                   **3.1.1 Waiver Of A Portion Of Civil Penalty**

2           As an incentive to achieve one hundred percent reformulation of the Covered Products into  
3 Reformulated Covered Products, Brimer agrees that \$9,000 of the \$15,000 Civil Penalty shall be  
4 waived upon certification, in writing, by an officer of each Central Purchasing and Harbor Freight  
5 that, on or before thirty (30) days after the Effective Date, each will only manufacture, cause to be  
6 manufactured, distribute or cause to be disturbed for sale in California, or sell or cause to be sold in  
7 California Reformulated Covered Products. The written certification of reformulation must be  
8 received by The Chanler Group on or before January 31, 2012.

9                                   **3.2 Reimbursement of Plaintiff's Fees and Costs**

10          The Parties acknowledge that Brimer and his counsel offered to resolve this dispute without  
11 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
12 issue to be resolved after the material terms of the agreement had been settled. Defendants then  
13 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been  
14 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to  
15 Brimer and his counsel under general contract principles and the private attorney general doctrine  
16 codified at California Code of Civil Procedure section 1021.5, for all work performed in this matter,  
17 except fees that may be incurred on appeal. Under these legal principles, Defendants shall pay the  
18 amount of \$50,500.00 for fees and costs incurred investigating, litigating and enforcing this matter,  
19 including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the  
20 Court's approval of this Consent To Judgment in the public interest.

21                                   **3.3 Payment Procedures**

22                                   **3.3.1 Funds Held In Trust:** All payments required by Sections 3.1 and 3.2 shall  
23 delivered on or before March 2, 2012, to either The Chanler Group or the attorney of record for the  
24 Defendants, and shall be held in trust pending the Court's approval of this Consent To Judgment.

25          Payments delivered to The Chanler Group shall be made payable, as follows:

- 26                                   (a)     One check made payable to "The Chanler Group in Trust for OEHHA" in the  
27   amount of \$11,250.00 (or \$4,500 if the conditional penalty waiver under  
28



1 Section 3.1.1 is secured);

2 (b) One check made payable to "The Chanler Group in Trust for Brimer" in the  
3 amount of \$3,750 (or \$1,500 if the conditional penalty waiver under Section  
4 3.1.1 is secured); and

5 (c) One check made payable to "The Chanler Group in Trust" in the amount of  
6 \$50,500.00.

7 Payments delivered to Hunton & Williams LLP shall be made payable, as follows:

8 (a) One check made payable to "Hunton & Williams LLP in Trust for OEHHHA"  
9 in the amount of \$11,250 (or \$4,500 if the conditional penalty waiver under  
10 Section 3.1.1 is secured);

11 (b) One check made payable to "Hunton & Williams LLP in Trust for [Plaintiff]"  
12 in the amount of \$3,750 (or \$1,500 if the conditional penalty waiver under  
13 Section 3.1.1 is secured); and

14 (c) One check made payable to "Hunton & Williams LLP in Trust for The  
15 Chanler Group" in the amount of \$50,500.00.

16 If Defendants elects to deliver payments to its attorney of record, the attorney of record shall  
17 confirm, in writing within five days of deposit, that the funds have been deposited in a trust account.

18 Within five days of the Effective Date, the payments being held in trust by the attorney of  
19 record for the Defendants shall be delivered to The Chanler Group in three separate checks payable,  
20 as follows:

21 (a) One check made payable to "The Chanler Group in Trust for OEHHHA" in the  
22 amount of \$11,250 (or \$4,500 if the conditional penalty waiver under Section  
23 3.1.1 is secured);

24 (b) One check to "The Chanler Group in Trust for Brimer" in the amount of  
25 \$3,750 (or \$1,500 if the conditional penalty waiver under Section 3.1.1 is  
26 secured); and

27 (c) One check to "The Chanler Group" in the amount of \$50,500.00.  
28

1 **14. ATTORNEY'S FEES**

2 A Party who unsuccessfully brings or contests an action arising out of this Consent To  
3 Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs unless  
4 the unsuccessful Party has acted with substantial justification. For purposes of this Consent To  
5 Judgment, the term substantial justification shall carry the same meaning as used in the Civil  
6 Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

7 Except as specifically provided in the above paragraph and in Section 3, each Party shall bear  
8 its own costs and attorney's fees in connection with this action.

9 Nothing in this Section 15 shall preclude a Party from seeking an award of sanctions pursuant  
10 to law.

11 **15. AUTHORIZATION**

12 The undersigned are authorized to execute this Consent To Judgment and have read,  
13 understood, and agree to all of the terms and conditions hereof.

14 **AGREED TO:**

15 Date: 1-30-12

16  
17 By:   
18 RUSSELL BRIMER

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_,  
CENTRAL PURCHASING LLC

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_,  
HARBOR FREIGHT TOOLS USA, INC.

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14 **AGREED TO:**

15 Date: \_\_\_\_\_

16  
17 By: \_\_\_\_\_  
18 RUSSELL BRIMER

**AGREED TO:**

Date: \_\_\_\_\_

19 By: \_\_\_\_\_  
20 **ROBERT RENE**  
21 **CHIEF OPERATING OFFICER**  
22 **CENTRAL PURCHASING LLC**

**AGREED TO:**

23 Date: \_\_\_\_\_

24 By: \_\_\_\_\_  
25 **ROBERT RENE**  
26 **CHIEF OPERATING OFFICER**  
27 **HARBOR FREIGHT TOOLS USA, INC.**  
28