

1 Evan J. Smith, Esquire (SBN 242352)  
2 Ryan P. Cardona, Esquire (SNB 302113)  
3 BRODSKY & SMITH, LLC  
4 9595 Wilshire Blvd., Ste. 900  
5 Beverly Hills, CA 90212  
6 Telephone: (877) 534-2590  
7 Facsimile: (310) 247-0160  
8  
9 *Attorneys for Plaintiff*

ENDORSED  
FILED  
ALAMEDA COUNTY

SEP 18 2015  
Clerk of the Superior Court  
By *Jayana Parker*  
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

10 EMA BELL and GABRIEL ESPINOZA,  
11  
12 Plaintiff,  
13 vs.  
14 HARBOR FREIGHT TOOLS USA, INC.  
15 Defendant.

CASE NO.: **2015786402**

JUDGE

DEPT.:

COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELEIF

(Violation of Health & Safety Code §25249.5  
*et seq.*)

BY FAX

19 Plaintiffs Ema Bell ("Bell") and Gabriel Espinosa ("Espinosa") (collectively,  
20 "Plaintiffs"), by and through their attorneys, allege the following cause of action in the public  
21 interest of the citizens of the State of California.

BACKGROUND OF THE CASE

23 1. Plaintiffs bring this representative action on behalf of all California citizens to  
24 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified  
25 at the Health and Safety Code § 25249.5 *et seq* ("Proposition 65"), which reads, in relevant part,  
26 "[n]o person in the course of doing business shall knowingly and intentionally expose any  
27 individual to a chemical known to the state to cause cancer or reproductive toxicity without first  
28 giving clear and reasonable warning to such individual ..." Health & Safety Code § 25249.6.

1           2.     This complaint is a representative action brought by Plaintiffs in the public  
2 interest of the citizens of the State of California to enforce the People’s right to be informed of  
3 the health hazards caused by exposures to di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical  
4 found in industrial tools and accessories, sold, and/or distributed by defendant Harbor Freight  
5 Tools USA, Inc. (“Harbor Freight or “Defendant”) in California.

6           3.     DEHP is a harmful chemical, known to the State of California to cause both  
7 cancer and reproductive toxicity, developmental, male. On January 1, 1988, the State of  
8 California listed DEHP as a chemical known to the State to cause cancer. On October 24, 2003,  
9 the State of California listed DEHP as a chemical known to cause developmental male  
10 reproductive toxicity.

11          4.     Proposition 65 requires all businesses with ten (10) or more employees that  
12 operate within California or sell products therein to comply with Proposition 65 regulations.  
13 Included in such regulations is the requirement that businesses must label any Proposition 65  
14 listed chemical with a “clear and reasonable” warning before knowingly or intentionally  
15 exposing it to any person.

16          5.     Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
17 to be imposed upon defendants in a civil action for violations of Proposition 65. *Health & Safety*  
18 *Code* § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin  
19 the actions of a defendant which “violate or threaten to violate” the statute. *Health & Safety*  
20 *Code* § 25249.7.

21          6.     Plaintiffs allege that Defendant distributes, manufactures, produces, imports, sells,  
22 and/or offers for sale, without the required warning, various industrial, recreational and home  
23 improvement products, furniture, luggage, and other items including but not limited to power  
24 tools, air tools, hand tools (e.g., pliers, screwdrivers, wrenches), welding tools, automotive tools  
25 and safety accessories in California containing DEHP. By way of example, these products  
26 include, but are not limited to, (1) *Industrial Ear Muffs, UPC# 7 92363 43768 4, Noise*  
27 *Reduction rating: 23 dB, ANSI, Large high-impact plastic ear cups, Soft PVC ear cushions;* (2) 2  
28 *Piece Welding Goggles Set, UPC# 7 92363 35711 1, SKU 35711, Brand: Chicago Electric*

1 *Welding, Certification: ANSI, Color: Green; (3) PVC Air Hose, Central Pneumatic, 300 PSI, 25*  
2 *Fl x 3/8, Color: Orange.* All of the items referenced in this paragraph, including those  
3 specifically identified, are collectively referred to herein as the "Products."

4 7. Defendant's failure to warn consumers, workers, and other individuals in  
5 California of the health hazards associated with exposure to DEHP in conjunction with the sale,  
6 manufacture, and/or distribution of the Products is a violation of Proposition 65 and subjects  
7 Defendant to the enjoinder and civil penalties described herein.

8 8. Plaintiffs seek civil penalties against Defendant's for their violations of  
9 Proposition 65 in accordance with Health and Safety Code § 25249.7(b).

10 9. Plaintiffs also seek injunctive relief, preliminarily and permanently, requiring  
11 Defendants to provide purchasers or users of the Products with the required warnings related to  
12 the dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety  
13 Code § 25249.7(a).

14 **PARTIES**

15 10. Plaintiff Bell is a citizen of the State of California acting in the interest of the  
16 general public to promote awareness of exposures to toxic chemicals in products sold in  
17 California and to improve human health by reducing hazardous substances contained in such  
18 items. She brings this action in the public interest pursuant to Health and Safety Code §  
19 25249.7(d).

20 11. Plaintiff Espinosa is a citizen of the State of California acting in the interest of the  
21 general public to promote awareness of exposures to toxic chemicals in products sold in  
22 California and to improve human health by reducing hazardous substances contained in such  
23 items. He brings this action in the public interest pursuant to Health and Safety Code §  
24 25249.7(d).

25 12. Defendant Harbor Freight, doing business in California at all relevant times  
26 herein, is principally located in California and, is in the business of selling and distributing  
27 various types of home improvement, industrial, and other tools and accessories to its customers.  
28 As such Harbor Freight effectively manufactures, imports, distributes, sells, and/or offers the

1 Products for sale or use in California, or it implies by its conduct that it manufactures, imports,  
2 distributes, sells, and/or offers the Products for sale or use in the State of California.

3 13. Defendant Harbor Freight can be served care of Corporation Service Company  
4 d/b/a CSC, 2710 Gateway Oaks Dr., Ste. 150N, Sacramento, CA 95833.

5 14. Defendant Harbor Freight is a person in the course of doing business within the  
6 meaning of Health & Safety Code sections 25249.6 and 25249.11.

7 **VENUE AND JURISDICTION**

8 15. Venue is proper in the County of Alameda, because one or more of the instances  
9 of wrongful conduct occurred, and continue to occur in this county and/or because Defendant  
10 conducts, and continues to conduct, business in the County of Alameda with respect to the  
11 Products.

12 16. This Court has jurisdiction over this action pursuant to California Constitution  
13 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those  
14 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the  
15 enforcement of violations of Proposition 65 in any Court of competent jurisdiction, therefore,  
16 this Court has jurisdiction over this lawsuit.

17 17. This Court has jurisdiction over Defendant as Defendant is a citizen of the State  
18 of California, has sufficient minimum contacts with the State of California, and is registered with  
19 the California Secretary of State as a corporations authorized to do business in the State of  
20 California, and/or has otherwise purposefully availed itself of the California market. Such  
21 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and  
22 permissible with traditional notions of fair play and substantial justice.

23 **SATISFACTION OF NOTICE REQUIREMNTS**

24 18. On July 9, 2015 Plaintiff Bell gave notice of alleged violations of Health and  
25 Safety Code § 25249.6, concerning the exposure of California citizens to DEHP, through the  
26 *Industrial Ear Muffs, UPC# 7 92363 43768 4, Noise Reduction rating: 23 dB, ANSI, Large high-*  
27 *impact plastic ear cups, Soft PVC ear cushions* without proper warning, subject to a private  
28 action to Defendant and to the California Attorney General's office and the offices of the County

1 District attorneys and City Attorneys for each city with a population greater than 750,000  
2 persons wherein the herein violations allegedly occurred.

3 19. On July 9, 2015 Plaintiff Espinosa gave notice of alleged violations of Health and  
4 Safety Code § 25249.6, concerning the exposure of California citizens to DEHP, through the (1)  
5 *2 Piece Welding Goggles Set, UPC# 7 92363 35711 1, SKU 35711, Brand: Chicago Electric*  
6 *Welding, Certification: ANSI, Color: Green;* and (2) *PVC Air Hose, Central Pneumatic, 300 PSI,*  
7 *25 Ft x 3/8, Color: Orange* without proper warning, subject to a private action to Defendant and  
8 to the California Attorney General's office and the offices of the County District attorneys and  
9 City Attorneys for each city with a population greater than 750,000 persons wherein the herein  
10 violations allegedly occurred.

11 20. Such Notices complied with all procedural requirements of Proposition 65  
12 including the attachment of a Certificate(s) of Merit affirming that Plaintiffs' counsel has  
13 consulted with at least one person with relevant and appropriate expertise who reviewed relevant  
14 data regarding DEHP exposure, and that counsel believed there was meritorious and reasonable  
15 cause for a private action.

16 21. After receiving Plaintiffs' Notices, and to Plaintiffs' best information and belief,  
17 none of the noticed appropriate public enforcement agencies have commenced and diligently  
18 prosecuted a cause of action against Defendant under Proposition 65 to enforce the alleged  
19 violations which are the subject of Plaintiff's notices of violation.

20 22. Plaintiffs are commencing this action more than sixty (60) days from the date of  
21 the last-in-time notice to Defendant, as required by law.

22 **FIRST CAUSE OF ACTION**

23 **(By Plaintiffs against Defendant for the Violation of Proposition 65)**

24 23. Plaintiffs hereby repeat and incorporate by reference paragraphs 1 through 22 of  
25 this complaint as though fully set forth herein.

26 24. Defendant has, at all times mentioned herein, acted as manufacturer, distributor,  
27 and/or retailer of the Products.

28

1           25.    The Products contain DEHP, a hazardous chemical found on the Proposition 65  
2 list of a chemical known to be hazardous to human health.

3           26.    The Products do not comply with the Proposition 65 warning requirements.

4           27.    Plaintiffs, based on their best information and belief, aver that at all relevant times  
5 hereto, and at least since July 9, 2015 and continuing to the present, Defendant has continued to  
6 knowingly and intentionally expose California users and consumers of the Products to DEHP  
7 without providing required warnings under Proposition 65.

8           28.    The exposures that are the subject of this Complaint result from the purchase,  
9 acquisition, handling and recommended use of the Products. Consequently, the primary route of  
10 exposure to these chemicals is through dermal transfer of DEHP to bare skin or mucous  
11 membranes that come into direct contact with the Products. Many of the Products are designed to  
12 be worn with direct contact to bare skin, and must be handled and manipulated by hand to use.  
13 Additionally, some exposure through ingestion can occur by touching the product, with  
14 subsequent touching of the users hand to mouth.

15           29.    Plaintiffs, based on their best information and belief, aver that such exposures will  
16 continue every day until clear and reasonable warnings are provided to the purchasers or users of  
17 the Products or until this known toxic chemical is removed from the Products.

18           30.    Defendant has knowledge that the normal and reasonably foreseeable use of the  
19 Products exposes individuals to DEHP, and Defendant intends that exposures to DEHP will  
20 occur by their deliberate, non-accidental participation in the manufacture, importation,  
21 distribution, sale and offering of the Products to consumers in California.

22           31.    Plaintiffs have engaged in good faith efforts to resolve the herein claims prior to  
23 this Complaint without success.

24           32.    Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above  
25 described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

26           33.    Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically  
27 authorized to grant injunctive relief in favor of Plaintiffs and against Defendant.

28

**PRAYER FOR RELIEF**

1 WHEREFORE, Plaintiffs demand judgment against Defendant and request the following  
2 relief:

- 3
- 4 A. That the court assess civil penalties against Defendant in the amount of  
5 \$2,500 per day for each violation in accordance with Health and Safety  
6 Code § 25249.7(b);
- 7 B. That the court preliminarily and permanently enjoin Defendants  
8 mandating Proposition 65 compliant warnings on the Products;
- 9 C. That the court grant Plaintiffs reasonable attorney's fees and costs of suit.
- 10 D. That the court grant any further relief as may be just and proper.

11 Dated: September 18, 2015

BRODSKY & SMITH, LLC

12 By: 

13 Evan J. Smith (SBN242352)

14 Ryan P. Cardona (SBN302113)

15 9595 Wilshire Boulevard, Suite 900

16 Beverly Hills, CA 90212

17 Telephone: (877) 534-2590

18 Facsimile: (310) 247-0160

19 *Attorneys for Plaintiffs*

20

21

22

23

24

25

26

27

28