

1 Reuben Yeroushalmi (SBN 193981)
2 Ben Yeroushalmi (SBN 232540)
3 Peter T. Sato (SBN 238486)
4 **YEROUSHALMI & YEROUSHALMI**
5 An Association of Independent Law Corporations
6 9100 Wilshire Boulevard, Suite 240W
7 Beverly Hills, California 90212
8 Telephone: 310.623.1926
9 Facsimile: 310.623.1930

10 Attorneys for Plaintiff,
11 Consumer Advocacy Group, Inc.

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF LOS ANGELES**

14 CONSUMER ADVOCACY GROUP, INC.,
15 in the public interest,

16 Plaintiff,

17 v.

18 HARBOR FREIGHT TOOLS USA, INC., a
19 Delaware Corporation; and DOES 1-50;

20 Defendants.

CASE NO.

19STCV00537

COMPLAINT FOR PENALTY AND
INJUNCTION

Violation of Proposition 65, the Safe
Drinking Water and Toxic Enforcement
Act of 1986 (*Health & Safety Code, §*
25249.5, et seq.)

ACTION IS AN UNLIMITED CIVIL
CASE (exceeds \$25,000)

21 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
22 Defendants HARBOR FREIGHT TOOLS USA, INC. and DOES 1-50 as follows:

23 **THE PARTIES**

- 24 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an
25 organization qualified to do business in the State of California. CAG is a person within
26 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
27 as a private attorney general, brings this action in the public interest as defined under
28 Health and Safety Code section 25249.7, subdivision (d).

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ORIGINAL FILED
Superior Court Of California

JAN 04 2019

Shawn H. Carter, Executive Officer/Clerk
By: Cristina Grijalva, Deputy

2. Defendant HARBOR FREIGHT TOOLS USA, INC. ("HARBOR"), is a Delaware Corporation, doing business in the State of California at all relevant times herein.
3. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-50, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
4. At all times mentioned herein, the term "Defendants" includes HARBOR and DOES 1-50.
5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all times mentioned herein have conducted business within the State of California.
6. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-50, was an agent, servant, or employee of each of the other Defendants. In conducting the activities alleged in this Complaint, each of the Defendants was acting within the course and scope of this agency, service, or employment, and was acting with the consent, permission, and authorization of each of the other Defendants. All actions of each of the Defendants alleged in this Complaint were ratified and approved by every other Defendant or their officers or managing agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged wrongful conduct of each of the other Defendants.
7. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the Defendants was a person doing business within the meaning of Health and Safety Code section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more employees at all relevant times.

JURISDICTION

8. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except

1 those given by statute to other trial courts. This Court has jurisdiction over this action
2 pursuant to Health and Safety Code section 25249.7, which allows enforcement of
3 violations of Proposition 65 in any Court of competent jurisdiction.

4 9. This Court has jurisdiction over Defendants named herein because Defendants either
5 reside or are located in this State or are foreign corporations authorized to do business in
6 California, are registered with the California Secretary of State, or who do sufficient
7 business in California, have sufficient minimum contacts with California, or otherwise
8 intentionally avail themselves of the markets within California through their manufacture,
9 distribution, promotion, marketing, or sale of their products within California to render
10 the exercise of jurisdiction by the California courts permissible under traditional notions
11 of fair play and substantial justice.

12 10. Venue is proper in the County of Los Angeles because one or more of the instances of
13 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
14 because Defendants conducted, and continue to conduct, business in the County of Los
15 Angeles with respect to the consumer product that is the subject of this action.

16 **BACKGROUND AND PRELIMINARY FACTS**

17 11. In 1986, California voters approved an initiative to address growing concerns about
18 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to
19 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,
20 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
21 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
22 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources
23 from contamination, to allow consumers to make informed choices about the products
24 they buy, and to enable persons to protect themselves from toxic chemicals as they see
25 fit.

26 12. Proposition 65 requires the Governor of California to publish a list of chemicals known to
27 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
28 § 25249.8. The list, which the Governor updates at least once a year, contains over 700

1 chemicals and chemical families. Proposition 65 imposes warning requirements and
2 other controls that apply to Proposition 65-listed chemicals.

3 13. All businesses with ten (10) or more employees that operate or sell products in California
4 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
5 from knowingly discharging Proposition 65-listed chemicals into sources of drinking
6 water (*Health & Safety Code* § 25249.5), and (2) required to provide "clear and
7 reasonable" warnings before exposing a person, knowingly and intentionally, to a
8 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

9 14. Proposition 65 provides that any person "violating or threatening to violate" the statute
10 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.
11 "Threaten to violate" means "to create a condition in which there is a substantial
12 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
13 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
14 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

15 15. On January 1, 1988, the Governor of California added DEHP to the list of chemicals
16 known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP
17 to the list of chemicals known to the State to cause developmental male reproductive
18 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)
19 months after addition of DEHP to the list of chemicals known to the State to cause
20 reproductive toxicity, DEHP became fully subject to Proposition 65 warning
21 requirements and discharge prohibitions.

22 16. On December 2, 2005, the Governor of California added Di-n-Butyl Phthalate, also
23 known as Dibutyl Phthalate ("DBP") to the list of chemicals known to the State to cause
24 developmental, female, and male reproductive toxicity. Pursuant to Health and Safety
25 Code sections 25249.9 and 25249.10, twenty (20) months after addition of DBP to the list
26 of chemicals known to the State to cause reproductive toxicity, DBP became fully subject
27 to Proposition 65 warning requirements and discharge prohibitions.

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1 17. Plaintiff identified certain practices of manufacturers and distributors of DEHP-bearing
2 and DBP-bearing products of exposing, knowingly and intentionally, persons in
3 California to the Proposition 65-listed chemicals of such products without first providing
4 clear and reasonable warnings of such to the exposed persons prior to the time of
5 exposure. Plaintiff later discerned that Defendants engaged in such practice.

6 **SATISFACTION OF PRIOR NOTICE**

7 18. On or about April 18, 2018, Plaintiff gave notice of alleged violations of Health and
8 Safety Code section 25249.6, concerning consumer products exposures subject to a
9 private action to HARBOR and to the California Attorney General, County District
10 Attorneys, and City Attorneys for each city containing a population of at least 750,000
11 people in whose jurisdictions the violations allegedly occurred, concerning the products,
12 PLIERS, containing DEHP.

13 19. On or about May 7, 2018, Plaintiff gave notice of alleged violations of Health and Safety
14 Code section 25249.6, concerning consumer products exposures subject to a private
15 action to HARBOR and to the California Attorney General, County District Attorneys,
16 and City Attorneys for each city containing a population of at least 750,000 people in
17 whose jurisdictions the violations allegedly occurred, concerning the product TOOLS,
18 containing DEHP.

19 20. On or about May 10, 2018, Plaintiff gave notice of alleged violations of Health and
20 Safety Code section 25249.6, concerning consumer products exposures subject to a
21 private action to HARBOR and to the California Attorney General, County District
22 Attorneys, and City Attorneys for each city containing a population of at least 750,000
23 people in whose jurisdictions the violations allegedly occurred, concerning the product
24 PLIERS SET, containing DEHP.

25 21. On or about August 21, 2018, Plaintiff gave notice of alleged violations of Health and
26 Safety Code section 25249.6, concerning consumer products exposures subject to a
27 private action to HARBOR and to the California Attorney General, County District
28 Attorneys, and City Attorneys for each city containing a population of at least 750,000

1 people in whose jurisdictions the violations allegedly occurred, concerning the product
2 Manual Air Pump With Polymer Components ("AIR PUMP"), containing DEHP and
3 DBP.

4 22. On or about October 15, 2018, Plaintiff gave notice of alleged violations of Health and
5 Safety Code section 25249.6, concerning consumer products exposures subject to a
6 private action to HARBOR and to the California Attorney General, County District
7 Attorneys, and City Attorneys for each city containing a population of at least 750,000
8 people in whose jurisdictions the violations allegedly occurred, concerning the product
9 Air Tool Accessory Kit with Polymer tool grip ("AIR TOOLS"), containing DEHP.

10 23. Before sending the notice of alleged violations, Plaintiff investigated the consumer
11 products involved, the likelihood that such products would cause users to suffer
12 significant exposures to DEHP and DBP, and the corporate structure of each of the
13 Defendants.

14 24. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
15 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
16 Plaintiff who executed the certificate had consulted with at least one person with relevant
17 and appropriate expertise who reviewed data regarding the exposures to DEHP and DBP,
18 the subject Proposition 65-listed chemicals of this action. Based on that information, the
19 attorney for Plaintiff who executed the Certificate of Merit believed there was a
20 reasonable and meritorious case for this private action. The attorney for Plaintiff attached
21 to the Certificate of Merit served on the Attorney General the confidential factual
22 information sufficient to establish the basis of the Certificate of Merit.

23 25. Plaintiff's notices of alleged violations also included a Certificate of Service and a
24 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
25 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

26 26. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
27 gave notices of the alleged violation to HARBOR and the public prosecutors referenced
28 in Paragraph 18 to 22.

1 27. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
2 any applicable district attorney or city attorney has commenced and is diligently
3 prosecuting an action against the Defendants.

4 **FIRST CAUSE OF ACTION**

5 **(By CONSUMER ADVOCACY GROUP, INC. and against HARBOR and DOES 1-10 for**
6 **Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**
7 **(Health & Safety Code, §§ 25249.5, et seq.))**

8 **Pliers**

9 28. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
10 reference paragraphs 1 through 27 of this complaint as though fully set forth herein. Each
11 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
12 promoter, or retailer of the Pliers, which includes but is not limited to (1) "9"
13 LINESMAN PLIERS", "QUINNTM", "High Strength Forged Steel", "37041 332017",
14 "HIGH LEVERAGE", "HARDENED 3/4" CUTTING EDGES", "63820", "DURABLE
15 JAWS WITH MILLED TEETH", "LIFETIME WARRANTY", "Distributed by Harbor
16 Freight Tools, Camarillo, CA", "Made in China", UPC:792363638203; (2) "5-3/4"
17 NEEDLE NOSE PLIERS", "PITTSBURGH", "Lifetime Warranty", "63815",
18 "Distributed by Harbor Freight Tools, Camarillo, CA", "Made in China", "37041
19 362017", UPC: 792363638159; (3) Long nose pliers with gray and green handle;
20 "Lifetime Warranty", "PITTSBURGH", "4-3/4" LONG NOSE PLIERS", "Distributed
21 by Harbor Freight Tools, Camarillo, CA", "37041 362017", "Made in China", UPC:
22 792363638173 ("PLIERS").

23 29. PLIERS contain DEHP.

24 30. Defendants knew or should have known that DEHP has been identified by the State of
25 California as a chemical known to cause cancer and reproductive toxicity and therefore
26 was subject to Proposition 65 warning requirements. Defendants were also informed of
27 the presence of DEHP in PLIERS within Plaintiff's notice of alleged violations further
28 discussed above at Paragraph 18.

1 31. Plaintiff's allegations regarding PLIERS concern "[c]onsumer products exposure[s],"
2 which "is an exposure that results from a person's acquisition, purchase, storage,
3 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
4 that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, § 25602(b).
5 PLIERS is a consumer product, and, as mentioned herein, exposures to DEHP took place
6 as a result of such normal and foreseeable consumption and use.

7 32. Plaintiff's allegations regarding PLIERS also concern Occupational Exposures, which
8 "means an exposure to any employee in his or her employer's workplace." *Cal. Code*
9 *Regs.* tit. 27, § 25602(f). Exposures of DEHP to Defendants' employees occurred through
10 the course of their employment in their employers' workplaces.

11 33. Plaintiff is informed, believes, and thereon alleges that between April 18, 2015, and the
12 present, each of the Defendants knowingly and intentionally exposed its employees,
13 California consumers of PLIERS, which Defendants manufactured, distributed, or sold as
14 mentioned above, to DEHP without first providing any type of clear and reasonable
15 warning of such to the exposed persons before the time of exposure. Defendants have
16 distributed and sold PLIERS in California. Defendants know and intend that California
17 consumers will use and consume PLIERS, thereby exposing them to DEHP. Defendants
18 thereby violated Proposition 65.

19 34. The principal routes of exposure are through dermal contact and ingestion. Persons
20 sustain exposures by using and by wearing or handling the PLIERS without wearing
21 gloves or by touching bare skin or mucous membranes with or without gloves after
22 handling PLIERS, as well as direct and indirect hand to mouth contact, hand to mucous
23 membrane, trans-dermal absorption, or breathing in particulate matter emanating from
24 PLIERS during use, as well as through environmental mediums that carry the DEHP once
25 contained within PLIERS.

26 35. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
27 Proposition 65 as to PLIERS have been ongoing and continuous to the date of the signing
28 of this complaint, as Defendants engaged and continue to engage in conduct which

1 violates Health and Safety Code section 25249.6, including the manufacture, distribution,
2 promotion, and sale of PLIERS, so that a separate and distinct violation of Proposition 65
3 occurred each and every time a person was exposed to DEHP by PLIERS as mentioned
4 herein.

5 36. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
6 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
7 violations alleged herein will continue to occur into the future.

8 37. Based on the allegations herein, Defendants are liable for civil penalties of up to
9 \$2,500.00 per day per individual exposure to DEHP from PLIERS, pursuant to Health
10 and Safety Code section 25249.7(b).

11 38. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
12 filing this Complaint.

13 **SECOND CAUSE OF ACTION**

14 **(By CONSUMER ADVOCACY GROUP, INC. and against HARBOR and DOES 11-20 for**
15 **Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**
(Health & Safety Code, §§ 25249.5, et seq.))

16 **Tools**

17 39. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
18 reference paragraphs 1 through 38 of this complaint as though fully set forth herein. Each
19 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
20 promoter, or retailer of Tools, which includes but is not limited to (1) "7" DIAGONAL
21 CUTTERS", "QUINNTM", "HARDENED CUTTING EDGES STAY SHARP
22 LONGER", "37041 512017", "HIGH LEVERAGE DESIGN FOR MORE CUTTING
23 POWER", "IDEAL FOR ALL TYPES OF CUTTING", "25/32" MAXIMUM JAW
24 CAPACITY", "LIFETIME WARRANTY", "Distributed by Harbor Freight Tools,
25 Camarillo, CA", "Made in China", UPC:792363638227; (2) "8" LONG NOSE PLIERS"
26 "QUINNTM", "HARDENED CUTTING EDGES STAY SHARP LONGER" "37041
27 352017", "HIGHER PIVOT POINT FOR BETTER LEVERAGE", "FLUSH RIVET
28 DESIGN FOR THINNER PROFILE", "1.65" MAXIMUM JAW CAPACITY",

1 "LIFETIME WARRANTY", "Distributed by Harbor Freight Tools, Camarillo, CA",
2 "Made in China", UPC:792363638234; (3) "Internal & External Circlip Pliers",
3 "PITTSBURGH", "Remove and Replace Most Internal and External Snap-ring or Circlip
4 Style Retaining Rings", "Lifetime Warranty", "ITEM 60593" "INTERCHANGEABLE
5 ANGLED TIPS" "36972 132017", "Distributed by Harbor Freight Tools, Camarillo,
6 CA", "Made in China", UPC: 792363605939; (4) "4-3/4" BENT LONG NOSE
7 PLIERS", "PITTSBURGH", "Lifetime Warranty", "63819", "Distributed by Harbor
8 Freight Tools, Camarillo, CA", "37041 362017" "Made in China", UPC: 792363638197
9 ("TOOLS").

10 40. TOOLS contain DEHP.

11 41. Defendants knew or should have known that DEHP has been identified by the State of
12 California as a chemical known to cause cancer and reproductive toxicity and therefore
13 was subject to Proposition 65 warning requirements. Defendants were also informed of
14 the presence of DEHP in TOOLS within Plaintiff's notice of alleged violations further
15 discussed above at Paragraph 19.

16 42. Plaintiff's allegations regarding TOOLS concern "[c]onsumer products exposure[s],"
17 which "is an exposure that results from a person's acquisition, purchase, storage,
18 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
19 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.
20 TOOLS is a consumer product, and, as mentioned herein, exposures to DEHP took place
21 as a result of such normal and foreseeable consumption and use.

22 43. Plaintiff is informed, believes, and thereon alleges that between May 7, 2015, and the
23 present, each of the Defendants knowingly and intentionally exposed California
24 consumers of TOOLS, which Defendants manufactured, distributed, or sold as mentioned
25 above, to DEHP without first providing any type of clear and reasonable warning of such
26 to the exposed persons before the time of exposure. Defendants have distributed and sold
27 TOOLS in California. Defendants know and intend that California consumers will use
28

1 and consume TOOLS, thereby exposing them to DEHP. Defendants thereby violated
2 Proposition 65.

3 44. The principal routes of exposure are through dermal contact and ingestion. Persons
4 sustain exposures by using and/or by handling the TOOLS without wearing gloves or by
5 touching bare skin or mucous membranes with or without gloves after handling TOOLS,
6 as well as through direct and indirect hand to mouth contact, hand to mucous membrane,
7 trans-dermal absorption, or breathing in particulate matter emanating from TOOLS
8 during use, as well as through environmental mediums that carry the DEHP once
9 contained within TOOLS.

10 45. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
11 Proposition 65 as to TOOLS have been ongoing and continuous to the date of the signing
12 of this complaint, as Defendants engaged and continue to engage in conduct which
13 violates Health and Safety Code section 25249.6, including the manufacture, distribution,
14 promotion, and sale of TOOLS, so that a separate and distinct violation of Proposition 65
15 occurred each and every time a person was exposed to DEHP by TOOLS as mentioned
16 herein.

17 46. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
18 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
19 violations alleged herein will continue to occur into the future.

20 47. Based on the allegations herein, Defendants are liable for civil penalties of up to
21 \$2,500.00 per day per individual exposure to DEHP from TOOLS, pursuant to Health
22 and Safety Code section 25249.7(b).

23 48. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
24 filing this Complaint.

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1 **THIRD CAUSE OF ACTION**

2 (By CONSUMER ADVOCACY GROUP, INC. and against HARBOR and DOES 21-30 for
3 Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986
4 (*Health & Safety Code, §§ 25249.5, et seq.*))

5 **Pliers Set**

6 49. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
7 reference paragraphs 1 through 48 of this complaint as though fully set forth herein. Each
8 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
9 promoter, or retailer of PLIERS SET, which includes but is not limited to
10 "PITTSBURGH"; "6 PC. PLIERS SET"; "63182"; "7" Linesman's Pliers"; "6" Diagonal
11 Pliers"; "6" Slip Joint Pliers"; "4-1/2" Long Nose Pliers"; "6" Long Nose Pliers"; "8"
12 Groove Joint Pliers" "Distributed by Harbor Freight Tools, Camarillo, CA", "Made in
China", "7 92363 63812 8" ("PLIERS SET").

13 50. PLIERS SET contains DEHP.

14 51. Defendants knew or should have known that DEHP has been identified by the State of
15 California as a chemical known to cause cancer and reproductive toxicity and therefore
16 was subject to Proposition 65 warning requirements. Defendants were also informed of
17 the presence of DEHP in PLIERS SET within Plaintiff's notice of alleged violations
18 further discussed above at Paragraph 20.

19 52. Plaintiff's allegations regarding PLIERS SET concern "[c]onsumer products
20 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
21 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
22 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
23 *25602(b)*. PLIERS SET is a consumer product, and, as mentioned herein, exposures to
24 DEHP took place as a result of such normal and foreseeable consumption and use.

25 53. Plaintiff is informed, believes, and thereon alleges that between May 10, 2015, and the
26 present, each of the Defendants knowingly and intentionally exposed California
27 consumers of PLIERS SET, which Defendants manufactured, distributed, or sold as
28 mentioned above, to DEHP without first providing any type of clear and reasonable

1 warning of such to the exposed persons before the time of exposure. Defendants have
2 distributed and sold PLIERS SET in California. Defendants know and intend that
3 California consumers will use and consume PLIERS SET, thereby exposing them to
4 DEHP. Defendants thereby violated Proposition 65.

5 54. The principal routes of exposure are through dermal contact and ingestion. Persons
6 sustain exposures by using or handling the PLIERS SET without wearing gloves or by
7 touching bare skin or mucous membranes with or without gloves after handling PLIERS
8 SET, as well as through direct and indirect hand to mouth contact, hand to mucous
9 membrane, trans-dermal absorption, or breathing in particulate matter emanating from the
10 PLIERS SET during use, as well as through environmental mediums that carry the DEHP
11 once contained within PLIERS SET.

12 55. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
13 Proposition 65 as to PLIERS SET have been ongoing and continuous to the date of the
14 signing of this complaint, as Defendants engaged and continue to engage in conduct
15 which violates Health and Safety Code section 25249.6, including the manufacture,
16 distribution, promotion, and sale of PLIERS SET, so that a separate and distinct violation
17 of Proposition 65 occurred each and every time a person was exposed to DEHP by
18 PLIERS SET as mentioned herein.

19 56. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
20 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
21 violations alleged herein will continue to occur into the future.

22 57. Based on the allegations herein, Defendants are liable for civil penalties of up to
23 \$2,500.00 per day per individual exposure to DEHP from PLIERS SET, pursuant to
24 Health and Safety Code section 25249.7(b).

25 58. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
26 filing this Complaint.

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1 **FOURTH CAUSE OF ACTION**

2 (By CONSUMER ADVOCACY GROUP, INC. and against HARBOR and DOES 31-40 for
3 Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986
4 (*Health & Safety Code, §§ 25249.5, et seq.*))

5 **Manual Air Pump With Polymer Components**

6 59. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
7 reference paragraphs 1 through 58 of this complaint as though fully set forth herein. Each
8 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
9 promoter, or retailer of Manual Air Pump with Polymer Components, which includes but
10 is not limited to "PITTSBURGH AUTOMOTIVE"; "Multi-Use Transfer Pump";
11 "LUBE"; "Comes with:" "Two 51" long, 1/2" diameter hoses"; 16" long air pressure
12 hose with snap-shut valve"; "1/2" slip fit outlet and intake nipples"; "Schraeder style air
13 chuck"; "Inflator nozzle"; "Item 63144"; "7 92363 63144 0"; "Made in China";
14 "Distributed by Harbor Freight Tools, Camarillo, CA" ("AIR PUMP").

15 60. AIR PUMP contains DEHP and DBP.

16 61. Defendants knew or should have known that DEHP and DBP has been identified by the
17 State of California as a chemical known to cause cancer and reproductive toxicity and
18 therefore was subject to Proposition 65 warning requirements. Defendants were also
19 informed of the presence of DEHP and DBP in AIR PUMP within Plaintiff's notice of
20 alleged violations further discussed above at Paragraph 21.

21 62. Plaintiff's allegations regarding AIR PUMP concern "[c]onsumer products exposure[s],"
22 which "is an exposure that results from a person's acquisition, purchase, storage,
23 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
24 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*. AIR
25 PUMP is a consumer product, and, as mentioned herein, exposures to DEHP and DBP
26 took place as a result of such normal and foreseeable consumption and use.

27 63. Plaintiff is informed, believes, and thereon alleges that between August 21, 2015, and the
28 present, each of the Defendants knowingly and intentionally exposed California
consumers of AIR PUMP, which Defendants manufactured, distributed, or sold as

1 mentioned above, to DEHP and DBP without first providing any type of clear and
2 reasonable warning of such to the exposed persons before the time of exposure.

3 Defendants have distributed and sold AIR PUMP in California. Defendants know and
4 intend that California consumers will use and consume AIR PUMP, thereby exposing
5 them to DEHP and DBP. Defendants thereby violated Proposition 65.

6 64. The principal routes of exposure are through dermal contact, ingestion and inhalation.

7 Persons sustain exposures by using and by installing or handling the AIR PUMP without
8 wearing gloves or by touching bare skin or mucous membranes with or without gloves
9 after handling AIR PUMP, as well as direct and indirect hand to mouth contact, hand to
10 mucous membrane, trans-dermal absorption, or breathing in particulate matter emanating
11 from the AIR PUMP during use, as well as through environmental mediums that carry
12 the DEHP once contained within the AIR PUMP.

13 65. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
14 Proposition 65 as to AIR PUMP have been ongoing and continuous to the date of the
15 signing of this complaint, as Defendants engaged and continue to engage in conduct
16 which violates Health and Safety Code section 25249.6, including the manufacture,
17 distribution, promotion, and sale of AIR PUMP, so that a separate and distinct violation
18 of Proposition 65 occurred each and every time a person was exposed to DEHP and DBP
19 by AIR PUMP as mentioned herein.

20 66. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
21 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
22 violations alleged herein will continue to occur into the future.

23 67. Based on the allegations herein, Defendants are liable for civil penalties of up to
24 \$2,500.00 per day per individual exposure to DEHP and DBP from AIR PUMP, pursuant
25 to Health and Safety Code section 25249.7(b).

26 68. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
27 filing this Complaint.
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1 **FIFTH CAUSE OF ACTION**

2 (By CONSUMER ADVOCACY GROUP, INC. and against HARBOR and DOES 41-50 for
3 Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986
4 (*Health & Safety Code, §§ 25249.5, et seq.*))

5 **Air Tool Accessory Kit with Polymer Tool Grip**

6 69. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
7 reference paragraphs 1 through 68 of this complaint as though fully set forth herein. Each
8 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,
9 promoter, or retailer of Air Tool Accessory Kit with Polymer Tool Grip, which includes
10 but is not limited to "Central Pneumatic;" "12 pc. Air Tool Accessory Kit;" "Distributed
11 by Harbor Freight Tools, Camarillo, CA;" "Made in China;" "UPC:792363613880;"
12 "Item 61388;" "I/M ¼" ("AIR TOOLS").

13 70. AIR TOOLS contain DEHP.

14 71. Defendants knew or should have known that DEHP has been identified by the State of
15 California as a chemical known to cause cancer and reproductive toxicity and therefore
16 was subject to Proposition 65 warning requirements. Defendants were also informed of
17 the presence of DEHP in AIR TOOLS within Plaintiff's notice of alleged violations
18 further discussed above at Paragraph 22.

19 72. Plaintiff's allegations regarding AIR TOOLS concern "[c]onsumer products
20 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
21 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
22 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
23 *25602(b)*. AIR TOOLS is a consumer product, and, as mentioned herein, exposures to
24 DEHP took place as a result of such normal and foreseeable consumption and use.

25 73. Plaintiff is informed, believes, and thereon alleges that between October 15, 2015, and
26 the present, each of the Defendants knowingly and intentionally exposed California
27 consumers of AIR TOOLS, which Defendants manufactured, distributed, or sold as
28 mentioned above, to DEHP without first providing any type of clear and reasonable
warning of such to the exposed persons before the time of exposure. Defendants have

1 distributed and sold AIR TOOLS in California. Defendants know and intend that
2 California consumers will use and consume AIR TOOLS, thereby exposing them to
3 DEHP. Defendants thereby violated Proposition 65.

4 74. The principal routes of exposure are through dermal contact and ingestion. Persons
5 sustain exposures by using or handling the AIR TOOLS without wearing gloves or by
6 touching bare skin or mucous membranes with or without gloves after handling AIR
7 TOOLS, as well as through direct and indirect hand to mouth contact, hand to mucous
8 membrane, trans-dermal absorption, or breathing in particulate matter emanating from the
9 AIR TOOLS during use, as well as through environmental mediums that carry the DEHP
10 once contained within AIR TOOLS.

11 75. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
12 Proposition 65 as to AIR TOOLS have been ongoing and continuous to the date of the
13 signing of this complaint, as Defendants engaged and continue to engage in conduct
14 which violates Health and Safety Code section 25249.6, including the manufacture,
15 distribution, promotion, and sale of AIR TOOLS, so that a separate and distinct violation
16 of Proposition 65 occurred each and every time a person was exposed to DEHP by AIR
17 TOOLS as mentioned herein.

18 76. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
19 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
20 violations alleged herein will continue to occur into the future.

21 77. Based on the allegations herein, Defendants are liable for civil penalties of up to
22 \$2,500.00 per day per individual exposure to DEHP from AIR TOOLS, pursuant to
23 Health and Safety Code section 25249.7(b).

24 78. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
25 filing this Complaint.

26 **PRAYER FOR RELIEF**

27 Plaintiff demands against each of the Defendants as follows:

- 28 1. A permanent injunction mandating Proposition 65-compliant warnings;

2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
3. Costs of suit;
4. Reasonable attorney fees and costs; and
5. Any further relief that the court may deem just and equitable.

Dated: January 4, 2018

YEROUSHALMI & YEROUSHLAMI

BY. Reuben Yeroushalmi
Attorney for Plaintiff,
Consumer Advocacy Group, Inc.