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**FILED**  
Superior Court of California  
County of San Francisco

JAN 09 2010

CLERK OF THE COURT  
BY: *[Signature]*  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

GABRIEL ESPINOZA,

Plaintiff,

vs.

HARBOR FREIGHT TOOLS USA,  
INC.,

Defendant.

Case No. **CGC-20-582133**  
**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**  
(Violation of Health & Safety Code § 25249.5 et  
seq.)

Plaintiff Gabriel Espinoza ("Plaintiff"), by and through his attorneys, alleges the  
following cause of action in the public interest of the citizens of the State of California.

**BACKGROUND OF THE CASE**

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

2. This complaint is a representative action brought by Plaintiff in the public interest  
of the citizens of the State of California to enforce the People's right to be informed of the health  
hazards caused by exposure to Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in

**BY FAX**

1 Pittsburgh Automotive jumper cables and HFT car duster sets sold and/or distributed by  
2 defendant Harbor Freight Tools USA, Inc. ("Harbor Freight" or "Defendant") in California.

3 3. DEHP is a harmful chemical known to the State of California to cause cancer and  
4 reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical  
5 known to the State to cause cancer and it has come under the purview of Proposition 65  
6 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§  
7 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical  
8 known to cause reproductive toxicity.

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

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

19 6. Plaintiff alleges that Defendant manufactures, distributes and/or offers for sale in  
20 California, without a requisite exposure warning, Pittsburgh Automotive jumper cables and HFT  
21 car duster sets (the "Products") that expose persons to DEHP.

22 7. Defendant's failure to warn consumers and other individuals in California of the  
23 health hazards associated with exposure to DEHP in conjunction with the sale and/or distribution  
24 of the Products is a violation of Proposition 65 and subjects Defendant to the enjoinder and  
25 civil penalties described herein.

26 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition  
27 65 in accordance with Health and Safety Code § 25249.7(b).

28

1           9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
2 Defendant to provide purchasers or users of the Products with required warnings related to the  
3 dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety  
4 Code § 25249.7(a).

## PARTIES

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

10            11. Defendant Harbor Freight, through its business, effectively manufactures,  
11 imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or  
12 it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the  
13 Products for sale or use in the State of California.

14 12. Plaintiff alleges that defendant Harbor Freight is a "person" in the course of doing  
15 business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

### VENUE AND JURISDICTION

17           13.     Venue is proper in the County of San Francisco because one or more of the  
18 instances of wrongful conduct occurred, and continue to occur in this county and/or because  
19 Defendant conducted, and continues to conduct, business in the County of San Francisco with  
20 respect to the Products.

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

26           15.     This Court has jurisdiction over Defendant because Defendant is either a citizen  
27 of the State of California, has sufficient minimum contacts with the State of California, is  
28 registered with the California Secretary of State as foreign corporations authorized to do business

1 in the State of California, and/or has otherwise purposefully availed itself of the California  
2 market. Such purposeful availment has rendered the exercise of jurisdiction by California courts  
3 consistent and permissible with traditional notions of fair play and substantial justice.

4 **SATISFACTION OF NOTICE REQUIREMENTS**

5 16. On November 28, 2018, Plaintiff gave notice of alleged violation of Health and  
6 Safety Code § 25249.6 (the "Notice") to Defendant concerning the exposure of California  
7 citizens to DEHP contained in the Products without proper warning, subject to a private action to  
8 Defendant and to the California Attorney General's office and the offices of the County District  
9 attorneys and City Attorneys for each city with a population greater than 750,000 persons  
10 wherein the herein violations allegedly occurred.

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

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

20 19. Plaintiff is commencing this action more than sixty (60) days from the date of the  
21 Notice to Defendant, as required by law.

22 **FIRST CAUSE OF ACTION**

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

24 20. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 19 of  
25 this complaint as though fully set forth herein.

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

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

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

4           24.     Plaintiff, based on his best information and belief, avers that at all relevant times  
5 herein, and at least since November 28, 2018, continuing until the present, that Defendant has  
6 continued to knowingly and intentionally expose California users and consumers of the Products  
7 to DEHP without providing required warnings under Proposition 65.

8           25.     The exposures that are the subject of this notice result from the purchase,  
9 acquisition, handling and recommended use of the Products. Consequently, the primary route of  
10 exposure to DEHP in the Pittsburgh Automotive jumper cables is through dermal absorption.  
11 Users may potentially be exposed to DEHP by dermal absorption through direct skin contact  
12 with the jumper cables during routine use when the item is grasped, opened, or manipulated with  
13 bare hands. If the jumper cables become wet or are handled with wet hands, aqueous DEHP skin  
14 permeation rates have been reported to be faster than neat DEHP permeation. If the jumper  
15 cables are kept in an automobile, vapor phase DEHP is likely to be produced that can potentially  
16 increase exposure risk due to the enclosed space of the vehicle cabin. A 2009 study measured  
17 phthalates in the interior air of 23 automobiles during the winter and summer months, with  
18 summertime temperatures inside the cars reaching up to 70° C. Overall concentrations of  
19 carbonyl compounds was 40% higher in the summer and detectable DEHP concentrations ranged  
20 from 335 to 3656ng m. Gas phase DEHP can potentially be inhaled or can be absorbed to dust in  
21 the automobile. If the jumper cables are stored in the automobile trunk, DEHP that leaches from  
22 the jumper cables may contaminate other articles contained within these closed spaces that are  
23 subsequently handled, worn, or ingested by the user. Finally, while mouthing of the jumper  
24 cables does not seem likely, some amount of exposure through ingestion can occur by touching  
25 the product with subsequent touching of the user's hand to mouth.

26           26.     The primary route of exposure to DEHP in the HFT car duster sets is through  
27 dermal absorption. Users may potentially be exposed to DEHP by dermal absorption through  
28 direct skin contact with the duster sets during routine use when the Products are grasped, opened,

1 or manipulated with bare hands. If the duster sets become wet or are handled with wet hands,  
2 aqueous DEHP skin permeation rates have been reported to be faster than neat DEHP  
3 permeation. If the duster sets are kept in an automobile, vapor phase DEHP is likely to be  
4 produced that can potentially increase exposure risk due to the enclosed space of the vehicle  
5 cabin. A 2009 study measured phthalates in the interior air of 23 automobiles during the winter  
6 and summer months, with summertime temperatures inside the cars reaching up to 70° C.  
7 Overall concentrations of carbonyl compounds was 40% higher in the summer and detectable  
8 DEHP concentrations ranged from 335 to 3656 ng m. Gas phase DEHP can potentially be  
9 inhaled or can be absorbed to dust in the automobile. DEHP contaminated dust collected on the  
10 duster sets can be resuspended and potentially ingested. If the duster sets are stored in a car  
11 storage area DEHP that leaches from the duster case may contaminate other articles contained  
12 within these closed spaces that are subsequently handled, worn, or ingested by the user. Finally,  
13 while mouthing of the duster sets does not seem likely, some amount of exposure through  
14 ingestion can occur by touching the product with subsequent touching of the user's hand to  
15 mouth.

16 27. Plaintiff, based on his best information and belief, avers that such exposures will  
17 continue every day until clear and reasonable warnings are provided to Products purchasers and  
18 users or until this known toxic chemical is removed from the Products.

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

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

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

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

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment against Defendant and requests the  
3 following relief:

- 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 Defendant mandating  
8 Proposition 65 compliant warnings on the Product;  
9 C. That the court grant Plaintiff 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: January 9, 2020

BRODSKY & SMITH, LLC

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

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