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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES

10 APS&EE, LLC, a limited liability company, )  
11 )  
12 Plaintiff, )  
13 v. )  
14 HARBOR FREIGHT TOOLS USA, INC., a )  
15 corporation, and DOES 1 through 100, )  
16 inclusive, )  
17 Defendants. )

CASE NO. 22STCV35985

**PLAINTIFF'S COMPLAINT FOR  
CIVIL PENALTIES AND INJUNCTIVE  
RELIEF**

(Health & Safety Code § 25249.6 et seq.)

Judge:  
Dept.:  
Compl. Filed:

Unlimited Jurisdiction

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**INTRODUCTION**

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2           1. This Complaint is brought by Plaintiff, APS&EE, LLC (“Plaintiff”) in the public  
3 interest of the citizens of the State of California, a representative action to enforce the People’s  
4 right to be informed of the presence of Di (2-ethylhexyl) Phthalate (“DEHP”), Di-n-Butyl  
5 Phthalate (“DBP”), and Lead (collectively with DEHP and DBP, the “Listed Chemicals”),  
6 chemicals known to the State of California to cause cancer and/or reproductive toxicity  
7 (including birth defects and other reproductive harm), found in hammers and bypass loppers sold  
8 by Defendants.

9           2. The purpose of this Complaint is to remedy Defendants’ continuing failure to  
10 warn California residents about the risk of exposure to the Listed Chemicals in the hammers and  
11 bypass loppers manufactured, distributed, sold, and/or offered for sale to consumers in  
12 California.

13           3. Defendants have and continue to manufacture, distribute, sell, and/or offer to sell  
14 hammers, including but not limited to Pittsburgh 4-in-1, Item 69093, 7-92363-69093-5  
15 (hereinafter, “hammers”). Defendants have and continue to manufacture, distribute, sell, and/or  
16 offer to sell the bypass loppers, including but not limited to Item 62681, 7-92363-62681-1  
17 (hereinafter, “bypass loppers”). The hammers and bypass loppers shall hereinafter collectively be  
18 referred to as the “Products”.

19           4. Children and adults are exposed to the Listed Chemicals when they use, touch,  
20 handle, play with, repair, maintain, or install the Products.

21           5. Hazardous levels of the Listed Chemicals are found in the accessible surface areas  
22 of the Products manufactured, distributed, sold, and/or offered for sale by Defendants to  
23 consumers in California.

24           6. California Health and Safety Code section 25249.6 et seq. (“Proposition 65”)  
25 provides in pertinent part: “[n]o person in the course of doing business shall knowingly and  
26 intentionally expose any individual to a chemical known to the state to cause cancer or  
27 reproductive toxicity without first giving clear and reasonable warning to such individual...”

28           7. Studies repeatedly conclude that exposure to the Listed Chemicals is hazardous to

1 the health of children and adults. Accordingly, California has listed DEHP as a chemical known  
2 to the state to cause cancer and reproductive toxicity; DBP as known to cause birth defects and  
3 other reproductive harm; Lead as known to cause cancer and birth defects or other reproductive  
4 harm, and therefore each chemical subject to Proposition 65 warning requirements.

5 8. Defendants have and continue to manufacture, distribute, sell, and/or offer to sell  
6 the Products without the required warnings. Defendants' conduct violates the warning  
7 requirements of Proposition 65.

8 **PARTIES**

9 9. Plaintiff is an organization based in California acting in the public interest.  
10 Plaintiff brings this action in the public interest pursuant to California Health and Safety Code  
11 section 25249.7(d).

12 10. Defendant, HARBOR FREIGHT TOOLS USA, INC. is a person in the course of  
13 doing business within the meaning of California Health and Safety Code section 25249.11.  
14 HARBOR FREIGHT TOOLS USA, INC. manufactures, distributes, and/or sells the Products for  
15 sale and use in California.

16 11. DOES 1 through 100 are each a person in the course of doing business within the  
17 meaning of California Health and Safety Code section 25249.11. DOES 1 through 100  
18 manufacture, distribute, and/or sell the Products for sale and use in California. The true names of  
19 DOES 1 through 100 are unknown to Plaintiff at this time. When their identities are discovered,  
20 Plaintiff's Complaint shall be amended to reflect their true names.

21 12. The defendants identified in paragraphs 10-11 shall collectively be referred to  
22 herein as "Defendants".

23 **JURISDICTION AND VENUE**

24 13. This Court has jurisdiction over this action pursuant to California Health and  
25 Safety Code section 25249.7, which allows enforcement in any court of competent jurisdiction,  
26 and pursuant to California Constitution Article VI, Section 10, because this lawsuit is based on a  
27 cause not given by statute to other trial courts. Moreover, this action belongs in unlimited  
28 jurisdiction since the amount in controversy exceeds \$25,000 and Plaintiff seeks permanent

1 injunctive relief.

2 14. This Court has jurisdiction over Defendants because each is a person, firm,  
3 corporation, or association with sufficient minimum contacts in the State of California, or  
4 otherwise purposefully avails itself to the California market as to render jurisdiction by the  
5 California courts consistent with traditional notions of fair play and substantial justice.

6 15. Venue is proper in Los Angeles County Superior Court because one or more  
7 occurrences of the wrongful conduct occurred, and continues to occur, in Los Angeles County,  
8 and/or because Defendants conducted, and continue to conduct, business in this County with  
9 respect to the Products.

10 **FIRST CAUSE OF ACTION**

11 **(Violations of Health & Safety Code Section 25249.6 et seq.)**

12 16. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,  
13 Paragraphs 1 through 15, inclusive.

14 17. On August 16, 2022, Plaintiff served a sixty-day notice of violation (the  
15 “Hammers Notice”), along with a Certificate of Merit, to HARBOR FREIGHT TOOLS USA,  
16 INC. and the various public enforcement agencies with respect to the Proposition 65 violations  
17 related to DEHP and DBP in the hammers. On said date, in compliance with Health & Safety  
18 Code section 25249.7(d), Plaintiff provided confidential factual information sufficient to  
19 establish the basis for the Certificate of Merit to the California Attorney General. In addition, on  
20 August 25, 2022, Plaintiff served a sixty-day notice of violation (the “Loppers Notice”), along  
21 with a Certificate of Merit, to HARBOR FREIGHT TOOLS USA, INC. and the various public  
22 enforcement agencies with respect to the Proposition 65 violations related to Lead in the bypass  
23 loppers. On said date, Plaintiff also provided confidential factual information sufficient to  
24 establish the basis for the Certificate of Merit to the California Attorney General. The Hammers  
25 Notice and Loppers Notice shall hereinafter collectively be referred to as the “Notices”.

26 18. None of the public prosecutors with the authority to prosecute Proposition 65  
27 violations has commenced and/or is diligently prosecuting the causes of action against  
28 Defendants based on the claims asserted in Plaintiff’s Notices.

1           19.     By placing the Products into the stream of commerce, each Defendant is a person  
2 in the course of doing business within the meaning of Health & Safety Code section 25249.11.

3           20.     Defendants knew and intended that consumers, including children, will use,  
4 touch, handle, play with, repair, maintain, or install the Products.

5           21.     Defendants knew that the Products contain the Listed Chemicals. Defendants,  
6 who are in the business of marketing various hand tools, also should have known or have  
7 constructive knowledge that the Products contain the Listed Chemicals from widespread media  
8 coverage and/or other channels of information concerning the presence of the Listed Chemicals  
9 in similar materials, such as the history of other Proposition 65 notices provided to Defendants.

10          22.     DEHP is a chemical listed by the State of California as known to cause cancer and  
11 reproductive toxicity. DBP is listed by the State of California as known to cause birth defects and  
12 other reproductive harm. Lead is listed by the State of California as known to cause cancer and  
13 birth defects or other reproductive harm.

14          23.     Defendants' Products contain sufficient quantities of the Listed Chemicals such  
15 that consumers, including children, who use, touch, handle, play with, repair, maintain, or install  
16 the Products are exposed to unsafe levels of Listed Chemicals. Listed Chemicals are present in  
17 the Products in such a way as to expose individuals to Listed Chemicals, as exposure is defined  
18 by 27 CCR section 25600.1(e): "...that results from a person's acquisition, purchase, storage,  
19 consumption, or any reasonably foreseeable use of a consumer good..." Exposure occurs  
20 through inhalation, ingestion and/or dermal contact during the reasonably foreseeable use of the  
21 Products.

22          24.     Defendants knew or should have known that the reasonably foreseeable use of the  
23 Products exposes individuals to the Listed Chemicals through inhalation, ingestion and/or dermal  
24 contact.

25          25.     Defendants failed to provide a "clear and reasonable warning" to individuals in  
26 the State of California who were or could become exposed to Listed Chemicals during the  
27 reasonably foreseeable use of the Products.

28          26.     By committing the acts alleged in this Complaint, Defendants have violated

1 California Health & Safety Code section 25249.6 et seq. by knowingly and intentionally  
2 exposing individuals to the Listed Chemicals without first giving clear and reasonable warnings  
3 to such individuals regarding the toxicity of the Listed Chemicals.

4 27. As a result of Defendants' wrongful conduct, individuals in the State of California  
5 have been exposed to the Listed Chemicals through the inhalation, ingestion and/or dermal  
6 contact during the reasonably foreseeable use of the Products without a "clear and reasonable  
7 warning", and have suffered and continue to suffer harm, each and every day since at least  
8 August 16, 2021.

9 **PRAYER FOR RELIEF**

10 **WHEREFORE**, Plaintiff prays for judgment against Defendants as follows:

11 1. That the Court, pursuant to California Health & Safety Code section 25249.7(b),  
12 assess civil penalties against Defendants in the amount of \$2,500 per day for each violation  
13 alleged herein;

14 2. That the Court, pursuant to California Health & Safety Code section 25249.7(a),  
15 preliminarily and permanently enjoin Defendants from manufacturing, distributing, or offering  
16 the Products for sale in California without providing "clear and reasonable warnings" as defined  
17 by 27 CCR section 25601;

18 3. That the Court, pursuant to California Health & Safety Code section 25249.7(a),  
19 order Defendants to take action to stop ongoing unwarned exposures to the Listed Chemicals  
20 resulting from use of Products sold by Defendants;

21 4. That the Court, pursuant to California Code of Civil Procedure section 1021.5, or  
22 any other applicable theory, grant Plaintiff's reasonable attorneys' fees and costs of suit; and

23 5. Such other and further relief as may be just and proper.

24 Dated: November 10, 2022

LAW OFFICES OF LUCAS T. NOVAK

25  
26 By: 

LUCAS T. NOVAK  
Attorney for Plaintiff, APS&EE, LLC