

FILED

JAN 16 2018

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Berg, Deputy

1 Gregory M. Sheffer, State Bar No. 173124
SHEFFER LAW FIRM
2 81 Throckmorton Ave., Suite 202
Mill Valley, CA 94941
3 Telephone: 415.388.0911
Facsimile: 415.388.9911

4 Attorneys for Plaintiff
5 SUSAN DAVIA

6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF MARIN
9 UNLIMITED CIVIL JURISDICTION

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF MARIN
13 UNLIMITED CIVIL JURISDICTION

14
15 SUSAN DAVIA,

16 Plaintiff,

17 v.

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

20 Defendants.

Case No. CIV 1700666

**JUDGMENT ON PROPOSITION 65
SETTLEMENT**

Action Filed: February 21, 2017
Trial Date: None Assigned

1 In the above-entitled action, Plaintiff Susan Davia and Defendants Central Purchasing, LLC
2 and Harbor Freight Tools USA, Inc., having agreed through their respective counsel that a
3 judgment be entered pursuant to the terms of the Settlement Agreement and stipulation to entry of
4 judgment entered into by the parties in resolution of this Proposition 65 action, and following the
5 issuance of an order approving the Parties' Settlement Agreement on this day, IT IS HEREBY
6 ORDERED, ADJUDGED AND DECREED that pursuant to Health & Safety Code § 25249.7(f)(4)
7 and Code of Civil Procedure § 664.6, judgment is hereby entered in accordance with the terms of
8 the Consent to Judgment attached hereto as Exhibit A. By stipulation of the parties, the Court will
9 retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

10 **IT IS SO ORDERED.**

11 Dated: JAN 16 2018

PAUL M. HAAKENSON

Honorable Paul Haakenson
Judge of the Superior Court

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Gregory M. Sheffer, State Bar No. 173124
SHEFFER LAW FIRM
81 Throckmorton Ave., Suite 202
Mill Valley, CA 94941
Telephone: 415.388.0911
Facsimile: 415.388.9911

Attorneys for Plaintiff
SUSAN DAVIA

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

SUSAN DAVIA,

Plaintiff,

v.

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

Defendants.

Case No. CIV 1700666

PROPOSED CONSENT JUDGMENT

Action Filed: February 21, 2017
Trial Date: None Assigned

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This settlement agreement and consent to judgment (“Agreement” or “Settlement
4 Agreement”) is entered into by and between plaintiff Susan Davia, (“Davia”) and defendants
5 Central Purchasing, LLC and Harbor Freight Tools USA, Inc. (collectively, “Harbor Freight” or
6 “Settling Defendants”) with Davia and Harbor Freight each referred to as a “Party” and collectively
7 referred to as the “Parties.”

8 **1.2 Plaintiff Susan Davia**

9 Davia is an individual residing in the State of California who seeks to promote awareness of
10 exposure to toxic chemicals and improve human health by reducing or eliminating hazardous
11 substances contained in consumer products.

12 **1.3 Harbor Freight Tools USA, Inc.**

13 Harbor Freight Tools USA, Inc. is a person in the course of doing business for purposes of
14 the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§
15 25249.6 *et seq.* (“Proposition 65”).

16 **1.4 Central Purchasing, LLC**

17 Central Purchasing, LLC is a person in the course of doing business for purposes of
18 Proposition 65.

19 **1.5 General Allegations**

20 Davia alleges that both Central Purchasing, LLC and Harbor Freight USA, Inc. participated
21 in the manufacture (or other acquisition), distribution and/or sale, in the State of California, of
22 certain hand tools and utility hooks that exposed users to di(2-ethylhexyl)phthalate (“DEHP”)
23 without first providing any “clear and reasonable warning” under Proposition 65. DEHP is listed
24 as a reproductive toxin pursuant to Proposition 65. DEHP shall hereinafter be referred to as the
25 “Listed Chemical.”
26

27 ///

28 ///

1 **1.6 Notice of Violation**

2 On May 5, 2016, Davia served Central Purchasing, LLC, Harbor Freight Tools USA, Inc. and
3 various public enforcement agencies with a document entitled “60-Day Notice of Violation” that
4 provided public enforcers and the noticed entities with notice of alleged violations of Health &
5 Safety Code § 25249.6 for failing to warn consumers of the presence of DEHP, a toxic chemical
6 found in Covered Products sold in California. Central Purchasing, LLC and Harbor Freight Tools
7 USA, Inc. both received the May 5, 2016, 60-Day Notice of Violation. Each Party represents that, as
8 of the date it executes this Agreement, it is not aware of any public enforcer that is diligently
9 prosecuting a Proposition 65 enforcement action related to DEHP in the Covered Products, as
10 identified in the 60-Day Notice.

11 **1.7 Complaint**

12 On February 21, 2017, Davia, acting in the interest of the general public in California, filed a
13 Complaint in the Superior Court of the State of California for the County of Marin, Case No. CIV
14 1700666 alleging violations by Central Purchasing, LLC, Harbor Freight Tools USA, Inc. and Does
15 1-150 of Health & Safety Code § 25249.6 based, *inter alia*, on the alleged exposures to DEHP
16 contained in certain hand tools and utility hook products (hereafter “Complaint” or “Action”). On
17 March 23, 2017, Settling Defendants filed an answer denying those claims and asserting affirmative
18 defenses.

19 **1.8 No Admission**

20 This Agreement resolves claims that are denied and disputed by Settling Defendants.
21 Settling Defendants deny the material factual and legal allegations contained in the Complaint,
22 maintains that it did not knowingly or intentionally expose California consumers to the Listed
23 Chemical through the reasonably foreseeable use of the Covered Products and otherwise contends
24 that, all Covered Products each has manufactured, distributed and/or sold in California have been
25 and are in compliance with all applicable laws. Nothing in this Agreement shall be construed as an
26 admission by Settling Defendants of any fact, finding, issue of law, or violation of law, nor shall
27 compliance with this Agreement constitute or be construed as an admission by Settling Defendants
28 of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by

1 Settling Defendants. However, notwithstanding the foregoing, this section shall not diminish or
2 otherwise affect Settling Defendants' obligations, responsibilities, and duties under this Agreement.

3 **1.9 Consent to Jurisdiction**

4 For purposes of this Agreement only, the Parties stipulate that the Marin County Superior
5 Court has jurisdiction over Settling Defendants as to the claims asserted by Davia in the Complaint
6 filed in this action and has jurisdiction to enforce the provisions of this Agreement.

7
8 **2. DEFINITIONS**

9 **2.1** The term "Products" or "Covered Products" shall mean all Pittsburgh spring
10 clamps (including, but not limited to, SKUs 39529 and 39569), vertical toggle clamps (including, but
11 not limited to, SKU 96238), Storehouse utility hooks (including, but not limited to, SKUs 65590 and
12 47751) and Storehouse storage hooks (including, but not limited to, SKU 67587) manufactured
13 and/or distributed by Central Purchasing, LLC or Harbor Freight Tools USA, Inc.

14 **2.2** The term "Phthalate Free" Covered Products shall mean every component of any
15 Covered Product containing less than or equal to 1,000 parts per million ("ppm") of DEHP, DBP,
16 DINP, DIDP, DnHP and BBP as determined by a minimum of duplicate quality controlled test
17 results achieved by an accredited U.S. laboratory using Environmental Protection Agency ("EPA")
18 testing methodologies 3580A and 8270C, or equivalent methodologies utilized by Federal or State
19 agencies for the purpose of determining phthalate content in a solid substance.

20 **2.3** The term "Effective Date" shall mean the date judgment is entered in this Action.

21 **3. INJUNCTIVE RELIEF**

22 **3.1 Reformulation Commitment**

23 Harbor Freight represents that after receipt of Davia's Notice, it commenced efforts to
24 reduce or remove the presence of phthalates in its Covered Products. By no later than June 1, 2017,
25 Harbor Freight shall take reasonable steps to ensure all newly manufactured Covered Products are
26 "Phthalate Free." By no later than the Effective Date, Defendant shall no longer sell any Covered
27 Product in California, or deliver any Covered Product to a consumer with a shipping address in
28 California, unless it is "Phthalate Free."

1 **4. MONETARY PAYMENTS**

2 **4.1 Civil Penalty**

3 As a condition of settlement of all the claims referred to in this Agreement, Harbor Freight
4 shall pay a total of \$7,500 in civil penalties in accordance with California Health & Safety Code §
5 25249.12(c)(1) & (d).

6 **4.2 Reimbursement of Davia’s Fees and Costs**

7 The Parties acknowledge that Davia and her counsel offered to resolve this dispute without
8 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
9 issue to be resolved after the material terms of the agreement had been settled. Harbor Freight then
10 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
11 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to
12 Davia and her counsel under general contract principles and the private attorney general doctrine
13 codified at California Code of Civil Procedure section 1021.5, for all work performed in this matter,
14 except fees that may be incurred on appeal. Under these legal principles, Harbor Freight shall pay
15 the amount of \$42,000 for reasonable fees and costs incurred by Davia in connection with this
16 action, subject to the Court’s approval.

17 **4.3 Payment Procedures**

18 Within 15 days of entry of judgment in this action, Harbor Freight shall deliver to counsel
19 for Plaintiff the following payments required by this Agreement:

- 20 1. a civil penalty check payable to “OEHHA” (Memo line “Prop. 65 Penalties, 2016-
21 00407”), in the amount of \$4,875;
- 22 2. a civil penalty check payable to “Susan Davia” (Memo line “Prop. 65 Penalties, 2016-
23 00407”) in the amount of \$1,625; and
- 24 3. a check payable to “Sheffer Law Firm” (Memo line “Prop. 65 Penalties, 2016-00407”) in
25 the amount of \$42,000.

26 The above payments shall be delivered to the Sheffer Law Firm at the following address:

27 Sheffer Law Firm
28 Attn: Proposition 65 Controller

1 81 Throckmorton Ave., Suite 202
2 Mill Valley, CA 94941

3 **4.4 Issuance of 1099 Forms** - Promptly after issuance of the payments required by the
4 Agreement, Harbor Freight shall issue three separate 1099 forms, as follows:

5 (a) The first 1099 shall be issued to the Office of Environmental Health Hazard
6 Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount
7 paid pursuant to Sections 4.1 and 4.2;

8 (b) The second 1099 shall be issued to Davia in the amount paid pursuant to
9 Sections 4.1 and 4.2, whose address and tax identification number shall be furnished
10 upon request; and

11 (c) The third 1099 shall be issued to the Sheffer Law Firm (EIN: 55-08-58910)
12 in the amount paid pursuant to Section 4.2 and Section 4.3.

13 **5. CLAIMS COVERED AND RELEASED**

14 **5.1 Davia's Release of Harbor Freight**

15 5.1.1 This Consent Judgment is a full, final, and binding resolution between Davia and
16 Defendants and each of their past and present parents, affiliates, subsidiaries, divisions,
17 predecessors, successors, and assigns, and each of their respective owners, officers, directors, board
18 members, trustees, shareholders, managers, members, employees, agents, insurers, attorneys,
19 auditors, accountants, experts, stockholders, representatives, partners, and any other persons acting
20 on their behalf ("Released Parties") concerning or in any way relating to the claims for violation of
21 Proposition 65 that have been or could have been asserted against Defendants up through the
22 Effective Date, provided that such claims are based on or relate to the facts alleged in the
23 Complaint. Upon entry of this Consent Judgment by the Court, going forward, Defendant's
24 compliance with the terms of this Consent Judgment shall be deemed to constitute compliance with
25 Proposition 65 by Defendant or any other Released Party with respect to DEHP in Covered
26 Products manufactured, sold, or distributed for sale in California by Defendant.

27 5.1.2 In further consideration of the promises and agreements herein contained,
28 Davia, acting on her own behalf and in the public interest, releases Central Purchasing, LLC and

1 Harbor Freight Tools USA, Inc. from all claims for violations of Proposition 65 with respect to the
2 Listed Chemical in the Covered Products manufactured, distributed, sold and/or offered for sale
3 by Harbor Freight up through the Effective Date.

4 5.1.3 Davia, on her own behalf, also provides a general release herein which shall
5 be effective as a full and final accord and satisfaction, as a bar to all claims, actions and causes of
6 action, of any nature, character or kind, known or unknown, suspected or unsuspected, arising out
7 of the subject matter of the Notice as to Covered Products manufactured, distributed or sold by
8 Central Purchasing, LLC and Harbor Freight Tools USA, Inc. prior to July 1, 2017. Davia
9 acknowledges that she is familiar with section 1542 of the California civil code, which provides as
10 follows:

11 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
12 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
13 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
14 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
15 SETTLEMENT WITH THE DEBTOR.

16 Davia expressly waives and relinquishes any and all rights and benefits that she may have
17 under, or which may be conferred on her by the provisions of Section 1542 of the California Civil
18 Code as well as under any other state or federal statute or common law principle of similar effect,
19 to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released
20 matters. In furtherance of such intention, excepting Section 4.2, the release hereby given shall be
21 and remain in effect as a full and complete release notwithstanding the discovery or existence of
22 any such additional or different claims or facts arising out of the released matters.

23 The Parties further understand and agree that this Section 5.1 release shall not extend
24 upstream to any entities, other than Harbor Freight, that manufactured the Covered Products or
25 any component parts thereof, or any distributors or suppliers who sold the Covered Products or
26 any component parts thereof to Harbor Freight.

27 **5.2 Harbor Freight's Release of Davia**

28 The Release by Davia is mutual. Central Purchasing, LLC and Harbor Freight Tools USA,
Inc., each on behalf of itself, its past and current agents, representatives, attorneys, successors,

1 and/or assignees, hereby waives any and all claims against Davia and her attorneys and other
2 representatives, for any and all actions taken or statements made (or those that could have been
3 taken or made) by Davia and her attorneys and other representatives, whether in the course of
4 investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with
5 respect to the Covered Products. Central Purchasing, LLC and Harbor Freight Tools USA, Inc. each
6 acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as
7 follows:

8 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
9 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
10 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
11 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
12 SETTLEMENT WITH THE DEBTOR.

13 Central Purchasing, LLC and Harbor Freight Tools USA, Inc. each expressly waives and
14 relinquishes any and all rights and benefits which it may have under, or which may be conferred on
15 him by the provisions of Section 1542 of the California Civil Code as well as under any other state
16 or federal statute or common law principle of similar effect, to the fullest extent that he may
17 lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such
18 intention, the release hereby given shall be and remain in effect as a full and complete release
19 notwithstanding the discovery or existence of any such additional or different claims or facts
20 arising out of the released matters.

21 **6. SEVERABILITY**

22 If, subsequent to court approval of this Agreement, any of the provisions of this Agreement
23 are determined by a court to be unenforceable, so long as all parties agree, the validity of the
24 enforceable provisions remaining shall not be adversely affected, unless the Court finds that any
25 unenforceable provision is not severable from the remainder of the Agreement.

26 **7. COURT APPROVAL**

27 This Agreement is effective upon execution but must also be approved by the Court. The
28 parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion is required
to obtain judicial approval of this Agreement and such motion will also include a request for entry

1 of judgment upon this Agreement, once approved. In furtherance of obtaining such approval,
2 Davia and Harbor Freight, and their respective counsel, agree to mutually employ their best efforts
3 to support the entry of this Agreement as a settlement agreement and obtain approval of the
4 Agreement - sufficient to render an order approving this agreement - by the Court in a timely
5 manner.

6 If this Agreement is not approved by the Court in its entirety, the Parties shall meet and
7 confer to determine whether to modify the terms of the Agreement and to resubmit it for approval.
8 In meeting and conferring, the Parties agree to undertake any actions reasonably necessary to
9 amend and/or modify this Agreement in order to further the mutual intention of the Parties in
10 entering into this Agreement.

11 **8. GOVERNING LAW**

12 The terms of this Agreement shall be governed by the laws of the State of California.

13 **9. NOTICES**

14 When any Party is entitled to receive any notice under this Agreement, the notice shall be
15 sent by FedEx (or other tracked delivery service) or electronic mail to the following:

16 For Central Purchasing, LLC and Harbor Freight Tools USA, Inc., to:

17 Tammy Stafford, Assoc. General Counsel
18 Central Purchasing, LLC
19 Harbor Freight Tools USA, Inc.
20 26541 Agoura Rd.
Calabasas, CA 91302

21 With a copy to their counsel:

22 Peter Hsiao
23 Navi Dhillon, Esq.
24 Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105
NDhillon@mofo.com

25
26 For Davia to:

27 Proposition 65 Coordinator
28 Sheffer Law Firm
81 Throckmorton Ave., Suite 202

1 Mill Valley, CA 94941

2 Any Party may modify the person and address to whom the notice is to be sent by sending each
3 other Party notice by certified mail and/or other verifiable form of written communication.

4 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

5 Davia agrees to comply with the reporting form requirements referenced, in California Health &
6 Safety Code §25249.7(f).

7 **11. MODIFICATION**

8 This Agreement may be modified only by a written agreement of the Parties approved by
9 the Court or an order of the Court after a successful noticed motion of any Party. Any Party
10 seeking to modify this Agreement shall attempt in good faith to meet and confer with the other
11 Party prior to filing a motion to modify the Agreement.

12 **12. ENTIRE AGREEMENT**

13 This Agreement contains the sole and entire agreement and understanding of the Parties
14 with respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
15 commitments, and understandings related hereto. No representations, oral or otherwise, express or
16 implied, other than those contained herein have been made by any Party hereto. No other
17 agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind
18 any of the Parties. No supplementation, modification, waiver, or termination of this Agreement
19 shall be binding unless executed in writing by the Party to be bound. No waiver of any of the
20 provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other
21 provisions whether or not similar, nor shall such waiver constitute a continuing waiver
22

23 **13. NEUTRAL CONSTRUCTION**

24 Both Parties and their counsel have participated in the preparation of this Agreement and
25 this Agreement is the result of the joint efforts of the Parties. This Agreement was subject to
26 revision and modification by the Parties and has been accepted and approved as to its final form by
27 all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Agreement
28 shall not be interpreted against any Party as a result of the manner of the preparation of this

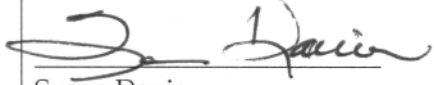
1 Agreement. Each Party to this Agreement agrees that any statute or rule of construction providing
2 that ambiguities are to be resolved against the drafting Party should not be employed in the
3 interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil Code
4 Section 1654.

5 **14. COUNTERPARTS, FACSIMILE SIGNATURES**

6 This Agreement may be executed in counterparts and by facsimile or portable document
7 format (PDF), each of which shall be deemed an original, and all of which, when taken together,
8 shall constitute one and the same document.

9 **15. AUTHORIZATION**

10 The undersigned parties and their counsel are authorized to execute this Agreement on
11 behalf of their respective Parties and have read, understood, and agree to all of the terms and
12 conditions of this Agreement.

14 Dated: October __, 2017 15 _____ 16 Marc Friedman, General Counsel Central 17 Purchasing, LLC 18 Harbor Freight Tools USA, Inc.	14 Dated: October ²⁶ __, 2017 15  16 Susan Davia
--	---

19
20
21
22
23
24
25
26
27
28

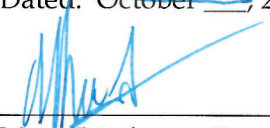
1 Agreement. Each Party to this Agreement agrees that any statute or rule of construction providing
2 that ambiguities are to be resolved against the drafting Party should not be employed in the
3 interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil Code
4 Section 1654.

5 **14. COUNTERPARTS, FACSIMILE SIGNATURES**

6 This Agreement may be executed in counterparts and by facsimile or portable document
7 format (PDF), each of which shall be deemed an original, and all of which, when taken together,
8 shall constitute one and the same document.

9 **15. AUTHORIZATION**

10 The undersigned parties and their counsel are authorized to execute this Agreement on
11 behalf of their respective Parties and have read, understood, and agree to all of the terms and
12 conditions of this Agreement.

14 Dated: ^{November 8,} October __, 2017 15  16 _____ 17 Marc Friedman, General Counsel Central 18 Purchasing, LLC Harbor Freight Tools USA, Inc.	Dated: October __, 2017 _____ Susan Davia
---	---

19
20
21
22
23
24
25
26
27
28