

FILED
Superior Court of California
County of Los Angeles

AUG 01 2018 *jm*

Sherri R. Carter, Executive Officer/Clerk
By *Jontae Marquez*, Deputy
Jontae M. Marquez

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JUN 11 2018
FILING WINDOW

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7 Attorney for Plaintiff, APS&EE, LLC

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)
14) v.)
15) HARBOR FREIGHT TOOLS USA, INC., a)
16) corporation, and DOES 1 through 100,)
17) inclusive,)
18) Defendants.)

CASE NO. BC699302

~~PROPOSED~~ CONSENT JUDGMENT

Judge: Hon. Barbara A. Meiers
Dept.: 12
Compl. Filed: March 23, 2018

Unlimited Jurisdiction

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1 **1. RECITALS**

2 **1.1 The Parties**

3 **1.1.1** This Consent Judgment (“Consent Judgment”) is entered into by and
4 between APS&EE, LLC (“APS&EE”) and Harbor Freight Tools USA, Inc. (“Harbor Freight”).
5 APS&EE and Harbor Freight shall hereinafter collectively be referred to as the “Parties.”

6 **1.1.2** APS&EE is an organization based in California with an interest in
7 protecting the environment, improving human health and the health of ecosystems, and
8 supporting environmentally sound practices, which includes promoting awareness of exposure to
9 toxic chemicals and reducing exposure to hazardous substances found in consumer products.

10 **1.1.3** Harbor Freight is a person in the course of doing business as the term is
11 defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition 65”).

12 **1.2 Allegations**

13 **1.2.1** APS&EE alleges that Harbor Freight sold screwdriver sets, including
14 Impact Screwdriver Set #37530 (hereinafter collectively the “Products”) in the State of
15 California causing users in California to be exposed to hazardous levels of Di (2-ethylhexyl)
16 Phthalate (“DEHP”), without providing “clear and reasonable warnings”, in violation of
17 Proposition 65. DEHP is potentially subject to Proposition 65 warning requirements because it is
18 listed as known to cause cancer and reproductive toxicity.

19 **1.2.2** On December 1, 2017, APS&EE sent a Sixty-Day Notice of Violation (the
20 “Notice”) to Harbor Freight and the various public enforcement agencies regarding the alleged
21 violation of Proposition 65 with respect to the Products. On March 23, 2018, Plaintiff, acting in
22 the public interest, filed the instant action (the “Complaint”) in the Superior Court for the County
23 of Los Angeles, alleging violations of Proposition 65.

24 **1.3 No Admissions**

25 Harbor Freight denies all allegations in APS&EE’s Notice and Complaint and maintains
26 that the Products have been, and are, in compliance with all laws, and that Harbor Freight has not
27 violated Proposition 65. This Consent Judgment shall not be construed as an admission of
28 liability by Harbor Freight but to the contrary as a compromise of claims that are expressly

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1 contested and denied. However, nothing in this section shall affect the Parties' obligations,
2 duties, and responsibilities under this Consent Judgment.

3 **1.4 Compromise**

4 The Parties enter into this Consent Judgment in order to resolve the controversy
5 described above in a manner consistent with prior Proposition 65 settlements and consent
6 judgments that were entered in the public interest and to avoid prolonged and costly litigation
7 between them.

8 **1.5 Effective Date**

9 The "Effective Date" shall be the date this Consent Judgment is approved and entered by
10 the Court.

11 **2. INJUNCTIVE RELIEF**

12 **2.1 Reformulation Standard**

13 Within ninety (90) days of the Effective Date, Harbor Freight shall not distribute for sale
14 in California, sell or offer for sale the Products in California unless (a) the Product contains no
15 more than 1000 parts per million (0.1%) of DEHP ("Reformulated Product"), or (b) the Product
16 is distributed, sold, or offered for sale with a clear and reasonable warning as described below in
17 Section 2.2.

18 **2.2 Proposition 65 Warnings**

19 **2.2.1** Whenever a clear and reasonable warning is required under Section 2.1,
20 Harbor Freight shall comply with 27 Cal. Code Regs. § 25601, et seq. (operative Aug. 30, 2018)
21 and use a warning with the capitalized and emboldened wording substantially similar to the
22 following:

23 **WARNING:** This product can expose you to DEHP which is known to the State
24 of California to cause cancer and birth defects or other
25 reproductive harm. For more information go to
www.P65Warnings.ca.gov.

26 The warning shall be accompanied by a symbol consisting of a black exclamation point
27 in a yellow equilateral triangle with a bold black outline. Where the label for the product is not
28 printed using the color yellow, the symbol may be printed in black and white. The symbol shall

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1 be placed to the left of the text of the warning, in a size no smaller than the height of the word
2 "WARNING".

3 **2.2.2** Each unit shall carry said warning directly on each unit or its label or
4 package, with such conspicuousness as compared with other words, statements or designs as to
5 render it likely to be read and understood by an ordinary consumer prior to sale. A Product that is
6 sold by Harbor Freight on the internet shall also provide the warning message by a clearly
7 marked hyperlink on the product display page, or otherwise prominently displayed to the
8 purchaser before the purchaser completes his or her purchase of the Product. For Products that
9 Harbor Freight provides for a downstream retailer to sell on the internet, Harbor Freight shall
10 include an instruction that the retailer provide the warning message by a clearly marked
11 hyperlink on the product display page, or otherwise prominently displayed to the purchaser
12 before the purchaser completes his or her purchase of the Product.

13 **3. PAYMENTS**

14 **3.1 Civil Penalty Pursuant To Proposition 65**

15 In settlement of all claims referred to in this Consent Judgment, Harbor Freight shall pay
16 a total civil penalty of four thousand dollars (\$4,000.00) to be apportioned in accordance with
17 *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$3,000.00) for State of
18 California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining
19 25% (\$1,000.00) for APS&EE.

20 Harbor Freight shall issue two (2) checks for the civil penalty: (1) a check or money order
21 made payable to "OEHHA" in the amount of \$3,000.00; and (2) a check or money order made
22 payable to "Law Offices of Lucas T. Novak" in the amount of \$1,000.00. Harbor Freight shall
23 remit the payments within five (5) business days of the Effective Date, to:

24 Lucas T. Novak, Esq.
25 LAW OFFICES OF LUCAS T. NOVAK
26 8335 W Sunset Blvd., Suite 217
27 Los Angeles, CA 90069

28 **3.2 Reimbursement Of APS&EE's Fees And Costs**

29 Harbor Freight shall reimburse APS&EE's reasonable experts' and attorney's fees and

1 costs incurred in prosecuting the instant action, for all work performed through execution of this
2 Consent Judgment. Accordingly, Harbor Freight shall issue a check or money order made
3 payable to "Law Offices of Lucas T. Novak" in the amount of twenty-three thousand dollars
4 (\$23,000.00). Harbor Freight shall remit the payment within five (5) business days of the
5 Effective Date, to:

6 Lucas T. Novak, Esq.
7 LAW OFFICES OF LUCAS T. NOVAK
8 8335 W Sunset Blvd., Suite 217
9 Los Angeles, CA 90069

9 **4. RELEASES**

10 **4.1 APS&EE's Release Of Harbor Freight**

11 APS&EE, acting in its individual capacity, and in the public interest, in consideration of
12 the promises and monetary payments contained herein, hereby releases Harbor Freight, its
13 parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys,
14 successors and assignees, as well as its downstream distributors, retailers, and franchisees
15 (collectively "Released Parties"), from any alleged Proposition 65 violation claims asserted in
16 APS&EE's Notice or Complaint regarding the Products sold and/or offered for sale by Harbor
17 Freight in California before and up to ninety days (90) after the Effective Date.

18 **4.2 Harbor Freight's Release Of APS&EE**

19 Harbor Freight, its parents, subsidiaries, shareholders, directors, members, officers,
20 employees, attorneys, successors and assignees, and on behalf of the Released Parties, by this
21 Consent Judgment, waives all rights to institute any form of legal action against APS&EE, its
22 shareholders, directors, members, officers, employees, attorneys, experts, successors and
23 assignees for actions or statements made or undertaken, whether in the course of investigating
24 claims or seeking enforcement of Proposition 65 against Harbor Freight in this matter.

25 **4.3 Waiver Of Unknown Claims**

26 Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil
Code which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER

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1 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
2 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
3 OR HER SETTLEMENT WITH THE DEBTOR.”

4 Each of the Parties waives and relinquishes any right or benefit it has or may have under
5 Section 1542 of California Civil Code or any similar provision under the statutory or non-
6 statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights
7 and benefits. The Parties acknowledge that each may subsequently discover facts in addition to,
8 or different from, those that it believes to be true with respect to the claims released herein. The
9 Parties agree that this Consent Judgment and the releases contained herein shall be and remain
10 effective in all respects notwithstanding the discovery of such additional or different facts.

11 **5. COURT APPROVAL**

12 Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed
13 Motion for Approval and Entry of Consent Judgment in the above-entitled Court. This Consent
14 Judgment is not effective until it is approved and entered by the Court. It is the intention of the
15 Parties that the Court approve this Consent Judgment, and in furtherance of obtaining such
16 approval, the Parties and their respective counsel agree to mutually employ their best efforts to
17 support the entry of this agreement in a timely manner, including cooperating on drafting and
18 filing any papers in support of the required motion for judicial approval.

19 **6. SEVERABILITY**

20 Should any part or provision of this Consent Judgment for any reason be declared by a
21 Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue
22 in full force and effect.

23 **7. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the State of
25 California.

26 **8. NOTICES**

27 All correspondence and notice required to be provided under this Consent Judgment shall
28 be in writing and delivered personally or sent by first class or certified mail addressed as follows:

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1 TO HARBOR FREIGHT:

2 Bruce Nye, Esq.
3 Scali Rasmussen
4 1901 Harrison St., 14th Floor
5 Oakland, CA 94612

TO APS&EE:

Lucas Novak, Esq.
Law Offices of Lucas T. Novak
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

6 **9. COUNTERPARTS**

7 This Consent Judgment may be executed in counterparts, each of which shall be deemed
8 an original, and all of which, when taken together, shall constitute the same document. Execution
9 and delivery of this Consent Judgment by e-mail, facsimile, or other electronic means shall
10 constitute legal and binding execution and delivery. Any photocopy of the executed Consent
11 Judgment shall have the same force and effect as the originals.

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1 **10. AUTHORIZATION**

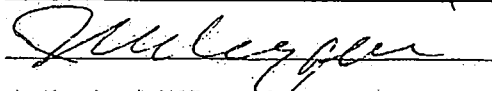
2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions
4 of this Consent Judgment. Each Party warrants to the other that it is free to enter into this
5 Consent Judgment and is not subject to any conflicting obligation that will or might prevent or
6 interfere with the execution or performance of this Consent Judgment by said Party.
7

8 **AGREED TO:**

9 Date:

06/7/18

10 By:



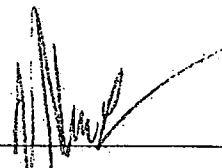
Authorized Officer of APS&EE, LLC

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13 **AGREED TO:**

14 Date:



15 By:

Marc Friedman

Authorized Officer of Harbor Freight Tools USA, Inc.

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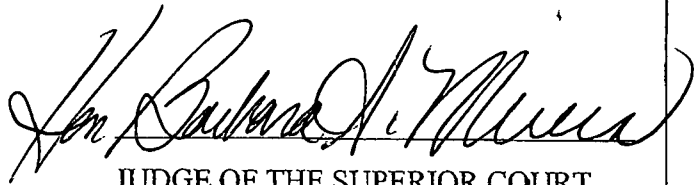
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19 **IT IS SO ORDERED.**

20 Dated:

8/6/18



JUDGE OF THE SUPERIOR COURT

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8/24/2018