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FILED
Superior Court of California
County of Los Angeles

OCT 17 2022

Sherril R. Carter, Executive Officer/Clerk
By  Deputy
Jamie Jones

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

10 APS&EE, LLC, a limited liability company,)

11 Plaintiff,)

12 v.)

13 HARBOR FREIGHT TOOLS USA, INC., a)
14 corporation, and DOES 1 through 100,)
15 inclusive,)

16 Defendants.)

CASE NO. 22STCV12817

~~PROPOSED~~ CONSENT JUDGMENT

Judge: Hon. Gail Killefer

Dept.: 37

Compl. Filed: April 18, 2022

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 (“Plaintiff”) and Harbor Freight Tools USA, Inc. (“Harbor Freight”).
5 Plaintiff and Harbor Freight shall hereinafter collectively be referred to as the “Parties.”

6 **1.1.2** Plaintiff 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** Plaintiff alleges that Harbor Freight is a person in the course of doing
11 business as the term is defined in California *Health & Safety Code* section 25249.6 et seq.
12 (“Proposition 65”).

13 **1.2 Allegations**

14 **1.2.1** Plaintiff alleges that Harbor Freight sold the Pittsburgh brand of bolt
15 cutters, including item 60683, 18”, 7-92363-60683-7 (hereinafter, the “Products”) in the State of
16 California causing users in California to be exposed to hazardous levels of Di (2-ethylhexyl)
17 Phthalate (“DEHP”) and Di-n-Butyl Phthalate (“DBP”, and collectively with DEHP, the “Listed
18 Chemicals”), without providing “clear and reasonable warnings”, in violation of Proposition 65.
19 DEHP is a chemical known to the state to cause cancer and reproductive toxicity, and DBP as
20 known to cause birth defects and other reproductive harm, and therefore each chemical is subject
21 to Proposition 65 warning requirements.

22 **1.2.2** On February 8, 2022, Plaintiff sent a Sixty-Day Notice of Violation (the
23 “Notice”) to Harbor Freight and the various public enforcement agencies regarding the alleged
24 violation of Proposition 65 with respect to the Products. On April 18, 2022, Plaintiff, acting in
25 the public interest, filed the instant action (the “Complaint”) in the Superior Court for the County
26 of Los Angeles, alleging violations of Proposition 65.

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1 **1.3 No Admissions**

2 Harbor Freight denies all allegations in Plaintiff's Notice and Complaint and maintains
3 that the Products have been, and are, in compliance with all laws, and that Harbor Freight has not
4 violated Proposition 65. This Consent Judgment shall not be construed as an admission of
5 liability by Harbor Freight but to the contrary as a compromise of claims that are expressly
6 contested and denied. However, nothing in this section shall affect the Parties' obligations,
7 duties, and responsibilities under this Consent Judgment.

8 **1.4 Compromise**

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

13 **1.5 Jurisdiction and Venue**

14 For purposes of this Consent Judgment only, the Parties stipulate that the above-entitled
15 Court has jurisdiction over Harbor Freight as to the allegations in the Complaint, that venue is
16 proper in Los Angeles County, and that this Court has jurisdiction to enter and enforce the
17 provisions of this Consent Judgment pursuant to California Code of Civil Procedure
18 Section 664.6 and Proposition 65.

19 **1.6 Effective Date**

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

22 **2. INJUNCTIVE RELIEF**

23 **2.1 Reformulation Standard**

24 Not later than sixty (60) days after the Effective Date, Harbor Freight shall not distribute
25 for sale in California, sell or offer for sale the Products in California unless (a) the Product
26 contains not more than 1,000 parts per million (0.1%) of DEHP or DBP ("Reformulated
27 Product") when analyzed pursuant to U.S. Environmental Protection Agency testing
28 methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies

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1 for the purpose of determining the DEHP or DBP content in a solid substance, or (b) the Product
2 is distributed, sold, or offered for sale with a clear and reasonable warning as described below in
3 Section 2.2.

4 **2.2 Clear And Reasonable Warnings**

5 For any Products that are not Reformulated Products, such Products shall be
6 accompanied by a clear and reasonable warning. Harbor Freight shall provide a warning
7 statement substantially similar to either the following long-form or short-form warning.

8 Long-Form Warning:

9 **WARNING:** This product can expose you to chemicals, including [Di (2-
10 ethylhexyl) Phthalate] [and] [Di-n-Butyl Phthalate]¹, which are
11 known to the State of California to cause [cancer and] birth defects
12 or other reproductive harm. For more information go to
13 www.P65Warnings.ca.gov.

12 Short Form Warning:

13 **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov

14 The warning shall be accompanied by a symbol consisting of a black exclamation point
15 in a yellow equilateral triangle with a bold black outline. Where the label for the product is not
16 printed using the color yellow, the symbol may be printed in black and white. The symbol shall
17 be placed to the left of the text of the warning, in a size no smaller than the height of the word
18 “WARNING”.

19 The Products shall carry said warning directly on each unit, label, or package, with such
20 conspicuousness as compared with other words, statements or designs as to render it likely to be
21 read and understood by an ordinary consumer prior to sale. A Product that is sold by Harbor
22 Freight on the internet to persons located in California shall also provide the warning message by
23 a clearly marked hyperlink on the product display page, or otherwise prominently displayed to
24 the purchaser before the purchaser completes his or her purchase of the Product. For Products
25

26
27 ¹ In accordance with 27 Cal. Code Regs., section 25603, operative Aug. 30, 2018, the warning must expressly
28 identify at least one of the Listed Chemicals present in the Product, as applicable, and the content of the warning
shall include the types of harm it is known to cause (e.g., cancer or reproductive harm, or both). DEHP is listed as
known to cause cancer and birth defect or other reproductive harm, while DBP is listed as known to cause birth
defects or other reproductive harm.

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1 that Harbor Freight provides for a downstream entity to sell on the internet, Harbor Freight shall
2 include an instruction that the entity comply with the warning requirements of this section.

3 **2.3 Additional Warnings Required or Permitted By Law or Regulation**

4 In addition to the warning requirements set forth in Section 2.2 above, Harbor Freight
5 may comply with this Consent Judgment by using any other warning and transmission method(s)
6 set forth in 27 Cal. Code Regs. §§ 25601, 25602, 25603, et seq., and amended subsequently
7 thereafter that are applicable to the Products.

8 In the event that Proposition 65 warnings for DEHP or DBP should no longer be required
9 by law, Harbor Freight shall have no further obligations pursuant to this Consent Judgment.

10 **2.4 Sell-Through**

11 The injunctive requirements of Section 2 shall not apply to Products Harbor Freight has
12 distributed to California retailers as of sixty (60) days after the Effective Date, which Products
13 are subject to the releases provided in Section 4.1.

14 **3. PAYMENTS**

15 **3.1 Civil Penalty Pursuant To Proposition 65**

16 In settlement of all claims referred to in this Consent Judgment, Harbor Freight shall pay
17 a total civil penalty of twelve thousand five hundred dollars (\$12,500.00) to be apportioned in
18 accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$9,375.00)
19 for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the
20 remaining 25% (\$3,125.00) for Plaintiff.

21 Harbor Freight shall issue two (2) checks for the civil penalty: (1) a check or money order
22 made payable to “OEHHA” in the amount of \$9,375.00; and (2) a check or money order made
23 payable to “APS&EE, LLC” in the amount of \$3,125.00. Harbor Freight shall remit the
24 payments within five (5) business days of the Effective Date, to:

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

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1 Law Offices of Lucas T. Novak shall provide a W-9 form for "APS&EE, LLC" prior to
2 the due date of any payments made hereunder and understands that no payments can be issued
3 unless and until Harbor Freight receives such W-9 Form. Upon receipt of the above civil penalty
4 checks, Law Offices of Lucas T. Novak shall be solely responsible for forwarding the respective
5 payments to OEHHA and Plaintiff.

6 **3.2 Reimbursement Of Plaintiff's Fees And Costs**

7 Harbor Freight shall reimburse Plaintiff's reasonable experts' and attorney's fees and
8 costs incurred in prosecuting the instant action for all work performed through execution and
9 approval of this Consent Judgment, in the amount of fifteen thousand dollars (\$15,000.00).
10 Accordingly, in addition to the civil penalty described above in Section 3.1, Harbor Freight shall
11 issue a check or money order made payable to "Law Offices of Lucas T. Novak" in the amount
12 of fifteen thousand dollars (\$15,000.00) within five (5) business days of the Effective Date, to:

13 Lucas T. Novak, Esq.
14 LAW OFFICES OF LUCAS T. NOVAK
15 8335 W Sunset Blvd., Suite 217
16 Los Angeles, CA 90069

17 Law Offices of Lucas T. Novak shall provide a W-9 form for "Law Offices of Lucas T.
18 Novak" prior to the due date of any payments made hereunder and understands that no payments
19 can be issued unless and until Harbor Freight receives such W-9 Form.

20 **4. RELEASES**

21 **4.1 Plaintiff's Release Of Harbor Freight**

22 Plaintiff, acting in its individual capacity, and in the public interest, in consideration of
23 the promises and monetary payments contained herein, hereby releases Harbor Freight, its
24 parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys,
25 successors and assignees, as well as its downstream distributors, retailers, and franchisees
26 (collectively "Released Parties"), from any alleged Proposition 65 violation claims asserted in
27 Plaintiff's Notice or Complaint regarding failure to warn about exposure to the Listed Chemicals
28 from the Products distributed by Harbor Freight before and up to sixty (60) days after the
Effective Date.

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1 **4.2 Harbor Freight's Release Of Plaintiff**

2 Harbor Freight, by this Consent Judgment, waives all rights to institute any form of legal
3 action against Plaintiff, its shareholders, directors, members, officers, employees, attorneys,
4 experts, successors and assignees for actions or statements made or undertaken, whether in the
5 course of investigating claims or seeking enforcement of Proposition 65 against Harbor Freight
6 in this matter. If any Released Party should institute any such action, then Plaintiff's release of
7 said Released Party in this Consent Judgment shall be rendered void and unenforceable.

8 **4.3 Waiver Of Unknown Claims**

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

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

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

22 **4.4 Compliance with Proposition 65**

23 Compliance with the terms of this Consent Judgment by Harbor Freight shall constitute
24 compliance with Proposition 65 by the Released Parties with respect to any alleged failure to
25 warn about DEHP and/or DBP from the Products manufactured, distributed, or sold by Harbor
26 Freight after the Effective Date, except as to those downstream entities that sell on the internet
27 but fail to provide the internet warning as instructed by Harbor Freight.

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1 **5. COURT APPROVAL**

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

9 **6. SEVERABILITY**

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

13 **7. GOVERNING LAW**

14 The terms of this Consent Judgment shall be governed by the laws of the State of
15 California.

16 **8. NOTICES**

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

<p>19 TO HARBOR FREIGHT:</p> <p>20 Anne Marie Ellis, Esq. 21 BUCHALTER 22 18400 Von Karman Ave, Suite 800 Irvine, CA 92612-0514</p>	<p>TO PLAINTIFF:</p> <p>Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069</p>
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23 Either Party may provide the other with an alternative name and/or address for
24 correspondence and notice, and the other side will comply with that change request.

25 **9. COUNTERPARTS**

26 This Consent Judgment may be executed in counterparts, each of which shall be deemed
27 an original, and all of which, when taken together, shall constitute the same document. Execution
28 and delivery of this Consent Judgment by e-mail, facsimile, or other electronic means shall

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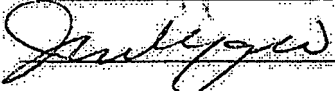
1 constitute legal and binding execution and delivery. Any photocopy of the executed Consent
2 Judgment shall have the same force and effect as the originals.

3 **10. AUTHORIZATION**

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

9
10 **AGREED TO:**


11 Date: 8/26/2022

12 By: 

13 Authorized Representative of APS&BE, LLC

14
15 **AGREED TO:**

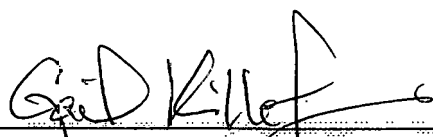
16 Date: 8/25/22

17 By: 

18 Authorized Representative of Harbor Freight Tools USA, Inc.

19
20 **IT IS SO ORDERED.**

21 Dated: 10/17/2022


22 JUDGE OF THE SUPERIOR COURT
23 GAIL KILLEFER
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10/19/2022