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7 Attorney for Plaintiff, Isabel Ruggeri

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

10 ISABEL RUGGERI, an individual,)
11 Plaintiff,)
12 v.)
13 HARBOR FREIGHT TOOLS USA, INC., a)
14 corporation, CENTRAL PURCHASING LLC,)
15 a limited liability company, and DOES 1)
16 through 100, inclusive,)
17 Defendants.)

CASE NO. BC583009

[PROPOSED] CONSENT JUDGMENT

Judge: Hon. Rolf M. Treu
Dept.: 58
Compl. Filed: May 26, 2015

Unlimited Jurisdiction

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1 **1. RECITALS**

2 **1.1 The Parties**

3 This Consent Judgment is entered into by and between Plaintiff, Isabel Ruggeri
4 (“Plaintiff”) and Defendant, Harbor Freight Tools USA, Inc. (“Defendant”). Plaintiff and
5 Defendant shall hereinafter collectively be referred to as the “Parties.”

6 Plaintiff is a citizen of the state of California with an interest in protecting the
7 environment, improving human health and the health of ecosystems, and supporting
8 environmentally sound practices, which includes promoting awareness of exposure to toxic
9 chemicals and reducing exposure to hazardous substances found in consumer products.
10 Defendant employs ten (10) or more employees and is a person in the course of doing business
11 as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition
12 65”).

13 **1.2 Allegations**

14 Plaintiff alleges that Defendant sold screwdrivers, including the Pittsburgh 7-in-1
15 screwdriver (Item 94955) (hereinafter, the “Products”) in the State of California causing users in
16 California to be exposed to hazardous levels of lead without providing “clear and reasonable
17 warnings”, in violation of Proposition 65. Lead is potentially subject to Proposition 65 warning
18 requirements because it is listed as known to cause birth defects and other reproductive harm.

19 On October 20, 2014, a sixty-day notice of violation (“60-Day Notice”), along with a
20 Certificate of Merit, was provided by Plaintiff to Defendant and various public enforcement
21 agencies regarding the alleged violation of Proposition 65 with respect to the Products.
22 Plaintiff subsequently filed the instant action in the public interest in the Superior Court for the
23 County of Los Angeles, alleging violations of Proposition 65 with respect to the Products.

24 **1.3 No Admissions**

25 Defendant denies all allegations in Plaintiff’s 60-Day Notice and Complaint, and
26 maintains that the Products have been, and are, in compliance with all laws, and that Defendant
27 has not violated Proposition 65. This Consent Judgment shall not be construed as an admission
28 of liability by Defendant but to the contrary as a compromise of claims that are expressly

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 Jurisdiction And Venue**

4 For purposes of this Consent Judgment, the Parties stipulate that the above-entitled Court
5 has jurisdiction over Defendant as to the allegations of the Complaint and that venue is proper in
6 Los Angeles County, and that this Court has jurisdiction to enter and enforce the provisions of
7 this Consent Judgment pursuant to California Code of Civil Procedure ("CCP") § 664.6 and
8 Proposition 65.

9 **1.5 Effective Date**

10 The "Effective Date" shall be the date upon which this Consent Judgment is approved by
11 the Court.

12 **2. INJUNCTIVE RELIEF AND REFORMULATION**

13 **2.1 Reformulation**

14 As of the Effective Date, Defendant shall not sell or offer for sale in California the
15 Products if they contain more than 100 parts per million of Lead in their handgrips and/or
16 accessible surfaces when analyzed pursuant to Environmental Protection Agency testing
17 methodologies 3050B or equivalent, unless a clear and reasonable Proposition 65 warning
18 accompanies each unit, as described below.

19 **2.2 Clear And Reasonable Warnings**

20 **(a) Retail Store Sales.** For Products that are sold in retail stores located in
21 California and do not meet the reformulation standard described in section 2.1 above, each unit
22 not meeting said reformulation shall be accompanied by the following specific warning with the
23 capitalized and emboldened wording:

24 **"WARNING:** This product contains a chemical known to the State of California
25 to cause birth defects and other reproductive harm."

26 Each unit shall carry said warning directly on each unit or its label or package, near the
27 product name, price, or UPC code, in a manner reasonably calculated to be seen by the ordinary
28 consumer.

1 **(b) Internet Website Warning.** Products that are offered for sale to
2 Californians via the internet and that do not meet the standard described in section 2.1,
3 shall be accompanied by a Proposition 65 warning, either: (a) on the same web page on which a
4 Product is displayed; (b) on the same web page as the order form for a Product; (c) on the same
5 web page as the price for a Product prior to sales completion; (d) on one or more web pages
6 displayed to a purchaser during the checkout process prior to sales completion; or (e) on a web
7 page with a clearly marked hyperlink from the product display page. The warning shall contain
8 language consistent with the following statement and shall appear in any of the above instances,
9 in the same type size as the Product description text, in a sufficiently conspicuous manner
10 reasonably calculated to be seen by the ordinary consumer of the Products:

11 **“WARNING:** This product contains a chemical known to the State of California
12 to cause birth defects and other reproductive harm.”

13 **3. PAYMENTS**

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

15 In settlement of all causes of action in Plaintiff’s Complaint, Defendant shall pay a total
16 civil penalty of three thousand dollars (\$3,000.00) to be apportioned in accordance with *Health*
17 *and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$2,250) paid to State of California
18 Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25%
19 (\$750.00) paid to Plaintiff.

20 Defendant shall issue two (2) checks for the civil penalty: (1) a check or money order
21 made payable to “Law Offices of Lucas T. Novak in Trust for OEHHA” in the amount of
22 \$2,250; and (2) a check or money order made payable to “Law Offices of Lucas T. Novak in
23 Trust for Isabel Ruggeri” in the amount of \$750. Defendant shall remit the payments within five
24 (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

3.2 Reimbursement Of Plaintiff’s Fees And Costs

Defendant shall reimburse Plaintiff’s reasonable experts’ and attorney’s fees and costs

1 incurred in prosecuting the instant action, for all work performed through execution of this
2 agreement and approval of this Consent Judgment. Accordingly, Defendant shall issue a check or
3 money order made payable to “Law Offices of Lucas T. Novak” in the amount of eighteen
4 thousand dollars (\$18,000). Defendant shall remit the payment within fifteen (15) business days
5 of the 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

10 **4. RELEASES**

11 **4.1 Plaintiff’s Release Of Defendant**

12 This Consent Judgment is a full, final, and binding resolution between Plaintiff and
13 Defendant and each of its past and present parents, affiliates, subsidiaries, divisions,
14 predecessors, successors, and assigns, and each of their respective owners, officers, directors,
15 board members, trustees, shareholders, managers, members, employees, agents, insurers,
16 attorneys, auditors, accountants, experts, stockholders, representatives, partners, and any other
17 persons acting on its behalf (“Released Parties”) concerning or in any way relating to the claims
18 that have been or could have been asserted against Defendant and/or the Released Parties up
19 through the date on which this Consent Judgment is entered, provided that such claims are based
20 on or relate to the facts alleged in the operative complaint filed by Plaintiff in this action.

21 **4.2 Defendant’s Release Of Plaintiff**

22 Defendant, the Released Parties, and on behalf of their downstream retailers, downstream
23 distributors, and downstream wholesalers, by this Consent Judgment, waive all rights to institute
24 any form of legal action against Plaintiff, her past and current agents, representatives, attorneys,
25 experts, successors and assignees, for actions or statements made or undertaken, in connection
26 with investigating claims or seeking enforcement of Proposition 65 against Defendant in this
27 matter.

28 **4.3** Plaintiff, acting on her own behalf and in the public interest pursuant to Health &
Safety Code § 25249.7(d), releases, waives, and forever discharges any and all claims against

1 Defendant and/or the Released Parties arising from any violation of Proposition 65 or any other
2 statutory or common law claims that have been or could have been asserted in the public interest
3 regarding the failure to warn about exposure to Lead arising in connection with the Products
4 manufactured, distributed, and sold by Defendant prior to the date on which this Consent
5 Judgment is entered.

6 **4.4** Compliance with the terms of this Consent Judgment by Defendant and the
7 Released Parties shall constitute compliance with Proposition 65 by Defendant and the Released
8 Parties with respect to any alleged failure to warn about Lead in the Products manufactured,
9 distributed, or sold by Defendant after the date on which this Consent Judgment is entered.

10 **4.5 Modification.** This Consent Judgment may be modified from time to time by
11 express written agreement of the Parties, with the approval of the Court, or by an order of the
12 Court upon motion and in accordance with law.

13 **4.6 Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
14 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to
15 modify the Consent Judgment.

16 **4.7 Waiver Of Unknown Claims**

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

19 "A general release does not extend to claims which the creditor does not know or
20 suspect to exist in his or her favor at the time of executing the release, which if
21 known by him or her must have materially affected his or her settlement with the
22 debtor."

23 Each of the Parties waives and relinquishes any right or benefit it has or may have under
24 Section 1542 of California Civil Code or any similar provision under the statutory or non-
25 statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights
26 and benefits. The Parties acknowledge that each may subsequently discover facts in addition to,
27 or different from, those that it believes to be true with respect to the claims released herein. The
28 Parties agree that this Consent Judgment and the releases contained herein shall be and remain

1 effective in all respects notwithstanding the discovery of such additional or different facts.

2 **5. COURT APPROVAL**

3 Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed
4 Motion for Approval and Entry of Consent Judgment in the above-entitled Court. This Consent
5 Judgment is not effective until it is approved by the Court and shall be null and void if, for any
6 reason, it is not approved by the Court within one (1) year after its full execution by all Parties. It
7 is the intention of the Parties that the Court approve this Consent Judgment, and in furtherance of
8 obtaining such approval, the Parties and their respective counsel agree to mutually employ their
9 best efforts to support the entry of this Consent Judgment in a timely manner, including
10 cooperating on drafting and filing any papers in support of the required motion for judicial
11 approval.

12 **6. SEVERABILITY**

13 Subsequent to Court approval of this Consent Judgment, should any part or provision of
14 this Consent Judgment, for any reason, be declared by a Court to be invalid, void or
15 unenforceable, the remaining portions and provisions shall continue in full force and effect.

16 **7. GOVERNING LAW**

17 The terms of this Consent Judgment shall be governed by the laws of the State of
18 California.

19 **8. NOTICES**

20 All correspondence and notices required to be provided under this Consent Judgment
21 shall be in writing and delivered personally or sent by first class or certified mail addressed as
22 follows:

23 TO DEFENDANT: 24 Peter Hsiao 25 PHsiao@mofocom 26 Navi Dhillon 27 NDhillon@mofocom 28 MORRISON & FOERSTER LLP 425 Market Street San Francisco, CA 94105	TO PLAINTIFF: Lucas T. Novak, Esq. LAW OFFICES OF LUCAS T. NOVAK 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069
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1 Tammy Stafford
2 Associate General Counsel, Litigation and
3 Risk
4 Harbor Freight Tools USA, Inc.
5 26541 Agoura Road
6 Calabasas, CA 91302
7 Email: TStafford@harborfreight.com

8 **9. INTEGRATION**

9 This Consent Judgment constitutes the entire agreement between the parties with respect
10 to the subject matter hereof and may not be amended or modified except in writing.

11 **10. COUNTERPARTS**

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

17 **11. AUTHORIZATION**

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

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AGREED TO:

Date: 8/6/15

By: 

Authorized Officer of Defendant, Harbor Freight Tools USA, Inc.

AGREED TO:

Date: _____

By: _____

Plaintiff, Isabel Ruggeri

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT

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AGREED TO:

Date: _____

By: _____

Authorized Officer of Defendant, Harbor Freight Tools USA, Inc.

AGREED TO:

Date: 7/22/15

By: Isabel Ruggeri

Plaintiff, Isabel Ruggeri

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT