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8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF MARIN

11 ANTHONY FERREIRO,  
12 Plaintiff,  
13 v.  
14 HARBOR FREIGHT TOOLS USA, INC.,  
15 Defendant.

Case No.: CIV1904482  
**CONSENT JUDGMENT**  
Judge: Stephen P. Freccero  
Courtroom: A  
Hearing Time: 1:30 PM  
Hearing Date:

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1           **1. INTRODUCTION**

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3           1.1     **The Parties.** This Consent Judgment is entered into by and between Anthony  
4 Ferreiro acting on behalf of the public interest (hereinafter “Ferreiro”) and c. (“Harbor Freight” or  
5 “Defendant”) with Ferreiro and Defendant collectively referred to as the “Parties” and each of them  
6 as a “Party.” Ferreiro is an individual residing in California that seeks to promote awareness of  
7 exposures to toxic chemicals and improve human health by reducing or eliminating hazardous  
8 substances contained in consumer products. Harbor Freight is alleged to be a person in the course  
9 of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

10           1.2     **Allegations and Representations.** Ferreiro alleges that Defendant has exposed  
11 individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of valves, including the Central  
12 Pneumatic blasting deadman valve, UPC #7 92363 60491 8, without providing a clear and  
13 reasonable exposure warning pursuant to Proposition 65. DEHP is listed under Proposition 65 as a  
14 chemical known to the State of California to cause cancer and reproductive toxicity.

15           1.3     **Notice of Violation/Complaint.** On or about July 17, 2019, Ferreiro served Harbor  
16 Freight, and various public enforcement agencies with documents entitled “60-Day Notice of  
17 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant  
18 violated Proposition 65 for failing to warn consumers and customers that the valves expose users  
19 in California to DEHP. No public enforcer has brought and is diligently prosecuting the claims  
20 alleged in the Notice. On December 6, 2019, Ferreiro filed a complaint (the “Complaint”) in the  
21 matter.

22           1.4     For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
23 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that  
24 venue is proper in the County of Marin, and that this Court has jurisdiction to approve, enter, and  
25 oversee the enforcement of this Consent Judgment as a full and final binding resolution of all claims  
26 which were, or could have been raised in the Complaint based on the facts alleged therein and/or  
27 in the Notice.

1           1.5 Defendant denies the material allegations contained in the Notice and Complaint  
2 and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be  
3 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor  
4 shall compliance with this Consent Judgment constitute or be construed as an admission by  
5 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically  
6 denied by Defendant. However, this section shall not diminish or otherwise affect the obligations,  
7 responsibilities, and duties of Defendant under this Consent Judgment.

8 **2. DEFINITIONS**

9           2.1 **Covered Products.** The term “Covered Products” means valves and nozzles,  
10 including the Central Pneumatic blasting deadman valve UPC #7 92363 60491 8, that are  
11 manufactured, distributed and/or offered for sale in California by Harbor Freight.

12           2.2 **Effective Date.** The term “Effective Date” means the date Harbor Freight’s counsel  
13 receives notice that this Consent Judgment is entered as a Judgment of the Court.

14 **3. INJUNCTIVE RELIEF: WARNINGS**

15           3.1 **Reformulation of Covered Products.** No later than three months after the date this  
16 Consent Judgment is issued by the Court, and continuing thereafter, Covered Products that Harbor  
17 Freight directly manufactures, imports, distributes, sells, or offers for sale in California shall either:  
18 (a) be Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable  
19 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a  
20 “Reformulated Product” is a Covered Product that is in compliance with the standard set forth in §  
21 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated  
22 Product.

23           3.2 **Reformulation Standard.** “Reformulated Products” shall mean Covered Products  
24 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm) of DEHP when  
25 analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and  
26 8270C or other methodology utilized by federal or state government agencies for the purpose of  
27 determining the phthalate content in a solid substance.  
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1           3.3     **Clear and Reasonable Warning.** No later than three months after the date this  
2 Consent Judgment is issued by the Court, and continuing thereafter, a clear and reasonable exposure  
3 warning as set forth in §§ 3.3 and 3.4 of this Consent Judgment must be provided for all Covered  
4 Products that Defendant manufacturers, imports, distributes, sells, or offers for sale in California  
5 that is not a Reformulated Product. There shall be no obligation for Defendant to provide a warning  
6 for Covered Products that enter the stream of commerce prior to three months after the date this  
7 Consent Judgment is issued by the Court. The warning shall consist of either the **Warning** or  
8 **Alternative Warning** described in § 3.3 subsection (a) or subsection (b), respectively:

9           (a)     **Warning.** The “Warning” shall consist of the statement:

10           ⚠ **WARNING:** This product can expose you to chemicals including di(2-  
11 ethylhexyl) phthalate (DEHP), which is known to the State of California to cause  
12 cancer and birth defects or other reproductive harm. For more information go to  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

13           (b)     **Alternative Warning:** Harbor Freight may, but is not required to, use the alternative  
14 short-form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

15           ⚠ **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

16           3.4     A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word  
17 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to  
18 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral  
19 triangle with a black outline, except that if the sign or label for the Covered Product does not use  
20 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller  
21 than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the  
22 Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or displayed on an  
23 electronic device or during an automatic process, providing that the warning is displayed with such  
24 conspicuousness, as compared with other words, statements, or designs as to render it likely to be  
25 read and understood by an ordinary individual under customary conditions of purchase or use. A  
26 warning may be contained in the same section of the packaging, labeling, or instruction booklet  
27 that states other safety warnings, if any, concerning the use of the Covered Product and shall be at  
28 least the same size as those other safety warnings.

1 If Harbor Freight sells Covered Products via an internet website to customers located in  
2 California, the warning requirements of this section shall be satisfied if the foregoing warning  
3 appears either: (a) on the same web page on which a Covered Product is displayed and/or described;  
4 (b) on the same page as the price for the Covered Product; or (c) on one or more web pages  
5 displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol  
6 consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent  
7 to or immediately following the display, description, price, or checkout listing of the Covered  
8 Product, if the warning statement appears elsewhere on the same web page in a manner that clearly  
9 associates it with the product(s) to which the warning applies.

10 **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in  
11 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent  
12 Judgment or by complying with warning regulations approved or adopted by the State of  
13 California’s Office of Environmental Health Hazard Assessment (“OEHHA”), or by any other State  
14 of California agency authorized to issue regulations approving or adopting warnings as  
15 implementation of Proposition 65, or by statutes adopted by the California State Legislature or by  
16 the California voters after the Effective Date.

17 **4. MONETARY TERMS**

18 **4.1 Civil Penalty.** Harbor Freight shall pay \$3,000.00 as a Civil Penalty pursuant to  
19 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health  
20 & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of  
21 the Civil Penalty remitted to Ferreiro, as provided by California Health & Safety Code  
22 § 25249.12(d).

23 **4.1.1** Within ten (10) days of the Effective Date, Harbor Freight shall issue two  
24 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$2250.00; and to  
25 (b) “Brodsky & Smith, LLC in Trust for Ferreiro” in the amount of \$750.00. Payment owed to  
26 Ferreiro pursuant to this Section shall be delivered to the following payment address:

27 Evan J. Smith, Esquire  
28 Brodsky & Smith, LLC

1 Two Bala Plaza, Suite 510  
2 Bala Cynwyd, PA 19004

3 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly  
4 to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

5 For United States Postal Service Delivery:

6 Mike Gyurics  
7 Fiscal Operations Branch Chief  
8 Office of Environmental Health Hazard Assessment  
9 P.O. Box 4010  
10 Sacramento, CA 95812-4010

11 For Non-United States Postal Service Delivery:

12 Mike Gyurics  
13 Fiscal Operations Branch Chief  
14 Office of Environmental Health Hazard Assessment  
15 1001 I Street  
16 Sacramento, CA 95814

17 A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith, LLC at the address  
18 set forth above as proof of payment to OEHHA.

19 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Harbor Freight shall  
20 pay \$24,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for  
21 Ferreiro's attorneys' fees and costs incurred as a result of investigating, bringing this matter to  
22 Harbor Freight's attention, litigating, negotiating, and obtaining judicial approval of a settlement  
23 in the public interest, pursuant to Code of Civil Procedure § 1021.5.

## 24 **5. RELEASE OF ALL CLAIMS**

25 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro  
26 acting on his own behalf, and on behalf of the public interest, and Harbor Freight, and its parents,  
27 shareholders, members, directors, officers, managers, employees, representatives, agents,  
28 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their  
predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they  
obtain and to whom they directly or indirectly distribute or sell Covered Products, including but  
not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees  
retailers, franchisees, and cooperative members ("Downstream Releasees"), of all claims for

1 violations of Proposition 65 based on exposure to DEHP from Covered Products as set forth in the  
2 Notice, with respect to any Covered Products manufactured, distributed, or sold by Harbor Freight  
3 prior to the Effective Date. This Consent Judgment shall have preclusive effect such that no other  
4 person or entity, whether purporting to act in his, her, or its interests or the public interest shall be  
5 permitted to pursue and/or take any action with respect to any violation of Proposition 65 that was  
6 alleged in the Complaint, or that could have been brought pursuant to the Notice against Harbor  
7 Freight and/or the Downstream Releasees of the Covered Products (“Proposition 65 Claims”).  
8 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65  
9 with regard to the Covered Products.

10           5.2     In addition to the foregoing, Ferreiro, on behalf of himself, his past and current  
11 agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative  
12 capacity, hereby releases Defendant Releasees and Downstream Releasees from all claims that he  
13 has asserted or could have asserted against said Releasees arising out of Proposition 65. Ferreiro  
14 acting on behalf of himself, his past and current agents, representatives, attorneys, and successors  
15 and/or assignees, and *not* in his representative capacity further waives all rights to institute or  
16 participate in, directly or indirectly, any form of legal action and releases Harbor Freight, Defendant  
17 Releasees, and Downstream Releasees from any and all manner of actions, causes of action, claims,  
18 demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages,  
19 charges, losses, costs, expenses, and attorneys’ fees, of any nature whatsoever, known or unknown,  
20 in law or equity, fixed or contingent, now or in the future, with respect to any alleged violations of  
21 Proposition 65 related to or arising from Covered Products manufactured, distributed, or sold by  
22 Harbor Freight, Defendant Releasees or Downstream Releasees. With respect to the foregoing  
23 waivers and releases in this paragraph, Ferreiro hereby specifically waives any and all rights and  
24 benefits which he now has, or in the future may have, conferred by virtue of the provisions of §  
25 1542 of the California Civil Code, which provides as follows:

26  
27           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
28           CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
              EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
              RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE

1 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
2 DEBTOR OR RELEASED PARTY.

3 5.3 Harbor Freight waives any and all claims against Ferreiro, his attorneys and other  
4 representatives, for any and all actions taken or statements made (or those that could have been  
5 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of  
6 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
7 and/or with respect to Covered Products.

8 **6. INTEGRATION**

9 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and  
10 any and all prior negotiations and understandings related hereto shall be deemed to have been  
11 merged within it. No representations or terms of agreement other than those contained herein exist  
12 or have been made by any Party with respect to the other Party or the subject matter hereof.

13 **7. GOVERNING LAW**

14 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
15 California and apply within the State of California. In the event that Proposition 65 is repealed or  
16 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then  
17 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and  
18 to the extent that, Covered Products are so affected.

19 **8. NOTICES**

20 8.1 Unless specified herein, all correspondence and notices required to be provided  
21 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-  
22 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party  
23 by the other party at the following addresses:

24 For Defendant:

25 Bruce Nye  
26 Scali Rasmussen  
1901 Harrison Street, 14th Floor  
Oakland, CA 94612

27 And

28 For Ferreiro:



1  
2 Evan Smith  
3 Brodsky & Smith, LLC  
4 9595 Wilshire Blvd., Ste. 900  
5 Beverly Hills, CA 90212

6 Any party, from time to time, may specify in writing to the other party a change of address to  
7 which all notices and other communications shall be sent.

8 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

9 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of  
10 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
11 the same document.

12 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**  
13 **APPROVAL**

14 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &  
15 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.  
16 Defendant agrees it shall support approval of such Motion.

17 10.2 This Consent Judgment shall not be effective until it is approved and entered by the  
18 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,  
19 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within  
20 30 days, the case shall proceed on its normal course.

21 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
22 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent  
23 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on  
24 its normal course on the trial court's calendar.

25 **11. MODIFICATION**

26 11.1 This Consent Judgment may be modified only by further stipulation of the Parties  
27 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

28 **12. ATTORNEY'S FEES**

12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent  
Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

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12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

**13. RETENTION OF JURISDICTION**

13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

**14. AUTHORIZATION**

14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this document and certify that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

**AGREED TO:**

**AGREED TO:**

Date: 3/16/2020  
By: Anthony Ferreiro  
ANTHONY FERREIRO

Date: 1/21/2020  
By: Jimmy Stojan  
HARBOR FREIGHT TOOLS USA, INC.

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court