

PROPOSITION 65 SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement (“**Agreement**”) is entered into by and between My Nguyen (“**Nguyen**”) and Harbor Freight Tools USA, Inc. (“**Harbor Freight**”), with Nguyen and Harbor Freight each individually referred to as a “**Party**” and collectively, as the “**Parties**”. Nguyen, is a person in the State of California proceeding in the public interest pursuant to California Health & Safety Code §§ 25249.7(d) to ensure that chemicals known to the State of California to cause cancer, birth defects or other reproductive harm are disclosed in or eliminated from consumer products sold in California. Harbor Freight is a person in the course of doing business for purposes of California Health & Safety Code §§ 25249.11(b).

1.2 Consumer Product Description

Nguyen alleges that Harbor Freight manufactures, imports, sells and distributes for sale in California (1) the PVC Air Hose containing di-n-butyl phthalate (“**DBP**”), Central Pneumatic PVC Air Hose, Model #69711, UPC #7 92363 69711 8, referred to hereinafter as the **AIR HOSE**, and (2) the Scraper with Grip containing diisononyl phthalate (“**DINP**”), Central Forge 5” Floor Scraper, Item #93292, UPC #7 92363 93292 9, referred to hereinafter as the **SCRAPER**, without providing the health hazard warning that Nguyen alleges is required by California Health & Safety Code §§ 25249.5 *et seq.* (“**Proposition 65**”). The AIR HOSE and SCRAPER are collectively referred to herein as the “**Products**”. DBP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm. DINP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer. DBP and DINP are collectively referred to herein as the “**Listed Chemicals.**”

1.3 Notice of Violation

On March 12, 2020, Nguyen served Harbor Freight, the California Attorney General and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”),

alleging that Harbor Freight violated Proposition 65 when it failed to warn its customers and consumers in California that its AIR HOSE can expose users to DBP and its SCRAPER can expose users to DINP. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

1.4 No Admission

Harbor Freight denies the material, factual, and legal allegations contained in the Notice, and maintains that all products it has sold or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Agreement shall be construed as, nor shall compliance with this Agreement constitute or be construed as, an admission by Harbor Freight of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Harbor Freight's obligations, responsibilities, and duties under this Agreement.

1.5 Effective Date

For purposes of this Agreement, the term "**Effective Date**" shall mean July 29, 2020.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Reformulation Commitment

Commencing on the Effective Date and continuing thereafter, each AIR HOSE Harbor Freight manufactures, imports, or distributes for sale in or into California shall meet the Reformulation Standard for Reformulated Products, as defined by Section 2.2. Commencing on August 31, 2020 and continuing thereafter, each AIR HOSE Harbor Freight sells in or into California shall meet the Reformulation Standard for Reformulated Products as so defined.

2.2 Reformulation Standard

For purposes of this Agreement, "Reformulated Products" are defined as Products which, if they contain Di-n-butyl Phthalate ("**DBP**"), Diisononyl Phthalate ("**DINP**"), di(2-ethylhexyl)phthalate ("**DEHP**"), Butyl Benzyl Phthalate ("**BBP**"), Di-isodecyl Phthalate ("**DIDP**") and Di-n-hexyl Phthalate ("**DnHP**"), contain any or all of such chemicals each in a maximum concentration of less than 0.1 percent (1,000 parts per million) when analyzed by a


laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization. For purposes of compliance with this reformulation standard, testing samples shall be prepared and extracted using Consumer Product Safety Commission (“CPSC”) methodology CPSC-CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency methodology 8270D, or other methodologies utilized by federal or state government agencies to determine phthalate content in a solid substance.

2.3 Clear and Reasonable Warnings

For each and every SCRAPER that does not meet the Reformulation Standard for Reformulated Products at any time as defined by Section 2.2, and for every AIR HOSE that does not meet the same Reformulation Standard up until August 31, 2020, then commencing on or before the Effective Date, continuing thereafter as to the SCRAPER and up until August 31, 2020 as to the AIR HOSE, Harbor Freight shall provide clear and reasonable warnings for each SCRAPER and AIR HOSE provided for sale to customers in California in accordance with this Section pursuant to Title 27 California Code of Regulations § 25600, *et seq.* Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use and shall be provided in a manner such that it is clearly associated with the specific Product to which the warning applies.


(a) Warning. The warning shall consist of one of the following statements:

(1) For the SCRAPER:

 **WARNING:** This product can expose you to DINP, which is known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.


or

(2) For the AIR HOSE:

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

(b) Short-Form Warning. Subject to Sections 2.5 and 2.6, Harbor Freight may use one of the following short-form warnings:

(1) For the SCRAPER:

 **WARNING:** Cancer – www.P65Warnings.ca.gov

or

(2) For the AIR HOSE:

 **WARNING:** Reproductive Harm – www.P65Warnings.ca.gov

(c) Foreign Language Requirement. Where a consumer product sign, label or shelf tag used to provide a warning includes consumer information in a language other than English, the warning must also be provided in that language in addition to English.

2.4 Product Warnings

Harbor Freight shall affix a warning to the Product label or otherwise directly on each Product provided for sale in retail outlets in California or sold via mail order catalog and/or the internet to customers located in California. For the purpose of this agreement, “Product label” means a display of written, printed or graphic material that is printed on or affixed to a Product or its immediate container or wrapper. The entire warning shall appear in a type size of at least 6-point type and no smaller than the largest type size used for other consumer information on the product. The warning shall consist of either one of the Warnings described in subsection 2.3(a) or one of the Short-Form Warnings described in subsection 2.3(b).

2.5 Mail Order Catalog Warnings

In the event that, after the Effective Date, Harbor Freight prints new catalogs and sells Products via mail order through such catalogs to customers located in California, Harbor Freight shall provide a warning for each SCRAPER both on the SCRAPER label in accordance with Section 2.4, and in the catalog in a manner that clearly associates the warning with the *specific* SCRAPER being purchased. Any warning provided in a mail order catalog shall be in the same type size or larger than other consumer information provided for the SCRAPER within the

catalog and shall be provided on the same page and in the same location as the display and/or description of the SCRAPER. The catalog warning may use the Short-Form Warning content described in Section 2.3(b) if the warning provided on the SCRAPER label also uses the Short-Form Warning content.

2.6 Internet Warnings

If, after the Effective Date, Harbor Freight sells the SCRAPER via the internet to customers located in California, Harbor Freight shall provide warnings for each SCRAPER both on the SCRAPER label in accordance with Section 2.4, and by prominently displaying the warning to the customer during the purchase and prior to completing the purchase of the SCRAPER without requiring customers to seek out the warning. The warning or a clearly marked hyperlink to the warning using the word “**WARNING**” given in conjunction with the sale of each SCRAPER via the internet shall appear either: (a) on the same web page on which the SCRAPER is displayed; (b) on the same web page as the order form for the SCRAPER; or (c) on one or more web pages displayed to a purchaser during the checkout process. The warning shall appear in any of the above instances adjacent to or immediately following the display or description of the SCRAPER for which it is given in the same type size or larger than the text describing the SCRAPER. The internet warning may use the Short-Form Warning in Section 2.3(b) if the warning provided on the SCRAPER label also uses the Short-Form Warning content.

2.7 Other Warnings

Should the State or Federal Government amend or adopt new statutes or regulations regarding warning text and/or transmission methods affecting the SCRAPER at issue by varying from the text and methods detailed in the preceding Sections 2.3 through 2.6, for each SCRAPER that does not meet the Reformulation Standard for Reformulated Products, Harbor Freight Tools may comply with this agreement by using such warning text and transmission methods, as set forth in the modified 27 Cal. Code Regs. § 25601 *et seq.*, as amended from time

to time, or by complying with those other text or methods authorized or mandated by new regulations or legislation.

3. MONETARY SETTLEMENT TERMS

3.1 Initial Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Harbor Freight agrees to pay a civil penalty of \$5,000 within five (5) days of the Effective Date. Harbor Freight's civil penalty payment will be allocated according to Health and Safety Code §§ 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent (25%) retained by Nguyen. Harbor Freight shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$3,750; and (b) "My Nguyen" in the amount of \$1,250. Nguyen's counsel shall deliver to OEHHA and Nguyen their respective portion of the penalty payment.

3.2 Final Waivable Civil Penalty

Harbor Freight shall pay a second civil penalty of \$5,000. However, the second civil penalty shall be waived in its entirety, if, on or before August 31, 2020, an officer of Harbor Freight certifies that as of the Effective Date, and continuing thereafter, any and all AIR HOSE (as defined in Section 1.2 of this Agreement, i.e., PVC Air Hose, Model #69711, UPC #7 92363 69711 8) made available for sale in California by Harbor Freight are Reformulated Products as defined by Section 2.2, or, in the alternative, that all such AIR HOSE have been discontinued. Unless the second civil penalty is waived, on or before September 1, 2020, Harbor Freight shall issue a check made payable to "OEHHA" in the amount of \$3,750 and a check made payable to "My Nguyen" in the amount of \$1,250.

3.3 Reimbursement of Attorneys' Fees and Costs

Nguyen and his counsel offered to resolve the allegations in the Notice without reaching terms on the amount of reimbursement of attorneys' fees and costs. Shortly after the Parties finalized the other material settlement terms, they negotiated and reached an accord on the amount of reimbursement to be paid to Nguyen's counsel, under general contract principles and

the private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution and reporting of this Agreement to the Office of the California Attorney General. Within five (5) days of the Effective Date, Harbor Freight agrees to issue a check in the amount of \$26,000 payable to “Seven Hills LLP” for all fees and costs incurred investigating, bringing this matter to Harbor Freight’s attention, negotiating a settlement in the public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 9.

3.4 Payments

All payments payable and due under this Agreement shall be delivered to Nguyen’s counsel at following address:

Seven Hills LLP
Attn: Laralei Paras
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

4. CLAIMS COVERED AND RELEASED

4.1 Nguyen’s Release of Harbor Freight

This Agreement is a full, final and binding resolution between Nguyen, as an individual and *not* on behalf of the public, and Harbor Freight, of any violation of Proposition 65 that was or could have been asserted by Nguyen on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against Harbor Freight, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Harbor Freight directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, Releasees), based on their failure to warn about alleged exposures to DBP contained in the AIR HOSE and DINP contained in the SCRAPERS that were manufactured, distributed, sold and/or offered for sale by Harbor Freight in California before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Nguyen as an individual and *not* on behalf of the public, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of Nguyen's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Nguyen may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to the Listed Chemicals in the Products, as alleged in the Notice, manufactured, distributed, sold and/or offered for sale by Harbor Freight, before the Effective Date (collectively, Claims), against Harbor Freight and Releasees.

The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Harbor Freight. Nothing in this Section affects Nguyen's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Harbor Freight's Products.

4.2 Harbor Freight's Release of Nguyen

Harbor Freight, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Nguyen and his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Nguyen and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

5. SEVERABILITY

If, subsequent to the execution of this Agreement, any provision of this Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

6. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California and apply within California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Harbor Freight may provide Nguyen with written notice of any asserted change in the law, and shall have no further injunctive obligations pursuant to this Agreement, with respect to, and to the extent that, the Products are so affected. Nothing in this Agreement shall be interpreted to relieve Harbor Freight from its obligation to comply with any pertinent state or federal law or regulation.

7. NOTICE

Unless specified herein, all correspondence and notice required by this Agreement shall be in writing and sent by: (i) first-class registered or certified mail, return receipt requested; or (ii) a recognized overnight courier to any Party by the other at the following addresses:

For Harbor Freight:

Bruce Nye, Attorney of Counsel
Scali Rasmussen
1901 Harrison Street, 14th Floor
Oakland, CA 94612

For Nguyen:

Laralei Paras, Partner
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

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

8. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES

This Agreement may be executed in counterparts and by portable document format (pdf) signature, each of which shall be deemed an original and, all of which, when taken together, shall constitute one and the same document.

9. COMPLIANCE WITH REPORTING REQUIREMENTS

Nguyen and his counsel agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

10. ENTIRE AGREEMENT

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto.

11. MODIFICATION


This Agreement may be modified only by a written agreement of the Parties.

12. AUTHORIZATION

The undersigned are authorized to execute this Agreement on behalf of their respective Parties and have read, understood, and agreed to all of the terms and conditions of this Agreement.

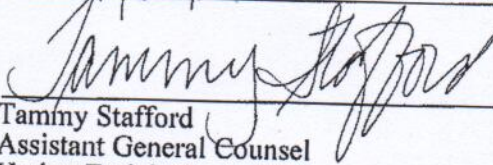
AGREED TO:

Date: 07/21/2020

By: 
My Nguyen

AGREED TO:

Date: 7/15/2020

By: 
Tammy Stafford
Assistant General Counsel
Harbor Freight Tools USA, Inc.