SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND HARBOR FREIGHT TOOLS USA, INC.

1. RECITALS

1.1 The Parties

1.1.1 This Settlement Agreement ("Agreement") is entered into by and between APS&EE, LLC ("APS&EE") and Harbor Freight Tools USA, Inc. ("Harbor Freight"). APS&EE and Harbor Freight shall hereinafter collectively be referred to as the "Parties".

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

1.1.3 APS&EE alleges that Harbor Freight is a company in the course of doing business as the term is defined in California *Health & Safety Code* section 25249.6 et seq. ("Proposition 65").

1.2 Allegations

1.2.1 APS&EE alleges that Harbor Freight sold Squeegee Item#60398, 37031-192020, 7-92363-60398-0 (hereinafter the "Products") in the State of California causing users in California to be exposed to unsafe levels of Lead, Di-n-Butyl Phthalate ("DBP"), Di (2-ethylhexyl) Phthalate ("DEHP"), and Diisononyl phthalate ("DINP") without providing "clear and reasonable warnings", in violation of Proposition 65. The listed chemicals are potentially subject to Proposition 65 warning requirements because Lead is listed by the State of California as known to cause cancer and birth defects or other reproductive harm; DBP is listed by the State of California as known to cause birth defects and other reproductive harm; DEHP is listed as known to cause cancer and reproductive toxicity; and DINP is listed as known to cause cancer.

1.2.2 On September 28, 2020, APS&EE provided a Sixty-Day Notice of Violation (the "Notice"), along with a Certificate of Merit, to Harbor Freight and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products.

1.3 No Admissions

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

1.4 Compromise

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

1.5 Effective Date

The "Effective Date" shall be the date upon which a complete and fully executed copy of the Agreement is delivered to each Party or its counsel.

2. INJUNCTIVE RELIEF AND REFORMULATION

2.1 Reformulation

As of the Effective Date, Harbor Freight shall not manufacture or distribute the Products for sale in California unless (a) the Products contain no more than 1,000 parts per million (0.1%) of DEHP, DBP, or DINP, and no more than 100 parts per million (0.01%) of Lead ("Reformulated Product"), or (b) the Product is distributed, sold, or offered for sale with a clear and reasonable warning as described below in Section 2.2. The only Products excluded from this requirement are those that have already been distributed to California retailers as of October 31, 2020

2.2 Clear And Reasonable Warnings

For any Products that are not Reformulated Products, such Products shall be accompanied by a clear and reasonable warning. Harbor Freight shall provide a warning statement substantially similar to the following:

> **WARNING:** This product can expose you to chemicals, including Lead [and/or DBP, DINP, and/or DEHP] [1], which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

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

The Products shall carry said warning directly on each unit, label, or package, with such conspicuousness as compared with other words, statements or designs as to render it likely to be read and understood by an ordinary consumer prior to sale. A Product that is sold by Harbor Freight on the internet to persons located in California shall also provide the warning message by a clearly marked hyperlink on the product display page, or otherwise prominently displayed to the purchaser before the purchaser completes his or her purchase of the Product. For Products that Harbor Freight provides for a downstream entity to sell on the internet, Harbor Freight shall include an instruction that the entity comply with the warnings requirements of this section.

2.3 Additional Warnings Required or Permitted By Law or Regulation

In addition to the warning requirements set forth in Section 2.2 above, Harbor Freight may comply with this Agreement by using other warning text and transmission methods set forth in 27 Cal. Code Regs. § 25601, et seq., and amended subsequently

[1] In accordance with 27 Cal. Code Regs., section 25603, operative Aug. 30, 2018, the warning must expressly identify at least one of the Listed Chemicals present in the Product, as applicable. Language within the brackets is optional.

thereafter, or other text or methods authorized or mandated by those regulations, or other State of California regulations or legislation pertaining to Proposition 65 warnings related to such Products.

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

In settlement of all claims referred to in this Agreement, Harbor Freight shall pay a total civil penalty of three thousand dollars ($3,000.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% ($2,250.00) for State of California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining 25% ($750.00) for APS&EE.

Harbor Freight shall issue these payments collectively as part of the total payment described below in Section 3.2 via wire transfer to Law Offices of Lucas T. Novak. After receipt of the wire transfer, Law Offices of Lucas T. Novak shall be responsible for forwarding the respective payments to OEHHA and APS&EE.

3.2 Reimbursement Of APS&EE's Fees And Costs

Harbor Freight shall reimburse APS&EE's reasonable experts' and attorney's fees and costs incurred in prosecuting the instant action, for all work performed through execution of this Agreement, in the amount of twenty-two thousand dollars ($22,000.00). Accordingly, along with the civil penalty described above in Section 3.1, Harbor Freight shall remit total payment via wire transfer to Law Offices of Lucas T. Novak in the amount of twenty-five thousand dollars ($25,000.00) within ten (10) business days of the Effective Date. Wire instructions shall be exchanged between the parties' counsel following execution of this Agreement.

4. RELEASES

4.1 APS&EE's Release Of Harbor Freight

APS&EE, acting in its individual capacity, in consideration of the promises and monetary payments contained herein, hereby releases Harbor Freight, its parents,

subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, as well as its downstream distributors, retailers, and franchisees, from any alleged Proposition 65 violation claims asserted in APS&EE's Notice regarding failure to warn about exposure to Lead, DEHP, DBP, and/or DINP from the Products that Harbor Freight has caused to be sold and/or offered for sale in California before and up to the Effective Date.

4.2 Harbor Freight's Release Of APS&EE

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

4.3 Waiver Of Unknown Claims

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

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

releases contained herein shall be and remain effective in all respects notwithstanding the discovery of such additional or different facts.

5. SEVERABILITY

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

6. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California.

7. NOTICE

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

TO Harbor Freight: Bruce Nye, Esq. Scali Rasmussen 1901 Harrison St., 14th Floor Oakland, CA 94612	TO APS&EE: Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069

Either side may provide the other with an alternative name and/or address for correspondence and notice, and the other side will comply with that change request.

8. COUNTERPARTS

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

9. AUTHORIZATION

The undersigned are authorized to execute this Agreement on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and

conditions of this Agreement. Each Party warrants to the other that it is free to enter into this Agreement and is not subject to any conflicting obligation that will or might prevent or interfere with the execution or performance of this Agreement by said Party.

AGREED TO:

Date: 2/3/21

By: _____
Authorized Representative of APS&EE, LLC

AGREED TO:

Date: 1/26/21

By: Marc Friedman
Authorized Representative of Harbor Freight Tools USA, Inc.