

SETTLEMENT AND RELEASE AGREEMENT

1. **INTRODUCTION**

1.1. **Ecological Alliance, LLC and Harbor Freight Tools USA, Inc.**

This Settlement Agreement is entered into by and between Ecological Alliance, LLC ("Ecological"), on the one hand, and Harbor Freight Tools USA, Inc. ("Harbor Freight"), on the other hand, with Ecological and Harbor Freight collectively referred to as the "Parties."

1.2. **General Allegations**

Ecological alleges that Harbor Freight manufactured and distributed and offered for sale in the State of California multi-head hammers and end nipper pliers containing Di(2-ethylhexyl)phthalate ("DEHP"), and that such sales have not included warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* ("Proposition 65"). California has identified and listed DEHP under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

1.3. **Product Description**

The products that are covered by this Settlement Agreement are defined as multi-head hammers and end nipper pliers that Harbor Freight has sold, offered for sale or distributed in California and that allegedly contain DEHP in amounts above safe harbor levels. All such items shall be referred to herein as the "Products."

1.4. **Notice of Violation**

On August 4, 2021, Ecological served Harbor Freight and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with a document entitled "60-Day Notice of Violation" ("Notice") that

provided Harbor Freight and such public enforcers with notice that Harbor Freight was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Products exposed users in California to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

1.5. No Admission

The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice concerning Harbor Freight's compliance with Proposition 65. Harbor Freight denies the material factual and legal allegations contained in Ecological's Notice and maintains that all products that it has manufactured for sale and distribution in California, including the Products, have been and are in compliance with Proposition 65 or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by Harbor Freight of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Harbor Freight of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Harbor Freight on its behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Harbor Freight under this Settlement Agreement.

1.6. Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is fully executed by the Parties.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

Not later than 90 days after the Effective Date, the Products that Harbor Freight manufactures, imports, or otherwise sources for authorized sale in California shall be: (a) Reformulated Products, as defined pursuant to Section 2.1 below; or (b) labeled with a clear and reasonable Proposition 65 warning pursuant to Section 2.2 below; or (c) discontinued for sale in California. This Section and its subsections shall not apply to Products that are in Harbor Freight's inventory or that were supplied to third parties by Harbor Freight or that are otherwise placed in the stream of commerce at any time up to 90 days after the Effective Date. Such Products shall be deemed exempted from the requirements of this Section 2 and shall be permitted to be sold through as previously manufactured, packaged and labeled.

2.1. Reformulation Standards

"Reformulated Products" are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

2.2. Warning Language

Where required, Harbor Freight shall provide Proposition 65 warnings on the Product's label as follows:

- (a) Harbor Freight may use either of the following warning statements in full compliance with this Section, and such warning statement, whichever elected, shall constitute compliance with Proposition 65 with respect to the chemical in the Products:

(1) **WARNING:** This product can expose you to chemicals including DEHP, which are 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

OR

(2) **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

(b) If Harbor Freight uses either of the warning statements identified in Section 2.2(a) to effectuate its compliance, it shall also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label 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.”

(c) The requirements for warnings, set forth in subsection (a) above are imposed pursuant to the terms of this Settlement Agreement. The Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations.

(d) If Proposition 65 warnings for DEHP should no longer be required by law, Harbor Freight shall have no further obligations pursuant to this Settlement Agreement.

(e) In the event that the Office of Environmental Health Hazard Assessment or another authorized agency promulgates one or more regulations requiring or

permitting warning text and/or methods of transmission different than those set forth above, or legislation is enacted by the California legislature, United States Congress or voters with such requirements or permission, Harbor Freight shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)

Pursuant to Health and Safety Code § 25249.7(b)(2) and in settlement of all the claims referred to in this Settlement Agreement and because it previously began to implement Proposition 65 warnings for the Products, \$1,000 of the payment described in Section 5 below shall constitute civil penalties in accordance with this Section. The penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Ecological. Ecological's counsel shall be solely responsible for delivering OEHHA's portion of any penalty payment made under this Settlement Agreement.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties reached an accord on the compensation due to Ecological and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Harbor Freight shall reimburse Ecological's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Harbor Freight's attention. Harbor Freight shall pay Ecological's counsel \$22,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

5. PAYMENT INFORMATION

Within 30 days of the Effective Date, Harbor Freight shall make a single payment of Twenty-Three Thousand Dollars (\$23,000) for the civil penalties and attorney's fees / costs by check or wire transfer to Plaintiff's counsel Custodio & Dubey LLP:

Bank: Bank of America, N.A.

Routing No.: 026009593

Account No.: 325132729125

Beneficiary: Custodio & Dubey LLP

Other than this payment, each side is to bear its own attorneys' fees and costs.

5.1. Tax Documentation

Harbor Freight agrees to provide a completed IRS 1099 form for its payments, and Ecological and Custodio & Dubey agree to provide IRS W-9 forms to Harbor Freight. The Parties acknowledge that Harbor Freight cannot issue any settlement payments pursuant to Section 5 above until Harbor Freight received the requisite W-9 forms from Ecological's counsel.

6. RELEASE OF ALL CLAIMS

6.1. Release of Harbor Freight, Downstream Customers and Upstream Vendors

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, Ecological, in its representative capacity, and on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims relating to the Products, 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 limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against (a) Harbor Freight, (b) each of Harbor Freight's past, present and future downstream distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) Harbor Freight's past, present and future parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees").

Ecological also, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees and *not* in its representative capacity, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of any nature, character or kind, known or unknown, suspected or unsuspected, against Harbor Freight and the Releasees. Ecological acknowledges that it is familiar with California Civil Code section 1542, 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.

Ecological, in its capacity only, and on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of California Civil Code section 1542 as well as under any other state or federal

statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

6.2. Harbor Freight's Release of Ecological

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

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Harbor Freight shall have no further obligations pursuant to this Settlement Agreement.

8. SEVERABILITY

In the event that any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected, and shall remain in full force and effect.

9. NOTICES

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

For Harbor Freight: Anne Marie Ellis, Esq.
Buchalter

18400 Von Karman Avenue, Suite 800
Irvine, CA 92612-0514

For Ecological: Vineet Dubey, Esq.
Custodio & Dubey LLP
445 S. Figueroa St., Suite 2520
Los Angeles, CA 90071

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

10. COUNTERPARTS; FACSIMILE/E-SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or e-signatures, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

11. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)

Ecological agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

12. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.



13. MODIFICATION

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

14. AUTHORIZATION

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

Settlement Agreement.

<p style="text-align: center;">AGREED TO:</p> <p>Date: January <u>20</u>, 2022</p> <p>By:  On Behalf of Ecological Alliance, LLC</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: January <u>2/8</u>, 2022</p> <p>By:  On Behalf of Harbor Freight Tools USA, Inc.</p>
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