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

10 APS&EE, LLC, a limited liability company, )  
11 Plaintiff, )  
12 v. )  
13 HARBOR FREIGHT TOOLS USA, INC., a )  
14 corporation, and DOES 1 through 100, )  
15 inclusive, )  
16 Defendants. )

CASE NO. 22STCV12817

**[PROPOSED] CONSENT JUDGMENT**

Judge: Hon. Gail Killefer  
Dept.: 37  
Compl. Filed: April 18, 2022

Unlimited Jurisdiction

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1 **1. RECITALS**

2 **1.1 The Parties**

3 **1.1.1** This Consent Judgment (“Consent Judgment”) is entered into by and  
4 between APS&EE, LLC (“Plaintiff”) and Harbor Freight Tools USA, Inc. (“Harbor Freight”).  
5 Plaintiff and Harbor Freight shall hereinafter collectively be referred to as the “Parties.”

6 **1.1.2** Plaintiff is an organization based in California with an interest in  
7 protecting the environment, improving human health and the health of ecosystems, and  
8 supporting environmentally sound practices, which includes promoting awareness of exposure to  
9 toxic chemicals and reducing exposure to hazardous substances found in consumer products.

10 **1.1.3** Plaintiff alleges that Harbor Freight is a person in the course of doing  
11 business as the term is defined in California *Health & Safety Code* section 25249.6 et seq.  
12 (“Proposition 65”).

13 **1.2 Allegations**

14 **1.2.1** Plaintiff alleges that Harbor Freight sold the Pittsburgh brand of bolt  
15 cutters, including item 60683, 18”, 7-92363-60683-7 (hereinafter, the “Products”) in the State of  
16 California causing users in California to be exposed to hazardous levels of Di (2-ethylhexyl)  
17 Phthalate (“DEHP”) and Di-n-Butyl Phthalate (“DBP”, and collectively with DEHP, the “Listed  
18 Chemicals”), without providing “clear and reasonable warnings”, in violation of Proposition 65.  
19 DEHP is a chemical known to the state to cause cancer and reproductive toxicity, and DBP as  
20 known to cause birth defects and other reproductive harm, and therefore each chemical is subject  
21 to Proposition 65 warning requirements.

22 **1.2.2** On February 8, 2022, Plaintiff sent a Sixty-Day Notice of Violation (the  
23 “Notice”) to Harbor Freight and the various public enforcement agencies regarding the alleged  
24 violation of Proposition 65 with respect to the Products. On April 18, 2022, Plaintiff, acting in  
25 the public interest, filed the instant action (the “Complaint”) in the Superior Court for the County  
26 of Los Angeles, alleging violations of Proposition 65.

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1           **1.3     No Admissions**

2           Harbor Freight denies all allegations in Plaintiff’s Notice and Complaint and maintains  
3 that the Products have been, and are, in compliance with all laws, and that Harbor Freight has not  
4 violated Proposition 65. This Consent Judgment shall not be construed as an admission of  
5 liability by Harbor Freight but to the contrary as a compromise of claims that are expressly  
6 contested and denied. However, nothing in this section shall affect the Parties’ obligations,  
7 duties, and responsibilities under this Consent Judgment.

8           **1.4     Compromise**

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

13           **1.5     Jurisdiction and Venue**

14           For purposes of this Consent Judgment only, the Parties stipulate that the above-entitled  
15 Court has jurisdiction over Harbor Freight as to the allegations in the Complaint, that venue is  
16 proper in Los Angeles County, and that this Court has jurisdiction to enter and enforce the  
17 provisions of this Consent Judgment pursuant to California Code of Civil Procedure  
18 Section 664.6 and Proposition 65.

19           **1.6     Effective Date**

20           The “Effective Date” shall be the date this Consent Judgment is approved and entered by  
21 the Court.

22 **2.     INJUNCTIVE RELIEF**

23           **2.1     Reformulation Standard**

24           Not later than sixty (60) days after the Effective Date, Harbor Freight shall not distribute  
25 for sale in California, sell or offer for sale the Products in California unless (a) the Product  
26 contains not more than 1,000 parts per million (0.1%) of DEHP or DBP (“Reformulated  
27 Product”) when analyzed pursuant to U.S. Environmental Protection Agency testing  
28 methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies

1 for the purpose of determining the DEHP or DBP content in a solid substance, or (b) the Product  
2 is distributed, sold, or offered for sale with a clear and reasonable warning as described below in  
3 Section 2.2.

## 4 **2.2 Clear And Reasonable Warnings**

5 For any Products that are not Reformulated Products, such Products shall be  
6 accompanied by a clear and reasonable warning. Harbor Freight shall provide a warning  
7 statement substantially similar to either the following long-form or short-form warning.

8 Long-Form Warning:

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

12 Short Form Warning:

13 **WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

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

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

## 26 **2.3 Additional Warnings Required or Permitted By Law or Regulation**

27 In addition to the warning requirements set forth in Section 2.2 above, Harbor Freight  
28 may comply with this Consent Judgment by using any other warning and transmission method(s)

1 set forth in 27 Cal. Code Regs. §§ 25601, 25602, 25603, et seq., and amended subsequently  
2 thereafter, or other text or methods authorized or mandated by those regulations, or other State of  
3 California or legislation pertaining to Proposition 65 warnings related to such Products.

4 In the event that Proposition 65 warnings for DEHP or DBP should no longer be required  
5 by law, Harbor Freight shall have no further obligations pursuant to this Consent Judgment.

6 **2.4 Sell-Through**

7 The injunctive requirements of Section 2 shall not apply to Products Harbor Freight has  
8 distributed to California retailers as of sixty (60) days after the Effective Date, which Products  
9 are subject to the releases provided in Section 4.1.

10 **3. PAYMENTS**

11 **3.1 Civil Penalty Pursuant To Proposition 65**

12 In settlement of all claims referred to in this Consent Judgment, Harbor Freight shall pay  
13 a total civil penalty of twelve thousand five hundred dollars (\$12,500.00) to be apportioned in  
14 accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$9,375.00)  
15 for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the  
16 remaining 25% (\$3,125.00) for Plaintiff.

17 Harbor Freight shall issue two (2) checks for the civil penalty: (1) a check or money order  
18 made payable to “OEHHA” in the amount of \$9,375.00; and (2) a check or money order made  
19 payable to “APS&EE, LLC” in the amount of \$3,125.00. Harbor Freight shall remit the  
20 payments within five (5) business days of the Effective Date, to:

21 Lucas T. Novak, Esq.  
22 LAW OFFICES OF LUCAS T. NOVAK  
23 8335 W Sunset Blvd., Suite 217  
Los Angeles, CA 90069

24 Law Offices of Lucas T. Novak shall provide a W-9 form for “APS&EE, LLC” prior to  
25 the due date of any payments made hereunder and understands that no payments can be issued  
26 unless and until Harbor Freight receives such W-9 Form. Upon receipt of the above civil penalty  
27 checks, Law Offices of Lucas T. Novak shall be solely responsible for forwarding the respective  
28 payments to OEHHA and Plaintiff.

1           **3.2 Reimbursement Of Plaintiff’s Fees And Costs**

2 Harbor Freight shall reimburse Plaintiff’s reasonable experts’ and attorney’s fees and  
3 costs incurred in prosecuting the instant action for all work performed through execution and  
4 approval of this Consent Judgment, in the amount of fifteen thousand dollars (\$15,000.00).

5 Accordingly, in addition to the civil penalty described above in Section 3.1, Harbor Freight shall  
6 issue a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount  
7 of fifteen thousand dollars (\$15,000.00) within five (5) business days of the Effective Date, to:

8 Lucas T. Novak, Esq.  
9 LAW OFFICES OF LUCAS T. NOVAK  
10 8335 W Sunset Blvd., Suite 217  
11 Los Angeles, CA 90069

12 Law Offices of Lucas T. Novak shall provide a W-9 form for “Law Offices of Lucas T.  
13 Novak” prior to the due date of any payments made hereunder and understands that no payments  
14 can be issued unless and until Harbor Freight receives such W-9 Form.

14 **4. RELEASES**

15           **4.1 Plaintiff’s Release Of Harbor Freight**

16 Plaintiff, acting in its individual capacity, and in the public interest, in consideration of  
17 the promises and monetary payments contained herein, hereby releases Harbor Freight, its  
18 parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys,  
19 successors and assignees, as well as its downstream distributors, retailers, and franchisees  
20 (collectively “Released Parties”), from any alleged Proposition 65 violation claims asserted in  
21 Plaintiff’s Notice or Complaint regarding failure to warn about exposure to the Listed Chemicals  
22 from the Products distributed by Harbor Freight before and up to sixty (60) days after the  
23 Effective Date.

24           **4.2 Harbor Freight’s Release Of Plaintiff**

25 Harbor Freight, by this Consent Judgment, waives all rights to institute any form of legal  
26 action against Plaintiff, its shareholders, directors, members, officers, employees, attorneys,  
27 experts, successors and assignees for actions or statements made or undertaken, whether in the  
28 course of investigating claims or seeking enforcement of Proposition 65 against Harbor Freight

1 in this matter. If any Released Party should institute any such action, then Plaintiff's release of  
2 said Released Party in this Consent Judgment shall be rendered void and unenforceable.

3 **4.3 Waiver Of Unknown Claims**

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

6 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
7 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
8 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
9 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
10 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
11 DEBTOR OR RELEASED PARTY.

12 Each of the Parties waives and relinquishes any right or benefit it has or may have under  
13 Section 1542 of California Civil Code or any similar provision under the statutory or non-  
14 statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights  
15 and benefits. The Parties acknowledge that each may subsequently discover facts in addition to,  
16 or different from, those that it believes to be true with respect to the claims released herein. The  
17 Parties agree that this Consent Judgment and the releases contained herein shall be and remain  
18 effective in all respects notwithstanding the discovery of such additional or different facts.

19 **4.4 Compliance with Proposition 65**

20 Compliance with the terms of this Consent Judgment by Harbor Freight shall constitute  
21 compliance with Proposition 65 by the Released Parties with respect to any alleged failure to  
22 warn about DEHP and/or DBP from the Products manufactured, distributed, or sold by Harbor  
23 Freight after the Effective Date.

24 **5. COURT APPROVAL**

25 Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed  
26 Motion for Approval and Entry of Consent Judgment in the above-entitled Court. This Consent  
27 Judgment is not effective until it is approved and entered by the Court. It is the intention of the  
28 Parties that the Court approve this Consent Judgment, and in furtherance of obtaining such  
approval, the Parties and their respective counsel agree to mutually employ their best efforts to  
support the entry of this agreement in a timely manner, including cooperating on drafting and

1 filing any papers in support of the required motion for judicial approval.

2 **6. SEVERABILITY**

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

6 **7. GOVERNING LAW**

7 The terms of this Consent Judgment shall be governed by the laws of the State of  
8 California.

9 **8. NOTICES**

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

<p>12 TO HARBOR FREIGHT:</p> <p>13 Anne Marie Ellis, Esq. 14 BUCHALTER 15 18400 Von Karman Ave, Suite 800 Irvine, CA 92612-0514</p>	<p>TO PLAINTIFF:</p> <p>Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069</p>
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16 Either Party may provide the other with an alternative name and/or address for  
17 correspondence and notice, and the other side will comply with that change request.

18 **9. COUNTERPARTS**

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

24 **10. AUTHORIZATION**

25 The undersigned are authorized to execute this Consent Judgment on behalf of their  
26 respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions  
27 of this Consent Judgment. Each Party warrants to the other that it is free to enter into this  
28 Consent Judgment and is not subject to any conflicting obligation that will or might prevent or

1 interfere with the execution or performance of this Consent Judgment by said Party.

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3 **AGREED TO:**

4 Date: 8/8/2022

5 By: [Signature]

6 Authorized Representative of APS&EE, LLC

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8 **AGREED TO:**

9 Date: 8/8/22

10 By: [Signature]

11 Authorized Representative of Harbor Freight Tools USA, Inc.

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13 **IT IS SO ORDERED.**

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

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

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