

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

1. RECITALS

1.1 The Parties

1.1.1 This Settlement Agreement (“Agreement”) is entered into by and between Harbor Freight Tools USA, Inc. and Central Purchasing, LLC (collectively “Harbor Freight”), on the one hand, and APS&EE, LLC (“APS&EE”) on the other hand (each individually referred to as a “Party” and collectively as the “Parties”).

1.1.2 APS&EE alleges that each Harbor Freight entity is a person 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 1) hammers, including but not limited to Pittsburgh 4-in-1, Item 69093, UPC #1-93175-48133-7 (collectively, “hammers”) and 2) hacksaws, including but not limited to Pittsburgh 12”, Item 62780, UPC #7-92363-62780-1 (“hacksaws”, and collectively with hammers, the “Products”) in the State of California causing users in California to be exposed to hazardous levels of Di (2-ethylhexyl) Phthalate (“DEHP”) without providing “clear and reasonable warnings”, in violation of Proposition 65. APS&EE further alleges that the hammers contain lead. DEHP is listed by the State of California as known to cause cancer and reproductive toxicity; Lead is listed as known to cause cancer and birth defects or other reproductive harm.

1.2.2 On or about September 14, 2023, APS&EE sent a Sixty-Day Notice of Violation (the “Sept. 14 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 DEHP in the Products. On or about September 27, 2023, APS&EE sent a Supplemental Sixty-Day Notice of Violation (the “Sept. 27 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 DEHP in the Products and Lead in the hammers. The Sept. 14 Notice and Sept. 27 Notice shall hereinafter collectively be referred to as the “Notices”.

1.3 No Admissions

Harbor Freight denies all allegations in APS&EE’s Notices 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

2.1 Reformulation Standard

Not later than sixty (60) days after the Effective Date, Harbor Freight shall not distribute for sale in California, sell or offer for sale the Products in California unless (a) the Products contain no more than 1,000 parts per million (0.1%) of DEHP and/or no more than 100 parts per million (0.01%) of Lead, as applicable, or specifically for Lead only, produce a wipe test result no higher than 1.0 microgram of Lead when analyzed using NIOSH Method 9100 (“Reformulated Product”), or (b) the Product is accompanied by a clear and reasonable warning as described below in Section 2.2. In

addition to the above tests, Harbor Freight may use equivalent methods utilized by any California or federal agency to determine Lead content in a substance.

2.2 Proposition 65 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:

Long Form Warning:

WARNING: This product can expose you to chemicals, including [Di (2-ethylhexyl) Phthalate and/or Lead],¹ which [is/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.

Short Form Warning:

WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

The bracketed language may vary based on the identified listed chemical(s). 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”. Additionally, if the Product contains consumer information in a foreign language, the warning must be provided in the foreign language.

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

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, and the content of the warning shall include the type(s) of harm it is known to cause (e.g., cancer and birth defects or other reproductive harm).

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 warning requirements of this section.

2.3 Additional Warnings Required or Permitted by Law or Regulation

In addition to or in lieu of the warning requirements set forth in Section 2.2 above, Harbor Freight may comply with this Agreement by using any other warning or transmission method(s) set forth in 27 Cal. Code Regs. §§ 25601 *et seq.*, and amended subsequently thereafter, or other text or methods authorized or mandated by those regulations, or other State of California legislation pertaining to Proposition 65 warnings that are applicable to the Products. In the event Proposition 65 warnings for DEHP and/or Lead should no longer be required by law, Harbor Freight shall have no further obligations under Section 2 of this Agreement regarding reformulation or warning about exposure to that affected chemical(s) from the Product(s).

2.4 Sell-Through

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

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 two thousand and five hundred dollars (\$2,500.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,875.00) for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$625.00) 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 solely responsible

for forwarding the respective payments to OEHHA and APS&EE.

3.2 Reimbursement Of Plaintiff'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-four thousand dollars (\$24,000). Accordingly, Harbor Freight shall remit the total payment via wire transfer to Law Offices of Lucas T. Novak in the amount of twenty-six thousand five hundred dollars (\$26,500), which includes the civil penalty described in Section 3.1, within seven (7) business days of the Effective Date and Harbor Freight's receipt of a completed W-9 form and wire instructions.

Law Offices of Lucas T. Novak shall provide its W-9 form prior to the due date of any payments made hereunder and understands that no payments can be issued unless and until Harbor Freight receives the W-9 form for Law Offices of Lucas T. Novak.

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 (collectively "Released Parties"), from any alleged Proposition 65 violation claims asserted or that could have been asserted in APS&EE's Notices regarding failure to warn about exposure to Listed Chemicals from the Products that Harbor Freight has sold or caused to be sold in California before and up to sixty (60) days after 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 acknowledge 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. Each of the Parties acknowledges that it 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.

4.4 Compliance with Proposition 65

The Parties agree that compliance with the terms of this Agreement shall constitute compliance by Harbor Freight with Proposition 65 for the Products with respect to any alleged failure to warn about DEHP and/or Lead from the Products manufactured, distributed, or sold by Harbor Freight after the Effective Date.

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

This Agreement is made and entered into in the State of California and 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, with a courtesy copy via email, addressed as follows:

<p>TO HARBOR FREIGHT: Meryl K. Chae, Esq. Harbor Freight Tools 26677 Agoura Road Calabasas, CA 91302 mchae@harborfreight.com</p>	<p>TO APS&EE: Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069 Lucas.nvk@gmail.com</p>
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Either Party 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.

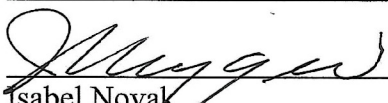
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9. **AUTHORIZATION**

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: 4.19.24

By: 
Isabel Novak
Authorized Representative of APS&EE, LLC


AGREED TO:

Date: April 19, 2024

By: 
Meryl K. Chae
EVP & General Counsel
Authorized Representative of Harbor Freight Tools USA, Inc.

AGREED TO:

Date: April 19, 2024

By: 
Meryl K. Chae
Authorized Representative of Central Purchasing, LLC

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: _____

By: _____
Isabel Novak
Authorized Representative of APS&EE, LLC

AGREED TO:

Date: April 19, 2024

By: Meryl K. Chae
Meryl K. Chae
EVP & General Counsel
Authorized Representative of Harbor Freight Tools USA, Inc.

AGREED TO:

Date: April 19, 2024

By: Meryl K. Chae
Meryl K. Chae
Authorized Representative of Central Purchasing, LLC