

## SETTLEMENT AGREEMENT

### **1. INTRODUCTION**

#### **1.1 Parties**

This settlement agreement (“Settlement Agreement”) is entered into by and between Keep America Safe and Beautiful, Inc., (“KASB”), on the one hand, and Harbor Freight Tools USA, Inc., (“Harbor Freight” or “Defendant”) on the other hand, with KASB and Harbor Freight each individually referred to as a “Party” and collectively as the “Parties.”

#### **1.2 General Allegations**

KASB alleges in a 60-Day Notice of Violation dated November 17, 2023, that Harbor Freight sells and/or distributes the “Wire Cutters” in California that contain Di(2-ethylhexyl) Phthalate (DEHP) without a warning required by Health and Safety Code §§ 25249.5 *et seq.* (“Proposition 65”) (the “Notice”). DEHP is listed under Proposition 65 as a chemical known to cause cancer and birth defects or other reproductive harm.

#### **1.3 Product Description**

The product covered by this Settlement Agreement is defined as, and expressly limited to the Pittsburgh 6” Diagonal Cutters, SKU #63816, UPC #792363638166 (hereinafter the “Product”) that allegedly contain DEHP and that are manufactured, sold or distributed for sale in California by Harbor Freight.

#### **1.4 Notice of Violation**

On November 17, 2023, KASB served the Notice on Harbor Freight, the California Attorney General and the other requisite public enforcers, alleging that Harbor Freight violated Proposition 65 when it failed to warn consumers in California of the alleged potential exposure to DEHP from the Product.

To the best of the Parties' knowledge, no public enforcer has commenced prosecuting an action to enforce the violations alleged in the Notice.

#### **1.5 No Admission**

Harbor Freight denies the material, factual, and legal allegations in the Notice and maintains that all of the products it sold and/or distributed for sale in California, including the Product, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Harbor Freight or any of its officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, finding, conclusion, issue of law or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Harbor Freight or any of its officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Harbor Freight. This Section shall not, however, diminish or otherwise affect Harbor Freight’s obligations, responsibilities, and

duties under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date on which a complete and fully executed copy of this Settlement Agreement is exchanged by the Parties' counsel.

## **2. INJUNCTIVE RELIEF**

### **2.1 Clear and Reasonable Warnings**

Not later than 90 days after the Effective Date, Products that Harbor Freight directly manufactures, imports, distributes, sells, or offers for sale in California, shall either bear a warning as set forth in Paragraphs 2.2 or have a maximum concentration of less than 0.1 percent (1,000.00 parts per million) DEHP 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 performed by using a laboratory method that is approved by the Consumer Product Safety Commission ("CPSC"), U.S. Environmental Protection Agency ("USEPA"), or other federal or state government agency for the purpose of determining DEHP content in a solid substance.

### **2.2 General Warning Requirements**

Harbor Freight agrees that 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 of purchase or use.

For purposes of this Settlement Agreement, a clear and reasonable warning for the Product shall consist of a warning affixed to the packaging, label, tag, or directly to each of the Product sold or distributed in California by Harbor Freight that contains one of the following statements:

- 1) **⚠WARNING:** This product can expose you to Di(2-ethylhexyl)phthalate (DEHP), 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](http://www.P65Warnings.ca.gov).
- 2) **⚠WARNING:** Cancer and Reproductive Harm-[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

The word "**WARNING:**" shall be in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word "**WARNING:**" must be a black exclamation point in a yellow equilateral triangle with a black outline. Where the sign, label, or shelf tag for the product is not printed using the color yellow, the symbol may be provided in black and white. The same warning shall be posted on any websites where the Product is sold in California.

Where a consumer product sign, label or shelf tag used to provide a warning includes

consumer information in language(s) other than English, the warning must also be provided in the other language(s) in addition to English.

(i) Changes in Warning Regulations or Statutes

In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, 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. If regulations or legislation are enacted or issued providing that a Proposition 65 warning for the Product is no longer required, Harbor Freight shall have no further obligations under this Settlement Agreement.

**2.3 Grace Period for Existing Inventory of Products**

The injunctive requirements of Section 2 shall not apply to Product that is already in the stream of commerce as of ninety (90) days after the Effective Date, which Product is expressly subject to the releases provided in Section 4.1.

**3. MONETARY SETTLEMENT TERMS**

**3.1 Total Settlement Payment**

In full satisfaction of all potential civil penalties, attorneys' fees, and costs, Harbor Freight shall make a total settlement payment of Thirty-One Thousand Seven Hundred and Fifty Dollars (**\$31,750.00**) ("Total Settlement Amount"). The Total Settlement Amount shall be apportioned into a Civil Penalty and Attorney's Fees and Costs as set forth in Sections 3.2 and 3.3 below.

**3.2 Civil Penalty Payment**

Pursuant to Health and Safety Code§ 25249.7(b)(2), and in settlement of all claims alleged or that could have been alleged in the Notice or referred to in this Settlement Agreement, Harbor Freight agrees to pay Three Thousand One Hundred and Seventy-Five Dollars (**\$3,175.00**) in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code§§ 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty amount retained by KASB. Within twenty-one (21) days of the Effective Date, Harbor Freight shall issue a check to "OEHHA" in the amount in the amount of Two Thousand Three Hundred and Eighty-One Dollars and Twenty-Five Cents (**\$2,381.25**) and shall, pursuant to the instructions below, wire to KASB the amount of Seven Hundred and Ninety-Three Dollars and Seventy-Five Cents (**\$793.75**).

All payments owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at the following addresses:

For United States Postal Delivery Service:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010, MS 19B  
Sacramento, CA 95812-4010

For Non-United States Postal Delivery Service:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street MS #19B  
Sacramento, CA 95814

All penalty payments owed to KASB shall be sent via wire to:

**Wire Instructions:**

Account Name: The Law Offices of Joseph R. Manning  
Bank Name: J.P. Morgan Chase Bank, N.A.  
Bank Address: 2967 Michelson Dr, Ste A, Irvine, CA 92612  
Routing Number: 322271627  
Wire Routing / ABA Number: 021000021  
Swift Code: CHASUS33  
Account Number: 579068902

For further benefit of: Civil Penalty Payment File No. P65-02-0024

**3.3 Attorney Fees and Costs**

The Parties reached an accord on the compensation due to KASB and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, within twenty-one (21) days of the Effective Date, Harbor Freight agrees to pay Twenty-Eight Thousand Five Hundred and Seventy-Five Dollars (**\$28,575.00**) to KASB and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Harbor Freight, and negotiating a settlement.

The payment shall be sent via wire to:

**Wire Instructions:**

Account Name: The Law Offices of Joseph R. Manning  
Bank Name: J.P. Morgan Chase Bank, N.A.  
Bank Address: 2967 Michelson Dr, Ste A, Irvine, CA 92612  
Routing Number: 322271627  
Wire Routing / ABA Number: 021000021

Swift Code: CHASUS33  
Account Number: 579068902

For further benefit of: Attorney's Fees and Costs File No. P65-02-0024

### **3.4 Tax Documentation**

Harbor Freight agrees to provide a completed IRS 1099 form for its payments to, and KASB and Manning Law agree to provide IRS W-9 forms for, each of the payees under this Settlement Agreement. The Parties acknowledge that Harbor Freight cannot issue any settlement payments pursuant to Section 3 above unless and until Harbor Freight receives the requisite W-9 forms from KASB's counsel.

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 KASB's Release of Harbor Freight**

KASB, acting on its own behalf and on behalf of its past and present officers, directors, shareholders, employees, agents, representatives, attorneys, parent companies, successors, assigns, subsidiaries, and divisions, and not on behalf of the public, fully releases and discharges Harbor Freight and its past and present officers, directors, shareholders, employees, agents, attorneys, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, distributors (the "Defendant Releasees") and all entities to which Defendant Releasees directly or indirectly distribute or sell the Product, and any other distributors, wholesalers, customers, retailers, franchisees, licensors, and licensees, (collectively, the "Released Parties" and individually, a "Released Party"). KASB, on behalf of itself and its past and present officers, directors, shareholders, employees, agents, representatives, attorneys, parent companies, successors, assigns, subsidiaries, and divisions hereby fully releases and discharges the Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, obligations, and expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent, asserted or that could have been asserted based on or related to the Product, including any alleged violation of Proposition 65 or its implementing regulations, including without limitation, any failure to provide Proposition 65 warnings on the Product with respect to exposures to DEHP.

### **4.2 Harbor Freight's Release of KASB**

Harbor Freight on behalf of its past and current agents, representatives, attorneys, successors and assignees hereby waives any and all claims against KASB and its attorneys and other representatives, for any and all actions taken, or statements made by KASB and its attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Product.

### **4.3 California Civil Code Section 1542**

It is possible that other claims not known to KASB arising out of the Notice or relating to the Product, will develop or be discovered. KASB, in its individual capacity, and on behalf of

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 claims against Harbor Freight and the Released Parties with regard to the Product. KASB acknowledges that it is familiar with and understands California Civil Code section 1542, which provides:

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.

KASB, in its individual capacity only, and on behalf of 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.

**5. SEVERABILITY**

In the event that any of the provisions of this Settlement Agreement are held by a court of competent jurisdiction to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

**6. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California, without regard to its conflicts of law principles.

**7. NOTICE**

When any Party is entitled to receive any notice under this Settlement Agreement, the notice shall be sent by first class mail and electronic mail to the addresses set forth in this Paragraph. Any Party may modify the person and address to whom the notice is to be sent by sending the other Party notice by certified mail, return receipt requested. Said change shall take effect on the date the return receipt is signed by the Party receiving the change.

Notices shall be sent to:

For KASB

Joseph R. Manning, Jr.  
26100 Towne Center Drive  
Foothill Ranch, CA 92610  
Tel: Office (949) 200-8757 Fax: (866) 843-8309  
p65@manninglawoffice.com

For Harbor Freight

Meryl K. Chae  
EVP & General Counsel  
Harbor Freight Tools  
26677 Agoura Road  
Calabasas, CA 91302  
mchae@harborfreight.com

**8. COUNTERPARTS: FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or 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. Signatures by scanned and emailed image or facsimile transmission shall have the same force and effect as original signature and as an electronic record adopted and executed by a Party with the intent to sign the electronic record pursuant to Civil Code §§ 1633.1 *et seq.*

**9. COMPLIANCE WITH HEALTH AND SAFETY CODE §25249.7(f)**

KASB and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code §25249.7(f).

**10. MODIFICATION**

The Settlement Agreement may be modified only by written agreement of the Parties.

**11. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by, or relied on, any Party.

**12. INTERPRETATION**

No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any Party, based upon the fact that one of the Parties and/or their counsel prepared or drafted any portion of this Agreement. The Parties waive the provisions of Civil Code § 1654. It is conclusively presumed that the Parties participated equally in the drafting of this Agreement.

**13. 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.

AGREED TO:

Date: \_\_\_\_\_

By: \_\_\_\_\_

Lance Nguyen  
Keep America Safe and Beautiful, Inc.

AGREED TO:

Date: June 24, 2024

By: 

Meryl K. Chae  
Harbor Freight Tools USA, Inc.



AGREED TO:

Date: 06/23/2024

By:  \_\_\_\_\_

Lance Nguyen  
Keep America Safe and Beautiful, Inc.

AGREED TO:

Date: \_\_\_\_\_

By: \_\_\_\_\_

Meryl K. Chae  
Harbor Freight Tools USA, Inc.