

1 **BURSOR & FISHER, P.A.**
 2 L. Timothy Fisher (State Bar No. 191626)
 3 Joel D. Smith (State Bar No. 244902)
 4 Blair E. Reed (State Bar No. 316791)
 5 1990 North California Boulevard, Suite 940
 6 Walnut Creek, CA 94596
 7 Telephone: (925) 300-4455
 8 Facsimile: (925) 407-2700
 9 E-Mail: ltfisher@bursor.com
 10 jsmith@bursor.com
 11 breed@bursor.com

12 *Counsel for Plaintiffs*

13 **UNITED STATES DISTRICT COURT**
 14 **CENTRAL DISTRICT OF CALIFORNIA**

15 WILL KAUPELIS and FRANK
 16 ORTEGA, individually and on behalf of
 17 all others similarly situated,

18 Plaintiffs,

19 v.

20 HARBOR FREIGHT TOOLS USA,
 21 INC.,

22 Defendant.

23 Case No. 8:19-cv-1203

24 **CLASS ACTION COMPLAINT**

25 JURY TRIAL DEMANDED

1 Plaintiffs Will Kaupelis and Frank Ortega (“Plaintiffs”) bring this action on
2 behalf of themselves and all others similarly situated against Defendant Harbor
3 Freight Tools USA, Inc. (“Harbor Freight” or “Defendant”) for the manufacture,
4 marketing, and sale of Portland, One Stop Gardens, and Chicago Electric 14-inch
5 Electric Chainsaw products identified below. Plaintiffs make the following
6 allegations pursuant to the investigation of their counsel and based upon information
7 and belief, except as to the allegations specifically pertaining to themselves, which
8 are based on personal knowledge.

9 **NATURE OF ACTION**

10 1. This is a class action against Defendant Harbor Freight Tools USA, Inc.
11 for the manufacture and sale of Portland, One Stop Gardens, and Chicago Electric
12 14-inch Electric Chainsaws (collectively, the “Products”), all of which suffered from
13 an identical defect in design. Specifically, the power switch was prone to
14 malfunction, causing the chainsaw blade to continue operating after the operator
15 moves the power switch to the “off” position. A chainsaw that takes on a life of its
16 own by not turning off when necessary is extraordinarily dangerous. This defect
17 rendered the Products unsuitable for their principal and intended purpose.

18 2. Plaintiffs bring their claims against Defendant individually and on
19 behalf of a class of all other similarly situated purchasers of the Products for (1)
20 violation of California’s Consumers Legal Remedies Act (“CLRA”), Civil Code §§
21 1750, *et. seq.*; (2) violation of California’s Unfair Competition Law, Cal. Bus. &
22 Prof. Code §§ 17200-17210; (3) fraud; (4) unjust enrichment; (5) breach of implied
23 warranty; and (6) violations of the Magnuson-Moss Warranty Act.

24 **PARTIES**

25 3. Plaintiff Will Kaupelis is, and at all times relevant to this action has
26 been, a resident of Placentia, California. In approximately the fall of 2016, Mr.
27 Kaupelis purchased a Portland brand 14-inch Electronic Chainsaw from a Harbor
28 Freight store located in San Bernardino, California. Mr. Kaupelis purchased the

1 Product because he believed it was fit for use as a chainsaw. However, the Product
2 Mr. Kaupelis purchased was not fit for use as a chainsaw due to the Product's
3 malfunctioning power switch. Mr. Kaupelis would not have purchased the Product
4 had he known that the Product was unfit to perform its intended purpose, rendering
5 the Product useless.

6 4. The power switch on the Product that Mr. Kaupelis purchased
7 malfunctioned shortly after he purchased it. Mr. Kaupelis threw the Product in the
8 trash because he was afraid to use it. Mr. Kaupelis disposed of the Product long
9 before he ever contemplated litigation.

10 5. Mr. Kaupelis reviewed the Product's packaging prior to purchase.
11 Defendant disclosed on the packaging that the Products were chainsaws and
12 described features typical of chainsaws but did not disclose the defect. Had there
13 been a disclosure, Mr. Kaupelis would not have bought the Product because the
14 defect would have been material to him, or at the very least, he would have
15 purchased the product at a substantially reduced price. Mr. Kaupelis relied on the
16 packaging in making his purchase decision.

17 6. Plaintiff Frank Ortega is, and at all times relevant to this action has
18 been, a resident of Reseda, California. In approximately the spring of 2017, Mr.
19 Ortega purchased a Portland brand 14-inch Electronic Chainsaw from a Harbor
20 Freight store located in Northridge, California. Mr. Ortega purchased the Product
21 because he believed it was fit for use as a chainsaw. However, the Product Mr.
22 Ortega purchased was not fit for use as a chainsaw due to the Product's
23 malfunctioning power switch. Mr. Ortega would not have purchased the Product had
24 he known that the Product was unfit to perform its intended purpose, rendering the
25 Product useless.

26 7. Mr. Ortega reviewed the Product's packaging prior to purchase.
27 Defendant disclosed on the packaging that the Products were chainsaws and
28 described features typical of chainsaws but did not disclose the defect. Had there

1 been a disclosure, Mr. Ortega would not have bought the Product because the safety
2 defect would have been material to him, or at the very least, he would have
3 purchased the product at a substantially reduced price. Mr. Ortega relied on the
4 packaging in making his purchase decision.

5 8. Defendant Harbor Freight Tools USA, Inc. is a Delaware corporation
6 with its principal place of business at 26541 Agoura Rd., Calabasas, California.
7 Defendant manufactures, markets, and distributes the Products throughout the United
8 States. Defendant sells its products directly to consumers in Harbor Freight stores
9 and on Harbor Freight's website.

10 JURISDICTION AND VENUE

11 9. This Court has subject matter jurisdiction over this action pursuant to 28
12 U.S.C. § 1332(d) because there are more than 100 class members and the aggregate
13 amount in controversy exceeds \$5,000,000, exclusive of interest, fees, and costs, and
14 at least one Class member is a citizen of a state different from Defendant.

15 10. This Court has personal jurisdiction over Defendant because Defendant
16 conducts substantial business within California such that Defendant has significant,
17 continuous, and pervasive contacts with the State of California.

18 11. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because
19 Defendant does substantial business in this District, a substantial part of the events
20 giving rise to Plaintiffs' claims took place within this District because Plaintiffs
21 purchased their Products in this District and reside in this District.

22 COMMON FACTUAL ALLEGATIONS

23 **I. The Power Switch Defect**

24 12. Defendant Harbor Freight is a hardware store franchise that owns and
25 operates over 900 hardware stores nationwide. Among the various tools sold by
26 Defendant are Portland, One Stop Gardens, and Chicago Electric 14-inch Electric
27 Chainsaws, which are the products at issue here ("the Products"). Except for the
28 brand names, the Products are identical and share the same model number 62755.

1 13. The Products were made with defective power switches, causing the
2 chainsaw blade to continue operating after the operator moves the power switch to
3 the “off” position (hereinafter, the “Product Defect” or “power switch defect”). The
4 Product Defect was substantially likely to materialize during the useful life of the
5 Product.

6 14. With over a million units sold at approximately \$50 each, Harbor
7 Freight profited enormously from its failure to disclose the Product Defect sooner.

8 15. The power switch defect at issue here involves a critical safety-related
9 component of the Products, and it was unsafe to operate the Products with the
10 defective power switch. Defendant had exclusive knowledge of the defect, which
11 was not known to Plaintiff or class members.

12 16. Defendant made partial representations to Plaintiffs and class members,
13 while suppressing the safety defect. Specifically, by displaying the Products and
14 describing their features, the product packaging implied that the Products were
15 suitable for use as a chainsaw, without disclosing that they had a critical safety-
16 related defect that could result in harm to users of the Products. In fact, the product
17 packaging specifically called-out the “Safety Lock-Out Switch,” conveying the
18 impression that the product was specially designed to prevent it from unintended or
19 undesired operation.

20 **II. Defendant’s Sham Recall**

21 17. In May of 2018, Harbor Freight issued a recall of the Products.

22 18. The recall was due to a serious injury hazard associated with the
23 Products. Specifically, Harbor Freight admitted that its Products had a defect in
24 design and materials that caused the chainsaw to continue operating after the
25 operator moves the power switch to the “off” position.

26 19. Harbor Freight sold over 1,000,000 Products in the United States.

27 20. As of August 31, 2018, barely 2% of the Products were returned as part
28 of the recall, and Harbor Freight generally declined refund requests.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.