

LAW OFFICES OF RONALD A. MARRON

RONALD A. MARRON (SBN 175650)

ron@consumersadvocates.com

SKYE RESENDES (SBN 278511)

skye@consumersadvocates.com

WILLIAM B. RICHARDS, JR. (SBN 298552)

bill@consumersadvocates.com

MICHAEL T. HOUCHIN (SBN 305541)

mike@consumersadvocates.com

651 Arroyo Drive

San Diego, California 92103

Telephone: (619) 696-9006

Facsimile: (619) 564-6665

LAW OFFICE OF DAVID ELLIOT

DAVID ELLIOT (SBN 270381)

elliott.david@hotmail.com

2028 3rd Avenue

San Diego, CA 92101

Telephone: (858) 228-7997

Counsel for Plaintiff and the Proposed Class

**UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA**

TED SHIMONO, on behalf of himself, all
others similarly situated, and the general
public,

Plaintiff,

v.

HARBOR FREIGHT TOOLS USA, INC.,

Defendant.

Case No.:

CLASS ACTION COMPLAINT

1. Violation of California’s Unfair Competition Laws (“UCL”); California Business & Professions Code §§ 17200, et seq.
2. Violation of California’s False Advertising Laws (“FAL”); California Business & Professions Code §§ 17500, et seq.
3. Violations of California Consumer Legal Remedies Act (“CLRA”); Civ. Code §§ 1750, et seq.
4. Deceit by Suppression of Facts; Cal. Civ. Code § 1710(3)

DEMAND FOR JURY TRIAL

1 Plaintiff TED SHIMONO (“Plaintiff” or “Mr. Shimono”), by and through his
2 undersigned counsel, hereby brings the below claims on behalf of himself, all others
3 similarly situated, and the general public against DEFENDANT HARBOR FREIGHT
4 TOOLS, INC. (“Harbor Freight” or “Defendant”) alleging the following on personal
5 knowledge or, where Plaintiff lacks personal knowledge, upon information and belief,
6 including the investigation of his counsel. The claims and other legal contentions alleged
7 in this Complaint are warranted by existing law or by a non-frivolous argument for
8 extending, modifying, or reversing existing law, or for establishing new law, and all
9 factual contentions have evidentiary support or will likely have evidentiary support after
10 a reasonable opportunity for further investigation and discovery:

11 **I. JURISDICTION AND VENUE**

12 1. This Court has diversity jurisdiction over this action pursuant to the Class
13 Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1332(d)(a), because the matter in
14 controversy exceeds \$5,000,000 exclusive of interests and costs, and this matter is a
15 nationwide class action in which more than two thirds of the Class Members, as defined
16 herein, are citizens of states other than California. Defendant maintains its headquarters
17 and principal place of business in Calabasas, California. Plaintiff is domiciled in the
18 county of Riverside, State of California, and is a citizen of California.

19 2. This Court has personal jurisdiction over Defendant because Defendant
20 maintains its principal place of business in Calabasas, California, and Defendant has
21 continuous and systematic contacts with this District and the state of California as to
22 essentially render it “at home” in this District. Moreover, Defendant has purposefully
23 availed itself to the laws and benefits of doing business in this District and Plaintiff’s
24 claims arise out of Defendant’s forum-related activities.

25 3. Venue is proper because Defendant “resides” in this District, and a
26 substantial part of the events alleged in this Complaint giving rise to Plaintiff’s claims,
27 occurred in this District.

1 **II. NATURE OF THE ACTION**

2 4. Plaintiff brings this class action to seek redress for himself and a class of
3 consumers, defined herein, who were deceived by Defendant’s advertising, marketing,
4 and sales practices.

5 5. Harbor Freight Tools USA, Inc. is a discount tool and equipment retailer.
6 Harbor Freight offers its products through over 600 retail stores in 47 states, by telephone
7 catalog sales through call centers, and via its own online website.¹

8 6. Through comprehensive and consistent fake-sale-price advertising,
9 Defendant falsely created in consumers the impression that “sale priced” merchandise
10 was reduced in price from Defendant’s previous retail prices, that advertised “savings”
11 were real when they were not, and that advertised “comp at” prices were valid
12 comparisons with equivalent merchandise—also false.

13 7. These deceptive tactics induced consumers to purchase poor-quality
14 merchandise at inflated prices.

15 8. During the Class Period, Defendant Harbor Freight deceived, and continues
16 to deceive, Plaintiff and the Class by falsely advertising its merchandise, including, but
17 not limited to, tools, equipment, accessories, and other products at purported “sale”
18 prices. Defendant’s advertising uniformly compared these ostensible sale prices to
19 invented “regular” prices, “Only” prices, and “comp[are] at” prices for the merchandise,
20 which were, and are, misrepresented as prevailing market retail prices, customary store
21 prices, and/or prices of comparable merchandise, from which fictitious savings were then
22 calculated and communicated to the consumer through various advertising mediums.

23 9. Defendant’s supposed discounts were calculated from sham “regular” or
24 “comp at” prices that were artificially inflated, and were never the regular retail prices
25 for Defendant’s merchandise or comparable retail prices for products of the same quality
26 or value as the products that Defendant sold. In addition, the represented “retail” or “comp
27

28 _____
¹ <http://www.harborfreight.com/> (last visited May 4, 2016)

1 at” prices were not the prevailing market retail prices within three months immediately
2 preceding the publication of the advertised former prices, as required by California law.

3 10. Defendant advertised its deceptive and misleading pricing campaign to
4 consumers at the point of purchase and through periodically-mailed and distributed
5 flyers, catalogs, circulars, and other promotional materials, in-store displays, web pages,
6 emailed “offers,” and print advertisements. For example, in many of Defendant’s retail
7 outlets, the fictitious discount price scheme is prominently displayed throughout the store,
8 advertising supposed deep discounts on essentially every single item of inventory sold in
9 the store.

10 11. Defendant sells branded products, as well as their own exclusive house-
11 brand products, at a particular price- and quality-point. There is no “comparable price”
12 for many of these products other than the price set by Defendant. The difference between
13 the “sale” price and the advertised “regular” or “comp at” prices is a false discount used
14 to induce consumers into purchasing products they have been led to believe are
15 significantly discounted.

16 12. Through its false and deceptive marketing, advertising, pricing, and sales
17 scheme, Defendant violated, and continues to violate, California law prohibiting the
18 advertising of goods for sale as discounted from former prices which are false, and
19 prohibiting misleading statements about the existence and amount of price reductions.
20 Specifically, Defendant violated, and continues to violate, California’s Business &
21 Professions Code §§ 17200, *et seq.* (“UCL”), California’s Business & Professions Code
22 §§ 17500, *et seq.* (“FAL”), California’s Consumers Legal Remedies Act, California Civil
23 Code §§ 1750, *et seq.* (“CLRA”), and the Federal Trade Commission Act (“FTCA”),
24 which prohibits “unfair or deceptive acts or practices in or affecting commerce” (15
25 U.S.C. § 45(a)(1)) and false advertisements (15 U.S.C. § 52(a)).

26 13. In addition, Defendant advertises coupon savings that state, for example,
27 “**20% off your purchase**” in bold, giant red type, with a tiny qualifier “*of any one item*”
28 below. These “coupon savings” also constitute deceptive advertising, for two reasons.

1 14. In addition to printing the coupons so as to deliberately mislead
2 customers—the fact that the customer will receive 20% off one item rather than their
3 entire purchase is deliberately obscured from the consumer—when consumers try to use
4 the “% off” coupon, sales associates do not apply the percentage savings to an item of the
5 customer’s choosing but rather apply the percentage discount to the lowest-priced item
6 in the customer’s order, rendering false the “*any item*” percentage savings as advertised.

7 15. Further, Defendant frequently advertises different prices for the same item
8 simultaneously, and when customers attempt to purchase such merchandise at retail
9 stores, Defendant charges the consumer the highest advertised price, in violation of
10 California consumer protection laws.

11 16. Accordingly, Plaintiff brings this action on behalf of himself and all other
12 similarly situated consumers/customers who have purchased one or more products at
13 Defendant’s retail stores, through the call center, or online, which were deceptively
14 represented as discounted from false former prices, and/or who were overcharged for
15 advertised merchandise or deceptively induced by misleading coupon offers to purchase
16 merchandise. Plaintiff brings this action in order to halt the dissemination of this false,
17 misleading, and deceptive pricing scheme, correct the false and misleading perception it
18 has created in the minds of consumers, and obtain redress for those who have purchased
19 deceptively priced products or been defrauded by Defendant in their purchases. Plaintiff,
20 on behalf of himself and the Class, seeks restitution and other equitable remedies,
21 including an injunction under the UCL and FAL, as well as restitution and damages, and
22 an injunction under the CLRA.

23 **III. PARTIES**

24 **Plaintiff Ted Shimono**

25 17. Plaintiff TED SHIMONO is a resident and citizen of Lake Elsinore,
26 California. Mr. Shimono, in reliance on Defendant’s false and deceptive advertising,
27 marketing, and “discount” pricing schemes, purchased numerous tools and other items of
28

1 merchandise for himself and his family between approximately June 2013 and March
2 2016 at a Harbor Freight retail store located in Murrieta, California.

3 18. Among other merchandise, Mr. Shimono purchased security lights, tool
4 bags, saw horses, and numerous other tools and other merchandise from Defendant.

5 19. All of this merchandise was advertised as having “regular” prices, “retail”
6 prices, “comp at” prices, or “[o]nly” [regularly priced] prices, and as being offered to the
7 customer at “sale” prices wherein the purported sale price gave the illusion of offering
8 large discounts from the store’s customary price or market price.

9 20. These advertised discounts were illusory. These products had not actually
10 been sold or offered for sale at the represented advertised prices at Defendant’s retail
11 stores, online store, or in its catalog, at that price within the 90-day time period
12 immediately preceding Plaintiff’s purchases, and any comparison prices were not valid
13 comparisons to equivalent or comparable merchandise.

14 21. Plaintiff suffered injury and was damaged economically by his purchases of
15 Defendant’s products. Plaintiff was induced by Defendant’s falsely advertised discounts
16 and sale prices to buy products he would not have purchased absent the false advertising,
17 and to purchase those products at prices greater than their true market value.

18 22. Mr. Shimono would consider buying Harbor Freight products again if the
19 sales prices were not marketed in a deceptive manner that is likely to mislead consumers
20 like himself.

21 **Defendant Harbor Freight Tools USA, Inc.**

22 23. Defendant Harbor Freight Tools USA, Inc. is a Delaware corporation that
23 maintains its principal corporate executive offices and headquarters in Calabasas, located
24 in Los Angeles County in the state of California. Defendant is registered to do business
25 in California as entity number C2111204.

26 24. Defendant operates Harbor Freight Tools retail stores as well as the
27 harborfreight.com website and a call center to process telephone orders, and advertises,
28 markets, distributes, and/or sells tools, equipment, accessories, and other merchandise

1 and products in California and throughout the United States. Plaintiff is informed and
2 believes, and based thereon alleges, that Defendant is legally responsible for the events,
3 happenings, circumstances, and/or occurrences alleged herein, and for the damages
4 suffered by Plaintiff and Class Members, as defined herein.

5 **IV. LEGAL AND FACTUAL ALLEGATIONS**

6 **A. False Former Price Comparison Schemes Are Unlawful**

7 25. The United States Federal Trade Commission describes false “former price
8 comparison” schemes as follows:

9 One of the most commonly used forms of bargain advertising is to offer a
10 reduction from the advertiser’s own former price for an article. If the former
11 price is the actual, bona fide price at which the article was offered to the public
12 on a regular basis for a reasonably substantial period of time, it provides a
13 legitimate basis for the advertising of a price comparison. Where the former
14 price is genuine, the bargain being advertised is a true one.

15 *If, on the other hand, the former price being advertised is not bona fide but*
16 *fictitious—for example, where an artificial, inflated price was established for*
17 *the purpose of enabling the subsequent offer of a large reduction—the*
18 *“bargain” being advertised is a false one; the purchaser is not receiving the*
19 *unusual value he expects. In such a case, the “reduced” price is, in reality,*
20 *probably just the seller’s regular price.*

21
22 16 C.F.R. § 233.1(a) (emphasis added).

23 26. California law also expressly prohibits false former pricing schemes:

24 For the purpose of this article the worth or value of any thing advertised is the
25 prevailing market price, wholesale if the offer is at wholesale, retail if the offer
26 is at retail, at the time of publication of such advertisement in the locality
27 wherein the advertisement is published.
28

1 No price shall be advertised as a former price of any advertised thing, unless
2 the alleged former price was the prevailing market price as above defined
3 within three months next immediately preceding the publication of the
4 advertisement or unless the date when the alleged former price did prevail is
5 clearly, exactly and conspicuously stated in the advertisement.

6 CAL. BUS. & PROF. CODE §17501.
7

8 27. California law further prohibits businesses from “[m]aking false or
9 misleading statements of fact concerning reasons for, existence of, or amounts of price
10 reductions.”²

11 28. During the Class Period, Defendant intentionally concealed, and continues
12 to conceal, material facts its customers, including Plaintiff and Class Members, regarding
13 the truth about its former-price and comparison price advertising in order to induce them
14 to purchase Defendant’s products in retail stores, through call centers, and/or on its
15 internet website.

16 29. As an illustrative example, Harbor Freight advertises the market price and
17 sale price of a 3/8-inch diameter, 50-foot retractable hose reel as: “comp at \$166.00” –
18 “Sale: \$89.99”.³
19
20
21
22
23
24
25
26

27 ² See Cal. Civ. Code § 1770(a)(9) & § 1770(a)(13).

28 ³ <https://web.archive.org/web/20160427044119/http://www.harborfreight.com/38-in-x-50-ft-Retractable-Hose-Reel-69265.html> (last visited May 3, 2016).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



3/8 in. x 50 ft. Retractable Hose Reel

CENTRALPNEUMATIC

"Impressed with the quality, covers your entire garage at an unbelievable low price."

Street Trucks Magazine

Central Pneumatic - Item#69265

[Read 69 Reviews](#)

[Write A Review](#)

Retractable hose reel has a locking ratchet system to keep hose at desired length

comp at \$166.00

Sale: \$89.99

Qty:

ADD TO CART

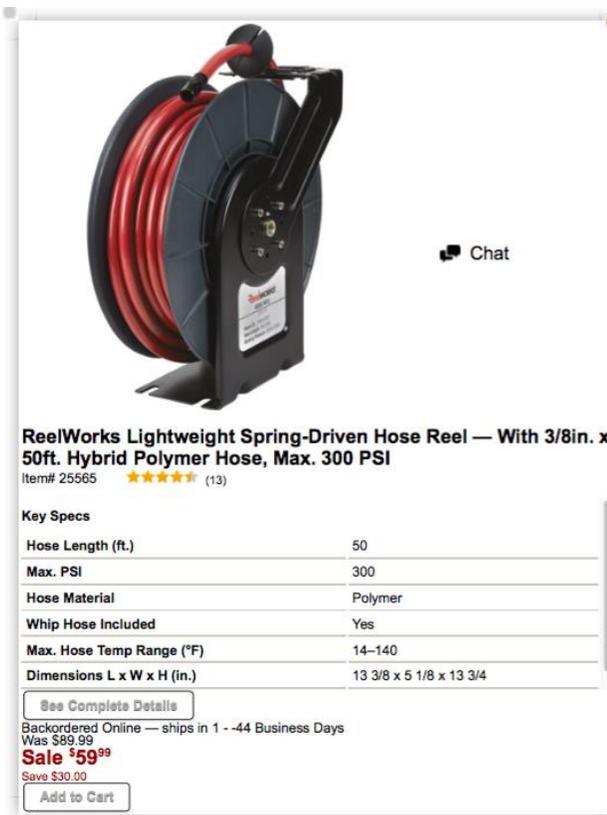
30. But a comparable hose reel, of equivalent or superior quality, by name-brand manufacturer Husky, is available from Home Depot for \$64.98.⁴

31. Moreover, an essentially identical unit to the one offered on “Sale” by Defendant – albeit photographed from a different angle – is available from a competitor, ReelWorks, for \$59.99, reduced from its suggested retail price of \$89.99⁵—the same \$89.99 price that Harbor Freight claims is a drastically-reduced “Sale” price. And the competitor’s product is rated for 20% higher pressure.⁶

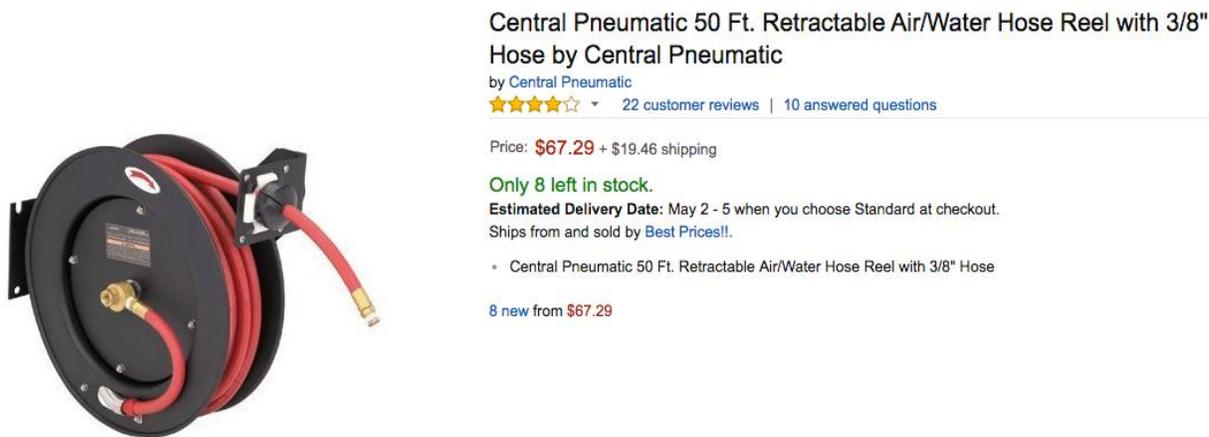
⁴ <http://www.homedepot.com/p/HUSKY-3-8-in-x-50-ft-Hybrid-Retractable-Hose-Reel-540HR-RET-HOM/205331905> (last visited May 3, 2016).

⁵ http://www.northerntool.com/shop/tools/product_200517529_200517529 (last visited April 26, 2016).

⁶ *Id.*



32. Further, the exact same unit, made by the same manufacturer, is available from a retail business on Amazon.com for \$67.29 plus shipping.⁷



⁷ <http://www.amazon.com/Central-Pneumatic-Retractable-Water-Hose/dp/B00AVKCJIA> (last visited May 3, 2016).

1 33. Defendant's retractable hose reel was never offered for sale - or ever valued
2 at - \$166.00 as Defendant claims. Defendant's advertised "comp at" price is simply false
3 and deliberately intended to deceive consumers into paying higher prices.

4 34. This is not by any stretch of the imagination an isolated case. Harbor Freight
5 deliberately advertises similar fake sale pricing on countless items of merchandise, in all
6 categories of equipment, in an effort to mislead consumers.

7 35. Defendant's fake sale pricing extends throughout its entire price range. A
8 brass pneumatic coupler set that Defendant claims to "comp at \$8.99" and dramatically
9 reduce to a "Sale" price of \$4.99⁸ is available from a competitor for \$3.40.⁹ The two
10 advertisements are shown below.

11 Harbor Freight



12
13
14
15
16
17
18
19
20
21
22
23
24
25

26 ⁸ <http://www.harborfreight.com/brass-industrial-quick-coupler-set-5-pc-61915.html>
27 (last visited May 4, 2016).

28 ⁹ <http://workersoutlet.com/Central-Pneumatic-5-Piece-Solid-Brass-Industrial-Quick-Coupler-Set-B006ZBC43E.php> (last visited May 4, 2016).

Competitor



Central Pneumatic 5 Piece Solid Brass Industrial Quick Coupler Set

792363682374

[Read Reviews](#) | [Save Product](#)

\$3.40 + Shipping

In Stock. Pricing as of 2016-04-26 22:04:34

36. Similarly, during the Class Period Defendant advertised comparison prices for an electrical welding unit, below, as “Only \$299” or “comp at \$519.” Both are false.

37. The table below shows the advertised price history of this unit, the Chicago Electric Welding 170 Amp-DC, 240 Volt, MIG/Flux Cored Welder, uniformly identified by Defendant by the exact same stock number and specifications. This unit was never sold at the former retail price or comparison price advertised by Defendant.

Defendant’s “Sale” Pricing History: Welding Unit¹⁰

<u>Date</u>	<u>Defendant’s comparison price</u>	<u>Advertised “Sale” price</u>
April 20, 2016	“comp at \$519.99”	184.99
October 7, 2015	“comp at \$519.99”	179.99
September 9, 2015	Only \$299.99	189.99

¹⁰ <https://web.archive.org/web/20150909102601/http://www.harborfreight.com/welding/mig-flux-welders/170-amp-dc-240-volt-migflux-cored-welder-68885.html>, (last visited April 20, 2015)

June 27, 2015	Only \$299.99	189.99
February 23, 2015	Only \$299.99	189.99
September 27, 2014	Only \$299.99	199.99

38. In yet another example, Defendant currently lists an impact wrench for “Sale” at \$99.99 and advertises a “compare at” price of \$249.99. But Defendant has for years sold this tool at the exact same current “Sale” price, or less—though it nearly doubled the false comparison price to its current \$249.99, further exaggerating the illusion of savings.

39. Below are examples of the “compare at” and sham implied-retail “Only” prices at which Defendant has priced this tool, a Central Pneumatic brand 1/2 in. Air Impact Wrench, Item#68424, and the corresponding “Sale” prices over time.

Defendant’s “Sale” Pricing History: Impact Wrench

<u>Date</u>	Comparison price	Advertised “Sale” price	Claimed savings for consumer
April 20, 2016	“comp at” \$249.99	\$99.99	\$150
February 16, 2016	“comp at” \$249.99	\$84.99	\$165
December 21, 2015	“comp at” \$249.99	99.99	\$150
July 21, 2105	Only: \$129.99	99.99	\$30
March 16, 2015	Only: \$129.99	99.99	\$30
July 29, 2014	Only: \$129.99	99.99	\$30
March 1, 2014	Only: \$129.99	84.99	\$45
January 22, 2014	Only: \$129.99	97.99	\$32
June 27, 2013 ¹¹	Only: \$129.99	94.99	\$35

¹¹ <https://web.archive.org/web/20130318215858/http://www.harborfreight.com/12-in-professional-air-impact-wrench-68424.html> (last visited April 26, 2016).

1 40. Defendant’s current advertised “Sale” price of \$99.99 is the highest price at
 2 which Defendant has ever offered this tool for sale to consumers.

3 41. Defendant’s “comp at” wording for its sham retail or former-retail
 4 advertised prices is a recent development. Defendant previously referred to its phony
 5 comparison prices as the merchandise’s “regular price” or as an “Only” price, with a
 6 strike-through of that price suggesting that the fake sale price was an actual reduction
 7 from Defendant’s usual retail price.

8 42. For example, in July 2015 Defendant advertised a 6000 lb. capacity scissors
 9 lift as having a regular price of “~~Only \$1799.99~~” and a purported sale price of \$1499.99¹²
 10 as shown below:

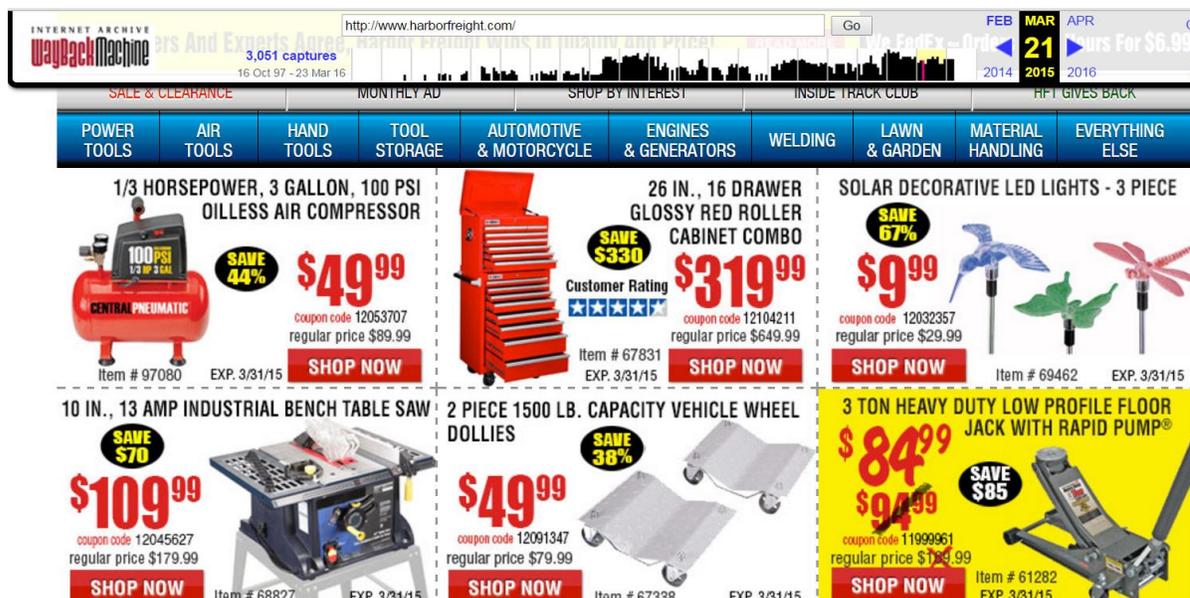
The screenshot shows the Harbor Freight Tools website interface. At the top, there is a search bar with the URL 'http://www.harborfreight.com/6000-lb-capacity-scissor-lift-91315.html' and a 'Go' button. Below the search bar is a navigation menu with options like 'FACT US', 'GET COUPONS NOW!', 'SIGN IN / REGISTER', 'WISH LIST', 'BUILD A STORE SHOPPING LIST', and 'ORDER STATUS'. The main header features the Harbor Freight Tools logo and a search bar. A promotional banner reads 'NEW This Week' with a 'VIEW' button. Below the banner is a category menu with options like 'SALE & CLEARANCE', 'MONTHLY AD', 'SHOP BY INTEREST', 'INSIDE TRACK CLUB', and 'HFT'. The main content area displays a product listing for a '6000 Lb. Capacity Scissor Lift' by Central Hydraulics. The product image shows a white van on a blue scissor lift. The price is listed as 'Only: \$1,799.99' and 'Sale: \$1,499.99'. There is an 'ADD TO CART' button and a quantity selector set to '1'. A sidebar on the right shows a 'CUSTOM THIS' section with a green arrow pointing to a product image and a 'Sale: \$2' offer.

11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28 ¹² <https://web.archive.org/web/20150715081832/http://www.harborfreight.com/6000-lb-capacity-scissor-lift-91315.html>; last visited May 19, 2015.

43. In October 2015, this same unit was being advertised as “comp at” \$1955.99 instead of “~~Only 1799.99~~,” with the same “Sale” price of \$1499.99.¹³ Defendant’s “Sale” price hadn’t changed at all, but the savings promised to consumers had leapt by 50%.¹⁴

44. In fact, Defendant used fake “strike-through” prices and “regular” prices, rather than “comp at” prices, to deceive consumers through nearly all of the class period.

45. To illustrate, this is Defendant’s advertising circular from March 2015¹⁵ during the class period, showing sham “regular” retail prices and fictitious savings calculated from those sham prices:



46. Other examples of Defendant’s fake sale pricing, from its catalog, website, and retail stores, are too numerous to show here. Exhibit 1 includes Defendant’s current “Sale” prices for its products offered on the Harbor Freight website. Defendant’s current version of its fake retail price advertising scheme typically displays sham “comp at” comparison prices, rather than the fake strike-through prices, “Only” prices, “regular” prices, or other equally misleading descriptions of sham retail comparison prices that

¹³ <https://web.archive.org/web/20151008052111/http://www.harborfreight.com/6000-lb-capacity-scissor-lift-91315.html>

¹⁴ *Id.*

¹⁵ <https://web.archive.org/web/20150321151920/http://www.harborfreight.com/>

1 Defendant has previously used. The wording varies but the result is the same: throughout
2 the Class period, Defendant’s fake “Sale” price advertising has been deceptive,
3 misleading, and in violation of California consumer protection law.

4 **B. Harbor Freight’s “Comp at” Pricing Scheme is Also Unlawful**

5 47. On or around September 2015, Defendant deliberately changed its
6 advertising of claimed retail comparison prices, from previously referring to these phony
7 prices as “regular” prices or “Only” prices—suggesting that even these false former or
8 retail prices were a good value—to instead describing its false comparison prices as
9 “comp at” prices, in an attempt to further deceive consumers including Plaintiff and Class
10 Members.

11 48. Defendant’s recent variation on its deceptive advertising scheme is equally
12 deceptive and continues to violate California and Federal law.

13 49. Federal advertising regulations specifically reference these types of
14 deceptive pricing practices.

15 50. In 16 CFR §§ 233 *et seq.*, the Federal Trade Commission sets forth guidance
16 regarding what the agency considers deceptive pricing schemes, including “comparable
17 value” retail price comparisons.

18 51. According to the FTC, any “advertised higher price must be based upon fact,
19 and not be fictitious or misleading.” 16 CFR § 233.2(c).

20 52. Such comparison price advertising may only display a prevailing price, not
21 an unrepresentative price, and must be for merchandise “of like grade and quality” that
22 is “obtainable in the area”—“in other words, comparable or competing merchandise” to
23 that being advertised. 16 CFR § 233.2(c).

24 53. The FTC further specifies that “[t]he advertiser should, however, be
25 reasonably certain . . . that the price advertised as being the price of comparable
26 merchandise does not exceed the price at which such merchandise is being offered by
27 representative retail outlets in the area. . . . Unless a reasonable number of the principal
28

1 outlets in the area are offering [the same merchandise at the advertised comparison price],
2 this advertisement would be deceptive.” *Id.*

3 54. During the Class Period, Defendant fraudulently concealed from and
4 intentionally failed to disclose to Plaintiff and Class Members the truth about its
5 advertised “Sale” prices and advertised, purported former “Only” prices and “comp at”
6 comparison prices, as well as alternate terms for comparison prices that Defendant has
7 used during the Class Period to imply former retail prices, market prices, and purportedly
8 valid comparison prices.

9 55. At all relevant times, Defendant has been under a duty to Plaintiff and the
10 proposed Class to disclose the truth about its false sale pricing, fictitious comparison
11 prices, and illusory discounts.

12 **C. Other Deceptive Advertising Practices Employed by Harbor Freight**

13 56. The fictitious discounts and sale prices, as alleged herein, are not the only
14 deceptive advertising that Defendant maintains.

15 57. Defendant advertises that “. . . Harbor Freight offers more than 7,000 tools
16 and accessories at quality levels that match or exceed competing brands, but at prices that
17 are up to 80% less.”¹⁶

18 58. Defendant also claims in its advertising: “*We buy direct from the same*
19 *factories who supply the expensive brands and pass the savings on to you.*”¹⁷

20 59. Defendant elsewhere claims to manufacture its tools and equipment itself,
21 in its own factories, in which Defendant claims to have “invested millions” in order to
22 supply “highest quality” merchandise at value prices.¹⁸

23 60. Defendant claims that “. . . our tools perform to professional standards and
24 stay tough for the long haul.”¹⁹

25
26 ¹⁶ <http://www.harborfreight.com/about-us> (last visited May 4, 2016).

27 ¹⁷ *Id.*

28 ¹⁸ *Id.*

¹⁹ *Id.*

1 61. Defendants' customers report differently. Customer reviews include:

2
3 "Harbor Freight sells dangerous garbage"; ". . . piece of junk gauge from Harbor
4 Freight was off almost 10 psi." "Don't buy it at Harbor Freight if you need it to
5 work more than once." "...falling apart in my hands." ". . . did not work from the
6 very beginning"; "Turned it on and motor burned up"; ". . . safety switch failed
7 after only two uses, after only about 90 days [right after the warranty expired]";
8 "[floor-tile removing tool] broke after removing approximately 15 tiles";
9 ". . . second time I used it the pump stopped working."

10
11 62. Much of Harbor Freight's merchandise, which Defendant claims is
12 "highest" quality or "professional quality," is, in the opinion of many of those who
13 purchased it, instead substandard and of poor quality.

14 63. Specifically, regarding Defendant's retractable hose reel, for which
15 Defendant's false comparison prices are discussed in Paragraphs 29-33 above, customer
16 comments about this product include:

- 17
- 18 • "... had for just over 90 days when the hose blew out."
 - 19 • "Hose blew up after only 3 months"
 - 20 • "...fine for about a month then the hose began to leak air."
 - 21 • "The hose is unusably cracked for the entire 1" above the end fitting. I
22 bought my hose reel in 10/14, so it's approx [sic] 9 months old."
 - 23 • "... one week later the hose has three holes in it . . . The hose is rated
24 for 250 psi, my compressor doesn't go above 125 psi."
 - 25 • ". . . only used a dozen times. First hose broke at spring, replaced hose
26 and fitting, one week later reel would not retract. 1 year 12 uses will
27 not buy again."
28

- 1 • “the hose needs patched every few days and I only run about 135psi.”
- 2 • “Purchased two of these terrible [products] and both have completely
- 3 failed”
- 4 • “... the rubber hose breaks first at the fitting after about a month of use
- 5 (just in time for the warranty to expire) then the spring that retracts the
- 6 hose completely breaks . . . after about 3 months the rubber hose begins
- 7 to tear and needs to be replaced. these are completely useless and should
- 8 be avoided at all costs.”
- 9

10 64. Such comments are not unique to this product, or any of the products
11 mentioned herein.

12 65. These are just a few examples of customer descriptions of the equipment for
13 which Defendant claims “Great Quality,” “performs to professional standards” and
14 “quality levels that match or exceed competing brands.”

15 66. To further the deception, Defendant omits from its advertising a crucial fact
16 about much of its merchandise: in contrast to warranties offered in the trade by its
17 competitors for similar mechanical equipment, for which warranty periods typically
18 range from one year to three years or more, Defendant offers only a 90-day limited
19 warranty on such equipment, and expressly disclaims all other warranties—including the
20 common law warranty of merchantability.

21 67. Warranty length is an important feature for consumers in determining the
22 quality and value of merchandise. Where Defendant purports to compare its “Sale” prices
23 to “comp at” prices for ostensibly similar merchandise, Defendant’s price comparisons
24 are false and misleading for this reason as well, because in addition to comparing its
25 “sale” prices with those of tools of superior quality, the warranty that Defendant offers is
26 not comparable to that offered by competing retailers.

27 68. Defendant’s advertising claims of “professional quality” merchandise, and
28 of sourcing that merchandise “at the same factories” as more expensive, reliable brands,

1 and quality that “matches or exceeds” competing brands, are also false and deceptive,
2 just as Defendant’s false sale price advertising, false coupon sales, deceptive advertising
3 of discounts and “% off” offers, and other deceptive practices described herein.

4 **D. Plaintiff’s Experience with Harbor Freight**

5 69. Between approximately June 21, 2013 and March 2016, Plaintiff shopped at
6 the Harbor Freight Tools USA retail store in Murrieta, California numerous times to
7 purchase tools, equipment, accessories, and other related merchandise for himself and his
8 family.

9 70. Plaintiff was induced to visit the retail store by print, direct-mail, and online
10 advertising that purported to offer steep discounts on quality merchandise.

11 71. That advertising purported to offer “Sale” prices and compared those
12 purported sale prices against much higher prices that Defendant intended consumers to
13 believe were Defendant’s prior retail prices, or actual or comparable market prices for the
14 same merchandise or merchandise of the same quality.

15 72. On each visit to the store, Plaintiff observed signage within the store and
16 price tags on or near the merchandise advertising significant savings on essentially all
17 merchandise in the store. Those claimed savings were calculated from what were
18 advertised by Defendant as former retail prices or comparable market prices.

19 73. Defendant’s marketing, advertising, and point-of-sale information
20 communicated to Plaintiff that all of this merchandise represented significant savings
21 relative to the products’ normal retail prices and comparable market values.

22 74. Based on this advertised information, Plaintiff decided to purchase
23 numerous items of merchandise during these visits, including, but not limited to, solar
24 security lights, tool bags, tarps, electric drills and drill bits, hammers, tool racks, storage
25 containers, and other merchandise, and did in fact purchase those items.

26 75. Specifically, relying upon Defendant’s misrepresentations and false and
27 deceptive advertising, among other items, Plaintiff purchased in or around June 2015 a
28 solar security light. The product advertising displayed a strike-through price of “Only

1 \$59.99”, suggesting that Harbor Freight’s usual price for this unit was \$59.99 and that
2 the unit was being offered at a discount from that former price. This advertisement
3 represented that the unit was at that time being offered at a substantial discount from the
4 former price, showing the current price as: “Sale: \$39.99”.

5 76. Defendant’s purported strike-through price and the implied price discount
6 and savings were false and misleading, as the prevailing retail price for the merchandise
7 during the three months immediately prior to Plaintiff’s purchase was not the strike-
8 through price advertised by Defendant.

9 77. Relying upon Defendant’s misrepresentations and false and deceptive
10 advertising, Plaintiff purchased this solar security light and was damaged thereby
11 economically.

12 78. Further, relying upon Defendant’s misrepresentations and false and
13 deceptive advertising, Plaintiff also purchased during the period of approximately
14 January through June 2015 a number of protective tarps in different sizes.

15 79. Defendant’s advertising for these tarps, which ranged in size from 5’6” by
16 7’ 6” to approximately 19’ by 29’, showed strike-through prices of, for example, “Only
17 \$6.99”, “Only \$8.99”, and “Only \$39.99”, suggesting that these were Harbor Freight’s
18 usual prices for these products.

19 80. They were not. Defendant’s advertised strike-through prices or “Only
20 \$xx.xx” implied former retail prices were never prices at which Defendant previously
21 sold this merchandise.

22 81. Defendant’s purported former prices and the implied price discount and
23 savings to the consumer were false and misleading, as the prevailing retail prices for the
24 merchandise during the three months immediately prior to Plaintiff’s purchase was not
25 the former price advertised by Defendant.

26 82. Defendant’s purported “comp at” “comparable” prices and corresponding
27 “discounts” and “savings” were similarly false and misleading, as the prevailing retail
28

1 prices for equivalent or comparable merchandise during the three months immediately
2 prior to Plaintiff's purchases were not the prices displayed by Defendant.

3 83. Relying upon Defendant's misrepresentations and false and deceptive
4 advertising, Plaintiff purchased the above and other merchandise, and was damaged
5 economically thereby.

6 84. Plaintiff would not have purchased the tools and equipment, or would not
7 have paid as much for them, absent the affirmative misrepresentations made by
8 Defendant and Defendant's failure to disclose pertinent information. As a result, Plaintiff
9 has been personally injured by and suffered economic injury as a direct and proximate
10 result of Defendant's unlawful, unfair, and fraudulent conduct.

11 85. Defendant was aware that its comparative price advertising currently is and
12 at all times during the Class period was, false, deceptive, misleading, unlawful, and/or
13 unfair under California law.

14 86. Plaintiff relied upon Defendant's artificially inflated comparison prices and
15 false discounts when purchasing tools and equipment from Defendant. Plaintiff would
16 not have made such purchases but for Defendant's representations of fabricated original,
17 "regular," market or "comp at" prices and false discounts.

18 87. Plaintiff and the Class reasonably and justifiably acted and relied on the
19 substantial price differences that Defendant advertised, and made purchases believing
20 that they were receiving substantial discounts on items of greater value than they actually
21 were. Plaintiff, like other Class Members, was lured in, justifiably relied on, and was
22 damaged by these deceptive pricing schemes that Defendant carried out throughout the
23 Class Period.

24 88. Plaintiff would like to shop at Harbor Freight again, but cannot trust Harbor
25 Freight's current price-comparison advertisements. Without tracking Harbor Freight's
26 advertisements on a daily basis for each and every item, and conducting intensive price,
27 quality, and market research and analysis, Plaintiff and Class Members have no realistic
28 way to know which of Harbor Freight's current or future price comparisons are false or

1 deceptive. If the Court were to issue an injunction ordering Harbor Freight to comply
2 with California's comparative price advertising laws, and prohibiting Harbor Freight's
3 use of the deceptive and misleading practices discussed herein, Plaintiff would likely
4 shop at Harbor Freight again in the future.

5 **V. CLASS ACTION ALLEGATIONS**

6 89. Plaintiff brings this action on behalf of himself and all other similarly
7 situated Class Members pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of
8 Civil Procedure, and seeks certification of the following Class against Defendant for
9 violations of California consumer protection laws:

10 All individuals in the United States who purchased Defendant's purportedly
11 discounted products, advertised at false "Sale" prices, for personal, family,
12 or household use, and not for resale, within four years prior to the filing of
13 this Complaint ("Class Period").
14

15 90. Excluded from the Class is Defendant, as well as its officers, employees,
16 agents or affiliates, and any judge who presides over this action, as well as all past and
17 present employees, officers, and directors of Defendant. Plaintiff reserves the right to
18 expand, limit, modify, or amend this class definition, including the addition of one or
19 more subclasses, in connection with his motion for class certification, or at any other
20 time, based upon, *inter alia*, changing circumstances and/or new facts obtained during
21 discovery.

22 91. **Numerosity**: The Class is so numerous that joinder of all Class Members is
23 impracticable. Plaintiff is informed and believes, and based thereon alleges, that the
24 proposed Class contains hundreds of thousands of individuals who have been damaged
25 by Defendant's conduct, as alleged in detail herein. The precise number of Class
26 Members is currently unknown to Plaintiff.

27 92. **Predominance and Commonality**: This action involves common
28 questions of law and fact, which predominate over any questions affecting individual

1 Class Members. These common legal and factual questions include, but are not limited
2 to, the following:

- 3 a) Whether, during the Class Period, Defendant used false comparison price
4 labels and falsely advertised price discounts on its products sold in its retail
5 stores, by telephone, and/or online;
- 6 b) Whether, during the Class Period, the “Only”, “comp at”, “original”,
7 “regular price” or other “market” prices or comparison advertised by
8 Defendant were the prevailing market prices for the respective Harbor
9 Freight products during the three-month period preceding the dissemination
10 and/or publication of the advertised former prices or comparison prices;
- 11 c) Whether Defendant’s alleged conduct constitutes violations of the laws
12 asserted;
- 13 d) Whether Defendant engaged in unfair, unlawful, and/or fraudulent business
14 practices under the laws asserted;
- 15 e) Whether Defendant engaged in false or misleading advertising;
- 16 f) Whether Plaintiff and Class members are entitled to damages and/or
17 restitution, and the proper measure of that loss; and
- 18 g) Whether an injunction is necessary to prevent Defendant from continuing
19 to use false, misleading or illegal price comparisons.
- 20
21
22

23 93. **Typicality:** Plaintiff’s claims are typical of the claims of Class Members
24 because, *inter alia*, all Class Members have been deceived or were likely to be deceived
25 by Defendant’s false and deceptive price advertising scheme, as alleged herein. Plaintiff
26 is advancing the same claims and legal theories on behalf of himself and all Class
27 Members. As such, Plaintiff has the same interest in this matter as all Class Members,
28 and has no interests antagonistic to the interests of other Class Members.

1 94. **Adequacy**: Plaintiff will fairly and adequately protect the interests of the
2 Class. Plaintiff has retained counsel experienced in complex consumer class action
3 litigation who are committed to the vigorous prosecution of this action, and have no
4 interests in the litigation that would potentially conflict with the interests of the Class.
5 Plaintiff has no antagonistic or adverse interest to those of the Class.

6 95. **Superiority**: The nature of this action and the nature of laws available to
7 Plaintiff and the Class make the use of the class action format a particularly efficient and
8 appropriate procedure to afford relief to him and the Class for the wrongs alleged. The
9 damages or other financial detriment suffered by individual Class Members is relatively
10 modest compared to the burden and expense that would be entailed by individual
11 litigation of their claims against Defendant. It would thus be virtually impossible for
12 Plaintiff and Class Members, on an individual basis, to obtain effective redress for the
13 wrongs done to them. Absent the class action, Class Members and the general public
14 would not likely recover, or would not likely have the chance to recover, damages or
15 restitution, and Defendant would be permitted to retain the proceeds of their fraudulent
16 and deceptive misdeeds.

17 96. All Class Members, including Plaintiff, were exposed to one or more of
18 Defendant's misrepresentations or omissions of material fact claiming that former
19 "original" advertised prices were in existence. Due to the scope and extent of Defendant's
20 consistent false "discount" price advertising scheme, disseminated in a years-long
21 campaign to California and nationwide U.S. consumers via a number of different
22 platforms—i.e., in-store displays, print advertisements, etc.—it can be reasonably
23 inferred that such misrepresentations or omissions of material fact were uniformly made
24 to all Class Members. In addition, it can be reasonably presumed that all Class Members,
25 including Plaintiff, affirmatively acted in response to the representations contained in
26 Defendant's false advertising scheme when purchasing Harbor Freight merchandise at
27 Harbor Freight stores, through the call center, and online.

28

1 103. Defendant's actions, as alleged in detail herein, constitute "unfair" business
2 acts or practices because Defendant engaged in misleading and deceptive price
3 comparison advertising that represented false "regular" prices or comparison prices and
4 false "discount" prices leading to phantom markdowns. Defendant's acts and practices
5 offended, and continue to offend, established public policy and Defendant engaged in
6 immoral, unethical, oppressive, and unscrupulous activities substantially injurious to
7 consumers.

8 104. The harm to Plaintiff and Class Members outweighs the utility of
9 Defendant's practices. There were reasonably available alternatives to further
10 Defendant's legitimate business interests, other than the misleading and deceptive
11 conduct described herein.

12 105. A business act or practice is "fraudulent" under the UCL if it is likely to
13 deceive members of the consuming public.

14 106. A business act or practice is "unlawful" under the UCL if it violates any
15 other law or regulation.

16 107. Defendant's acts and practices, as alleged in detail herein, have deceived
17 Plaintiff and Class Members, and are highly likely to deceive members of the consuming
18 public. Plaintiff and Class Members relied on Defendant's fraudulent and deceptive
19 representations regarding its "regular" prices, "comp at" prices, or other suggestions of
20 "market" prices, and the corresponding promised discounts for the Harbor Freight
21 products, which Defendant sells at its retail stores, through call centers, and on its website.
22 These misrepresentations played a substantial role in Plaintiff and Class Members'
23 decisions to purchase the products at promised steep discounts, and Plaintiff and Class
24 Members would not have purchased, or would not have paid as much for, this
25 merchandise without Defendant's misrepresentations.

26 108. The FTCA prohibits "unfair or deceptive acts or practices in or affecting
27 commerce" (15 U.S.C. § 45(a)(1)) and prohibits the dissemination of any false
28 advertisements. 15 U.S.C. § 52(a). Under the FTC false former pricing schemes, similar

1 to the ones implemented by Defendant, are described as deceptive practices that would
2 violate the FTCA:

3 (a) One of the most commonly used forms of bargain advertising is to offer
4 a reduction from the advertiser's own former price for an article. If the
5 former price is the actual, bona fide price at which the article was offered
6 to the public on a regular basis for a reasonably substantial period of time,
7 it provides a legitimate basis for the advertising of a price comparison.
8 Where the former price is genuine, the bargain being advertised is a true
9 one. If, on the other hand, the former price being advertised is not bona fide
10 but fictitious - for example, where an article price, inflated price was
11 established for the purpose of enabling the subsequent offer of a large
12 reduction - the "bargain" being advertised is a false one; the purchaser is
13 not receiving the unusual value he expects.
14

15 (b) A former price is not necessarily fictitious merely because no sales at
16 the advertised price were made. The advertiser should be especially careful,
17 however, in such a case, that the price is one at which the product was
18 openly and actively offered for sale, for a reasonably substantial period of
19 time, in the recent, regular course of her business, honestly and in good faith
20 - and, of course, not for the purpose of establishing a fictitious higher price
21 on which a deceptive comparison might be based.
22

23 109. California law also expressly prohibits false former pricing schemes. Cal.
24 Bus. & Prof. Code § 17501, entitled "*Value determinations; Former price*
25 *advertisement,*" states:

26 For the purpose of this article the worth or value of any thing advertised is
27 the prevailing market price, wholesale if the offer is at wholesale, retail if
28 the offer is at retail, at the time of publication of such advertisement in the

1 locality wherein the advertisement is published.

2 No price shall be advertised as a former price of any advertised thing, unless
3 the alleged former price was the prevailing market price as above defined
4 within three months next immediately preceding the publication of the
5 advertisement or unless the date when the alleged former price did prevail
6 is clearly, exactly and conspicuously stated in the advertisement.
7

8 110. As detailed in Plaintiff's Third Cause of Action below, Cal. Civ. Code §
9 1770(a)(9), prohibits a business from "[advertising goods or services with intent not to
10 sell them as advertised," and subsection (a)(13) prohibits a business from "[m]aking false
11 or misleading statements of fact concerning reasons for, existence of, or amounts of price
12 reductions."

13 111. Defendant's practices, as set forth above, have misled Plaintiff, the proposed
14 Class, and the general public in the past, and will continue to mislead in the future.
15 Consequently, Defendant's practices constitute unlawful and unfair business practices
16 within the meaning of the UCL.

17 112. Defendant's violations of the UCL through its unlawful, unfair, and
18 fraudulent business practices are ongoing and present a continuing threat that members
19 of the public will be deceived into purchasing products based on price comparisons of
20 arbitrary and inflated "regular" or other comparison prices to "sale" prices that created
21 merely phantom markdowns. These practices deceived and continue to deceive
22 consumers, causing financial injury to consumers like Plaintiff and the proposed Class.

23 113. Pursuant to the UCL, Plaintiff is entitled to, and hereby seeks, preliminary
24 and permanent injunctive relief ordering Defendant to cease its unfair, unlawful, and/or
25 fraudulent business practices, as well as disgorgement and restitution to Plaintiff and the
26 Class of all of Defendant's revenues associated with its unfair competition, or such
27 portion of those revenues as the Court may find equitable.
28

1 **COUNT II**

2 **VIOLATIONS OF THE FALSE ADVERTISING LAW**

3 **(CAL. BUS. & PROF. CODE §§ 17500, *et seq.*)**

4 114. Plaintiff repeats and re-alleges the allegations contained in every preceding
5 paragraph as if fully set forth herein.

6 115. Plaintiff brings this Claim individually and on behalf of the members of the
7 Class against Defendant.

8 116. Cal. Bus. & Prof. Code § 17500 provides that “[i]t is unlawful for
9 any...corporation...with intent...to dispose of...personal property...to induce the public to
10 enter into any obligation relating thereto, to make or disseminate or cause to be made or
11 disseminated from this state before the public in any state, in *any newspaper or other*
12 *publication, or any advertising device, or by public outcry or proclamation, or in any*
13 *other manner or means whatever*, including over the Internet, any statement...which is
14 untrue or misleading, and which is known, or which by the exercise of reasonable care
15 should be known, to be untrue or misleading.”

16 117. The “intent” required by Cal. Bus. & Prof. Code § 17500 is the intent to
17 dispose of property, and not the intent to mislead the public in the disposition of such
18 property. Defendant had the intent to dispose of its property through the business
19 practices complained of herein.

20 118. This section also provides, “No price shall be advertised as a former price
21 of any advertised thing, unless the alleged former price was the prevailing market price
22 as above defined within three months next immediately preceding the publication of the
23 advertisement or unless the date when the alleged former price did prevail is clearly,
24 exactly and conspicuously stated in the advertisement.” Cal Bus. & Prof. Code § 17501.

25 119. Defendant’s tactic of advertising discounted prices from false “market”
26 prices, regular prices, or comparison prices associated with Harbor Freight products,
27 which were never the true prevailing “market” prices of those products and were
28 materially greater than the true prevailing prices, was an unfair and misleading practice.

1 This deceptive practice gave consumers the false impression that these or comparable
2 products were regularly sold in the market for a substantially higher price than they
3 actually were, creating in consumers the false impression that Defendant's products were
4 worth more than they actually were.

5 120. Defendant misled, and continues to mislead, consumers including Plaintiff
6 and Class Members, by making untrue and misleading statements and failing to disclose
7 information required by California law.

8 121. As a direct and proximate result of Defendant's misleading and false
9 advertisements, Plaintiff and Class Members have suffered injury in fact and have lost
10 money. As such, Plaintiff requests that this Court order Defendant to restore this money
11 to Plaintiff and all Class Members, and to enjoin Defendant from continuing these unfair
12 practices in violation of the Unfair Competition Law in the future, and in addition to pay
13 for the cost of notice to the class and Plaintiff's attorney's fees and costs. Otherwise,
14 Plaintiff, Class Members, and the broader general public will be irreparably harmed
15 and/or denied an effective and complete remedy.

16 **COUNT III**

17 **VIOLATIONS OF THE CONSUMERS LEGAL REMEDIES ACT ("CLRA")**

18 **(CAL. CIV. CODE §§ 1750, *et seq.*)**

19 122. Plaintiff repeats and re-alleges the allegations contained in every preceding
20 paragraph as if fully set forth herein.

21 123. Plaintiff brings this Claim individually and on behalf of the members of the
22 Class against Defendant.

23 124. Defendant is a "person" under Cal. Civ. Code § 1761(c).

24 125. Plaintiff and Class Members are "consumers," as defined by Cal. Civ. Code
25 § 1761(d).

26 126. Defendant's sale of Harbor Freight products at its retail stores, through call
27 centers, and online, to Plaintiff and the Class, were "transactions" within the meaning of
28 California Civil Code § 1761(e).

1 127. The products purchased by Plaintiff and the Class are “goods” within the
2 meaning of California Civil Code § 1761(a).

3 128. By making affirmative misrepresentations about the products and by
4 concealing material facts about the products, Defendants engaged in deceptive business
5 practices prohibited by the CLRA, Cal. Civ. Code § 1750, *et seq.*, including:

- 6 • § 1770(a)(2): Misrepresenting the source, sponsorship, approval, or
7 certification of goods by claiming that the goods are being sold at an
8 approved or certified sale price, when in fact they are not;
- 9 • § 1770(a)(3): Misrepresenting the affiliation, connection, or association
10 with, or certification by, another by claiming that competitors sell the goods
11 at the "regular" or "comp at" price, when in fact they do not;
- 12 • 1770(a)(5): Representing that goods have characteristics, uses, or benefits
13 which they do not have by claiming that the goods are being sold at a sale
14 price when in fact they are not;
- 15 • § 1770(a)(7): representing that goods are of a particular standard, quality, or
16 grade if they are of another by claiming that the goods were purchased on
17 sale, or were implying that the goods are a "bargain," when in fact they are
18 not;
- 19 • § 1770(a)(9): advertising goods with intent not to sell them as advertised
20 because Defendant knew that the goods were not being sold at a sale a price;
- 21 • § 1770(a)(13): Making false or misleading statements of fact concerning
22 the reasons for, existence of, or amounts of price reductions;
- 23 • § 1770(a)(16): representing the subject of a transaction has been supplied in
24 accordance with a previous representation when it has not representing that
25
26
27
28

1 certain goods were once sold at a "regular" price or "comp at" price when in
2 fact they were not.

3 129. Defendant had, and has, a duty to make material disclosures about the true
4 nature of the Products and its pricing schemes.

5 130. A reasonable consumer would not have purchased nor paid as much for the
6 Defendant's products had Defendant disclosed the truth about the sale prices of the
7 products, as that information is material to a reasonable consumer.

8 131. As a result of its violations of the CLRA detailed above, Defendant has
9 caused, and continues to cause, harm to Plaintiff and Class Members and, if not stopped,
10 will continue to harm them. Had Plaintiff known the truth about the Products he would
11 not have purchased, or paid as much for, the Products.

12 132. In accordance with Civil Code § 1780(a), Plaintiff and Class Members seek
13 injunctive and equitable relief for Defendant's violations of the CLRA. In addition, after
14 mailing appropriate notice and demand in accordance with Civil Code § 1782(a) & (d),
15 Plaintiff will subsequently amend this Complaint to also include a request for damages.
16 Plaintiff and Class Members request that this Court enter such orders or judgments as
17 may be necessary to restore to any person in interest any money which may have been
18 acquired by means of such unfair business practices, and for such other relief, including
19 all costs of notice to the class plus attorneys' fees and costs, as provided in the CLRA,
20 Civil Code § 1780 and the Prayer for Relief. *See* Ex. 2.

COUNT IV

DECEIT BY SUPPRESSION OF FACTS

(CAL. CIV. CODE § 1710(3))

1
2
3
4 133. Plaintiff repeats and re-alleges the allegations contained in every preceding
5 paragraph as if fully set forth herein.

6 134. Plaintiff brings this Claim individually and on behalf of the members of the
7 Class against Defendant.

8 135. California Civil Code Section 1710(3) provides that a “deceit” includes
9 “[t]he suppression of a fact, by one who is bound to disclose it, or who gives information
10 of other facts which are likely to mislead for want of communication of that fact.”

11 136. As set forth above, during the Class Period, Defendant suppressed, and
12 continues to suppress, material facts concerning the true nature of its pricing schemes and
13 sales prices. Defendant had, and has, a duty to make these disclosures based on its
14 superior knowledge of its products and pricing schemes.

15 137. During the Class Period, Defendant actively concealed, and continues to
16 conceal, material facts, in whole or in part, with the intent to induce Plaintiff and Class
17 Members to purchase its products. Specifically, Defendant actively concealed the truth
18 about its pricing schemes and its “comp at” pricing by not disclosing all facts about the
19 true value of the products or that the products were never sold by Defendant at so-called
20 “regular” prices or that “comp at” prices did not reflect the market value of equivalent or
21 comparable merchandise.

22 138. Plaintiff and Class Members were unaware of these concealed or omitted
23 material facts and would not have acted as they did if they had known of those facts.

24 139. Plaintiff and the Class suffered injuries that were directly and proximately
25 caused by Defendant’s active concealments and omissions of material facts in that they
26 overpaid for the products that were purportedly a bargain.

27 140. Defendant’s fraudulent concealments and omissions were a substantial
28 factor in causing the harm suffered by Plaintiff and Class Members, as they would not

1 have purchased the products at all, or would have paid much less for the products, if all
2 material facts were properly disclosed.

3 141. Defendant's conduct was systematic, repetitious, knowing, intentional, and
4 malicious, and demonstrated a lack of care and reckless disregard for Plaintiff and Class
5 Members' rights and interests. Defendant's conduct thus warrants an assessment of
6 punitive damages under Cal. Civ. Code § 3294 and other applicable states' laws,
7 consistent with the actual harm it has caused, the reprehensibility of its conduct, and the
8 need to punish and deter such conduct.

9 **VI. PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff and the Class Members request that the Court enter an
11 order or judgment against Defendant including the following:

- 12 A. An order certifying the Class pursuant to Rule 23(b)(2) with respect to class
13 wide remedies for declaratory or injunctive relief;
- 14 B. An order certifying the Class pursuant to Rule 23(b)(3) with respect to class
15 wide remedies for damages, punitive damages, restitution, and injunctive
16 relief;
- 17 C. Should the class be un-certifiable under Rules 23(b)(2) or 23(b)(3), Plaintiff
18 may seek an order certifying a "particular issue class" to determine the issue
19 of liability pursuant to Rule 23(c)(4);
- 20 D. An order appointing Plaintiff as the Class Representative for the Class and
21 The Law Offices of Ronald A. Marron, APLC and the Law Office of David
22 Elliot as counsel for the Class;
- 23 E. An order requiring Defendant to bear the costs of Class notice;
- 24 F. Restitution in such amount that Defendant has been unjustly enriched by the
25 benefits conferred on it by Plaintiff and Class Members;
- 26 G. For Plaintiff's Count IV, nominal damages, actual damages, punitive
27 damages;
- 28

- 1 H. For Plaintiff's Counts I through III, restitution and disgorgement of ill-gotten
2 gains (except for the CLRA), plus injunctive and other equitable relief;
- 3 I. An order declaring Defendant's conduct as unlawful, unfair, and/or
4 fraudulent, and an order enjoining Defendant from unlawfully marketing
5 and selling its Products in violation of federal and state law;
- 6 J. An order awarding Plaintiff his costs of suit, including reasonable attorneys'
7 fees and pre- and post-judgment interest on such monetary relief;
- 8 K. An order requiring an accounting for, and imposition of, a constructive trust
9 upon all monies Defendant received as a result of the misleading, fraudulent,
10 and unlawful conduct alleged herein; and
- 11 L. Such other relief to which Plaintiff and Class Members may be entitled to at
12 law or in equity.

13 **JURY TRIAL**

14 Plaintiff hereby demands a jury trial for all of the claims so triable.

15
16 Dated: May 20, 2016

Respectfully submitted,

17
18 /s/ Ronald A. Marron

Ronald A. Marron

LAW OFFICES OF

RONALD A. MARRON

Ronald A. Marron, Esq.

ron@consumersadvocates.com

651 Arroyo Drive

San Diego, CA 92101

Telephone: (619) 696-9006

Fax: (619) 564-6665

19
20
21
22
23
24
25
26 /s/ David Elliot

David Elliot

LAW OFFICE OF DAVID ELLIOT

DAVID ELLIOT (SBN 270381)

elliott.david@hotmail.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2028 3rd Avenue
San Diego, CA 92101
Telephone: (858) 228-7997

***Counsel for Plaintiff and the Proposed
Class***

EXHIBIT 2

LAW OFFICES OF
RONALD A. MARRON

A PROFESSIONAL LAW CORPORATION

651 Arroyo Drive
San Diego, California 92103

Tel: 619.696.9006
Fax: 619.564.6665

May 11, 2016

Via: Certified Mail, (receipt acknowledgment with signature requested)

Harbor Freight Tools USA, Inc.

Attn: Legal Dept.
26541 Agoura Road
Calabasas, California 91302-2093

Corporation System Co. d/b/a CSC – Lawyers Incorporating Service

Agent for Service of Process for Harbor Freight Tools USA, Inc.
2710 Gateway Oaks Drive, Suite 150N
Sacramento, California 95833

RE: NOTICE: Violations of Consumer Protection Laws, and Duty to Preserve Evidence

Dear Sir or Madam,

PLEASE TAKE NOTICE that our law firm, along with the Law Office of David Elliot, represents Ted Shimono, a California resident and purchaser of Harbor Freight products. All further communications intended for our client must be directed through this office. This notice and demand letter provides **Harbor Freight Tools USA, Inc.** (“YOU” or “YOUR”) with notice of YOUR violations of California’s Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* (“CLRA”); False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.* (“FAL”); Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (“UCL”); and other related consumer-protection laws. This letter is further meant to comply with, and constitutes notice under, the CLRA and similar consumer protection laws in other states requiring pre-suit demand and notice, and of our client’s demand that YOU remedy such violations within thirty (30) days of your receipt of this letter. This demand and notice letter is provided on behalf of our client and any additional “plaintiffs” should this matter proceed to litigation.

As a discount tool and equipment retailer, YOU market, promote, advertise, and sell a variety of branded and exclusive house-brand merchandise, including, but not limited to, tools, equipment, accessories, and other products at purported “sale” prices (the “Products”) through over 600 retail stores in 47 states, by telephone catalog sales through call centers, and via YOUR own online website, <http://www.harborfreight.com/>. In an effort to induce consumers to purchase YOUR Products at inflated prices, YOU misleadingly market YOUR Products through comprehensive and consistent fake-sale-price advertising to consumers at the point of purchase and through periodically-mailed and distributed flyers, catalogs, circulars, and other promotional materials, prominent in-store displays, web pages,

emailed “offers,” and print advertisements—falsely creating in consumers’ minds the impression that YOUR “sale priced” merchandise was reduced in price from YOUR previous retail prices, that advertised “savings” were real when they were not, and that advertised “comp at” prices were valid comparisons with equivalent merchandise. Specifically, YOUR advertising uniformly compares YOUR Products’ ostensible sale prices to invented “regular” prices, “Only” prices, and “comp[are] at” prices, which were, and are, misrepresented as prevailing market retail prices, customary store prices, and/or prices of comparable merchandise, from which fictitious savings are then calculated and communicated to consumers through various advertising mediums. However, YOUR supposed discounts were, and are, calculated from sham “regular” or “comp at” prices that were artificially inflated, and were never the regular retail prices for YOUR merchandise or comparable retail prices for products of the same quality or value as the Products that YOU sell. In addition, the represented “retail” or “comp at” prices were not the prevailing market retail prices within three months immediately preceding the publication of the advertised former prices, as required by California law. Indeed, the difference between the “sale” and “regular” or “comp at” prices is a false discount used to induce consumers into purchasing Products they have been led to believe are significantly discounted.

YOU also advertise coupon savings that state, for example, “20% off your purchase of any one item.” In addition to printing the coupons so as to deliberately mislead customers—the fact that the customer will receive 20% off one item rather than their entire purchase is deliberately obscured from the consumer—when consumers try to use the “% off” coupon, sales associates do not apply the percentage savings to an item of the customer’s choosing but rather apply the percentage discount to the lowest-priced item in the customer’s order, rendering false the “any item” percentage savings as advertised.

Through YOUR false and deceptive marketing, advertising, pricing, and sales scheme, YOU violated, and continues to violate, California law prohibiting the advertising of goods for sale as discounted from former prices which are false, and prohibiting misleading statements about the existence and amount of price reductions. Specifically, YOU violated, and continue to violate, California’s Unfair Competition Law, False Advertising Law, and Consumers Legal Remedies Act, as well as the Federal Trade Commission Act (“FTCA”), which prohibits “unfair or deceptive acts or practices in or affecting commerce” (15 U.S.C. § 45(a)(1)) and false advertisements (15 U.S.C. § 52(a)).

Between approximately June 2013 and March 2016, our client shopped at the Harbor Freight Tools USA retail store in Murrieta, California numerous times to purchase tools, equipment, accessories, and other related merchandise for himself and his family, after being induced to visit the retail store by YOUR print, direct-mail, and online advertising that purported to offer steep discounts on quality merchandise. Specifically, our client purchased, among other merchandise, solar security lights, tool bags, tarps, electric drills and drill bits, saw horses, hammers, tool racks, storage containers, and numerous other Products and merchandise from YOU. All of this merchandise was advertised as having “regular” prices, “retail” prices, “comp at” prices, “[o]nly” [regularly priced] prices, and/or “save” in a blue or other-colored circle. That advertising purported to offer “Sale” prices and compared those purported sale prices against much higher prices that YOU intended consumers to believe were YOUR prior retail prices, or actual or comparable market prices for the same merchandise or merchandise of the same quality. YOUR marketing, advertising, and information communicated to our client that all of this merchandise represented significant savings relative to the Products’ normal retail prices and comparable market values. By way of illustration, in or around June 2015, our client purchased a solar security light from YOU, after relying on YOUR misrepresentations and deceptive marketing. The

product advertising displayed a strike-through price of “Only \$59.99”, suggesting that YOUR usual price for this unit was \$59.99 and that the unit was being offered at a discount from that former price. This advertisement represented that the unit was at that time being offered at a substantial discount from the former price, showing the current price as: “Sale: \$39.99”. However, YOUR purported strike-through price and the implied price discount and savings were false and misleading, as the prevailing retail price for the product during the three months immediately prior to our client’s purchase was not the strike-through price advertised by YOU.

Relying on YOUR artificially inflated comparison prices and false discounts, our client suffered injury and was damaged economically by his purchases of YOUR products. Our client was induced by YOUR falsely advertised discounts and sale prices to buy Products he would not have purchased absent the false advertising, and to purchase those Products at prices greater than their true market value. Our client would like to shop at Harbor Freight again in the future, but cannot trust YOUR current price-comparison advertisements. Without tracking YOUR advertisements on a daily basis for each and every item, and conducting intensive price, quality, and market research and analysis, our client and other consumers have no realistic way of knowing which of YOUR current or future price comparisons are false or deceptive. A reasonable consumer would have relied on the deceptive and false claims made in YOUR advertisements, and through the exercise of reasonable diligence would not have discovered the violations alleged herein because YOU actively and purposefully concealed, and continue to conceal, material facts about YOUR pricing scheme—including the true value of the Products or that the Products were never sold by YOU at so-called “regular” prices, or that “comp at” prices did not reflect the market value of equivalent or comparable merchandise.

Please be advised that YOUR unfair methods of competition, or unfair or deceptive acts and practices in violation of the CLRA include, but are not limited to:

- § 1770(a)(2): Misrepresenting the source, sponsorship, approval, or certification of goods by claiming that the goods are being sold at an approved or certified sale price, when in fact they are not;
- § 1770(a)(3): Misrepresenting the affiliation, connection, or association with, or certification by, another by claiming that competitors sell the goods at the “regular” or “comp at” price, when in fact they do not;
- 1770(a)(5): Representing that goods have characteristics, uses, or benefits which they do not have by claiming that the goods are being sold at a sale price when in fact they are not;
- § 1770(a)(7): representing that goods are of a particular standard, quality, or grade if they are of another by claiming that the goods were purchased on sale, or were implying that the goods are a “bargain,” when in fact they are not;
- § 1770(a)(9): advertising goods with intent not to sell them as advertised because YOU knew, and know, that the goods were not being sold at a sale a price;
- § 1770(a)(13): Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions; and

- § 1770(a)(16): representing the subject of a transaction has been supplied in accordance with a previous representation when it has not representing that certain goods were once sold at a “regular” price or “comp at” price when in fact they were not.

In sum, YOU have failed to honor YOUR consumer protection obligations. To cure the harmful conduct noted herein, demand is hereby made that YOU: (1) cease and desist from marketing and selling YOUR Products in a false and misleading manner, as alleged above; (2) conduct a corrective advertising campaign and destroy all misleading advertising materials; and (3) make full restitution to YOUR customers, including our client, who have purchased YOUR Products which were deceptively represented as discounted from false former prices, and/or who were overcharged for advertised merchandise or deceptively induced by misleading coupon offers to purchase YOUR merchandise, including all purchase money YOU obtained from the sales thereof.

Please be advised that YOUR failure to comply with this request within thirty (30) days may subject YOU to the following remedies, available for violations of the CLRA, which will be requested through a class action complaint on behalf of our client, all other similarly-situated U.S. residents, and the general public:

- (1) The actual damages suffered;
- (2) An order enjoining YOU for such methods, acts, or practices;
- (3) Restitution of property (when applicable);
- (4) Punitive damages;
- (5) Any other relief which the court deems proper; and
- (6) Court costs and attorneys’ fees.

Under state consumer protection laws that do not require advance notice of intent to sue, YOU may already be liable for any or all of these remedies. In addition, California Civil Code Section 1780(b) provides in part that: “Any consumer who is a senior citizen or a disabled person, as defined in subdivision (f) and (g) of Section 1761, as part of an action under subdivision (a), may seek and be awarded, in addition to the remedied specified therein, up to five thousand dollars (\$5,000)... [emphasis added]”.

Additionally, we further remind you of your legal duty to preserve all records, documents, and other evidence which refer or relate to any of the above-described practices. “The duty to preserve evidence is triggered when litigation is pending or reasonably foreseeable, at which time a party is required to preserve all relevant evidence and put into place a litigation hold to preserve relevant documents.” *Net-Com Services, Inc. v. Eupen Cable USA, Inc.*, No. 11-cv-2553, 2013 WL 4007785, at *2 (C.D. Cal. Aug. 5, 2013); *see also Convolve, Inc. v. Compaq Computer Corp.*, 223 F.R.D 162, 175 (S.D.N.Y 2004); *Computer Ass’n Int’l v. American Fundware, Inc.*, 133 F.R.D. 166, 168-69 (D. Colo. 1990). This Firm anticipates that all e-mails, letters, reports, internal corporate instant messages, and records that relate to the marketing and pricing of YOUR Products will be sought in the forthcoming discovery process. YOU therefore must inform any employees, contractors, and third-party agents (for example product consultants and advertising agencies handling YOUR product account) to preserve all such relevant information.

We are willing to discuss an appropriate way to remedy the demands asserted in this letter. If YOU wish to enter into such discussion, please contact us immediately. If our Firm does not hear from YOU promptly, we will conclude that YOU are not interested in resolving this dispute short of litigation in the form of a class action lawsuit. If YOU contend that any statement in this letter is inaccurate in any respect, please provide our office with YOUR contentions and supporting documents promptly.

We look forward to YOUR response and to being informed that YOU have initiated corrective action. Thank you for your time and consideration in this matter.

Sincerely,

/s/ Ronald A. Marron

Ronald A. Marron

LAW OFFICES OF RONALD A. MARRON, APLC

/s/ David Elliot

David Elliot

LAW OFFICE OF DAVID ELLIOT

2028 3rd Avenue

San Diego, CA 92101

Attorneys for Mr. Shimono, all others similarly situated, and the general public

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Harbor Freight Tools USA, Inc.
 Attn: Legal Department
 26541 Agoura Road
 Calabasas, CA 91302-2093



9590 9402 1650 6053 0358 88

2. Article Number (Transfer from service label)

7016 0340 0000 4194 2531

A. Signature

X

- Agent
- Addressee

B. Received by (Printed Name)

JOHN KEANE

C. Date of Delivery

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail

- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

Mail Restricted Delivery (D)

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

CSC – Lawyers Incorporating Service
 Agent of Service of Process for Harbor
 Freight Tools USA, Inc.
 2710 Gateway Oaks Drive, Suite 150N
 Sacramento, CA 95833



9590 9402 1650 6053 0358 95

2. Article Number (Transfer from service label)

7016 0340 0000 4194 2

A. Signature

X

- Agent
- Addressee

B. Received by (Printed Name)
Trisha Ward
 LiTrisha Ward

C. Date of Delivery

- D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

MAY 13 2016

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

USPS TRACKING #

5:16-cv-01052 Document 1-2 Filed 05/20/16 Page 10 of 10 Page ID #



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

9590 9402 1650 6053 0358 95

**United States
Postal Service**

• Sender: Please print your name, address, and ZIP+4® in this box •

Law Offices of Ronald A. Marron
651 Arroyo Drive
San Diego, CA 92103

R. Marron

