

FILED

2016 DEC 15 P 2:18
JEFFREY BECK
MAUREEN G. KELLY
LAKE CO. CLERK OF COURT

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

Plaintiff,

v.

HARBOR FREIGHT TOOLS USA, INC.,

Defendant.

CASE NO. 15 CV 000598

JUDGE VINCENT CULOTTA

**AGREED ENTRY AND ORDER PRELIMINARILY APPROVING SETTLEMENT
AND SCHEDULING SETTLEMENT APPROVAL HEARING**

Plaintiff and Defendant having made a joint motion for preliminary approval of a Stipulation and Agreement of Settlement dated December ____, 2016 (the "Agreement") between Plaintiff, individually and on behalf of a Settlement Class (as defined in the Agreement) and Defendant Harbor Freight Tools USA, Inc., and the Court having read and considered the Agreement,

IT IS ORDERED that:

1. Unless otherwise specified, terms herein shall be as defined in the Agreement.
2. For settlement purposes only and contingent upon Final Approval of the

Agreement, the Court hereby certifies the following Settlement Class, defined as follows:

All Harbor Freight customers in the United States who since April 8, 2011 and up to the date the Court grants preliminary approval of the proposed class settlement (the "Class Period") purchased any product from Harbor Freight which was advertised with a higher reference price (e.g., "reg. \$XXX", "only \$XXX," or "comp. at \$XXX") adjacent to a lower current offering price, but not sold by Harbor Freight at the higher reference price for at least 28 of the last 90 days prior to purchase. The class excludes Defendant's employees, representatives, court officials in this case, and any individual already a named party to a suit against Defendant challenging advertised pricing.

3. Subject to Final Approval of the Settlement Agreement and the entry of final judgment, and for settlement purposes only, the Court finds that the prerequisites of Rule 23 of the Ohio Rules of Civil Procedure are met and hereby certifies the foregoing defined Settlement Class as an injunctive relief class pursuant to Rule 23(B)(2) and a damages class pursuant to Rule 23(B)(3). If Final Approval of the Settlement is not granted, or if final judgment as contemplated in the Agreement is not entered, this Order of certification shall be vacated and the Parties shall be restored without prejudice to their respective litigation positions prior to entry of this Order.

4. The Court directs the parties, within 35 days of the date of this Order and consistent with the terms of the Settlement Agreement, to submit to the Court for its review and approval a proposed date for the Settlement Approval Hearing, as well as a detailed Notice Plan, to include Emailed Notice, Print Publication Notice (to include at least two sources through which Defendant currently or within the past 12 months has advertised its products for sale), Online Publication Notice, and a dedicated website through which copies of significant pleadings, the settlement agreement, claims forms, frequently asked questions, and other information as may be directed by the Court shall be made available to potential Class Members. The Notice Plan shall be designed to provide the best notice reasonably practicable to Class Members, and to fairly advise them of their right to object, to opt-out of the settlement, of what they may receive if they remain within the Class and the Court grants final approval to the Settlement, and to otherwise satisfy the requirements of Rule 23, Ohio law, and due process requirements of the United States and Ohio Constitutions.

5. Any Class Member who wishes to be excluded from the Settlement Class must send a written request for exclusion in the manner and to the address provided in the Emailed Notice and Print Publication Notice. The Emailed Notice and Print Publication Notice will advise Class

Members of their right to request exclusion from the Settlement Class. Such opt out rights may be exercised only individually by a Class Member, and not by any other person in a representative capacity, except as to a legal representative on behalf of a Class Member who is deceased or legally incapacitated. Requests by Class Members to be excluded from the Settlement Class must be mailed to the Settlement Administrator at the address set forth in the Notice and must be postmarked on or before **[date no less than 30 days before the Settlement Approval Hearing]** in order to be effective.

6. Within 7 days after the deadline for exclusions described in paragraph 8, the Settlement Administrator shall submit to Plaintiff's Counsel and Defendant's Counsel a report of the names and addresses of all Class Members who timely and properly excluded themselves from the Settlement Class.

7. Based on review of the Agreement, terms of the proposed Settlement, the claims, defenses, and allegations in this Action, and applicable law, the Court preliminarily finds that there is sufficient basis to conclude that the proposed Settlement is fair, adequate, and reasonable and in the best interests of Class Members. Thus, the Court preliminarily and conditionally approves the proposed Settlement of the Class claims as described in the Agreement, preliminarily finding the settlement to be fair, reasonable, and adequate and in the best interests of Class Members.

8. The Court also preliminarily approves the administration of the proposed Settlement as described in the Agreement and the disbursement of the settlement payments and/or gift cards to Class Members who timely submit signed and completed Claim Forms. Claim Forms must be postmarked or delivered to the Settlement Administrator on or before **[30 days after the Settlement Approval Hearing]** in order to be considered, which deadline will be stated in the Emailed Notice and Print Publication Notice. Those Class Members who timely submit signed

and completed Claim Forms by the deadline specified will be eligible for distribution of compensation only to the extent, in the amount, and in the manner described in the Agreement. If the Court grants Final Approval of the Settlement, the settlement payments and/or gift cards will be distributed to or for the benefit of Class Members in the manner and in the amounts described in the Agreement.

9. Upon submission and approval of the Notice plan, the Court shall schedule a Settlement Approval Hearing, the date and time of which to be included in the Notice to Class Members, to consider and finally determine:

- a. Whether the Settlement should be finally approved by the Court as fair, reasonable, and adequate;
- b. Whether and in what amount attorneys' fees should be awarded to Plaintiff's Counsel, as provided in the Settlement; and
- c. Objections, if any, made to the Settlement, or any of its terms.

The Settlement Approval Hearing described in this paragraph may be postponed, adjourned, or continued by order of the Court without further notice to Class Members.

10. Any Settlement Class Member who has not requested exclusion from the Settlement Class and who objects to approval of the proposed settlement may appear at the Settlement Approval Hearing in person or through counsel to show cause why the proposed settlement should not be approved as fair, reasonable, and adequate. However, no person (other than named parties) may be heard at the Settlement Approval Hearing, or file papers or briefs in connection therewith, unless on or before **[date no less than 30 days before the Settlement Approval Hearing]** such person has filed with the Court and served on Plaintiff's Counsel and Defendant' Counsel a timely written notice of intent to object, which must contain or include the following information:

- (a) the name, address, telephone number, and signature of the objecting Class Member;

- (b) the specific reasons for the Class Member's objections to the Settlement, and a detailed statement of the factual and legal basis for such objections; and
- (c) the identity of all witnesses, by name, address, and a summary of proposed testimony, who the objecting Class Member may call to testify at the Settlement Approval Hearing, and a description and copies of all evidence such objecting Class Member may offer at the Settlement Approval Hearing; and indication whether the objector will attend the Hearing.

Any Class Member who does not file and serve a timely notice of intent to object in accordance with this Order shall waive the right object to the Settlement or to be heard at the Settlement Approval Hearing, and shall be forever barred from making any objection to the Settlement.

11. Defendant's Counsel and Plaintiff's Counsel shall promptly furnish to each other copies of any notice of intent to object that comes into such counsel's possession.

12. If the Settlement is finally approved, the Court will enter a Settlement Order and Final Judgment approving the Agreement substantially in the form and content attached to the Agreement as Exhibit C, and incorporating it as the judgment of the Court, which judgment shall be binding upon all members of the Settlement Class who have not timely and properly requested exclusion in accordance with this Order and the terms of the Agreement.

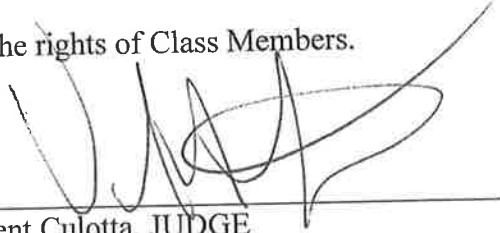
13. In the event that Final Approval of the proposed Settlement reflected by the Agreement is not granted by the Court, or a Settlement is approved with terms different than as reflected by the Agreement and that are not agreed to by Plaintiff and Defendant in writing, or the Settlement Order and Final Judgment is reversed or modified on appeal, or entry of a Settlement Order and Final Judgment as provided in the Agreement does not occur for any reason, then the Settlement, the Agreement, all drafts, negotiations, discussions, and documentation relating thereto, and all orders entered by the Court in connection therewith, shall become null and void, and shall not be used or referred to for any purpose in this Action or in any other proceeding. In such event, the Agreement and all negotiations and proceedings relating thereto shall be withdrawn

without prejudice to the rights of any of the Parties thereto, who shall be restored to their respective positions as of the date of the execution of the Agreement.

14. All Class Members who have not timely and properly excluded themselves from the Settlement Class are preliminarily enjoined, in either an individual or representative capacity, from filing, commencing, prosecuting, continuing, litigating, intervening in, participating in as class members or otherwise, or seeking to certify a class in, or organizing customers of Harbor Freight into a separate class of persons, as a purported class action (including by seeking to amend a pending complaint to include class allegations) in or receiving any benefits or other relief from, any other lawsuit, arbitration or administrative, regulatory or other proceeding or order in any jurisdiction, based on or relating to the claims and causes of action in, or the facts and circumstances relating to, this Action and/or the Released Claims as described in the Agreement.

15. The Parties are hereby authorized without further approval from the Court to agree upon such amendments or modifications of the Agreement and of all exhibits thereto as shall be consistent in all respects with this Order and do not limit the rights of Class Members.

Date: December 15, 2016



Vincent Culotta, JUDGE

Consented to by:



Patrick J. Perotti (0005481)
Nicole Fiorelli (0079204)
DWORKEN & BERNSTEIN CO., L.P.A.
60 South Park Place
Painesville, Ohio 44077
pperotti@dworkenlaw.com
Tele: 440.946.7656
Fax: 440.352.3469

Counsel for Plaintiff and Settlement Class



Rodger L. Eckelberry (0071207)
Email: reckelberry@bakerlaw.com
Rand L. McClellan (0079266)
Email: rmcclellan@bakerlaw.com
Jacqueline K. Matthews (0086259)
Email: jmatthews@bakerlaw.com
BAKER & HOSTETLER LLP
Capitol Square, Suite 2100
65 East State Street
Columbus, OH 43215-4260
Telephone: 614.228.1541
Facsimile: 614.462.2616
Counsel for Defendant

Michael K. Farrell (0040941)
Email: mfarrell@bakerlaw.com
BAKER & HOSTETLER LLP
PNC Center
1900 East 9th Street, Suite 3200
Cleveland, OH 44114-3482
Telephone: 216.621.0200
Facsimile: 216.696.0740

Attorneys for Defendant
Harbor Freight Tools USA, Inc.