

IN THE COURT OF COMMON PLEAS
LAKE COUNTY, OHIO

JEFFREY BECK,

Plaintiff,

vs.

HARBOR FREIGHT TOOLS USA, INC.,

Defendant.

CASE NO. 15 CV 000598

JUDGE VINCENT CULOTTA

**STIPULATION AND AGREEMENT OF CLASS ACTION SETTLEMENT BETWEEN
PLAINTIFF JEFFREY BECK, INDIVIDUALLY AND ON BEHALF OF A CLASS, AND
DEFENDANT HARBOR FREIGHT TOOLS USA, INC.**

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STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement (the “Agreement”) is made and entered into by Harbor Freight Tools USA, Inc., by and through its undersigned attorneys of record, and by Jeffrey Beck, individually and on behalf of the Settlement Class he represents (“Plaintiff”), by and through his undersigned attorneys of record. This settlement is intended to fully, finally, and forever resolve, discharge, and settle this Action and the Released Claims (as defined below) without costs and with prejudice, upon and subject to the terms and conditions hereof, subject to the approval of the Common Pleas Court of Lake County, Ohio (the “Court”).

1. Background Information

1.1 The above-captioned action (the “Action”) was filed in the Court on April 8, 2015, and amended on December 11, 2016, as a proposed class action for purchasers of product(s) from Defendant which were advertised with a higher reference price (e.g., “reg. \$XXX,” “only ~~\$XXX~~,” or “comp. at \$XXX”) adjacent to a lower current offering price, but were not sold by Defendant at the higher reference price for at least 28 of the last 90 days prior to purchase.

1.2 The Complaint alleges that Harbor Freight is liable to Plaintiff under a variety of causes of action by selling items advertised with a higher reference price (e.g., “reg. \$XXX,” “only ~~\$XXX~~,” or “comp. at \$XXX”) adjacent to a lower current offering price, when those items allegedly had not been sold at the higher reference price for at least 28 of the last 90 days prior to the sale. Harbor Freight denies that it has breached any obligations or is liable to Plaintiff, and believes its sales practices were and have been at all times in accordance with law.

1.3 Harbor Freight moved for judgment on the pleadings, which Plaintiff opposed. That motion was denied in all respects by the Court.

1.4 The Parties have agreed to settle the claims in this Action, upon the terms and conditions described in this Agreement, against Harbor Freight in order to avoid the uncertainty, risks, costs, and delays of further litigation.

1.5 This settlement is a compromise of disputed claims, and Harbor Freight does not admit liability to Plaintiff or to any Class Member. Harbor Freight also denies any wrongful conduct toward any customers in the advertising or sale of products. Neither the fact of settlement, this Agreement, nor any consideration therefor, nor any actions taken to implement the terms of this Agreement are intended to be nor may they be deemed or construed to be, an admission or concession of liability or of the validity of any claim or of any point of law or fact (including, but not limited to, the propriety of class certification) by any Party, and shall not be deemed or construed to be an admission or evidence for any purpose.

1.6 The Parties and their counsel have extensively investigated the facts and issues raised in this Action, and have sufficient information to evaluate settlement and this Agreement. Arms-length settlement negotiations occurred between Plaintiff's Counsel and Defendant's Counsel over the course of twelve months, including three separate mediations overseen by the Hon. James J. McMonagle, Cuyahoga County Court of Common Pleas (Retired), and this Agreement is the result of those extensive negotiations. Plaintiff's Counsel and Defendant's Counsel, in light of their knowledge of this Action and their experience, are satisfied that the terms and conditions of this Agreement are fair, reasonable and adequate and in the best interests of all Class Members, particularly due to the likelihood that continued litigation would be protracted, entail risks, and involve substantial expense.

1.7 Without admitting or conceding any liability or damages, and in order to avoid the uncertainty, risks, and costs of the Action, the Parties have agreed to settle the claims of Plaintiff

and of the Settlement Class in the manner and upon the terms and conditions set forth in this Agreement.

2. Certain Definitions

The following terms used in the Settlement have the meanings specified below:

2.1 “Agreement” means this Stipulation and Agreement of Settlement.

2.2 “Claim Deadline” means the date no less than 30 days after the Settlement Approval Hearing, held by the Court to consider final approval of the Settlement, as described in Section 2.22, which date will be stated in the Sent Notice and Published Notice.

2.3 “Claim Form” means the form of claim form to be sent via email with the Emailed Notice to all potential Class Members identifiable by reasonable search by Harbor Freight of its electronic records, in addition to those persons who request a Notice and Claim form from the Settlement Administrator. Claim Forms must be timely submitted by Class Members in order to determine their eligibility to participate in the settlement, as described in Section 8.

2.4 “Class Member” means a person included within the Settlement Class, and includes Plaintiff, but does not include persons who timely and properly exclude themselves from the Settlement Class, in accordance with Section 7. Class Member excludes Defendant’s employees, representatives, court officials in this case, and any customer already a named party to a suit against Defendant challenging advertised pricing.

2.5 “Class Period” means the time period of April 8, 2011 through the date of Preliminary Approval, inclusive of those dates.

2.6 “Court” means the Common Pleas Court of Lake County, Ohio.

2.7 “Defendant” and “Harbor Freight” means Harbor Freight Tools USA, Inc.

2.8 “Defendant’s Counsel” means any partner or associate of Baker & Hostetler LLP.

2.9 “Distributed Amount” means the sum of eligible claims paid by delivered gift cards and cashed checks to Class Members by the Settlement Administrator, as described in Section 9.5.

2.10 “Effective Date” means the last date by which all of the following events have occurred and the following statements are true:

- (a) The Court has entered the Settlement Order and Final Judgment in the form and content attached hereto as Exhibit B, without modification (except as approved in writing by the Parties);
- (b) 35 days have passed after entry of the Settlement Order and Final Judgment without any appeal of the Settlement Order and Final Judgment being filed, or, if an appeal or motion to accept jurisdiction of an appeal of the Settlement Order and Final Judgment has been filed, orders have been entered affirming said Settlement Order and Final Judgment without modification or denying jurisdiction of an appeal and all appeals have been exhausted; and
- (c) No Party has withdrawn from this Agreement prior to occurrence of the conditions described in subsections (a) and (b).

2.11 “Emailed Notice” means the notice of certification of the Settlement Class and of the Settlement, with claim submission information, that will be emailed to Class Members as described in Section 6.

2.12 “Final Approval” means the Court’s final approval of this Settlement through the entry of the Settlement Order and Final Judgment, in the form and content attached as Exhibit B, as provided in Section 5.2.

2.13 “Online Publication Notice” means a summary notice of certification of the Settlement Class and of the Settlement that will be published online as described in Section 6.

2.14 “Parties” means the Representative Plaintiff, the Settlement Class and all of its Members, and Defendant, and “Party” means any of said Parties.

2.15 “Plaintiff” means the Representative Plaintiff and Class Members.

2.16 “Plaintiff’s Counsel” means any member or associate of Dworken & Bernstein Co., L.P.A.

2.17 “Preliminary Approval” means that the Court has entered an order the same as or similar in content to the attached Exhibit A, without modification that is not consented to in writing by the Parties: (a) preliminarily approving the terms and conditions of the Settlement and this Agreement as fair and reasonable; (b) directing Notice of the pendency of the Settlement Class in this action and of the Settlement be given to Class Members, as provided in the Notice Plan to be submitted to the Court for review and approval; (c) directing the manner in which and deadline by which Class Members may act to exclude themselves from the Settlement Class; and (d) scheduling a fairness hearing at which the Court will determine whether this Agreement should be approved as fair, reasonable, and adequate.

2.18 “Print Publication Notice” means a summary notice of certification of the Settlement Class and of the Settlement that will be published as described in Section 6.

2.19 “Released Claims” means those claims described in Section 12.1 of this Agreement that are released by Plaintiff and the Settlement Class under the Settlement as against the Released Parties.

2.20 “Released Parties” means Defendant, Harbor Freight, and each and all of its parents, subsidiaries, divisions, joint ventures, joint venturers, and related and affiliated entities,

and their insurers, and all of their respective predecessors, successors, assigns, attorneys, accountants, representatives, and all of their past and present officers, directors, employees, agents, and independent contractors.

2.21 “Representative Plaintiff” means Plaintiff Jeffrey Beck.

2.22 “Settlement” means the compromise and settlement of the claims of Plaintiff and of the Settlement Class in the Action, as described in this Agreement.

2.23 “Settlement Approval Hearing” means the hearing to be held by the Court to consider final approval of the Settlement and to consider the Settlement Order and Final Judgment.

2.24 “Settlement Class” means the class of persons defined by Section 4.1, and includes Plaintiff, but does not include any Class Members who timely and properly elect to be excluded from the Class, as described in Section 7. Settlement Class excludes Defendant’s employees, representatives, court officials in this case, and any customer already involved in a suit against Defendant challenging pricing.

2.25 “Settlement Amount” means the total amount of (a) settlement payments available to Class Members who timely submit a valid claim under the terms of this agreement; (b) attorneys’ fees as approved by the Court; (c) administration costs of up to \$3,000,000; and (d) incentive compensation to the named Plaintiff as approved by the Court, all of which is inclusive of any interest and no further interest is claimed; with the total of (a), (b), (c), and (d) not to exceed \$33,000,000. Except for administrative expenses in excess of \$3,000,000, which additional expenses shall be paid directly by Harbor Freight, the Settlement Amount shall constitute the entire monetary consideration available by or on behalf of Harbor Freight in connection with the Settlement.

2.26 “Settlement Order and Final Judgment” means the order and final judgment approving and incorporating this Agreement and the Settlement as binding upon the Parties that is entered by the Court substantially in the form and content attached hereto as Exhibit B without modification, except as may be agreed to in writing by the Parties.

2.27 “Settlement Administrator” means the entity retained by Harbor Freight to administer the Settlement as described in this Agreement, and its agents and employees.

2.28 “Supporting Documentation” means a receipt(s) issued by a Harbor Freight retail store or electronic receipt for an online purchase reflecting a dollar amount of “you saved” within the Class Period, or a credit card or bank statement(s) reflecting a dollar amount of total purchase(s) at a Harbor Freight retail store within the Class Period.

3. Certification of Settlement Class and Cessation of Practice.

3.1 Plaintiff will promptly amend his pending complaint to reflect the settlement class in this agreement, and the parties will, by the motion for preliminary approval, ask the Court to certify that class for settlement.

3.2 From the date of Final Approval, Defendant will cease the practices challenged in this suit by clearly defining all reference prices in its online and print advertising and in its retail stores for a period of at least three years.

4. Settlement Class and Opt-out

4.1 The Parties hereby agree, subject to the approval of the Court pursuant to Rule 23 of the Ohio Rules of Civil Procedure, that for settlement purposes only, the Settlement Class for all purposes hereunder shall be 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 Defendant 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 which was not sold by Defendant at the higher reference price for at least 28 of the last 90 days prior to purchase, excluding Defendant’s employees, representatives, court officials in this case, and any customer already party to a suit against Defendant challenging advertised pricing.”

4.2 As provided in Section 7, any Class Member individually may elect to opt out of the Settlement Class, within the time and in the manner specified in the Emailed Notice and Print Publication Notice and in the order of Preliminary Approval, with the effect that the rights of each such Class Member who opts out shall not be affected by this Settlement. Except for Class Members who are deceased or incapacitated, such opt out rights may only be exercised individually by a Class Member, and not by any other person or entity in a representative capacity.

5. Preliminary Approval and Final Approval

5.1 The Parties shall move the Court to approve and enter a Preliminary Approval order, in the form and content of Exhibit A, preliminarily approving this Settlement as fair, just, reasonable, and adequate, approving notice to the Settlement Class as described in Section 6, and setting a hearing to consider Final Approval of the Settlement and any objections.

5.2 At or before the Settlement Approval Hearing, Plaintiff’s Counsel shall move the Court to approve and enter a Settlement Order and Final Judgment substantially in the form of the attached Exhibit B, granting Final Approval of this Settlement as fair, reasonable, adequate, binding on all Class Members who have not timely excluded themselves, awarding attorneys’ fees and costs, as set forth in Section 10, effecting the releases as set forth in Section 12, and such other provisions as set forth in the Settlement Order and Final Judgment.

5.3 If the Court refuses to issue Preliminary Approval of the Settlement, or to issue Final Approval of the Settlement and this Agreement, or grants Preliminary Approval or Final

Approval of the Settlement with a material change from this Agreement, or issues a Settlement Order and Final Judgment materially different from that attached as Exhibit B, or the Settlement Order and Final Judgment is reversed or modified on appeal, then this Agreement in its entirety shall become void, unless the Parties promptly agree in writing to proceed with the Settlement and this Agreement consistent with the change or modification under which the Agreement would be rendered void. In the event this Agreement becomes null and void as described in this Section 5.3, the Parties shall be restored without prejudice to their respective litigation positions in the Action prior to execution of this Agreement.

5.4 The Parties and their counsel shall undertake all reasonable efforts that are in good faith necessary and appropriate to obtain the Court's Preliminary Approval and Final Approval of this Agreement and entry of the Court's Settlement Order and Final Judgment approving and adopting this Settlement and Agreement.

6. Notice and Claim Form and Confirmatory Discovery

6.1 Harbor Freight agrees to create by a good faith effort and at its expense a list of the names of potential Class Members based on the definition of the Settlement Class for whom Harbor Freight has current e-mail addresses, as reflected by Harbor Freight's search of its electronic records. Harbor Freight shall deliver such list of potential Class Members to the Settlement Administrator within 45 days after Preliminary Approval.

6.2 Within 35 days of the Court granting Preliminary Approval to the Settlement, Defendant shall submit to the Court for its review and approval 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, and of what they may receive if they remain within the Class and the Court grants final approval to the Settlement.

6.3 Defendant has already provided confirmatory information to Plaintiff's counsel regarding the terms, conditions and substance of this Agreement and will provide any such reasonable further information requested.

7. Requests for Exclusion and Notice of Intent to Object

7.1 Pursuant to Section 4.2, any Class Member seeking to be excluded from the Settlement Class must send a written request for exclusion to the Settlement Administrator, at an address designated in the Emailed Notice and Print Publication Notice, with a sent date, or received by the Settlement Administrator, by the Claims Deadline, which Claims Deadline date will be stated in the Emailed Notice and Print Publication Notice.

7.2 To be effective, a request for exclusion from the Settlement Class must include the Class Member's name and address, a clear and unequivocal statement that the Class Member wishes to be excluded from the Settlement Class, and the signature of the Class Member or, in the case of a Class Member who is deceased or incapacitated, the signature of the legally authorized representative of such Class Member.

7.3 Within 7 days after the Claims Deadline, as set forth in Section 7.1, 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 have timely and properly excluded themselves from the Settlement Class. Upon the reasonable request of Defendant's Counsel or

Plaintiff's Counsel, the Settlement Administrator shall make available for inspection and copying any opt out requests received by it.

7.4 Harbor Freight shall have the right to withdraw from this Agreement if the number of Class Members who timely elect to be excluded from the Settlement Class exceeds 110,000 (1% of anticipated Emailed Notice recipients). Harbor Freight must exercise such right to withdraw, in writing to Plaintiff's Counsel, within ten (10) days after receipt of the report of opt outs from the Settlement Administrator, pursuant to section 7.3. If Harbor Freight timely chooses to exercise the right to withdraw described herein, this Agreement shall be null and void for all purposes and the parties shall be restored without prejudice to their respective pre-settlement litigation positions in the Action.

7.5 Any Class Member who does not request exclusion from the Settlement Class may object to the Settlement by filing with the Court a written notice of objection, with a copy served on Plaintiff's Counsel and Defendant's Counsel. A notice of objection must be filed with the Court no less than 30 days before the Settlement Approval Hearing, and must contain the following information, and be supported as follows:

- (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 full factual and legal basis for such objections; and
- (c) the name, address and a summary of proposed testimony of all witnesses the objecting Class Member may call to testify at the Settlement Approval Hearing, and a description and copy of all evidence such objecting Class Member may offer at the Settlement Approval Hearing.

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

8. Claims Process and Determination of Eligibility for Compensation

8.1 All Class Members may submit a claim by U.S. Mail. In addition, Class Members in Groups A and B may submit a claim online via the dedicated settlement website. As described in the Emailed Notice, Print Publication Notice and Claim Form, any Class Member who desires to participate in the Settlement must return a completed and signed Claim Form (signed subject to penalty of perjury) to the Settlement Administrator. The claim must be timely, U.S. Mail postmarked by, or received by the Settlement Administrator on or before the Claims Deadline, to the address stated in the Emailed Notice, Print Publication Notice, and Claim Form. Any Class Member who fails to timely return a completed, and signed, Claim Form, with the required Supporting Documentation, by the deadline specified shall not be eligible to participate in the disbursement of compensation to Class Members.

8.2 The eligibility of a Class Member who timely returns a properly completed Claim Form to receive a disbursement of compensation under the Settlement will be determined for Group A by whether the information on the Supporting Documentation shows the purchase of product from a Harbor Freight retail store within the Class Period reflecting a “you saved” amount (other than amounts reflected by a free or returned item(s)); for Group B by whether the Supporting Documentation shows a purchase from Harbor Freight within the Class Period; and for Group C by whether the Class Member signed declaration under penalty of perjury states that during the class period the Class Member purchased an item (other than a free or returned

item(s)) that was advertised with a higher reference price (e.g., “reg. \$XXX,” “only \$XXX,” or “comp. at \$XXX”) adjacent to a lower current offering price. Those Class Members who timely deliver signed and completed Claims Forms with Supporting Documentation or a signed declaration as described above are eligible for compensation under this Settlement. Class Members who do not timely file a Claim Form, or who excluded themselves from the Settlement Class, are not eligible for compensation under the Settlement.

8.3 The Settlement Administrator will review returned Claims Forms to determine if they were timely (to wit, either: received by the Settlement Administrator or sent by U.S. Mail with a postmark, no later than the Claims Deadline). For timely claims, the Settlement Administrator will determine Class Members’ eligibility for compensation under this Agreement by examination of the Claim Form and the Supporting Documentation submitted by the Class Member for compliance with the terms of this Agreement and the Court’s orders. The Settlement Administrator may contact Harbor Freight to request information regarding a claim, and may contact Class Members who submit Claim Forms to gather additional or omitted information in order to determine their eligibility for or amount of compensation. The amount of compensation due any Class Member will be determined solely by reference to this Agreement, as described in Section 8.6.

8.4 Within 60 days after the Claims Deadline, the Settlement Administrator shall notify Plaintiff’s Counsel and Defendant’s Counsel in writing of those persons who have submitted claims that the Settlement Administrator has determined: (a) are untimely or were not signed; or (b) for whom the Supporting Documentation or declaration submitted by the Class Member fails to demonstrate the claimant is eligible for compensation (for example, the relevant purchase falls outside the Class Period, was for free items, the item was later returned, etc).

Within 30 days after such notice from the Settlement Administrator, Plaintiff's Counsel and Defendant's Counsel shall send written notice to each other, objecting to any individual claims determinations of the Settlement Administrator. Objections not submitted within that time period will be deemed waived. Upon receipt of timely objections by either Party to claims determinations by the Settlement Administrator, the Parties will attempt to resolve such objections. Any objections to claims determinations not resolved within 30 days after notice of objections is provided shall be submitted in writing to the Court for final, binding, and non-appealable determination. Provided, however, that any determination of the Court upholding eligibility of a claim shall not require payment contrary to the terms of Section 8.6. Subject to the foregoing, the determination by the Settlement Administrator of any Class Member's eligibility for and amount of compensation under this Agreement shall be final and shall not be subject to any further review or appeal.

8.5 All persons who submit Claim Forms who are not within the Class, will be notified in writing by the Settlement Administrator that they are not eligible to participate in the Settlement along with a brief statement of why they are ineligible.

8.6 Class Members may submit any of three types of claims. A Class Member may submit a claim in both Group A and B, but Group C claims may not be combined with any other Group. The claims groups are:

- A. Class members with itemized receipt(s) reflecting "you saved _____" for one or more purchases at Harbor Freight during the Class Period, which is the Supporting Documentation for this group. All "you saved" amounts exclude free items and items that were later returned.

- B. Class members with credit or debit card statements reflecting one or more purchases at Harbor Freight during the Class Period, which is the Supporting Documentation for this group.
- C. Class members with no proof of purchase during class period.

8.6.1. Claims process and payment terms. Group A class members submitting a valid claim with Supporting Documentation may choose to receive cash or gift card in the amount of 20% in cash or 30% in the form of a Harbor Freight gift card of the total “you saved” amount listed on their receipts for Harbor Freight purchases during the Class Period, excluding any amounts reflecting free items or items that were later returned.

Group B class members submitting a valid claim with Supporting Documentation may choose to receive 10% in cash or 12% in the form of a Harbor Freight gift card of the total Harbor Freight purchases on their credit or debit card statement(s), excluding any amounts reflecting items that were later returned, during the Class Period.

Group C class members submitting a signed declaration under penalty of perjury stating that during the Class Period they purchased an item (other than a free item or an item that was later returned) that was advertised with a higher reference price (e.g., “reg. \$XXX,” “only \$XXX,” or “comp. at \$XXX”) adjacent to a lower current offering price, and that they do not have store receipts or credit or debit card statements of their Harbor Freight purchases during the Class Period, will receive a \$10 Harbor Freight gift card.

8.6.2. The foregoing compensation is known as the First Allocation. If after the First Allocation, the Distributed Amount, attorney fees and incentive compensation awarded, and \$3,000,000 in administration costs spent total less than \$23,000,000 (the difference of which is the “Remainder Amount”), then the Settlement Administrator shall make a Second Allocation as

follows, with the Second Allocation made in the same form as the First Distribution chosen by the class member (i.e., gift card or cash).

For Group A claimants, the Second Allocation shall be up to 54% in cash or 60% in the form of a Harbor Freight gift card of the “you saved” amount reflected on receipt(s) (excluding amounts representing free items or items that were later returned), inclusive of First Allocation, not to exceed 100% of the purchase price. For example: A Group A claimant makes a valid claim with supporting documentation reflecting “You Saved \$100.” In the Initial Allocation, the Group A claimant would be allocated \$20 in cash or \$30 in a Harbor Freight Gift Card. Their Second Allocation shall be no more than \$34 additional dollars cash or \$30 additional dollars on a gift card. For Group B claimants, the sum of their First and Second Allocation shall be no more than 18% of the total Harbor Freight purchases during the Class Period for either cash or gift card.

8.6.3. If, after the Second Allocation, the Distributed Amount, attorney fees and incentive compensation awarded, and administration costs spent (up to a maximum of \$3,000,000 in administration costs) total less than \$23,000,000 (the difference of which is the “Second Remainder Amount”), the Settlement Administrator shall make a Third Allocation as follows: The Second Remainder Amount shall be divided among all Group C Class Members pro rata for an additional gift card amount above the \$10 First Allocation.

8.6.4. Once the relevant amounts for the First Allocation, Second Allocation, and Third Allocation have been determined, the Settlement Administrator will issue a single check or gift card to each Class Member according to their eligibility and election of compensation type as described in this Section 8.

8.7 Payments to eligible Group A or Group B Class Members submitting claims and who had more than one purchase during the Class Period may be combined, provided the Class Member submits Supporting Documentation evidencing each purchase. For example, a Class Member who has a store receipt reflecting “you saved \$100” for one purchase during the Class Period, and no store receipt but credit/debit card statements for another separate purchase during the Class Period, may make a claim for both purchases. No claims may overlap each other as to dates during the Class Period, e.g. a store receipt for January 21, 2012 may not be submitted with a credit/debit statement evidencing purchase from January 21, 2012.

8.8 The Settlement Administrator shall maintain records of all Claims Forms and all determinations of the eligibility for and amount of compensation payments to Class Members, and shall make those records available for review upon the reasonable request of Plaintiff’s Counsel or Defendant’s Counsel. The Settlement Administrator shall retain all records of Claim Forms filed, correspondence with Class Members, and checks and gift card numbers issued pursuant to this Agreement for a minimum period of one year after disbursements under this Agreement have been completed.

9. Disbursements to or for the Benefit of Class Members

9.1 Within 35 days after the Effective Date, as defined in Section 2.10, the Settlement Administrator will commence distribution of compensation payments or gift cards as provided in this Agreement to eligible Class Members, as they have elected, as described in Section 8. The Settlement Administrator will use its best efforts to complete distribution of compensation payments and gift cards within 90 days after the Effective Date.

9.2 Harbor Freight will provide funds as necessary to the Settlement Administrator, so that the Settlement Administrator can distribute compensation to Class Members as provided in Sections 8 and 9, subject to the limits provided in Section 2.25.

9.3 Disbursements to Class Members who select cash compensation shall be made by checks issued by the Settlement Administrator in the names of the eligible Class Member(s) who signed the Claim Form, and the terms of such checks shall require negotiation within 60 days of the instrument's date, in the amount described in Section 8.6, and shall contain a conspicuous notice of that limitation upon the check, e.g. "Void and Not Reissuable if not cashed in 60 days." Negotiation within 60 days of the instruments' date is a condition precedent to the Class Member's entitlement to the funds represented by the check. No interest shall accrue or be due on payments to Class Members. Disbursements to Class Members who select gift card compensation shall be made by issuance by the Settlement Administrator of a single gift card. The gift card shall state that it is fully transferable, has no expiration date, and may be used by any holder. Gift cards issued under this provision shall not be subject to any maintenance or other fees.

9.4 Checks and gift cards shall be mailed by the Settlement Administrator to Class Members at their last known addresses as shown on their submitted Claim Forms.

9.5 Within 7 days after the "Void and not Reissuable date" on the checks has passed, the Settlement Administrator shall report in writing to Plaintiff's Counsel and Defendant's Counsel the total number of checks and total amount of such checks that: (a) issued to Class Members; (b) returned as undeliverable or are not forwarded by the U.S. Postal Service; and (c) not negotiated within 60 days of the instrument's date. The amounts represented by undeliverable or uncashed checks will be distributed as directed by the Court.

9.6 Within 10 days after completing all disbursements of the Settlement Amount as provided in this Section 9, the Settlement Administrator shall so report to Plaintiff's Counsel and Defendant's Counsel, and the Parties shall submit an agreed order to the Court in the form of

Exhibit C, dismissing the Action with prejudice without costs or attorneys' fees (except such costs and fees as are awarded pursuant to this Agreement) as to all claims that were asserted or could have been asserted by Plaintiff and/or Class Members.

10. Attorneys' Fees, Costs, and Incentive Compensation

10.1 Plaintiff's Counsel shall apply to the Court for, and Harbor Freight will take no position upon, an award of attorneys' fees and reimbursement of expenses and costs in connection with the representation of the Representative Plaintiff and Settlement Class in this Action in an amount not to exceed \$10,000,000.00.

10.2 Plaintiff's Counsel shall apply to the Court for, and Harbor Freight will take no position on, incentive compensation to the Representative Plaintiff, in the amount of \$10,000.00 in recognition of the amount of time and effort spent by Representative Plaintiff as the class representative.

10.3 Harbor Freight shall transfer funds to the Settlement Administrator in an amount sufficient to pay the Court's award of attorneys' fees and expenses to Plaintiff's Counsel, as set forth in the Settlement Order and Final Judgment, or may pay such award of attorneys' fees and expenses directly to Plaintiff's Counsel. The Settlement Administrator or Harbor Freight shall pay such award of attorneys' fees and expenses to Plaintiff's Counsel within five (5) business days after the Effective Date, which may be by either wire transfer or by check payable to Plaintiff's Counsel. Any payment of attorneys' fees and reimbursement of expenses and costs shall not exceed the maximum amount set forth in Section 10.1.

10.4 Harbor Freight shall transfer funds to the Settlement Administrator in an amount sufficient to pay the Court's award of incentive compensation to the Representative Plaintiff, as set forth in the Settlement Order and Final Judgment, or may pay same directly to Plaintiff. The

Settlement Administrator or Harbor Freight shall pay same within five (5) business days after the Effective Date, by check payable to the Representative Plaintiff. Any payment of incentive compensation shall not exceed the maximum amount set forth in Section 10.2.

10.5 None of the Released Parties shall have any responsibility for and shall have no liability whatsoever with respect to the allocation among Class Counsel and/or any other person who may assert a claim thereto, of any attorneys' fees or expenses that the Court may award, or that are paid by Harbor Freight pursuant to this Agreement.

11. Settlement Administration Costs

11.1 Harbor Freight shall be responsible for all costs of the Settlement Administrator as described in this Agreement including, but not limited to, the Notice Plan approved by the Court, establishing and operating the Class Web Site, evaluating Claim Forms, and the issuing and mailing of checks and gift cards for the disbursements provided by this Agreement.

11.2 Upon request, the Settlement Administrator shall timely report to Plaintiff's Counsel and Defendant's Counsel of the actions it has taken in connection with administration of this Settlement. The Parties, Plaintiff's Counsel, and Defendant's Counsel shall in good faith cooperate in the implementation of the Settlement and this Agreement.

12. Release and Covenant Not to Sue

12.1 Upon entry by the Court of the Settlement Order and Final Judgment in this Action, Plaintiff and all Class Members who have not timely and properly excluded themselves, regardless of whether such Class Members have claimed or obtained benefits hereunder, on behalf of themselves and each of their successors and assigns, shall release and forever discharge the Released Parties from any and all claims, lawsuits, rights, counts, causes of action, damages, judgments, executions, attachments, debts, demands, liabilities, and obligations of every kind and nature, known and unknown, that they ever had, now have, or hereafter assert, in law or

equity, class or individual, suspected or unsuspected, concealed or unconcealed, tangible or intangible, whether sounding in contract, tort, fraud or misrepresentation, constructive fraud, fiduciary duty, unjust enrichment or any other theory, that were asserted or could have been asserted by Plaintiff in this Action against Released Parties, for any injury or damages relating to or arising out of the facts alleged in the Action, including but not limited to: (a) advertised or represented "sale," "regular," "comp at," "actual," "discount" or other price or cost representation for any products sold by Harbor Freight during the Class Period, or any other such advertising claim or injury, and (b) any and all claims to attorneys' fees and/or expenses in connection with the prosecution of this Action or the claims described in subsection 12.1(a), except for the amount set forth in and awarded pursuant to Section 10.1.

12.2 Effective upon the entry by the Court of the Settlement Order and Final Judgment in this Action, all Class Members who have not timely and properly excluded themselves hereby covenant not to sue the Released Parties in respect to any or all of the Released Claims identified in Section 12.1, and agree not to file, institute, maintain, collect, proceed against, or seek to establish liability against Harbor Freight in any federal, state, or local court or forum, in or before any administrative agency, or in any other proceeding, based upon, arising out of, or related to, in whole or in part, the Released Claims.

12.3 Plaintiff, for himself and on behalf of the Settlement Class, accepts and assumes the risk that if any fact or circumstances found, suspected, or claimed hereafter to be other than or different from the facts or circumstances now believed to exist, the release and covenant not to sue set forth in Sections 12.1 and 12.2 shall remain effective notwithstanding any such difference in any such facts or circumstances.

12.4 Effective upon entry by the Court of the Settlement Order and Final Judgment, all claims of the Representative Plaintiff and of all Class Members, except for those who have timely and properly excluded themselves, shall be dismissed with prejudice and without costs. Provided, however, that the Court shall retain jurisdiction over the interpretation, enforcement, and implementation of this Agreement and the Settlement.

12.5 The Representative Plaintiff agrees that Harbor Freight has offered consideration for the Released Claims by Class Members who do not opt out, regardless of whether Class Members file Claim Forms, are eligible for compensation payments, or receive or negotiate the checks provided by this Agreement, or receive or use the gift cards provided by this Agreement.

12.6 This Settlement reflects, among other things, the compromise and settlement of disputed claims, and neither the Settlement nor the releases given herein, nor any consideration therefor, nor any actions taken to carry out this Settlement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or of the validity of any claim, or of any point of fact or law (including, but not limited to, the propriety of class certification) on the part of any Party. Harbor Freight denies the allegations of the Complaint filed in this Action.

13. Miscellaneous Provisions

13.1 The Parties and the Parties' counsel shall use their best efforts to secure Preliminary Approval of this Settlement as promptly as possible, to take all steps necessary to effectuate this Settlement, and to obtain Final Approval.

13.2 This Agreement was entered into only for purposes of compromise and settlement and is not an admission of liability by Harbor Freight or an admission that a class should be certified. In the event that Final Approval, without modification, does not occur for any reason,

then no term or condition of this Settlement shall have any effect, nor shall any such matter be admissible in evidence for any purpose in this action or in any other proceeding.

13.3 This Agreement is intended to and shall be governed by the laws of the State of Ohio.

13.4 The terms and conditions set forth in this Agreement, including all attached exhibits, constitute the complete and exclusive agreement between the Parties relating to the subject matter of this Settlement, superseding all previous negotiations, representations, and understandings, and may not be contradicted or supplemented by evidence of any prior or contemporaneous agreement. The Parties further intend that this Agreement and all attached exhibits constitute the complete and exclusive statement of its terms as between the Parties and that no extrinsic evidence whatsoever may be introduced in any judicial proceeding involving this Settlement. Prior or contemporaneous representations not contained in this Agreement shall be of no force or effect. Any modification of this Agreement must be in writing signed by or on behalf of Plaintiff's Counsel, Plaintiff, and Harbor Freight.

13.5 The determination of the terms of, and the drafting of, this Agreement has been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel. No terms or provisions of this Agreement shall be construed against either Party on the basis that such Party or its or their counsel drafted this Agreement.

13.6 This Agreement shall be binding upon and inure to the benefit of the representative heirs, successors and assigns of the Parties.

13.7 The waiver by one Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement. Time is of the essence in the performance of this Agreement.

13.8 Claims may be made only by individuals for themselves and may not be made, or accepted by the Settlement Administrator, by factors, consolidators, or otherwise.

13.9 This Agreement shall become effective upon its execution by all of the undersigned. The Parties may execute this Agreement in counterparts, and execution of counterparts shall have the same force and effect as if all Parties had signed the same instrument.

13.10 As used herein, the plural of any defined term includes the singular thereof, and the singular of any defined term includes the plural thereof as the context may require.

13.12 In the event any date or deadline for actions set forth in this Agreement falls on a weekend or legal holiday, such date or deadline shall be on the first business day thereafter.

IN WITNESS HEREOF, the undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on the date it has been executed on behalf of both Plaintiff and Defendant.

[SIGNATURES ON FOLLOWING PAGE]

Dated: 12-14, 2016

Dated: 12-14, 2016

ATTORNEYS FOR DEFENDANT:

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FOR DEFENDANT:

Tammy Stafford
(Signature)

Tammy Stafford / Associate General Counsel
(Print Name/Title)

FOR PLAINTIFF:

Jeffrey Beck individually and as class representative

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[SIGNATURES ON FOLLOWING PAGE]

Dated: , 2016

Dated: , 2016

ATTORNEYS FOR DEFENDANT:

ATTORNEYS FOR PLAINTIFF:

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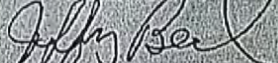
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FOR DEFENDANT:

(Signature)

(Print Name/Title)

FOR PLAINTIFF:



Jeffrey Beck individually and as class
representative