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MAUREEN G. KELLY, CLERK OF COURT
JEFFREY BECK,)
Plaintiff)
v.)
HARBOR FREIGHT TOOLS USA, INC.,)
Defendant)

CASE NO. 15CV000598

JUDGE VINCENT A. CULOTTA

SETTLEMENT ORDER AND FINAL JUDGMENT

This matter was heard on July 7, 2017, before the Court, pursuant to the Order Approving Class Settlement Notice Plan and Setting Settlement Approval Hearing (the "Notice Plan Approval Order") entered on February 9, 2017 for the purpose of determining: (i) whether the settlement of the action, on the terms and conditions set forth in the Stipulation and Settlement Agreement between Plaintiffs and Defendant Harbor Freight Tools USA, Inc. (the "Agreement"), should be approved as fair, reasonable and adequate; (ii) the amount of attorneys' fees and expenses to award counsel for Plaintiffs; and (iii) whether a Settlement Order and Final Judgment should be entered. The words in this Order shall have the same meaning as defined terms in the Agreement.

Having considered the record in this action, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The Court hereby finalizes its prior preliminary certification of this Action (entered on December 15, 2016), for settlement purposes only, as a class action. In so doing, the Court finds, for settlement purposes only, that the Action meets all the requirements of Rule 23 of the Ohio Rules of Civil Procedure and due process and can therefore be certified as a class action, because: (1) the Settlement Class defined below is identifiable and is not ambiguous; (2) Plaintiff is a member of the Settlement Class; (3) the Settlement Class is so numerous that joinder of all members is impracticable; (4) there are questions of law or fact that are common to the Settlement Class and predominate over any individual questions; (5) the claims of Plaintiff are typical of the claims of the Settlement Class; (6) Plaintiff and Class Counsel will fairly and adequately protect the interests of the Settlement Class; and (7) the requirements of Rule 23(B)(3) are met.

2. Pursuant to Rule 23(E) of the Ohio Rules of Civil Procedure, this class action

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cannot be compromised without the approval of this Court, finding that class members have been afforded reasonable notice of the proposed settlement and an opportunity to be heard, and that the settlement is fair, adequate, and reasonable. *In re Kroger Co. Shareholders Litigation*, 70 Ohio App. 3d 52 (1st Dist. Hamilton 1990). Having conducted the required analysis, and after consideration of all facts and circumstances, including those adduced at the hearing, the Court finds and concludes for purposes of settlement only that the requirements of Rule 23 have been satisfied, that the settlement is fair, adequate and reasonable, and that class members received reasonable notice of such settlement, of their right to exclude themselves from the Settlement Class, and an opportunity to be heard.

3. Pursuant to Rule 23(B)(3) of the Ohio Rules of Civil Procedure, the definition of the class set forth in the Court's Order of December 15, 2016, preliminary certifying the class action, is hereby confirmed. For settlement purposes only, the class (the "Settlement Class") is 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 party to a suit against Defendant challenging advertised pricing.

4. The Court has personal jurisdiction over Plaintiff, all members of the Settlement Class, Harbor Freight Tools USA, Inc., and the Released Persons (as defined in the Agreement), and the Court has subject matter jurisdiction to approve the Agreement.

5. Plaintiff and Harbor Freight have entered into the Agreement, which has been filed with the Court and is incorporated herein by reference. The Agreement provides for the settlement of this Action with Harbor Freight by the Plaintiffs as a representative of and on behalf of the members of the Settlement Class, subject to final approval by the Court. The Agreement provides that, in exchange for the releases described in the Agreement and this Settlement Order and Final Judgment, Harbor Freight will provide (a) settlement payments available to Class Members who

timely submit a valid claim under the terms of the Agreement; (b) attorneys' fees; (c) administration costs of up to \$3,000,000; and (d) incentive compensation, 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. The Agreement also provides injunctive relief to the Class and the public requiring Defendant to cease the practices at issue by clearly defining the nature of any reference price used in advertising in or out of store for three years.

6. Based on the evidence presented at the hearing, the Court finds that notice has been given to Class Members pursuant to and in compliance with the Preliminary Approval Order and Agreement, and that the Emailed Notice, Print Publication Notice, Online Publication Notice, and the notice methodology adopted pursuant to the Order Approving Class Settlement Notice Plan and the Agreement was reasonable and the best notice practicable; satisfied due process requirements; provided Class Members with fair and adequate notice of the Settlement and its terms; provided adequate notice of the certification of the Settlement Class and of the Settlement Approval Hearing; provided adequate notice of the right of class members to submit a claim for settlement compensation; provided adequate information concerning the Settlement Approval Hearing, the right to be excluded from the Settlement Class, and the right of counsel for Plaintiffs to apply for an award of attorneys' fees and expenses. Accordingly, the Emailed Notice, Print Publication Notice, Online Publication Notice, and Claim Form are finally approved as fair, reasonable and adequate. The Court finds and concludes that due and adequate notice of the pendency of this Action and of the Agreement has been provided to members of the Settlement Class, and the Court further finds and concludes that notice of the Settlement as described in the Order Approving Class Settlement Notice Plan and completed by the Parties complied fully with the requirements of Ohio Rule of Civil Procedure 23 and the requirements of due process under the Ohio and United States Constitutions.

7. The Court finds that the Agreement was entered into in good faith between Plaintiff and Harbor Freight, and is the result of non-collusive, diligent and good faith arm's length negotiations by the Parties thereto. In making this finding, the Court notes that the Settlement is the result of three formal mediation sessions over a six-month period, taking place in Los Angeles, Cleveland, and New York, respectively; and that all three mediation sessions were facilitated by an experienced and neutral mediator, the Hon. James McMonagle (Ret.). In addition, the Court finds that Final Approval of the Agreement will result in substantial savings in time and resources

of the Court and the Parties and will further the interests of justice, and is in the best interest of the Settlement Class, especially in light of the benefits to the Settlement Class and the costs and risks associated with the complex proceedings necessary to achieve a favorable result in this Action. Further, the Court finds that the Agreement is fair, reasonable and adequate to members of the Settlement Class based on proceedings in this Action, discovery, due diligence, and the absence of material objections sufficient to deny approval.

8. The Court further finds that Plaintiff and his counsel have adequately represented the Class. Plaintiff asserts a claim for breach of contract under Article 2 of the Uniform Commercial Code, which governs contracts for the sale of goods and which every state other than Louisiana has adopted. Further, the Parties' discovery has demonstrated that Harbor Freight's pricing and advertising is identical across the country. Thus, the claims of class members do not differ materially from state to state and Plaintiff's and his counsel's representation of the certified nationwide settlement class is consistent with due process.

9. The Court has considered the objections filed by objectors and finds that, to the extent any evidence was submitted, the objections are not supported by sufficient competent, credible evidence, and are therefore found to be without merit and overruled.

10. Therefore, the terms of the Settlement, as set forth in the Agreement, are hereby determined to be fair, reasonable and adequate. Accordingly, the Agreement, including each of its respective terms and conditions, is hereby finally approved by and incorporated as part of this Settlement Order and Final Judgment.

11. The Court hereby enters final judgment approving the Settlement, as set forth in the Agreement. In accordance with the Agreement and this Settlement Order and Final Judgment, the Court hereby enters judgment fully and finally terminating all claims of Plaintiff and the Settlement Class against Harbor Freight, on the merits, with prejudice, and without leave to amend.

12. The Court further finds that all Class Members who have not timely and properly excluded themselves, regardless of whether such Class Members have claimed or obtained benefits under the Agreement, shall, by operation of this Settlement Order and Final Judgment, release, dismiss with prejudice, and forever discharge Defendant Harbor Freight Tools USA, Inc., and its parents, subsidiaries, divisions, joint ventures, and related and affiliated entities, and all of their respective predecessors, successors, assigns, attorneys, accountants, representatives, insurers, and past and present officers, directors, employees, agents, and independent contractors (collectively,

“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, constructive fraud, fiduciary duty, unjust enrichment or any other theory, that were asserted or could have been asserted by Plaintiffs in this Action against Released Parties, for any injury or damages relating to or arising out of the facts and circumstances 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 at Harbor Freight retail store locations or on Harbor Freight’s website during the Class Period; (b) any and all claims to attorneys’ fees and/or expenses in connection with the prosecution of this Action, except as provided for in this Order.

13. Those Class Members who timely and properly requested exclusion from the Settlement Class are identified in an Exhibit to the Affidavit of the Settlement Administrator, filed with the Court. The Court approves this list of Class Members who have excluded themselves from the Settlement Class, and those individuals are excluded from the Settlement Class. All other members of the Settlement Class are, together with their heirs, estates, trustees, executors, administrators, principals, agents, beneficiaries, assigns, successors, and legal representatives bound by this Settlement Order and Final Judgment and all proceedings embodied by the Settlement, including the releases provided for in this Settlement Order and Final Judgment.

14. All Class Members who have not timely and properly excluded themselves from the Settlement Class are permanently enjoined, in either an individual or representative capacity, from: (a) 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), based on, related to, or arising out of the claims and causes of action, or the facts and circumstances relating thereto, in the Action and/or the Released Claims; (b) organizing members of the Settlement Class who have not been excluded from the Settlement Class into a separate class for purposes of pursuing as a purported class action any lawsuit or administrative, regulatory, arbitration, or other proceeding (including by seeking to amend a pending complaint to include class allegations), based on, related to, or arising out of the

claims and causes of action, or the facts and circumstances relating thereto, in the Action and/or the Released Claims; (c) attempting to effect an opt-out class of individuals in any lawsuit or administrative, regulatory, arbitration or other proceeding based on, relating to, or arising out of the claims and causes of action, or the facts and circumstances relating thereto, in the Action and/or Released Claims; and (d) receiving any benefits or other relief from, any other lawsuit, arbitration or administrative, regulatory or other proceeding or order in any jurisdiction, based on, relating to, or arising out of the claims and causes of action, or the facts and circumstances relating thereto, in the Action and/or the Released Claims.

15. The Court finds that Plaintiff and counsel for Plaintiff and the Settlement Class, Patrick J. Perotti, Esq. and Nicole Fiorelli, Esq. of Dworken & Bernstein Co., LPA, have fairly and adequately satisfied the requirements of Rule 23. The court finds said counsel are well-known to the court and bar, have an excellent reputation for their work in class action litigation statewide and nationally, and have done an excellent job in fairly and effectively representing the interests of the Settlement Class,

16. The sum of \$10,000,000.00 is hereby awarded as the entire attorneys' fees and reimbursement to Class Counsel for costs and expenditures in this Action, including all fees for legal services, all costs, all disbursements, all out-of-pocket expenses and all other expenditures. The sum of \$10,000.00 is hereby awarded as incentive compensation to the named Plaintiff for his efforts in litigating and settling this Action for the class. These sums shall be paid by Harbor Freight to Plaintiff and Class Counsel representing Plaintiff and the Settlement Class pursuant to the terms and conditions and at the time set forth in the Agreement. Harbor Freight shall not be responsible 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 attorneys' fees and expenses awarded by the Court.

17. The Parties are directed to consummate the Agreement in accordance with its terms. Harbor Freight shall pay the costs of administration of the Settlement, in accordance with the terms and conditions set forth in the Agreement.

18. Disbursements to eligible Class Members who timely file proper Claim Forms, and if applicable to the following charities identified by Plaintiffs and approved by the Court, shall be made by the Settlement Administrator or Harbor Freight in the manner, within the time periods, and under the terms and conditions provided in the Agreement. Harbor Freight shall provide funds

as necessary to the Settlement Administrator to make disbursements to eligible Class Members, as provided in the Agreement.

19. The Settlement Administrator shall discharge all aspects of notice, payment, and other settlement administration in accordance with the Agreement.

20. Neither this Settlement Order and Final Judgment, the Agreement, the fact of settlement, the settlement proceedings, settlement negotiations, nor any related document, shall be used as an admission of any act or omission by Harbor Freight or any other Released Party, or be offered or received in evidence as an admission, concession, presumption, or inference of any wrongdoing by Harbor Freight or any other Released Party, in any action or proceeding in any court, administrative panel or proceeding, or other tribunal, other than such proceedings as may be necessary to consummate or enforce the Agreement.

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

22. Without affecting the finality of this Order, the Court retains jurisdiction over this Settlement to the extent necessary to implement, enforce, and administer the Agreement and this Settlement Order and Final Judgment. Upon written report of the Settlement Administrator that all distributions have been made from the Settlement Fund pursuant to the Agreement, the Court will dismiss this Action with prejudice and without costs or attorneys' fees (except such costs and fees as are awarded herein) as to all claims that were asserted or could have been asserted by Plaintiff and/or the Settlement Class. Notwithstanding the foregoing, this Order constitutes a final and complete adjudication of the claims of the Settlement Class and other matters presented herein, and the Court expressly determines that there is no just reason for delay, pursuant to Rule 54(B).

IT IS SO ORDERED

Dated: 11/3/17, 2017



VINCENT A. CULOTTA, JUDGE