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**SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

**COUNTY OF VENTURA**

BRET LESTER, ROBERT ALVAREZ,  
SYLVIA BLANCO, FRANCISCO  
ARECHIGA, and ANGELA KYLER, on  
behalf of themselves and all others  
similarly situated,

Plaintiffs,

vs.

HARBOR FREIGHT TOOLS USA,  
INC., a California Corporation and  
DOES 1 through 10, inclusive,

Defendant.

CASE NO. 56-2016-00484055-CU-OE-VTA

[Assigned for All Purposes to:  
The Hon. Mathew P. Guasco, Dept. 20]

**MEMORANDUM OF POINTS & AUTHORITIES  
IN SUPPORT OF PLAINTIFFS' UNOPPOSED  
MOTION FOR PRELIMINARY APPROVAL OF  
CLASS ACTION AND PAGA SETTLEMENT  
AND PROVISIONAL CLASS CERTIFICATION**

[Filed and served concurrently with Notice of  
Plaintiffs' Unopposed Motion for Preliminary  
Approval of Class Action and PAGA Settlement and  
Provisional Class Certification; Declarations of  
Attorneys Christina A. Humphrey, Larry W. Lee, Paul  
K. Haines, Dennis S. Hyun, Kyle Nordrehaug, Elissa L.  
Gysi; Declarations of Representatives Bret Lester,  
Robert Alvarez, Sylvia Blanco, Francisco Arechiga and  
Angela Kyler; Declaration of Sean Hartranft of ILYM  
Group; and [Proposed] Order]

Date: November 3, 2021

Time: 8:30am

Dept: 20

Reservation #: 2593617

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Attorneys for Plaintiff Angela Kyler and the Putative Class

1 This Memorandum is submitted in support of Plaintiffs' Unopposed Motion for  
2 Preliminary Approval of Class Action and PAGA Settlement and Provisional Class  
3 Certification. The proposed non-reversionary settlement before this Court will dispose of the  
4 consolidated action as to HARBOR FREIGHT TOOLS USA, INC, (hereinafter referred to as  
5 "Defendant" or "Harbor Freight"), except as to any Class Members who elect to exclude  
6 themselves ("opt-out") from the Settlement Class. Because of page limitations and the  
7 complicated history of this action, more detail is provided in the Declaration of Christina  
8 Humphrey, Esq. ("Humphrey Dec."), and is cited extensively herein for this Court's ease of  
9 reference.

## 10 I

### 11 INTRODUCTION AND STATEMENT OF FACTS

12 On July 13, 2016, Plaintiff Bret Lester filed a putative class action lawsuit on behalf  
13 of non-exempt Assistant Managers against Defendant requesting relief for the following  
14 causes of action: (1) failure to pay minimum wages; (2) failure to pay wages at the agreed  
15 rate; (3) failure to pay overtime compensation; (4) failure to provide meal periods; (5) failure  
16 to provide rest periods; (6) failure to pay timely wages upon termination of employment; (7)  
17 failure to provide accurate itemized wage statements; and (8) unfair business practices. On  
18 November 24, 2016, Bret Lester filed the First Amended Complaint adding Robert Alvarez  
19 as a Plaintiff. (Humphrey Decl. ¶12-13).

20 The Parties attended a mediation before Steve Pearl, Esq. on February 25, 2021. The  
21 Parties also included the following cases at the mediation in an effort to reach a global  
22 resolution of all pending actions against Defendant.

23 1. *Sylvia Blanco v. Harbor Freight Tools USA, Inc.*, Los Angeles Superior Court  
24 Case No. BC603939;

25 2. *Francisco Arechiga v. Harbor Freight Tools USA, Inc.*, Los Angeles Superior  
26 County Superior Court Case No. 20STCV10502; and

27 3. *Angela Kyler v. Harbor Freight Tools USA, Inc.*, San Diego County Superior  
28 Court Case No. 37-2020-00015828.

1 The Parties have settled these four matters on a global basis and have obtained a  
2 Memorandum of Understanding signed by all the Parties. (Humphrey Decl. ¶¶20-23).

3 On August 10, 2021, Plaintiffs filed the Second Amended Complaint including  
4 additional allegations regarding the claim for penalties under the Private Attorneys General  
5 Act, and adding Sylvia Blanco, Francisco Arechiga, and Angela Kyler as Plaintiffs to this  
6 action. (Humphrey Decl. ¶19).

7 This matter has a relatively complicated procedural history and is explained in more  
8 detail at paragraphs 9-19 of the Humphrey Dec. submitted herewith.

9 The proposed settlement comprises of a proposed class of 81 employees and a PAGA  
10 group of 5,107 employees. The parties agreed to the settlement for Three million, five hundred  
11 thousand dollars, and Zero Cents (\$3,500,000.00.) (“Gross Settlement Amount”) with no claim  
12 requirement, no residual to revert to the Defendant, and Defendant to pay its share of taxes in  
13 additional to the settlement.

14 **II.**  
15 **THE CLASS/EMPLOYEE GROUP REPRESENTED**  
16 **(“Employees at Issue”)**

17 **Settlement Class.** All current and former non-exempt employees employed by  
18 Defendant in the State of California in the position of non-exempt Assistant Store Managers  
19 who worked at least one workweek for Harbor Freight at any time from November 14, 2012  
20 to April 23, 2015 (the “Class Period”), whose employment ended before April 24, 2015, and  
21 who did not sign a release agreement with Harbor Freight. Defendant represents that there are  
22 approximately 81 individuals in the Settlement Class, including Plaintiffs.

23 **PAGA Employees.** All current and former non-exempt employees employed by  
24 Defendant in the State of California in the position of non-exempt retail store employees who  
25 worked at least one pay period for Harbor Freight at any time from July 28, 2014 to June 30,  
26 2015 and January 9, 2019 to February 28, 2021 (the “PAGA Period”). Defendant represents  
27 that there are approximately 5,107 PAGA Employees, including Plaintiffs.

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### III

#### THE TWO-STEP APPROVAL PROCESS

Any settlement of class litigation must be reviewed and approved by the court. This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice has been distributed to the class members for their comment or objections. *Manual for Complex Litigation Second* at §30.44 (1985).

A two-step process is followed when considering class settlements ... if the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to Class Representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the Class Members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement. Thus, the preliminary approval of the Trial Court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. As Professor Newberg comments, “The strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer, or is presumptively valid subject only to any objections that may be raised at a final hearing.” (*Newberg on Class Actions*, 3<sup>rd</sup> Ed., 11.26.)

The procedures for submission of a proposed settlement for preliminary approval are discussed at *Newberg on Class Actions*, 3<sup>rd</sup> Ed., §11.24 – 11.26. *Newberg* observes at §11.24: “When the Parties to an action reach a monetary settlement, they will usually prepare and execute a joint stipulation of settlement, which is submitted to the court for preliminary approval. The stipulation should set forth the central terms of the agreement, including but not limited to, the amount of the settlement, form of payment, manner of determining the effective date of settlement, and any recapture clause.”

The details of the recovery for each Class Member are set forth in the proposed Settlement Agreement attached to the Humphrey Dec. as Exhibit “A” in addition to

1 paragraphs 25-32 of the Humphrey Dec. The settlement for each participating Class Member  
2 is fair, reasonable, and adequate given the inherent risk of litigation, the risk relative to class  
3 certification and the costs of litigation. (Humphrey Dec, paragraphs 40-55).

#### 4 IV.

#### 5 THE PRESUMPTION OF FAIRNESS

6 Courts presume the absence of fraud or collusion in the negotiation of a settlement  
7 unless evidence to the contrary is offered. In short, there is a presumption that the negotiations  
8 were conducted in good faith. (*Newberg*, §11.51; *In re Chicken Antitrust Litigation*, 560 F.  
9 Supp. 957, 962 (N.D. Ga. 1980); *Priddy v. Edelman*, 883 F.2d 438, 447 (6<sup>th</sup> Cir. 1989); *Mars*  
10 *Steel Corp. v. Continental Illinois National Bank and Trust Co.*, 834 F.2d 677, 682 (7<sup>th</sup> Cir.  
11 1987).) Courts do not substitute their judgment for that of the proponents, particularly where,  
12 as here, settlement has been reached with the participation of experienced counsel familiar  
13 with the litigation and a professional mediator. (*Hammon v. Barry*, 752 F. Supp. 1087 (D.D.C.  
14 1990); *Steinberg v. Carey*, 470 F. Supp. 471 (S.D.N.Y. 1979); *In re Armored Car Antitrust*  
15 *Litigation*, 472 F.Supp 1357 (N.D. Ga. 1979), *aff'd in part, rev'd in part* in 645 F.2d 488 (5<sup>th</sup>  
16 Cir. 1981).)

17 While the recommendations of counsel proposing the settlement are not conclusive,  
18 the Court can properly take them into account, particularly where, as here, they have been  
19 involved in litigation for some period of time, appear to be competent, have experience with  
20 this type of litigation, and have obtained substantial evidence from the opposing party. (*See*  
21 *Newberg*, §11.47.) Here, the Class Counsel involved in the case has a great deal of experience  
22 in wage and hour class action litigation. Christina A. Humphrey of Christina Humphrey Law,  
23 P.C., Larry W. Lee of Diversity Law Group, P.C., Dennis S. Hyun of Hyun Legal, APC, Kyle  
24 R. Nordrehaug of Blumenthal Nordrehaug Bhowmik De Blouw LLP, and Paul K. Haines of  
25 Haines Law Group, APC, have all been approved as Class Counsel in numerous other wage  
26 and hour class actions. (Humphrey Dec., para. 3-8 and Dec. of Lee, Hyn, Nordregaug, and  
27 Haines submitted herewith). Plaintiffs' attorneys and the Class Representative have litigated  
28 this matter for approximately five (5) years, including extensive pre-litigation investigation,

1 the production of documents by Plaintiffs and Defendant, including Defendant's production  
2 of its employee handbooks, policies and procedures regarding the payment of wages, time  
3 keeping, overtime guidelines, meal and rest periods, and the production of detailed statistical  
4 data regarding class and PAGA members, numerous depositions, collection of interviews and  
5 declarations, motion practice and appeal, expert reports, conferences between representatives  
6 of the Parties, and a full day-long mediation session with Steve Pearl, Esq., an experienced  
7 mediator of wage-and-hour class actions. The mediation session with Steve Pearl, Esq.,  
8 occurred on February 25, 2021, in California. All Counsel for Parties were present including  
9 representatives from Harbor Freight and Plaintiffs were available by telephone.

10 At the conclusion of the February 25, 2021, mediation session, the Parties did not reach  
11 a resolution, but, through their counsel and with the assistance of Steve Pearl, Esq., continued  
12 to discuss a potential settlement, and eventually reached an agreement to resolve the Action  
13 on a global basis pursuant to terms of a Memorandum of Understanding fully executed on  
14 March 10, 2021, and a Stipulation of Settlement fully executed just shortly before this motion  
15 was filed. (Stipulation of Settlement, Humphrey Dec., paragraphs 17-24 and Exhibit "A" to  
16 Humphrey Dec).

## 17 V.

### 18 DISTRIBUTION OF THE SETTLEMENT FUNDS<sup>1</sup>

19 The Settlement Administrator shall first deduct from the Gross Settlement Amount the  
20 amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and  
21 expenses, Plaintiffs' Class Representative Incentive Awards, and the Settlement  
Administrator's administration costs. These amounts are estimated to be:

- |                                    |                                                                                                                                                            |
|------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 22 1) Claims Administration Costs: | \$21,500                                                                                                                                                   |
| 23 2) Attorneys' Fees:             | Attorneys' Fees: \$1,225,000.00 [35% of the<br>24 Total Settlement Amount split between class<br>25 counsel as set forth in Humphrey Dec., para.<br>26 58] |
| 3) Costs                           | \$122,500                                                                                                                                                  |

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27 <sup>1</sup> Please reference the Stipulation of Settlement, attached as Exhibit A to the Humphrey Dec., ¶2 and ¶54-55.

1 4) Class Representative Service Award: \$50,000 (\$10,000 for each Plaintiff)

2  
3 The remaining amount, around \$2,081,000.00 shall be known as the “Net Settlement  
4 Amount.” Of the Net Settlement Amount, 15% (around \$312,150.00) shall be allocated to  
5 the Settlement Class only (“Settlement Class Amount”). The Settlement Administrator will  
6 calculate each participating Settlement Class member’s payment from the Net Settlement  
7 Amount based on the proportionate number of workweeks worked by that Settlement Class  
8 Member during the Class Period, and which will be calculated by multiplying the Net  
9 Settlement Amount by a fraction, the numerator of which is the participating Settlement  
10 Class member’s number of workweeks worked during the Class Period, and the denominator  
11 of which is the total workweeks worked by all participating Settlement Class members  
12 during the Class Period. There is an estimated 1971 workweeks, which averages a payment  
13 of \$158.37 per workweek for each class member. Thus, an employee who was employed  
14 from Nov. 14, 2012, to April 23, 2015 (the “Class Period”), should receive an estimated  
15 \$18,054.18. The highest and lowest payout numbers will be provided at the final approval  
16 stage, after Defendant has had a chance to finalize the class list and workweeks.

17 Of the Net Settlement Amount, 85% (around \$1,768,850.00) (the “PAGA Amount”)  
18 shall be allocated for violations of the PAGA, which shall be paid (i) 75% to the California  
19 Labor and Workforce Development Agency (LWDA) and (ii) 25% (around \$442,212.50) to  
20 Aggrieved Employees, pursuant to Labor Code § 2699(i), divided amongst Aggrieved  
21 Employees. Each PAGA Employee who worked for Harbor Freight during the PAGA  
22 Period shall receive a portion of the PAGA Amount proportionate to the number of pay  
23 periods worked by that PAGA Employee during the PAGA Period, and which will be  
24 calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the  
25 PAGA Employees’ number of pay periods worked as a non-exempt employee for Harbor  
26 Freight in California during the PAGA period, and the denominator of which is the total  
27 number of pay periods worked by all participating PAGA Employees as non-exempt  
28 employees for Harbor Freight in California during the PAGA Period. There is an estimated

1 150,000 pay periods, which averages a payment of \$2.94 per pay period, which is being  
2 paid in addition to money paid in a previous settlement, *Ettie Armendariz v. Harbor Freight*  
3 *USA Inc.*, Case No. 37-2017-00004443-CU-OE-CTL. (Exhibit B to Humphrey Dec., ¶19).  
4 Thus, an employee who was employed from July 28, 2014 to June 30, 2015 and January 9,  
5 2019 to February 28, 2021 (the “PAGA Period”) should receive an estimated \$423.36. The  
6 highest and lowest payout numbers will be provided at the final approval stage, after  
7 Defendant has had a chance to finalize the class list and pay periods.

8 This is a non-reversionary settlement. Any funds payable to participating Settlement  
9 Class members and PAGA Employees whose checks are not cashed within 180 days after  
10 mailing will be deposited by the Settlement Administrator with Casa Pacifica. Casa  
11 Pacifica is a nonprofit organization assisting children and young adults overcome difficult  
12 circumstances including abuse and neglect, complex emotional and behavioral issues, and  
13 family crisis. The Parties and/or Counsel for the Parties do not have any interests or  
14 involvement with the governance or work of Casa Pacifica as set forth in all of the  
15 declarations submitted.

## 16 VI.

### 17 FILING DOCUMENTS AND ADMINISTRATION

18 The parties have finalized a formal settlement agreement. The parties are filing all  
19 settlement and notice documents as follows: (1) Stipulation of Settlement Agreement (Exhibit  
20 “A” to the Humphrey Dec); (2) Notice of Class Action Settlement (Exhibit 1A to Stipulation);  
21 (3) Notice of Estimated Settlement Award to Settlement Class Members (Exhibit 1B to  
22 Stipulation); (4) Notice to PAGA Employees (to be sent with checks) (Exhibit 2 to  
23 Stipulation); (5) ILYM Claims Administration Quote (Exhibit C to Hartranft Dec); (6) Proof  
24 of Submission to the LWDA (Exhibit C to Humphrey Dec); and (7) the Reminder Postcard  
25 sent to individuals who have not cashed their checks (Exhibit B to Hartranft Dec.). The  
26 [Proposed] Order granting Plaintiffs’ Motion for Preliminary Approval of Class Action and  
27 PAGA settlement is filed concurrently with this Motion, along with the declarations of all  
28 proposed class counsel and class and PAGA representatives. The parties respectfully request

1 that this court approve those documents to be disseminated to the class in English and Spanish  
2 consistent with the manner and timing as set forth in the Settlement Agreement.

3 The parties have agreed to ILYM Group, Inc. as the settlement administrator and  
4 respectfully request that this court appoint ILYM Group, Inc. to handle the notice and claims  
5 administration procedures. The Senior Vice President of Sales, Sean Hartranft, has submitted  
6 a declaration describing ILYM Group, Inc.'s qualifications to serve as the settlement  
7 administrator and its quote for services.

## 8 **VII.**

### 9 **THE SETTLEMENT IS FAIR AND REASONABLE BASED UPON OBJECTIVE** 10 **EVIDENCE**

11 The settlement is fair, reasonable and adequate for the reasons stated in accompanying  
12 Declaration of Christina A. Humphrey filed in support of Plaintiffs' Motion for Preliminary  
13 Approval of Class Action and PAGA settlement (*see* Humphrey decl., paragraphs 35-51). The  
14 settlement that has been reached, subject to this court's approval, is the product of tremendous  
15 effort, and a great deal of expense by the parties and their counsel. The settlement was reached  
16 after Plaintiffs' attorneys and the class representatives litigated this matter for approximately  
17 five years, including extensive pre-litigation investigation, the propounding of written  
18 discovery by Plaintiffs and Defendant, the production of documents by Plaintiffs and  
19 Defendant, including Defendant's production of its employee handbooks, policies and  
20 procedures regarding the payment of wages, time keeping, overtime guidelines, meal and rest  
21 periods, the production of class wide time and payroll data, multiple depositions, interviews  
22 of class members, and collection of declarations, expert reports, numerous conferences  
23 between representatives of the parties, and a full day-long mediation session with an  
24 experienced mediator of Steve Pearl, Esq., wage-and-hour class actions. The mediation  
25 session with Steve Pearl, Esq., occurred on February 25, 2021, in California. At the  
26 conclusion of the February 25, 2021, mediation session, the Parties did not reach a resolution,  
27 but, through their counsel and with the assistance of Steve Pearl, Esq., continued to discuss a  
28 potential settlement, and eventually reached an agreement to resolve the Action on a global

1 basis pursuant to terms of a MOU signed March 10, 2021. The mediation and subsequent  
2 negotiations resulted in the Settlement described herein to resolve this Action in its entirety.

3 The settlement amount is, of course, a compromise figure. Plaintiffs took into account  
4 the risks that the class would be certified, risks related to proof of damages, and the strengths  
5 and weaknesses of Defendant's other defenses, including a settlement reached in another  
6 PAGA action that purported to release most of the PAGA employees claims in this  
7 consolidated action (Humphrey Dec. ¶19 and Exhibit B to Humphrey Dec. 40-55). Plaintiffs  
8 also took into account the possibility that if a settlement were reached after additional years  
9 of litigation, the great expenses and attorneys' fees of litigation would likely reduce the  
10 amount of funds available to the class. Furthermore, plaintiffs also took into consideration  
11 the time delay and financial repercussions of trial and the possibility of an appeal by  
12 Defendant.

### 13 **VIII.**

#### 14 **ACTION REQUESTED AS PART OF THE MOTION FOR PRELIMINARY** 15 **APPROVAL**

16 The parties request this Court, as part of the preliminary approval process, to do the  
17 following:

- 18 1. Review the proposed Settlement Agreement;
- 19 2. Provisionally certify for settlement purposes only the class listed above;
- 20 3. Confirm for settlement purposes only Christina A. Humphrey of Christina  
21 Humphrey Law, P.C., Larry W. Lee of Diversity Law Group, P.C., Dennis S.  
22 Hyun of Hyun Legal, APC, Aparajit Bhowmik of Blumenthal Nordrehaug  
23 Bhowmik De Blouw LLP, and Paul K. Haines of Haines Law Group, APC as  
24 Class Counsel; Robert Alvarez as a Class Representative; Bret Lester, Sylvia  
25 Blanco, Francisco Arechiga, and Angela Kyler as PAGA Representatives;
- 26 4. Approve an order granting preliminarily approval of the proposed settlement  
27 on a class basis, direct notice to be given to the class, and setting a hearing for  
28 final review of the proposed settlement.

5. Approve ILYM Group, Inc. as claims administrator to handle the notice and claims procedures as set forth in its proposal.

## IX.

## CONCLUSION

Based upon the foregoing, counsel respectfully requests that the court grant this motion for preliminary class action and PAGA approval and enter the proposed order.

DATED: October 12, 2021

**CHRISTINA HUMPHREY LAW, P.C.  
DIVERSITY LAW GROUP, P.C.  
HYUN LEGAL, APC**

By: Christina I. Humphrey

By: Christina A. Humphrey, Esq.  
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