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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]

**DECLARATION OF CHRISTINA A.
HUMPHREY 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; Memorandum of Points
and Authorities; Declarations of Attorneys Larry W.
Lee, Paul K. Haines, Dennis S. Hyun, Elissa L. Gysi;
Declarations of Representatives Bret Lester, Robert
Alvarez, Sylvia Blanco, Angela Kyler, and Francisco
Arechiga; 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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1. I have been practicing law for a total of twenty (20) years. For thirteen years as an associate and partner at Marlin & Saltzman, LLP and approximately five (5) years as the owner of my own firm, I have been responsible for the handling of all facets of class action and other complex litigation, from pre-filing investigation through trial and appeal, especially in the arena of wage and hour litigation. Effective February 14, 2019, my new firm, Christina Humphrey Law, P.C., substituted in this case as counsel (my previous firm, Humphrey & Rist, LLP, filed the case).

I. ADEQUACY AS CLASS COUNSEL

4. Throughout my career I have successfully litigated cases involving a wide array of employment laws and practices, including meal and rest break violations, off-the-clock violations, violations of minimum wage and overtime laws, failure to pay upon termination, PAGA violations, and other wage and hour violations similar to those pled in the instant case. I have also successfully litigated numerous claims of misclassifications under the executive,

1 administrative, outside sales, and other overtime exemptions arising out of California and
2 federal law.

3 5. I further have handled appeals in at least 10-15 wage and hour class action cases
4 and have published decisions including *Faulkinbury v. Boyd* (2013) 185 Cal.App.4th 1363 and
5 *Hodge v. AON* (2006) 145 Cal.App.4th 278.

6 6. The plaintiff side employment cases that I have either been involved in or been
7 responsible for directly, have resulted in the payment by defendants of hundreds of millions
8 of dollars in settlements. Examples of some of the many cases I have been involved in or
9 directly handled include:

10 (1) **Gutierrez vs. State Farm**, Los Angeles Superior Court. Class action
11 seeking overtime compensation for insurance claims adjusters employed by
12 defendant in the State of California. Plaintiff's counsel. Certification granted, and
13 then summary adjudication as to liability granted in favor of the class. Case settled
14 in 2004 for \$135 million, with Final Approval granted and no objections filed. Full
deposition survey completed, settled on eve of trial.

15 (2) **Bednar vs. Allstate Insurance Company**, Los Angeles Superior Court.
16 Class action seeking overtime compensation for insurance claims adjusters
17 employed by defendant in the State of California. Plaintiff's counsel. Certification
18 granted, and then summary adjudication as to liability granted in favor of the class.
19 Case settled in 2005 for \$120 million. Final Approval granted and no objections
20 filed. Full deposition survey completed, settled on eve of trial.

21 (3) **In re: Wal-Mart Wage and Hour Litigation**, United States District
22 Court for the Northern District of California. Class action seeking unpaid vacation
23 pay and penalties. Case settled for maximum payment of \$86 million. Final
24 approval granted.

25 (4) **Roberts vs. Coast National Insurance**, Orange County Superior Court.
26 Class action seeking overtime compensation for insurance claims adjusters
27 employed by defendant in the State of California. Plaintiff's counsel. Certification
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1 granted, and then the matter was tried to binding arbitrator. Case settled for in
2 excess of \$18 million during class-wide arbitration. Handled adjudication of
3 individual damage claims in arbitration.

4 (5) **CNA Class Action Litigation**, Los Angeles Superior Court Class.
5 Class action seeking overtime compensation for insurance claims adjusters
6 employed by defendant in the State of California. Plaintiffs' counsel. Case settled
7 in 2005 for \$33 million.

8 (6) **H & R Block Litigation**, United States District Court for the Northern
9 District of California. Class certified, and settlement reached prior to trial. Total
10 settlement was \$35 million.

11 (7) **Hoyng v. AON**, Los Angeles County Superior Court. Class action
12 seeking overtime compensation for certain employees employed by defendant third
13 party administrator in the State of California. Plaintiffs' counsel. Certification
14 granted. Case settled for \$10.5 million. Deposition survey completed.

15 (8) **Parris vs. Lowe's Home Improvement**, Los Angeles Superior Court.
16 Class action seeking payment of "off the clock" hours worked by all hourly
17 employees of Lowe's in the State of California. Plaintiffs' counsel. Case ordered
18 certified by Order of the Court of Appeals, Second Appellate District, California,
19 on reversal of trial court order denying certification. Case settled for \$29.5 million.
20 Deposition survey completed.

21 (9) **Fulton vs. Cisco Systems, Inc.**, Orange County Superior Court. Wage
22 and hour litigation seeking overtime and related compensation. Plaintiffs' class
23 counsel. Settled for \$6.7 million.

24 (10) **Van Heyn vs. WMC Mortgage Corp.**, Los Angeles Superior Court.
25 Action for violation of Labor Code §§ 2802 and 2804, etc. for failure to reimburse
26 employees for business expenses. Plaintiffs' counsel. Case settled for \$3 million.

27 (11) **In re: JB Hunt Transport Class Action**, United States District Court
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1 for the Central District of California. Previously appointed Plaintiffs' Class
2 counsel for certified class. Case settled in 2018 for \$15 million after my departure
3 from Marlin & Saltzman. Co-lead attorney for nine years.

4 (12) **Poston vs. Marcus & Millichap Real Estate Investment**, Los Angeles
5 Superior Court. Action for violation of Labor Code §§2802 and 2804, etc. for
6 failure to reimburse employees for business expenses. Plaintiffs' Class counsel.
7 Case settled for \$1,340,000.

8 (13) **Dotson vs. Royal SunAlliance**, Orange County Superior Court. Class
9 action seeking overtime compensation for insurance claims adjusters employed by
10 defendant in the State of California. Plaintiffs' counsel. Case settled in 2005 for
11 \$12.3 million.

12 (14) **Harris v. Vector Marketing Corp.**, United States District Court,
13 Northern District of California. Plaintiffs' Class counsel. Final approval of \$13
14 million settlement granted.

15 (15) **Woods v. Vector Marketing Corp.**, United States District Court,
16 Northern District of California. Plaintiffs' Class Counsel. Case settled for \$6.75
17 million.

18 (16) **McCowen v. Trimac Transporation**, United States District Court,
19 Northern District of California. Appointed Plaintiffs' Class Counsel. Certified
20 Class Action. Case settled after my departure from Marlin & Saltzman.

21 (17) **Berner vs. Kraft Foods, Inc.**, United States District Court, Central
22 District. Counsel for Plaintiffs in "off the clock" action, plus meal and break time.
23 Case settled.

24 (18) **Rounsavall vs. Countrywide Home Loans, Inc.**, Los Angeles Superior
25 Court. Lead counsel in class action claiming mis-classification of computer driven
26 underwriting positions. Plaintiffs' class counsel. Final approval of \$15 million
27 settlement granted.

28 (19) **Ortmann vs. New York Life Insurance**, United States District Court,

Central District. Class action involving alleged failure to pay minimum wages to employed insurance agents, failure to reimburse, etc. Plaintiffs' class counsel. Final approval of \$10 million granted.

(20) **Bickley v. Schneider Logistics**, United States District Court, Northern District of California. Plaintiffs' Class Counsel. Final Approval of \$28 million settlement granted.

(21) **Holmby v. Cardinal Logistics**, United States District Court, Northern District of California. Plaintiffs' Class Counsel. Final Approval of \$2 million settlement granted.

(22) **Pitshikyan v. Dependable Highway Express, Inc.**, Sacramento Superior Court. Lead counsel in an alleged class action claiming mis-classification of truck drivers classified as independent contractors. Final Approval of \$2.5 million settlement granted.

(23) **Ramos v. Cedar Fair, Inc.**, Orange County Superior Court. Plaintiffs' Class Counsel. Final Approval of \$4.2 million granted.

(24) **Williams v. Chevron Stations, Inc.**, Los Angeles Superior Court. Plaintiffs' Class Counsel. Final Approval of \$3.25 million granted.

(25) **Takrouri v. CoreMark International, Inc.**, Los Angeles Superior Court. Plaintiff's Lead Counsel. Final approval of \$1 million settlement granted.

(26) **Weiss v. Carmax Auto Superstores California, LLC et. al**, Placer County Superior Court. Plaintiffs' Lead Counsel. Final approval of \$6.518 million settlement granted and separate confidential settlement of individually filed mass arbitrations.

7. My firm concentrates its efforts on areas of litigation, with a great emphasis on Plaintiff class action and complex litigation.

8. My firm has worked with the Class Representative Robert Alvarez, and PAGA representatives Bret Lester, Sylvia Blanco, Francisco Arechiga, and Angela Kyler, to protect the interests of the class and the Plaintiffs. I am familiar with the law as it applies to the legal

1 and factual issues relevant to this matter. My firm has dedicated the necessary personnel and
2 resources to fully develop the case, and in doing so the firm was also fully enabled to evaluate
3 the settlement risks and benefits for the case.

4 **II. PROCEDURAL HISTORY**

5 **A. Pre-Litigation and the Pleading Stage**

6 9. Harbor Freight is a discount tool retailer in the United States with its corporate
7 headquarters in Calabasas, California. Its products include automotive, air, and power tools, shop
8 equipment, and hand tools. According to its website, the company offers its products through 650
9 retail stores in 47 states and online. It serves automotive and truck repair shops, government
10 agencies, schools, manufacturers, contractors, and individuals.

11 10. Harbor Freight employs Associates, Senior Associates, Supervisors, and
12 Assistant Managers as non-exempt employees. PAGA Plaintiffs Lester, Blanco, Arechiga, and
13 Kyler represent the State of California on behalf of all non-exempt retail employees of Defendants
14 that were employed in California from July 28, 2014, to June 30, 2015, and January 9, 2019, to
15 February 28, 2021, against whom Defendants have allegedly committed labor law violations,
16 including, but not limited to, failing to provide meal and rest periods, failing to pay minimum wage
17 and overtime for off-the-clock work, failing to pay minimum and overtime wages for time spent
18 undergoing off the clock security inspections, failing to pay overtime based on the correct hourly
19 rate, failing to pay overtime to account for bonuses or incentive payments, failing to pay reporting
20 time wages, higher regular rate of pay, failing to reimburse business expenses, failing to provide
21 suitable seating, failing to provide accurate paystubs, and failing to pay all wages upon termination.

22 11. On July 13, 2016, Plaintiff Lester, on behalf of himself and the other aggrieved
23 employees, gave written notice by certified mail to the LWDA and Defendants of the specific
24 provisions of the California Labor Code alleged to have been violated, including the facts and
25 theories to support the alleged violations. Plaintiff Bret Lester's notice was given to the LWDA
26 within one year his employment ended with Defendants, which was July 27, 2015.

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12. On July 13, 2016, Plaintiff Bret Lester filed a putative class action and Private Attorney General Act (“PAGA”) lawsuit against Defendants requesting relief for the following causes of action: (1) failure to pay minimum wages; (2) failure to pay wages at the agreed rate; (3) failure to pay overtime compensation; (4) failure to provide meal periods; (5) failure to provide rest periods; (6) failure to pay timely wages upon termination of employment; (7) failure to provide accurate itemized wage statements; and (8) unfair business practices.

13. On November 24, 2016, Bret Lester filed the First Amended Complaint adding Robert Alvarez as a Plaintiff. The First Amended Complaint alleged: (1) failure to pay for all hours worked; (2) failure to pay wages at the agreed rate; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) failure to provide timely wages upon termination of employment; (6) failure to provide accurate wage statements; and (7) unfair business practices. The First Amended Complaint also sought civil penalties under PAGA. Mr. Alvarez is the sole Class Representative since he left his employment prior to the institution of Harbor Freight's arbitration agreement in April of 2015 and is the only named plaintiff that did not sign an arbitration agreement. He seeks to represent the Settlement Class of approximately 81 Assistant Managers who did not sign an arbitration agreement or a release of claims.

14. By letter dated July 28, 2015, Plaintiff Sylvia Blanco, on behalf of herself and the other aggrieved non-exempt retail employees, gave written notice by certified mail to the LWDA and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. On December 11, 2015, Plaintiff Blanco filed her case in Los Angeles Superior Court, Case No. BC603939.

15. By letter dated January 9, 2020, Plaintiff Francisco Arechiga, on behalf of himself and the other aggrieved non-exempt retail employees, gave written notice by certified mail to the LWDA and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. On March 16, 2020, Plaintiff Arechiga filed her case in Los Angeles Superior Court, Case No. 20STCV10502.

1 16. By letter dated April 15, 2020, Plaintiff Angela Kyler, on behalf of herself and
2 the other aggrieved non-exempt retail/warehouse employees, gave written notice by certified mail
3 to the LWDA and Defendants of the specific provisions of the California Labor Code alleged to
4 have been violated, including the facts and theories to support the alleged violations. On
5 November 17, 2020, Plaintiff Kyler filed her case in San Diego Superior Court, Case No.
6 00042006.

7 **B. This Case Has Been Heavily Litigated, Although the Docket May Not Reflect It**

8 17. Collectively, counsel for the Parties have spent over a thousand hours litigating
9 the case and expended over a \$100,000 in costs. In both the *Blanco* and *Lester* action, the
10 Plaintiffs opposed Defendant's Motion to Compel Arbitration but lost. Both cases were
11 stayed pending the outcome of arbitration for Plaintiff Sylvia Blanco and Bret Lester.
12 Plaintiff Robert Alvarez's case was also stayed even though his claims were not subject to
13 arbitration. Plaintiff Alvarez engaged in additional motion practice to attempt to lift the stay
14 but was not successful. Plaintiff propounded formal discovery prior to the stay and Defendant
15 responded.

16 18. Both Blanco and Lester litigated their cases to the eve of trial. The Parties
17 engaged in multiple depositions, exchanged multiple sets of discovery, prepared expert
18 reports, and examined time records for not only Plaintiffs, but for the employees in the stores
19 they worked in. Numerous documents and data were produced both formally and informally,
20 including Plaintiff and employee time, payroll, and electronic log records. In total, the Parties
21 exchanged thousands of pages of documents.

22 19. In addition, during arbitration, Plaintiffs Blanco and Lester learned that
23 Defendant settled a case in San Diego Superior Court, *Ettie Armendariz v. Harbor Freight*
24 *USA Inc.*, Case No. 37-2017-00004443-CU-OE-CTL, that purported to release Plaintiffs'
25 PAGA claims and those of 5000 employees for \$40,000, while their cases were stayed.
26 Plaintiff Lester then spent substantial time and effort (over a year) challenging the settlement
27 and eventually appealed an order denying a Motion to Set Aside the Judgment in San Diego
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1 Superior Court. The order denying Lester's Motion to Set Aside the Judgment was affirmed
2 and the question remains whether Harbor Freight released the claims in this underlying action.
3 Plaintiff Lester hired an expert to assist in briefing the appeal because the issue involved novel
4 issues regarding the PAGA. A copy of the *Armendariz* settlement agreement and final
5 approval order is attached hereto as Exhibit B.

6 **C. Mediation and Settlement Efforts**

7 20. After the Arechiga and Kyler cases were filed and the appeal resolved, the
8 Plaintiffs for the various cases agreed to join forces and to move forward jointly. The Parties
9 agreed to attend a global mediation to resolve the matters. On February 25, 2021, the Parties
10 participated in a private mediation with Steve Pearl, Esq., a well-respected mediator with
11 considerable experience mediating wage and hour class actions. Counsel for all Parties were
12 present including representatives from Harbor Freight and Plaintiffs were available via phone.

13 21. Prior to mediation, the Defendant produced a sample of time and payroll
14 records, policies and procedures pertaining to the relevant time periods, and all the Plaintiff's
15 documents. The Parties also engaged in substantial meet and confer efforts prior to mediation
16 to ensure all documents and data were needed to assess Defendant's potential exposure to the
17 claims alleged. Plaintiffs interviewed approximately 25 employees over the course of the
18 case and gathered multiple declarations in preparation for the mediation.

19 22. Plaintiff submitted a mediation brief based on its analysis of the records as well as
20 a projected damages estimate.

21 23. At the conclusion of the February 25, 2021, mediation session, the Parties did not
22 reach a resolution, but, through their counsel and with the assistance of Steve Pearl, Esq., continued
23 to discuss a potential settlement, and eventually reached an agreement to resolve the Action on a
24 class-wide basis pursuant to terms of a Memorandum of Understanding signed on March 10, 2020.
25 The mediation and subsequent negotiations resulted in the Settlement described herein to resolve
26 this Action in its entirety.

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24. On August 10, 2021, Plaintiffs filed the Second Amended Complaint including Plaintiffs Sylvia Blanco, Francisco Arechiga, and Angela Kyler and their allegations to this action.

D. The Scope of the Settlement Class and PAGA Employees

25. This is a \$3.5 million non-reversionary settlement. The PAGA Employee Group includes approximately 5,107 employees and the Settlement Class Group includes around 81 employees. Fifteen percent (15%) of the Net Settlement Amount (after deductions for Attorney's Fees, Incentive Awards, Administration Fees) shall be allocated to the Settlement Class and the remaining will be allocated to the State of California and the PAGA Employee Group. The Payroll taxes are being paid separately by Harbor Freight and are not included in the Gross Amount of Settlement.

III. SETTLEMENT DOCUMENTS

26. Class Counsel and Defendants' counsel have finalized the terms of the following documents, a true and correct copy of which, are attached hereto:

Exhibit A: Stipulation of Settlement ("Settlement Agreement")

For clarification purposes, there are two exhibits that are in turn attached to Exhibit A including the following:

Exhibit 1A: Notice of Class Action Settlement to Settlement Class Members

Exhibit 1B: Notice of Estimated Settlement Award to Settlement Class Members

Exhibit 2: Notice to PAGA Employees (to be sent with checks)

The terms of the settlement are set forth in detail in Exhibit A and summarized in the Memorandum of Points & Authorities filed herewith.

27. The proposed Notice of Class Action Settlement and Notice of Estimated Settlement Award to Settlement Class Members (Exhibits 1A and 1B) apprise the Settlement class members (the 81 class member referenced above) of their rights under the settlement and provide an estimate of each person's approximate share of the recovery, assuming that the Court approves the various requests for fees, costs, incentive awards and such, at the Final

1 Fairness Hearing (any amounts not approved will be distributed to Settlement Class Members,
2 PAGA Employees, and the LWDA). The Notice also provides appropriate and adequate
3 information as to the value of the overall settlement, the terms of the settlement, the amount
4 of attorneys' fees and costs that will be requested, the amount of the enhancement that will be
5 requested for the Class Representatives, as well as the Settlement Class Members' right to
6 object or to opt-out of the settlement and/or dispute the allocation of their share of the
7 settlement.

8 28. The parties believe that mailing notices is the most accurate, cost-effective way
9 to effectively provide notice to the settlement class members because the addresses used were
10 addresses provided by the Settlement Class Members while employed by Defendants.

11 29. All Settlement Class Members are being notified of the settlement and the
12 Notice is being provided in both English and Spanish.

13 30. The Notice to PAGA Employees (Exhibit 2) will be sent to the approximately
14 5,107 PAGA employees along with their checks for distribution, so that they understand what
15 the lawsuit is about and what PAGA claims they are releasing.

16 31. A reminder postcard (which is attached to the Hartranft Declaration as Exhibit
17 "B") will be sent out after 90 days for those individuals who did not yet cash their checks.

18 32. Casa Pacifica, a children's charity, is the cy pres recipient. "On its website, at
19 casapacifica.org, the organization describes its mission: "Casa Pacifica offers adolescent and
20 family services designed to treat victims of abuse and neglect, substance abuse, homelessness,
21 and other behavioral and mental health issues. Our Camarillo, Santa Barbara, and Santa Maria
22 offices work with more than 2,100 of the most vulnerable children and their families annually.
23 We meet youth and families at the most challenging times of their lives and help them
24 overcome some of life's most difficult circumstances – abuse and neglect, complex emotional
25 and behavioral issues, and family crisis. We restore hope, help children find joy in daily
26 living, and improve families' opportunities to build a better life for themselves and find a
27 place in the community where they can be successful. Casa Pacifica is committed to children
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1 and their families unconditionally over time and through all of life's ups and downs.
2 Headquartered on a rural 24-acre campus just five miles from the Pacific Ocean, Casa
3 Pacifica's main Camarillo campus provides the perfect setting for children and adolescents to
4 heal and find new hope for a better future. Our primary service area includes: San Diego, Los
5 Angeles, Long Beach, Kern County (Bakersfield), San Luis Obispo County (SLO), Ventura
6 County, Santa Barbara County and the Southern California/Central Coast region." No counsel
7 of record or party (as set forth in their declarations), including the undersigned, have any
8 interest, relationship, or involvement with the proposed *cy pres* recipient, Casa Pacifica.

9 **IV. PROVISIONAL CLASS CERTIFICATION IS APPROPRIATE**

10 33. As part of the settlement, the Parties have agreed to conditionally certify this
11 case as a class action. This case meets the requirement for conditional certification pursuant
12 to California Code of Civil Procedure Section 382.

13 **A. Ascertainability and Numerosity**

14 34. Settlement Class Members are defined as follows:

15 All current and former non-exempt employees employed by Defendant in the State of
16 California in the position of non-exempt Assistant Store Managers who worked at
17 least one workweek for Harbor Freight at any time from November 14, 2012 to April
18 23, 2015 (the "Class Period"), whose employment ended before April 24, 2015, and
19 who did not sign a release agreement with Harbor Freight.

20 35. The proposed settlement and Classes comprise of 81 putative Class Members.
21 The number satisfies the numerosity requirements in California pursuant to California Code
22 of Civil Procedure Section 382.

23 **B. Common Questions of Law and Fact Predominate**

24 36. Plaintiffs believes that there are common questions of law and fact as to the
25 Class which predominate over questions affecting only individual members including,
26 without limitation to:

27 a. whether Plaintiffs and the members of the Putative Class are subject to and
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- entitled to the benefits of California wage and hour statutes;
- b. whether Defendant required, encouraged, suffered, or permitted Plaintiffs and the members of the Putative Class to perform certain work-related duties without compensation equal to at least the California minimum wage;
 - c. whether Defendants required, encouraged, suffered, or permitted Plaintiffs and the members of the Putative Class to perform certain work-related duties without compensation at the designated rate;
 - d. whether Defendants had a policy and practice of failing to provide Plaintiffs and the members of the Putative Class meal and rest breaks;
 - e. whether Defendants had a policy and practice of failing to compensate Plaintiffs and the members of the Putative Class for missed, short, on duty, or late meal and rest breaks;
 - f. whether Defendants' policy and practice of not providing, and/or compensating Plaintiffs and the members of the Putative Class for meal and rest breaks violated California wage and hour law;
 - g. whether the nature of the work of Plaintiffs and members of the Putative Class prevented them from taking meal breaks;
 - h. whether Defendants unlawfully and/or willfully failed to provide Plaintiffs and the members of the Putative Class with true and proper wage statements upon payment of wages, in violation of Labor Code § 226;
 - i. whether Defendants unlawfully and/or willfully failed to promptly pay compensation owing to Plaintiffs and the members of the putative Former Employee Sub-class upon termination of their employment, in violation of Labor Code §§ 201-203;
 - j. whether Plaintiffs and members of the Putative Class sustained damages, and if so, the proper measure of such damages, as well as interest, penalties, costs, attorneys' fees, and equitable relief; and

1 k. whether Defendants' conduct as alleged herein violates the Unfair Business
2 Practices Act of California, Bus. & Prof. Code § 17200, et seq.

3 37. There are no individualized factual or legal issues for the Court to resolve that
4 would prevent this case from proceeding as a class action.

5 38. Defendant, while not admitting that there are common questions of law and fact
6 sufficient to justify litigation Class, acknowledges the risk that such common questions might
7 be found, and agrees that there are sufficient common question to support creation of
8 Settlement Class.

9 **C. The Class Representatives Are Typical and Adequate**

10 39. The claims of the Class Representative, Robert Alvarez, are typical of the Class
11 Members. The proposed Class Representative is adequate because he will adequately and
12 fairly represent the Class and will not and has not placed his interests above any Member of
13 the Class. The Class Representative worked during the relevant time period in this case and
14 was subjected to the same policies and procedures and labor violations as all other Putative
15 Class Members he seeks to represent.

16 **V. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE AND**
17 **MEETS THE STANDARDS FOR PRELIMINARY APPROVAL**

18 **A. Discovery and Investigation Prior to Mediation**

19 40. Plaintiffs' Counsel has conducted a thorough investigation of the facts in the
20 Action and have diligently pursued an investigation of Class Members' claims against
21 Defendant. As set forth above, discovery was conducted in this matter and over a thousand
22 pages of documents and electronic data were exchanged by the Parties during the normal
23 course of discovery as well as prior to mediation. In addition, interviews and declarations of
24 class members and PAGA employees were collected to ensure all issues were addressed
25 throughout the litigation of the case.

26 41. Prior to the February 25, 2021, mediation, the Parties held numerous
27 conference calls/emails to discuss and exchange facts and data regarding the case.

42. After the February 25, 2021, mediation, the Parties continued to exchange data and negotiate through Steve Pearl, Esq. until approximately March of 2021.

B. The Settlement is Fair, Adequate, and Reasonable

43. This case was settled through arms-length negotiation. Class counsel submits that the Settlement for each Settlement Class Member is fair, reasonable, and adequate given the inherent risk, cost, length, and delay of further litigation. The amount recoverable for each Settlement Class Member as set forth in the Memorandum of Points and Authorities is fair and reasonable based in a review of all objective evidence. The settlement that has been reached, subject to this Court's approval, is the product of tremendous effort, and a great deal of expense by the Parties and their counsel. The settlement was agreed upon after Plaintiffs' attorney and the Class Representatives litigated this matter for approximately five (5) years, including extensive pre-litigation investigation.

44. The settlement amount is, of course, a compromise figure. Plaintiffs took into account the risks related to maintaining a manageable action, risks related to proof of damages, and the strengths and weaknesses of Defendant's other defenses. Plaintiffs also took into account the possibility that if a settlement were reached after additional years of litigation, the great expenses and attorney's fees incurred would likely reduce the amounts of funds available to the employees. Furthermore, Plaintiffs took into consideration the time delay and financial repercussions of trial and the possibility of an appeal by Defendant.

C. The Settlement Valuation

45. This following information is provided to comply with the requirements set forth in *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, 120, 129, 132; *Clark v. American Residential Services LLC* (2009) 175 Cal. App. 4th 785; *Munoz v. BCI Coco-Cola Bottling Company of Los Angeles* (2010) 186 Cal.App. 4th 399; *Nordstrom Commission Cases* (2010) 186 Cal. App. 4th 576. I am providing information to enable the Court to "ensure that the recovery represents a reasonable compromise" by providing "an understanding of the amount that is in controversy and the realistic range of outcomes of the

1 litigation...” through submission of “data. . . that will enable the court to make an
2 independent assessment of the adequacy of the settlement terms.” (*Kullar, supra*, 168
3 Cal.App. 4th at p. 129.)

4 (a) ***Unpaid Wages/Meal and Rest Break & Non-Productive Time Claims for the***
5 ***Settlement Class (not PAGA):***

6 46. Throughout the Relevant Time Period, Plaintiff Alvarez, and around 81 other Assistant
7 Managers (AMs), were subject to Defendant’s uniform policy and/or practice of failing to pay at
8 least minimum wages and/or designated rates and premium wages for hours worked off-the-
9 clock during meal breaks. As a result, Plaintiffs and similarly situated employees were routinely
10 denied compensation for all hours worked. Additionally, Defendant did not maintain adequate
11 records of all wages earned, hours worked, and meal and rest breaks taken. Further, Defendants
12 did not pay all wages for time spent by Plaintiffs and all non-exempt employees undergoing
13 security inspections, which Plaintiffs allege were performed after Plaintiffs and similarly situated
14 employees clocked out. Specifically, Plaintiffs and similarly situated employees were required
15 to undergo a visual inspection and a search of their belongings before leaving the store at the end
16 of their shifts after they had clocked out. They were not paid any minimum wages for this time.
17 Finally, Defendants failed to pay premium pay for missed, late, or short meal breaks and had a
18 policy that AMs could not leave the premises when they were the sole keyholder in the store.
19 Finally, the lawsuit included an allegation that employee bonuses were not included in the
20 regular rate; however, after reviewing the numbers with Defendants, this claim appeared to very
21 minimal and is not counted as having any settlement value for any employee. Only 81
22 employees who are not covered by Defendant’s arbitration policy, which went into effect in
23 April 2015, and who did not enter into any individual settlement agreement with Defendant are
24 included in the Settlement Class.

25 47. Given the information obtained during this litigation, I estimate the maximum
26 possible total recovery for unpaid wages for the Settlement Class as approximately \$405,000.
27 This calculation is based on a review of the Plaintiffs’ time and payroll records for the period
28

1 from November 14, 2012, to April 23, 2015, and then using this as an estimate to extrapolate out
2 the data for the other employees who received incentive compensation and for the full number of
3 workweeks, which totals 1971. Thus the total settlement of \$312,150 to Settlement Class
4 Members is a fair and adequate result.

5 **(b) *Inaccurate Wage Statements, and Waiting Time Penalties for the Settlement***
6 ***Class, not PAGA***

7 48. Plaintiffs' overtime claims originally asserted in the case are preempted by federal law.
8 Plaintiffs also alleged inaccurate wage statements and late payment of wages as primarily
9 derivative claims, meaning that those allegations predominately stemmed from the parallel
10 allegations that Defendant failed to separately compensate Settlement Class Members for rest
11 breaks and nonproductive time.

12 49. As such, given that these are primarily derivative claims, it is difficult to assess how
13 much those claims might be worth, as a Court may choose to award no penalties given that they
14 are derivative and the uncertainty as to whether Defendant's actions were willful. At most, I
15 estimate that those claims may be worth \$25,000.

16 **(c) *PAGA Claim***

17 50. For substantive Labor Code sections that currently carry no civil penalties, the
18 PAGA establishes penalties. Pursuant to Labor Code §2699, et seq., an employee is entitled
19 to a \$100 penalty for the initial pay period and a \$200 penalty for each subsequent violation
20 of the Labor Code. Unless there is a prior violation adjudicated by the DLSE or a Court,
21 which was not the case here, the initial violation rate should be utilized. *Bernstein v. Virginia*
22 *America, Inc.*, No. 19-15382, 2021 WL 867583 (9th Cir. Feb. 23, 2021).

23 51. PAGA penalties awarded are also within the Courts discretion. Here, PAGA
24 penalties are available subject to the Court's discretion on Plaintiff's wage claims. As stated
25 *supra* the chances from proving liability on those claims is far from certain and the time period
26 for liability was limited, and the question remains as to whether or not the release entered into
27 in the *Armendariz* case also released the claims in this case for most of the Aggrieved
28

1 employees. Further, even if liability is established Defendants could make an argument that
2 they have taken steps comply with the law, thus substantiating a reduction in penalties. There
3 are approximately 150,000 pay periods at issue. Plaintiff estimates that if *Armendariz* were
4 not an issue, the damages could be as high as \$30,000,000, assuming violations for security
5 checks for every pay period and then meal and rest break violations for approximately 25%
6 of pay periods. According to Harbor Freight's time records, approximately 15% of clocked
7 missed, late, or short meal breaks were not compensated with premium pay. There was no
8 evidence that non-exempt employees other than AMs were not permitted to leave the premises
9 so Plaintiff estimates an additional 10% violation rate for AMs during the PAGA period. Rest
10 breaks were compensated and would be more difficult to prove. Accordingly, the parties
11 negotiated a fair compromise amount of a total PAGA payment of \$1,768,850 [75% of the
12 amount to the California Labor and Workforce Development Agency and 25% to Participating
13 Class Members] that accounts for both sides' respective risks.

14 **(d) Overall Settlement Valuation**

15 52. I estimate that Defendant's maximum potential exposure, if this case proceeded
16 to trial, could total approximately \$30,500,000, at most, which is highly unlikely given the
17 release in *Armendariz*. The Parties agreed to settle the case for a total sum of \$3,500,000.00,
18 which is over 11.5% of the value of the case if the Parties were to proceed through trial and
19 Plaintiff prevailed as set forth above. This is an excellent result in light of the adversities
20 faced by the Parties throughout the litigation.

21 53. Class counsel considers this to be an excellent settlement for the Settlement
22 Class and PAGA Members, taking into account all issues and risks related to liability,
23 damages and manageability of a collective action, and also considering the case law regarding
24 fair, reasonable, and adequate settlements. *Rebny v. Wells Fargo Bank* (1990) 220 Cal. App.
25 3d 1117, 1139 ["Compromises is inherent and necessary in the settlement process...even if
26 the relief afforded by the proposed settlement is substantially narrower than it would be if the
27 suits were to be successfully litigated, this is no bar to a class settlement because the public
28

1 interest may indeed be served by a voluntary settlement in which each side gives ground in
2 the interest of avoiding litigation”]; *Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1980)
3 688 F.2d. 615, 628 [“It is well-settled law that a cash settlement amounting to an only a
4 fraction of the potential recovery does not...render the settlement inadequate or unfair”]; *In*
5 *re Omnivision Technologies, Inc.* (N.D. Cal. 2007) 2007 U.S. Dist LEXIS 95616, at 21 [noting
6 that certainty of recovery in settlement of 6% of maximum potential recovery after reduction
7 for attorney’s fees was higher than median percentage for recoveries in shareholder class
8 action settlements, averaging 2.2%-3% from 2002 through 2006].

9 **(e) Individual Settlement Payment Estimates**

10 54. There is no claim form requirement and no reversion to Defendant. The
11 employer’s portion of payroll taxes will be paid separately by Defendant. Payments to
12 Settlement Class Members are being allocated by workweeks and Payments to PAGA
13 Employees are being allocated by Pay Period.

14 55. Based on the workweek data provided by Defendant of a total 1971 workweeks,
15 each Settlement Class Member will receive on average approximately \$158.37 per workweek,
16 with an employee employed during the entire Class Period of Nov. 14, 2012-April 23, 2015
17 receiving approximately \$18,054.18, after deductions for attorneys’ fees, litigation costs,
18 administration costs, PAGA payment, and Class Representative Enhancements. Based on pay
19 period data provided by Defendant of approximately 150,000 pay periods, each PAGA
20 Employee will recover on average approximately \$2.94 per pay period, in addition to what
21 has already been provided under the *Armendariz* case. An employee who was employed from
22 July 28, 2014 to June 30, 2015 and January 9, 2019 to February 28, 2021 (the “PAGA Period”)
23 should receive an estimated \$423.36.

24 **VI. REPRESENTATIVE ENHANCEMENTS**

25 56. I believe that a Representative Enhancement of \$10,000 to each Plaintiff is fair
26 and reasonable. The Representatives have signed a general release for any and all claims
27 related to their employment with Defendant so they cannot pursue any other potential claims.

1 They have also waited a long time to resolve their claims and some representatives were
2 deposed and gave declarations in support of the action.

3 57. Likewise, the Representative initially informed our office of the policies and
4 procedures of Defendant at issue. They have spent substantial time and energy in assisting
5 with this wage and hour class action. They have been diligent and acted above and beyond
6 that of which is expected of a representative and provided the work, diligence, loyalty and
7 willingness to assume a substantial risk should Defendant have prevailed in this case. They
8 have spent hours reviewing documents and making notes on documents to assist in the
9 litigation of this matter. As such, Class counsel believe that the 10,000 for each
10 Representative is fair and reasonable.

11 **VII. ATTORNEY FEES AND COSTS**

12 58. In the present case, Class Counsel is requesting \$1,225,000.00 for attorneys'
13 fees or thirty-five percent (35%) of the common fund. There total attorneys' fee will be
14 allocated between Plaintiffs' Counsel as follows: 7.5% to Plaintiff Angela Kyler's Counsel
15 (Blumenthal Nordrehaug Bhowmik De Blow LLP); 7.5% to Plaintiff Francisco Arechiga's
16 Counsel (Haines Law Group, APC); 42.5% to Plaintiff Sylvia Blanco's Counsel (Hyun Legal,
17 APC, Diversity Law Group, P.C., and Polaris Law Group); and 42.5% to Plaintiff Bret
18 Lester's Counsel, the undersigned and the Law Offices of David Secrest, APC. The clients
19 have approved of the attorneys' fee split in writing. Class Counsel believes that this is
20 appropriate based upon a common fund. This settlement is for an amount of \$3,500,000.00
21 lump sum. The California Supreme Court recently affirmed that trial courts may grant
22 attorney fees in a common fund case based on a percentage of the recovery. (*Laffitte v. Robert*
23 *Half International Inc.*, California Supreme Court, 2016 WL 4238619, 8/11/16). An attorney
24 fee based on a percentage of the common fund fairly replicates the fair market value of such
25 services and is fair and reasonable in view of the typical common fund attorneys' fees awards
26 and similar California class action wage and hour settlements. (*Laffitte*, *supra*, at p. 27.)
27 Furthermore, the California Supreme Court recognized in *Laffitte* that a fee award based on a
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percentage of the recovery in a common fund is proper as the award serves to spread the attorney fee amongst all beneficiaries of the fund, aligns the incentives between plaintiffs' counsel and the class, is a better approximation of the market conditions in a contingency case, and encourages class counsel to seek an early settlement and avoid unnecessarily prolonging litigation. (*Id.*) Pursuant to *Laffitte*, this request is fair and reasonable in view of the typical common fund attorneys' fees awards and similar California class action wage and hour settlements and the hours worked on this case. Likewise, Class Counsel have incurred approximately \$121,312.36 in litigation costs. Christina Humphrey Law, P.C.'s costs have been \$93,206.86; Diversity Law Group, P.C.'s costs have been \$14,439.44; Hyun Legal, APC's costs have been \$45.00; Haines Law Group, APC's costs have been \$1,300; Blumenthal Nordrehaug Bhowmik De Blow LLP's costs have been \$2,321.06; and Polaris Law Group's costs have been \$600.00. Class counsel estimated \$122,500 for purposes of the notice to ensure that any costs incurred through final approval are covered.

VIII. SETTLEMENT ADMINISTRATION COSTS AND NOTICE

59. The parties have agreed on ILYM Group, Inc. and respectfully request this Court appoint them to handle the notice and settlement administration procedures. ILYM Group has extensive experience in administering class action settlements. The costs of Claims administration shall not exceed \$21,500.00 and Mr. Hartranft, Senior Vice President of Sales for ILYM Group, Inc., has provided a declaration that is being submitted herewith.

IX. SUBMISSION TO THE LWDA

60. On this same day this motion was filed with the Court, I submitted a copy of the proposed settlement agreement to the LWDA via its online submission process. I received a confirmation email from them confirming my filing. A true and copy of said email is attached as Exhibit "C".

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1 I declare under the penalty of perjury under the laws of the State of California that
2 the foregoing is true and correct.

3 Executed this 12th day of October 2021, at Santa Barbara, California

4
5 CHRISTINA HUMPHREY LAW, P.C.

6 

7
8

Christina A. Humphrey, Declarant

EXHIBIT A

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement” or “Settlement”) is reached by and between Plaintiffs Sylvia Blanco (“Blanco”), Bret Lester (“Lester”), Robert Alvarez (“Alvarez”), Francisco Arechiga (“Arechiga”), and Angela Kyler (“Kyler”) (collectively, “Plaintiffs”), individually and on behalf of all members of the Settlement Class (defined below), on the one hand, and Defendant Harbor Freight Tools USA, Inc. (collectively “Harbor Freight” or “Defendant”), on the other hand. Plaintiffs and Defendant are referred to herein collectively as the “Parties.” Plaintiffs, the Settlement Class, and the PAGA Employees are represented by Christina Humphrey of Christina Humphrey Law, P.C., Larry W. Lee of Diversity Law Group, P.C., Dennis Hyun of Hyun Legal, William Marder of Polaris Law Group, Paul K. Haines of Haines Law Group, APC, and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP (“Class Counsel”). Harbor Freight is represented by Warren J. Higgins and Elissa Gysi of Hill, Farrer & Burrill, LLP (“Defense Counsel”).

Lester originally filed a wage and hour class action complaint on behalf of all Assistant Managers against Harbor Freight in Ventura County Superior Court (the “Court”), titled *Bret Lester v. Harbor Freight Tools, USA, Inc.*, Case No. 56-2014-00454445-CU-OE-VTA, on July 13, 2016 (the “Lawsuit”). Plaintiffs thereafter filed a First Amended Complaint on November 14, 2016, adding (1) adding Mr. Lester’s PAGA claims, which essentially allege the same underlying violations; and (2) adding Plaintiff Robert Alvarez as a named Plaintiff, who did not sign an arbitration agreement while employed at Harbor Freight.

The Parties attended a full-day mediation on February 25, 2021. With the assistance of Mediator Steve Pearl, the Parties reached an agreement and subsequently signed a Memorandum of Understanding (“MOU”). As part of this Settlement Agreement, the Parties have agreed to file a Second Amended Complaint adding Plaintiffs Blanco, Arechiga and Kyler as PAGA representatives and consolidating the claims alleged in *Sylvia Blanco v. Harbor Freight Tools USA, Inc.*, Los Angeles County Superior Court Case No. BC603939 (“Blanco”), *Bret Lester and Robert Alvarez v. Harbor Freight Tools USA, Inc.*, Ventura County Superior Court Case No. 2016-00484055 (“Lester”), *Francisco Arechiga v. Harbor Freight Tools USA, Inc.*, Los Angeles County Superior Court Case No. 20STCV10502 (“Arechiga”) and *Angela Kyler v. Harbor Freight Tools USA, Inc.*, San Diego County Superior Court Case No. 00042006 (“Kyler”) (together, the “Actions”). The Parties agreed that while approval of settlement is pending in Ventura County in the *Lester* Action, the Parties will seek stays in the remaining Actions. Each Plaintiff’s counsel agreed to prepare and file a joint stipulation for stay in each Action, and Harbor Freight’s counsel agreed to cooperate and assist in obtaining the stay in all Actions. After final approval of the Settlement in *Lester*, the Parties agreed to cooperate to obtain dismissals of all the other Actions with prejudice.

The operative Second Amended Complaint (“Complaint”) alleges the following causes of action: (1) Failure to Pay For All Hours Worked; (2) Failure to Pay Wages at the Agreed Rate; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Failure to Pay Timely Wages Upon Termination; (6) Failure to Provide Accurate Itemized Wage Statements; (7) Unfair Business Practices; and (8) Civil Penalties Under the Private Attorneys General Act of 2004 (Labor Code §§2698, et. seq.) (“PAGA”). On August 10, 2021, Plaintiff filed the Second Amended Complaint.

Accordingly, Plaintiffs and Harbor Freight agree as follows:

1. Settlement Class. For purposes of this Settlement Agreement only, Plaintiffs and Harbor Freight stipulate to the certification of a Settlement Class, defined as all current and former non-exempt employees employed by Defendant in the State of California in the position of non-exempt Assistant Store Managers who worked at least one workweek for Harbor Freight at any time from November 14, 2012 to April 23, 2015 (the “Class Period”), whose employment ended before April 24, 2015, and who did not sign a release agreement with Harbor Freight. Defendants represents there are approximately 81 individuals in the Settlement Class, including Plaintiff Alvarez.

Stipulation to Certification for Purposes of Settlement: The Parties agree that certification of the Settlement Class for purpose of settlement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure in a non-settlement context. If for any reason this Settlement is not approved or is terminated, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement. The Second Amended Complaint filed in the *Lester* action will be considered void and the operative complaint in the *Lester* action will revert to the First Amended Complaint.

2. PAGA Employees. For purposes of this Settlement Agreement only, Plaintiffs and Harbor Freight agree to settle with the “PAGA Employees,” defined as all current and former non-exempt employees employed by Defendant in the State of California in the position of non-exempt retail store employees who worked at least one pay period for Harbor Freight at any time from July 28, 2014 to June 30, 2015 and January 9, 2019 to February 28, 2021 (the “PAGA Period”).

Representation as to Number of Pay Periods: Harbor Freight represents that there are approximately 150,000 pay periods worked by Aggrieved Employees in California (“Affected Pay Periods”) during the PAGA Period. If the actual number of Affected Pay Periods during the PAGA Period is more than 10% greater than this number (i.e., if there are more than 165,000 Affected Pay Periods during the PAGA Period), Harbor Freight shall increase the GSA in proportion to the increase in Affected Pay Periods over 10% (e.g., if the number of Affected Pay Periods in the PAGA Period is 12% greater than 150,000, Harbor Freight will increase the GSA by 2%).

2. Releases.

- A. **Release by Settlement Class.** Once the Defendant fully funds the settlement, Plaintiffs and every participating member of the Settlement Class will unconditionally and irrevocably forever release and discharge Harbor Freight, and its current and former members, managers, owners, shareholders, officers, directors, employees, consultants, accountants, joint venturers, attorneys, representatives, agents, benefit plans, parent companies, subsidiaries, affiliates, related entities, successors, and assigns (“Released Parties”) from all claims, rights, demands, liabilities and causes of action that arose during the Class Period for wages, damages, penalties, attorneys’ fees, costs, and interest based on the factual allegations pled in the *Lester* Action (“Released Class Claims”).
- B. **Release by PAGA Employees.** Once the Defendant fully funds the settlement, Plaintiffs, all PAGA Employees, and the State of California will unconditionally and irrevocably forever release and discharge Harbor Freight and the Released

Parties from civil penalties under PAGA for the PAGA Period, based on the factual allegations pled in the operative complaints and PAGA letters to the LWDA in the Actions, including any claims for attorneys' fees, costs, or interest resulting therefrom ("Released PAGA Claims").

Plaintiffs and all PAGA Employees who were employed by Defendant during the PAGA Period will not have the opportunity to opt out or object to the PAGA Payment, as described below in section 4.C, and/or release of PAGA claims set forth in this Agreement although the release of PAGA claims will be subject to Court approval.

- C. **Release by Plaintiffs.** In light of Plaintiffs' Class Representative Incentive Awards (discussed below), Plaintiffs have agreed to release, in addition to the Class Released Claims and PAGA Released Claims described above, all claims, whether known or unknown, under federal or state law, against all Released Parties through the date this Settlement is signed by Plaintiffs ("Plaintiffs' Released Claims"). Plaintiffs understand that this release includes unknown claims and that they are, as a result, waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Specifically excluded from Plaintiffs' Released Claims are any claims that cannot be released as a matter of law, such as claims for workers' compensation benefits or unemployment benefits.

- D. **Released Claims.** All claims defined above as Released Class Claims, Released PAGA Claims, and Plaintiffs' Released Claims shall be jointly referred to below as "Released Claims."
3. **Gross Settlement Amount.** As consideration, Harbor Freight agrees to pay a "Gross Settlement Amount" or "GSA" of Three million, five hundred thousand dollars, and Zero Cents (\$3,500,000.00.) in full and complete settlement of this matter, as follows:
- A. The Parties have agreed to engage ILYM Group ("ILYM") as the "Settlement Administrator" to administer this Settlement.
- B. The Gross Settlement Amount shall be deposited with the Settlement Administrator within thirty (30) calendar days after Final Approval (which, for this purpose, shall be defined as the date on which the Court enters an Order granting Final Approval) or, solely in the event that there are any objections to the settlement (the submission of an objection being a prerequisite to the filing of an appeal), the later of: (i) thirty (30) days after the last date on which any appeal might be filed or (ii) thirty (30) days after the successful resolution of any appeal(s).
- C. This is a non-reversionary settlement. The Gross Settlement Amount includes:

- (1) All payments (including interest) to the Settlement Class;
 - (2) All payments (including interest) to the PAGA Employees;
 - (3) All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than \$21,500;
 - (4) Up to \$10,000.00 for each Plaintiff (for a total of \$50,000.00), for Plaintiffs' Class/PAGA Representative Incentive Awards, in recognition of their contributions to the Lawsuit and their service to the Settlement Class;
 - (5) Class Counsel attorney fees of up to 35% of the GSA (currently estimated to be \$1,225,000.00), plus litigation costs and expenses incurred by Class Counsel in relation to the Lawsuit as supported by declaration, which are currently estimated to be no greater than \$122,500. In the event the Court reduces or does not approve the requested Class Counsel attorneys' fees and costs, Class Counsel shall not have the right to revoke this settlement, and it will remain binding (although Class Counsel will retain the right to appeal the Court's award if it is less than amount sought);
- D. Harbor Freight's share of payroll taxes on any wage portion of the payments to the Settlement Class shall be paid by Harbor Freight separately from, and in addition to, the Gross Settlement Amount.
- E. To the extent the Court awards less than the requested amount of attorneys' fees, litigation costs and expenses, Class Representative Awards, or Administration Costs, then the amount not awarded shall be distributed to PAGA employees according to the formula set forth below in Paragraph 4(C) below.
4. **Payments to the Settlement Class and PAGA Employees.** Settlement Class members are not required to submit a claim form to receive a payment from the Settlement ("Settlement Share").

Settlement Shares will be determined and paid as follows:

- A. The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and expenses, Plaintiffs' Class Representative Incentive Awards, and the Settlement Administrator's administration costs. The remaining amount shall be known as the "Net Settlement Amount" or "NSA."
- B. Payments from the Net Settlement Amount: Of the Net Settlement Amount, 15% shall be allocated to the Settlement Class only ("Settlement Class Amount"). The Settlement Administrator will calculate each participating Settlement Class member's payment from the NSA based on the following formula:
 - i. Payments to all Settlement Class members: Each Settlement Class Member who worked for Harbor Freight during the Class Period shall receive a portion of the Settlement Class Amount proportionate to the number of

workweeks worked by that Settlement Class Member during the Class Period, and which will be calculated by multiplying the Net Settlement Amount by a fraction, the numerator of which is the participating Settlement Class member's number of workweeks worked during the Class Period, and the denominator of which is the total workweeks worked by all participating Settlement Class members during the Class Period.

- C. PAGA Payment from the Net Settlement Amount: Of the Net Settlement Amount, 85% (the "PAGA Amount") shall be allocated for violations of the PAGA, which shall be paid (i) 75% to the California Labor and Workforce Development Agency (LWDA) and (ii) 25% to Aggrieved Employees, pursuant to Labor Code § 2699(i), divided amongst Aggrieved Employees.
- i. Payments to all PAGA Employees: Each PAGA Employee who worked for Harbor Freight during the PAGA Period shall receive a portion of the PAGA Amount proportionate to the number of pay periods worked by that PAGA Employee during the PAGA Period, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employees' number of pay periods worked as a non-exempt employee for Harbor Freight in California during the PAGA period, and the denominator of which is the total number of pay periods worked by all participating PAGA Employees as non-exempt employees for Harbor Freight in California during the PAGA Period.
- D. Within seven (7) business days following Harbor Freight's deposit of the Gross Settlement Amount with the Settlement Administrator, the Settlement Administrator will calculate Settlement Shares (including the Defendant's share of payroll taxes from the Settlement Class payments) and provide the same to Class Counsel and Defense Counsel for review and approval. Within five (5) business days of approval by counsel, the Settlement Administrator will prepare and mail Settlement Shares, less applicable taxes and withholdings for payments to the Settlement Class, to participating Settlement Class members, to the PAGA Employees, as well as the Plaintiffs' Incentive Awards to Plaintiffs and the PAGA payment to the LWDA. The Settlement Administrator shall simultaneously pay all applicable withholdings to the applicable authorities with the necessary reports, submitting copies to Defense Counsel. Harbor Freight shall also remit the employer's share of payroll taxes within this time frame to the Settlement Administrator, who shall promptly transmit such sum to the appropriate taxing authorities.
- E. For purposes of calculating applicable taxes and withholdings for payments to Settlement Class members, each Settlement Share shall be allocated as follows: one-third (1/3) as wages; one-third (1/3) as penalties; and one-third (1/3) as interest. For purposes of calculating applicable taxes and withholdings for PAGA Employees, each Settlement Share shall be allocated one hundred percent (100%) as penalties, which shall be reported on an IRS Form 1099. The Settlement Administrator will be responsible for issuing to participating Settlement Class Members an IRS Form W-2 for amounts deemed "wages" and an IRS Form 1099 for the portions allocated as penalties and interest. As stated above, Harbor Freight

is responsible for its share of the payroll taxes on the wages portion of the Settlement Shares, and these taxes will not be deducted from the Gross Settlement Amount. Notwithstanding the treatment of the payments to each participating Settlement Class member above, none of the payments called for by this Settlement Agreement are to be treated as earnings, wages, pay, or compensation for any purpose of any applicable bonus, benefit or retirement plan, unless required by such plans.

- F. Each participating Settlement Class member and PAGA Employee who is mailed a Settlement Share must cash his/her Settlement Share check within 180 days from the date the Settlement Administrator mails it. The Settlement Administrator will send a reminder postcard to those Settlement Class Members and PAGA employees who have not cashed the check after ninety (90) days. Any funds payable to participating Settlement Class members and PAGA Employees whose checks were not cashed within 180 days after mailing will be deposited by the Settlement Administrator with Casa Pacifica. Casa Pacifica is a nonprofit organization assisting children and young adults overcome difficult circumstances including abuse and neglect, complex emotional and behavioral issues, and family crisis. The Parties and/or Counsel for the Parties do not have any interests or involvement with the governance or work of Casa Pacifica. After 240 days from mailing of checks, the Settlement Administrator will provide a declaration to counsel confirming the status of uncashed checks and deposits made with Casa Pacifica.
- G. Neither Plaintiffs nor Harbor Freight nor their respective counsel shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

5. **Attorneys' Fees and Costs.** Class Counsel will request a total award of attorneys' fees of 35% of the Gross Settlement Amount (currently estimated at \$1,225,000.00), plus actual costs and expenses as supported by declaration in an amount not to exceed \$122,500. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. The Settlement Administrator will send by mail, or wire Class Counsel the attorneys' fees and cost award when it mails the Settlement Shares. The Settlement Administrator will issue Class Counsel IRS Forms 1099 when the Settlement Administrator pays the fee and cost award allowed by the Court.

6. **Class Representative Incentive Award.** Plaintiffs will request Class/PAGA Representative Incentive Awards of \$10,000.00 to each Plaintiff (\$50,000.00 total) from the Gross Settlement Amount for Plaintiffs' general release of claims, their time and risks in prosecuting this Lawsuit, and their service to the Settlement Class. This award will be in addition to Plaintiffs' Settlement Share as a Settlement Class member and shall be reported on an IRS Form 1099 by the Settlement Administrator. The Settlement Administrator will mail Plaintiffs the Class/PAGA Representative Incentive Awards and issue Plaintiffs IRS Forms 1099 when it mails the Settlement Shares.

7. **Settlement Administrator.** The parties will request the appointment of ILYM as Settlement Administrator. Harbor Freight will not object to Plaintiffs' seeking permission to pay up to \$21,500.00 from the Gross Settlement Amount for the Settlement Administrator's services. The Settlement Administrator shall be responsible for sending notices and for calculating Settlement Shares and preparing all checks and mailings, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount only after Settlement Shares have been mailed to all participating Settlement Class members.

8. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiffs' counsel shall submit this Settlement Agreement and the Preliminary Approval Motion to the LWDA as required by PAGA. Plaintiffs shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Christina Humphrey of Christina Humphrey Law, P.C. Larry W. Lee of Diversity Law Group, P.C., Dennis Hyun of Hyun Legal, William Marder of Polaris Law Group, Paul K. Haines of Haines Law Group, APC, and Aparajit Bhowmik of Blumenthal Nordrehaug Bhowmik De Blouw LLP as Class Counsel;
- C. Appointing Plaintiffs as Class Representatives for the Settlement Class;
- D. Approving as ILYM Group as the Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Class Notice Packet (which is comprised of the Class Notice and the Notice of Estimated Settlement Award, attached hereto as Exhibit 1-A and 1-B), and directing the mailing of same after the Order Granting Preliminary Approval; and
- G. Scheduling a Final Approval hearing.

9. **Employee Data.** Within ten (10) business days after entry of an order preliminarily approving this Agreement, Harbor Freight will provide the Settlement Administrator with the name, last known address, last known phone number, social security number, dates of employment for the Class Period and PAGA Period (if applicable), plus the number of workweeks worked in California during the Class Period and the number of pay periods worked during the PAGA Period, for each Settlement Class member and PAGA Employee (the "Employee Data"). The Employee Data shall be provided to the Settlement Administrator in an electronic format satisfactory to the Settlement Administrator.

10. **Notice to Settlement Class and PAGA employees.**

- A. Within ten (10) business days from receipt of the Class Data, the Settlement Administrator shall (i) run the names of all Settlement Class members and PAGA Employees through the National Change of Address ("NCOA") database to determine any updated addresses for Settlement Class members and PAGA Employees; (ii) update the addresses of any Settlement Class member and PAGA

Employees for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Share for each Settlement Class member; (iv) provide Class Counsel and Defense Counsel with (a) the number of Settlement Class members as well as the Settlement Administrator's estimated Settlement Shares for each Settlement Class member (with the names of Settlement Class members anonymized) and (b) formatted versions of the Notice Packets to be sent to Settlement Class members; and (v) after receiving approval from all counsel, mail a Notice Packet (in English and Spanish) to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing. The Notice packet for Settlement Class Members is attached hereto as Exhibit "1." The proposed notice for PAGA employees to be enclosed with payment upon final approval is attached hereto as Exhibit "2."

- B. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the class settlement must complete and mail an Exclusion Letter (defined below) to the Settlement Administrator on or before forty-five (45) calendar days after the date of the initial mailing of the Notice Packets (the "Response Deadline").
- i. The Notice Packet shall state that Settlement Class members who wish to exclude themselves from the settlement must submit an Exclusion Letter by the Response Deadline. The Exclusion Letter is a document prepared by the Settlement Class member that must: (1) contain the Settlement Class member's name, address, telephone number, and last four digits of his/her Social Security number; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked or emailed or faxed by the Response Deadline and mailed, emailed, or faxed to the Settlement Administrator at the address/contact information specified in the Class Notice. If the Exclusion Letter does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from this settlement, except an Exclusion Letter not containing either a Settlement Class member's telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Exclusion Letter, or fax or email received by the Settlement Administrator, shall be the exclusive means used to determine whether an Exclusion Letter has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery of class payments under this Settlement Agreement, will not be bound by the terms of the Settlement Agreement as to the Settlement Class, and will not have any right to object, appeal, or comment thereon. However, any Settlement Class member who requests exclusion from the Class Settlement will not be excluded from the PAGA Settlement and will still receive his/her share of the PAGA payment (if applicable). The Settlement Administrator will notify the Parties of the total number of Exclusion Letters received within seven (7) calendar days after the Response Deadline.
 - ii. The Parties and their counsel agree not to take any action to encourage any Settlement Class member to opt out of or object to the settlement.

- C. Objections. Members of the Settlement Class who do not request exclusion may object to the class settlement, but not the PAGA settlement, in this Settlement Agreement either by submitting a written objection to the Settlement Administrator as explained in the Class Notice or appearing at the hearing on Final Approval via CourtCall or in person, depending on the protocols of the Court at the time of Final Approval. The Settlement Administrator shall, within two (2) business days of receipt, serve any written objection(s) as received on Class Counsel and Defense Counsel, who shall then promptly file all such objections with the Court. Defense Counsel and Class Counsel shall file and serve any responses to written objections no later than five (5) calendar days prior to the Final Approval hearing.
- D. Notice of Estimated Settlement Award / Disputes. Each Notice Packet mailed to Settlement Class members shall contain a Notice of Estimated Settlement Award, in which shall be disclosed the amount of the Settlement Class member's estimated Settlement Share as well as all of the information that was used from Defendant's records in order to calculate the Settlement Share, including the number of workweeks and pay periods worked in California during the Class Period. Settlement Class members will have the opportunity, should they disagree with Defendant's records regarding the information stated in their Notice of Estimated Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with counsel for the Parties to determine whether an adjustment to the Settlement Class member's Settlement Share is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement Share under the terms of this Settlement. The Settlement Administrator's determination of the eligibility for and amount of any Settlement Share shall be binding upon the Settlement Class member and the Parties.
- E. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within three (3) business days of receiving the returned Notice Packet. Efforts to locate updated addresses for returned notices should continue throughout the 45-day notice period. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member within two (2) business days of obtaining the updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. It will be conclusively presumed that, if an envelope so mailed has not been returned within thirty (30) days of the mailing, the Settlement Class member received the Notice Packet. Settlement Class members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline, whichever is later, to submit an

Exclusion Letter, Objection, or dispute, as applicable. In no event can a Settlement Class Member submit an Exclusion Letter, Objection, or dispute beyond sixty (60) days from the date of the initial mailing. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline, if applicable. If a Settlement Class member's Notice Packet is returned to the Settlement Administrator more than once as non-deliverable, then an additional Notice Packet need not be mailed. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defense Counsel to provide notice of the proposed settlement.

10. **Final Approval.** Following preliminary approval and the close of the period for submitting Exclusion Letters, Objections, or disputes under this Settlement Agreement, Plaintiffs shall apply to the Court for entry of an Order:

- A. Granting final approval of the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiffs' and Class Counsel's application for attorneys' fees, costs, Class Representative Incentive Awards, and settlement administration costs; and
- C. Entering judgment pursuant to California Rule of Court 3.769.

11. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this settlement. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code § 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code § 1152.

12. **Nondisclosure and Nonpublication.** Plaintiffs and Class Counsel agree not to disclose or publicize the Settlement Agreement contemplated herein, the fact of the Settlement Agreement, its terms or contents, or the negotiations underlying the Settlement Agreement to any person or entity, except to Settlement Class members and as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein, and except to Plaintiffs' spouses or to their attorneys or tax preparers as necessary for those professionals to provide their professional services to Plaintiffs. Further, Class Counsel may disclose this Agreement and any supporting briefing to the appropriate governmental agencies, including the Labor Workforce Development Agency. Moreover, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the names of the Parties in this Action, the venue/case number of this Lawsuit, and a general description of the Lawsuit and amount of settlement, to a court in a declaration by Class Counsel.

13. **Continuing Jurisdiction.** Except as otherwise specifically provided for herein, the Court shall retain jurisdiction to construe, interpret and enforce this Settlement, to supervise all notices, the administration of the Settlement, and to hear and adjudicate any dispute arising from or related to the Settlement. The Parties agree that the Court has jurisdiction over the Settlement pursuant to California Code of Civil Procedure, Section 664.6. If any party brings an action to enforce this Agreement, the prevailing party shall be entitled to its/her/his reasonable attorneys' fees and costs.

14. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by counsel for all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

15. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Harbor Freight: Warren J. Higgins, Elissa Gysi, Hill, Farrer & Burrill, LLP
One California Plaza
300 S. Grand Avenue, 37th Floor
Los Angeles, California 90071
whiggins@hfbllp.com, egysi@hfbllp.com

if to Plaintiffs: Christina Humphrey, Christina Humphrey Law, P.C.,
591 Telegraph Canyon Rd, #376 Chula Vista, CA 91910
christina@chumphreylaw.com

Larry W. Lee, Diversity Law Group, P.C.,
515 S Figueroa St Suite 1250, Los Angeles, CA 90071
lwlee@diversitylaw.com

Paul K. Haines, Haines Law Group, APC,
2155 Campus Drive, Suite 180, El Segundo, CA 90245
phaines@haineslawgroup.com

Aparajit Bhowmit, Blumenthal Nordrehaug Bhowmik De Blouw LLP,
2255 Calle Clara, La Jolla, CA 92037
aj@bamlawlj.com

16. **Applicable Law.** All terms and conditions of this Settlement Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law or choice of law principles.

17. **Captions and Interpretations.** Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision hereof. Each term of this Agreement is contractual and not merely a recital.

18. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

19. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts, by DocuSign, and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

20. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Settlement. This Settlement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

SIGNATURES

DATED: _____, 2021

HARBOR FREIGHT TOOLS USA, INC.

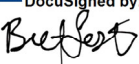
By: _____

Name: Marc Friedman

Its: Executive Vice President, Legal and Human Resources

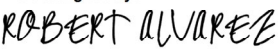
DATED: September 25, 2021

Bret Lester

DocuSigned by:
By: 
2C44A9806885451
Plaintiff and PAGA Representative

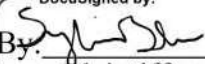
DATED: 9/27, 2021

Robert Alvarez

DocuSigned by:
By: 
17D3B026A4584CA
Plaintiff and Class Representative

DATED: 9/24/2021, 2021

Sylvia Blanco

DocuSigned by:
By: 
F4A288E81
Plaintiff and PAGA Representative

DATED: _____, 2021

Francisco Arechiga

By: _____
Plaintiff and PAGA Representative

20. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Settlement. This Settlement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

SIGNATURES

DATED: September 26, 2021

HARBOR FREIGHT TOOLS USA, INC.

By: 

Name: Marc Friedman

Its: Executive Vice President, Legal and Human Resources

DATED: _____, 2021

Bret Lester

By: _____

Plaintiff and PAGA Representative

DATED: _____, 2021

Robert Alvarez

By: _____

Plaintiff and Class Representative

DATED: _____, 2021

Sylvia Blanco

By: _____

Plaintiff and PAGA Representative

DATED: Sep 28, 2021, 2021

Francisco Arechiga

By: 

Francisco Arechiga (Sep 28, 2021 12:23 PDT)

Plaintiff and PAGA Representative

DATED: 9/29/21, 2021

Angela Kyler

By: Angela Kyler
Angela Kyler (Sep 29, 2021 22:05 PDT)
Plaintiff and PAGA Representative

APPROVED AS TO FORM:

Dated: September 24, 2021

DIVERSITY LAW GROUP, P.C.

By: [Signature]
Larry W. Lee
Attorneys for Plaintiff Sylvia Blanco

Dated: 09/28/, 2021

CHRISTINA HUMPHREY LAW, P.C.

By: Christina A. Humphrey
DocuSigned by: ABF5A032827A422...
Christina A. Humphrey
Attorneys for Plaintiffs Lester and Alvarez

Dated: September 28, 2021

LAW OFFICES OF DAVID S. SECREST, APC

By: David S. Secrest
DocuSigned by: 87D6D980399846C...
David S. Secrest
Attorneys for Plaintiffs Lester and Alvarez

Dated: _____, 2021

HAINES LAW GROUP, APC

By: _____
Paul K. Haines
Attorneys for Plaintiff Francisco Arechiga

Dated: 9/29, 2021

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

By: [Signature]
Aparajit Bhowmik
Attorneys for Plaintiff Angela Kyler

DATED: _____, 2021

Angela Kyler

By: _____
Plaintiff and PAGA Representative

APPROVED AS TO FORM:

Dated: September 24, 2021

DIVERSITY LAW GROUP, P.C.

By: _____
Larry W. Lee
Attorneys for Plaintiff Sylvia Blanco

Dated: 09/28/, 2021

CHRISTINA HUMPHREY LAW, P.C.

DocuSigned by:
By: Christina A. Humphrey
Christina A. Humphrey
Attorneys for Plaintiffs Lester and Alvarez

Dated: September 28, 2021

LAW OFFICES OF DAVID S. SECREST, APC

DocuSigned by:
By: David S. Secrest
David S. Secrest
Attorneys for Plaintiffs Lester and Alvarez

Dated: September 28, 2021

HAINES LAW GROUP, APC

By: _____
Paul K. Haines
Attorneys for Plaintiff Francisco Arechiga

Dated: _____, 2021

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

By: _____
Aparajit Bhowmik
Attorneys for Plaintiff Angela Kyler

Dated: September 24, 2021

HYUN LEGAL, APC

By: 
Dennis S. Hyun
Attorneys for Plaintiff Sylvia Blanco

Dated: September 24, 2021

POLARIS LAW GROUP LLP

By: 
William L. Marder
Attorneys for Plaintiff Sylvia Blanco

Dated: _____, 2021

HILL, FARRER & BURRILL LLP

By: _____
Warren J. Higgins
Attorneys for Harbor Freight Tools USA, Inc.

Dated: _____, 2021

HYUN LEGAL, APC

By: _____
Dennis S. Hyun
Attorneys for Plaintiff Sylvia Blanco

Dated: _____, 2021

POLARIS LAW GROUP LLP

By: _____
William L. Marder
Attorneys for Plaintiff Sylvia Blanco

Dated: Sept 27, 2021

HILL, FARRER & BURRILL LLP

By:  _____
Warren J. Higgins
Attorneys for Harbor Freight Tools USA, Inc.

EXHIBIT 1A

NOTICE OF CLASS ACTION SETTLEMENT

SUPERIOR COURT OF THE STATE OF CALIFORNIA – COUNTY OF VENTURA
800 South Victoria Avenue, Ventura, CA 93009

Bret Lester, Robert Alvarez, et. al. v. Harbor Freight Tools USA, Inc. - Case No. 56-2014-00454445

YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT.

THIS NOTICE AFFECTS YOUR RIGHTS. PLEASE READ IT CAREFULLY.

A California court authorized this notice. This is not a solicitation from a lawyer.

YOU WILL NOT BE RETALIATED AGAINST FOR PARTICIPATING IN THIS SETTLEMENT.

YOU ARE HEREBY NOTIFIED that a proposed settlement (“the Settlement”) of the above Class and Private Attorney General Act (“PAGA”) action (hereinafter referred to as “the Action”) filed in Ventura County Superior Court has been reached between Plaintiffs Bret Lester, Robert Alvarez, Sylvia Blanco, Francisco Arechiga, and Angela Kyler, in their individual capacities, as class representatives and/or as private attorneys general (collectively referred to as “Plaintiffs”) and Harbor Freight Tools USA, Inc. (“Harbor Freight” and collectively with Plaintiffs as the “Parties”), and has been granted Preliminary Approval by the Court supervising the Action. The Ventura County Superior Court has ordered that this Class Notice be sent to you because you may be a Settlement Class Member. The purpose of this Class Notice is to inform you of the Settlement of this class action and your legal rights under the Settlement as follows:

The settlement class is defined as all current and former non-exempt employees employed by Harbor Freight in the State of California in the position of non-exempt Assistant Store Managers who worked at least one workweek for Harbor Freight at any time from November 14, 2012 to April 23, 2015 (the “Class Period”), whose employment ended before April 24, 2015, and who did not sign a release agreement with Harbor Freight (“Class Member” or “Settlement Class Member”). You may also be entitled to additional money if you worked as a non-exempt retail employee during the period of July 28, 2014 to June 30, 2015, or January 9, 2019 to February 28, 2021 (the “PAGA Period”). If you also worked as a non-exempt retail employee during that time period it will be listed on the Notice of Estimated Settlement Award included with this notice.

- The proposed settlement generally resolves claims regarding the following alleged wage and hour issues related to your employment with Harbor Freight: meal and rest breaks; unpaid wages, including minimum wages, regular wages, overtime and double time wages; wage statement violations; untimely payment of wages after employment; unfair business practices; and penalties pursuant to California’s Private Attorneys General Act (“PAGA”). Please see Section D below for further information regarding the claims you are releasing by participating in this settlement.
- The settlement avoids costs and risks to you from continuing the lawsuit; pays money to employees; and releases Harbor Freight from liability for these claims.
- The two sides disagree on whether Harbor Freight is liable for the allegations raised in this case and what the outcome of trial would have been.
- **Your legal rights may be affected. Read this notice carefully.**

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

Get a Payment	If you are a Class Member, you will automatically receive a payment, unless you exclude yourself from the settlement as described below. After final approval by the Court, the payment will be mailed to you at the same address as this notice. If your address has changed, please notify the Settlement Administrator, whose information is contained at the bottom of this notice.
Exclude Yourself	If you want to exclude yourself from the settlement, you must complete and mail an Exclusion Letter (defined below) to the Settlement Administrator on or before forty-five (45) calendar days after the date of the mailing of the Notice Packets. In the event your packet was re-mailed, the deadline is sixty (60) calendar days after the date of initial mailing of the Notice Packets. Specific deadlines are listed below. This is the only option that allows you to bring your own claims against Harbor Freight regarding the legal claims in the Action. You will not be bound by the terms of the Class Settlement if you opt-out. You will not receive a class action payment if you opt-out. The Exclusion Letter is a document prepared by the Settlement Class Member that must contain: (1) the Settlement Class Member's name, address, telephone number, and last four digits of his/her Social Security number; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked, emailed or faxed by the Response Deadline and mailed to the Settlement Administrator at the address/contact info specified at the bottom of this notice. The date of the postmark of the Exclusion letter, or fax or email received by the Settlement Administrator, shall be the exclusive means used to determine whether an Exclusion Letter has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under the class action portion of this Settlement Agreement, will not be bound by the class action terms of the Settlement Agreement, and will not have any right to object, appeal, or comment thereon.
Object	To object to the settlement, mail a copy of the objection to the Settlement Administrator as provided below about why you do not agree with the settlement. Any Class Member may also object by appearing remotely, in person, or by attorney at the Final Approval Hearing. Additional information on how to appear remotely can be found at http://www.ventura.courts.ca.gov/ and by reaching out to the attorneys of record, listed below, or the Settlement Administrator. If you object and the court still finally approves the settlement over your objection, you will still participate in the settlement that is finally approved and receive a settlement payment.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a lawsuit and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the class on whose behalf this lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

Plaintiffs filed this lawsuit in Ventura County Superior Court on behalf of the Class. The lawsuit alleges that Harbor Freight: (i) failed to provide timely and/or proper meal and rest breaks; (ii) failed to pay regular, overtime, and double-time compensation; and (iii) failed to pay minimum wages. Plaintiffs further alleged that these practices resulted in the employees receiving inaccurate wage statements, and the underpayment of wages to employees upon termination and/or resignation. The lawsuit seeks recovery of wages, restitution, statutory and civil penalties, interest, attorneys' fees and costs.

Harbor Freight denies any liability or wrongdoing of any kind associated with the claims alleged in the lawsuit and further denies that, for any purpose other than that of settling this lawsuit, the lawsuit is appropriate for class treatment. Harbor Freight contends, among other things, that it complied at all times with the California Labor Code, the California Business and Professions Code, and all other applicable laws. The Court has made no ruling and will make no ruling on the merits of the Action and its allegations and claims.

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did **not** decide in favor of the Plaintiffs or Harbor Freight. There was no trial. Instead, both sides agreed to a settlement. That way, they avoid the costs, risks, and uncertainty of a trial, and the Class Members will get compensation. Plaintiffs and Plaintiffs' attorneys believe the settlement is fair, reasonable and adequate and in the best interests of all Class Members. Thus far, the Court has only determined that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable. A final determination of whether the proposed settlement is fair, adequate, and reasonable will be made at the Final Approval Hearing.

B. Who is in the Class?

The Class consists of all current and former non-exempt employees employed by Harbor Freight in the State of California in the position of non-exempt Assistant Store Managers who worked at least one workweek for Harbor Freight at any time from November 14, 2012 to April 23, 2015 (the "Class Period"), whose employment ended before April 24, 2015, and who did not sign a release agreement with Harbor Freight ("Class Member" or "Settlement Class Member"). You may also be entitled to additional money if you worked as a non-exempt retail employee during the period of July 28, 2014 to June 30, 2015, and January 9, 2019 to February 28, 2021 ("PAGA Period"). If you also worked as a non-exempt retail employee ("PAGA Employee") during that time period, it will also be listed on the Notice of Estimated Settlement Award included with this notice.

C. What does the Settlement provide?

1. Gross Settlement Amount.

Harbor Freight will pay a total of Three Million Five Hundred Thousand Dollars (\$3,500,000) (the “Gross Settlement Amount”) to settle the Action.

The following amounts will be paid from the Gross Settlement Amount: all settlement payments to participating Class Members (discussed below); attorneys’ fees not to exceed 35% of the Gross Settlement Amount, or \$1,225,000.00; litigation expenses, not to exceed \$122,500; administrative costs, estimated not to exceed \$21,500; and an Incentive Award to each Named Plaintiff in the amount of \$10,000 (for a total not exceeding \$50,000). The amount left over after deductions for attorneys’ fees, litigation expenses, administrative expenses, and incentive awards to Named Plaintiffs is called the “Net Settlement Amount.” The employer’s portion of payroll taxes will be paid outside of and in addition to the Gross Settlement Amount. No funds will revert to Harbor Freight.

2. Allocation of the Net Settlement Amount

Fifteen percent (15%) of the Net Settlement Amount will be distributed to Settlement Class Members (defined above and estimated to be 81 employees) and the remaining will be distributed to the California Labor and Workforce Development Agency (“LWDA”) (75% of remainder) and the PAGA employees (25% of the remainder).

3. Your Individual Payment Amount.

The Settlement Administrator will calculate the individual settlement payments to Class Members who do not submit valid Opt-Out Forms. This calculation will be based on Class Member’s proportionate workweeks worked during the Class Period, by multiplying the Net Settlement Amount by a fraction, the numerator of which is the participating Settlement Class Member’s number of workweeks worked during the Class Period, and the denominator of which is the total workweeks worked by all participating Settlement Class Members during the Class Period.

In addition to the class action individual settlement payment, each employee who worked for Harbor Freight as a non-exempt retail employee during the PAGA Period shall receive a portion of the PAGA penalty amount proportionate to the number of pay periods worked by that employee during the PAGA Period, and which will be calculated by multiplying the PAGA penalty amount by a fraction, the numerator of which is the PAGA Employees’ number of pay periods worked as a non-exempt employee for Harbor Freight in California during the PAGA period, and the denominator of which is the total number of pay periods worked by employees working for Harbor Freight in California during the PAGA Period. If approved by the Court, this PAGA amount will be paid to all eligible Settlement Class Members regardless of objections or exclusions.

The details of your individual settlement payment can be found on the included Notice of Estimated Settlement Award sheet.

Settlement checks issued to Class Members will expire one hundred and eighty (180) days from the date they are issued by the Settlement Administrator. The money from the uncashed checks, plus any interest accrued thereon, shall be paid to the designated *cy pres* Casa Pacifica, subject to Court approval.

4. Tax Matters.

The Settlement Administrator will distribute IRS Forms W-2 and 1099 (and the equivalent California forms) to participating Class Members reflecting the payments each Class Member receives under the Settlement. For tax purposes, payments will be allocated as follows: 1/3 as wages; 1/3 as interest; and 1/3 as penalties. Forms W-2 and/or Forms 1099 will be distributed at times and in the manner required by the Internal Revenue Code.

Interest and penalties paid under this Settlement shall not be subject to federal, state and local payroll withholding taxes. The Settlement Administrator shall issue an IRS form 1099 for payments of interest and penalties. The usual and customary deductions will be taken out of the amounts attributable to unpaid wages. Class Members should consult with their tax advisors concerning the tax consequences of the payment they receive under the Settlement.

D. What are you giving up to get a payment or stay in the Class?

Release by Settlement Class Members: Once Harbor Freight fully funds the settlement, Plaintiffs and every participating member of the Settlement Class will unconditionally and irrevocably forever release and discharge Harbor Freight, and its current and former members, managers, owners, shareholders, officers, directors, employees, consultants, accountants, joint venturers, attorneys, representatives, agents, benefit plans, parent companies, subsidiaries, affiliates, related entities, successors, and assigns (“Released Parties”) from all claims, rights, demands, liabilities and causes of action that arose during the Class Period for wages, damages, penalties, attorneys’ fees, costs, and interest based on the factual allegations pled in the *Lester* Action (“Released Class Claims” shown in Second Amended Complaint available at website.com).

Release by PAGA Employees. Once the Harbor Freight fully funds the settlement, Plaintiffs, all PAGA Employees, and the State of California will unconditionally and irrevocably forever release and discharge Harbor Freight and the Released Parties from civil penalties under PAGA for the PAGA Period, based on the factual allegations pled in the operative complaints and PAGA letters to the LWDA in the Actions, including any claims for attorneys’ fees, costs, or interest resulting therefrom (“Released PAGA Claims” shown in Second Amended Complaint available at website.com).

Plaintiffs and all PAGA Employees who were employed by Harbor Freight during the PAGA Period will not have the opportunity to opt out or object to the PAGA Payment and/or release of PAGA claims set forth in this Agreement although the release of PAGA claims will be subject to Court approval.

THE FINAL APPROVAL HEARING

Presently, the Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, reasonable and adequate. The Court will conduct a final approval hearing regarding the proposed settlement (the “Final Approval Hearing”) on [DATE](#) at [TIME](#), in Department 20 of the Ventura Superior Court located at 800 South Victoria Avenue, Ventura, California 93009. The Court will determine: (i) whether the settlement should be given the Court’s final approval as fair, reasonable, adequate and in the best interests of the participating Class Members; (ii) whether the participating Class Members should be bound by the terms of the settlement; (iii) the amount of the attorneys’ fees and litigation costs that should be awarded to Plaintiffs’ counsel; and (iv) the amount that should be awarded to the Plaintiffs as an Incentive Award. At the Final Approval Hearing, the Court will hear all objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself. Please review the court website at www.ventura.courts.ca.gov for appearance procedures or contact the Settlement Administrator or the attorneys of record to help you make an arrangement for an appearance. If you decide to hire an attorney to represent you, you will be solely responsible for paying any attorneys’ fees and/or costs associated with that representation.

Check the settlement website at www.website.com to determine if there have been any changes to the date and time for Final Approval Hearing. Additionally, you may contact Plaintiffs' counsel, listed at the end of this notice, to inquire into the date and time of the Final Approval hearing.

Condition of Settlement. This Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing fully and finally approving the Settlement as fair, reasonable, adequate and in the best interests of the participating Class Members. Notice of final judgment will be available on the settlement website at www.website.com.

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – GET A PAYMENT**

IF YOU ARE A SETTLEMENT CLASS MEMBER AND WISH TO RECEIVE YOUR SHARE OF THE SETTLEMENT, THEN YOU DO NOT HAVE TO DO ANYTHING AND YOU WILL AUTOMATICALLY RECEIVE A SETTLEMENT PAYMENT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE.

The number of workweeks you worked during the Class Period and the estimated amount of your Settlement Payment is set forth in the included Notice of Estimated Settlement Award sheet. If you believe that the number of workweeks stated is incorrect, you may dispute it by timely producing evidence to the Settlement Administrator showing that the workweek information is inaccurate. To be considered, your dispute must be sent by first class U.S. mail to the Settlement Administrator and must be postmarked no later than [REDACTED], 2021 or 45 days after mailing of this notice to you ("Class Member Exclusion Deadline"). In the event this notice was re-mailed to you, your dispute must be postmarked no later than [REDACTED], 2021, or 60 days after the initial mailing of this notice. If you believe that your stated number of workweeks is correct, you do not have to do anything.

The Settlement Payment you will receive will be a full and final settlement of your Released Claims described above.

- **OPTION 2 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself ("Opt-Out") from the Settlement, but if you choose to do so, you will not receive any payment from the proposed settlement. You will **not** be bound by a judgment in this case, and you will have the right to file your own lawsuit against Harbor Freight, subject to time limits called Statutes of Limitations and other potential defenses that Harbor Freight may assert, and to pursue your own claims in a separate suit.

- i. You can Opt-Out of the Settlement by completing all of the information requested set forth below and sending it by first class U.S. mail to the Settlement Administrator at [REDACTED]. The Exclusion Letter must contain the following information:

- (1) name, address, telephone number, and last four digits of your Social Security number;
- (2) a statement that you wish to be excluded from the Settlement;
- (3) your signature; and

(4) be postmarked, emailed, faxed 45 days after mailing to you or [REDACTED] (Response Deadline). In the event your notice was re-mailed, it must be postmarked, emailed, or faxed by [REDACTED], or 60 days after the initial mailing of this notice. Your exclusion letter must be mailed, emailed, or faxed to the Settlement Administrator at the address specified above.

If the Exclusion Letter does not contain the information listed in (1)-(3) above, it will not be deemed valid for exclusion from this settlement, except if it does not contain either your telephone number and/or last four digits of the Social Security number, then it will be deemed valid. The date of the postmark on the Exclusion Letter shall be the exclusive means used to determine whether an Exclusion Letter has been timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery of class payments under this Settlement Agreement, will not be bound by the terms of the Settlement Agreement as to the Settlement Class, and will not have any right to object, appeal, or comment thereon. However, any Settlement Class member who requests exclusion from the Class Settlement will not be excluded from the PAGA Settlement and will still receive his/her share of the PAGA payment (if applicable).

- **OPTION 3 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Class Member and retain the ability to participate in any settlement that is approved and receive a settlement payment, but you wish to object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Approval Hearing, you may object to the proposed settlement in writing by serving a copy of the written objection to the Settlement Administrator by first class U.S. mail and/or make an appearance at the Final Approval Hearing by contacting either the Settlement Administrator or the attorneys listed below, who will then assist you in arranging for an appearance in Court.

The written objection should be mailed to the Settlement Administrator, [REDACTED], at [REDACTED] and must be postmarked no later than [REDACTED], 2021 or 45 days after mailing of this notice to you. If this notice was re-mailed to you, then the written objection should be postmarked by [REDACTED], 2021, or 60 days after the initial mailing of this notice to all Settlement Class Members.

Please note that you, or an attorney representing you, may appear at the Final Approval Hearing to object to the settlement. Please contact the Settlement Administrator or Attorneys for the Parties whose contact information is listed below to make arrangements for an appearance.

COUNSEL FOR THE PARTIES

COUNSEL FOR PLAINTIFFS/CLASS
MEMBERS:

COUNSEL FOR HARBOR FREIGHT:

DIVERSITY LAW GROUP, P.C.
LARRY W. LEE, Esq.
315 S. Figueroa St., Suite 1250
Los Angeles, CA 90071
Telephone: (213) 488-6555
Email: lwlee@diversitylaw.com

HILL, FARRER, & BURRILL, LLP
Warren J. Higgins, Esq.
Elissa Gysi, Esq.
300 S. Grand Avenue, 37th Floor
Los Angeles, CA 90071
Telephone: (213) 620-0460
Email: whiggins@hfbllp.com
Email: egysi@hfbllp.com

CHRISTINA HUMPHREY LAW, P.C.
Christina A. Humphrey, Esq.
591 Telegraph Canyon Rd, #376
Chula Vista, CA 91910
Telephone: (805) 618-2924
Email: christina@chumphreylaw.com

CHANGE OF ADDRESS

If you move after receiving this notice, if it was misaddressed, or if for any reason you want your Settlement Payment or future correspondence concerning this Action to be sent to a different address, you must supply your preferred address to the Settlement Administrator, whose contact information is provided below.

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you may review the detailed “Joint Stipulation of Class Action Settlement”, “Second Amended Class Action Complaint,” “Motion for Preliminary Approval of Settlement”, and “Order Granting Preliminary Approval of Settlement”, which is available for viewing online, at settlement website: website.COM.

ALL INQUIRIES REGARDING THIS LITIGATION SHOULD BE MADE TO THE SETTLEMENT ADMINISTRATOR OR CLASS COUNSEL.

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE SETTLEMENT ADMINISTRATION PROCESS.

QUESTIONS?

If you have any questions, you may contact Class Counsel or the Settlement Administrator.

SETTLEMENT ADMINISTRATOR

[INSERT SETTLEMENT ADMINISTRATOR ADDRESS AND PHONE NUMBER AND WEBSITE]

EXHIBIT 1B

NOTICE OF ESTIMATED SETTLEMENT AWARD

SUPERIOR COURT OF THE STATE OF CALIFORNIA – COUNTY OF VENTURA
800 South Victoria Avenue, Ventura, CA 93009

Bret Lester, Robert Alvarez, et. al. v. Harbor Freight Tools USA, Inc. - Case No. 56-2014-00454445

<<Name>>
«Address»
<<City>>, <<State>> <<Zip Code>>
XX - XX - _ _ _ _

Indicate Name/Address Changes, if any:

YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT.

THIS NOTICE AFFECTS YOUR RIGHTS. PLEASE READ IT CAREFULLY.

A California court authorized this notice. This is not a solicitation from a lawyer.

YOU WILL NOT BE RETALIATED AGAINST FOR PARTICIPATING IN THIS SETTLEMENT.

The Settlement Administrator has calculated the individual settlement payments to Class Members who do not submit valid Opt-Out Forms. These payments will be calculated by assigning a certain dollar value to each week participating Class Members worked during the Class Period.

Currently, it is estimated that you will receive approximately \$ [REDACTED] as a Class Member. This is based on Harbor Freight's records showing you worked [REDACTED] workweeks during the Class Period. This amount can change depending on how much the court awards in attorneys' fees, litigation expenses, the Incentive Awards to the Plaintiffs, and the number of Class Members who ask to be excluded from the settlement. Payments to participating Class Members will vary depending on the workweeks worked, however, the range of payments is estimated to be between \$ [REDACTED] and \$ [REDACTED].

In addition, it is estimated that you will receive approximately \$ [REDACTED] for the Private Attorneys General Act ("PAGA"). This is based on Harbor Freight's records showing you worked _____ pay periods during the PAGA Period.

ALL INQUIRIES REGARDING THIS LITIGATION SHOULD BE MADE TO THE SETTLEMENT ADMINISTRATOR OR CLASS COUNSEL.

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE SETTLEMENT ADMINISTRATION PROCESS.

QUESTIONS?

If you have any questions, you may contact Class Counsel or the Settlement Administrator.

SETTLEMENT ADMINISTRATOR

[INSERT SETTLEMENT ADMINISTRATOR ADDRESS AND PHONE NUMBER]

EXHIBIT 2

Date

«First_Name»«Last_Name»

«Address_Line_1»

«Address_Line_2»

Re: Payment from *Bret Lester, Robert Alvarez, et. al. v. Harbor Freight Tools USA, Inc.* -Ventura County Superior Court Case No. 56-2014-00454445

Dear «First_Name»«Last_Name»

Enclosed you will find a check made payable to you. This is your payment from the settlement of the lawsuit referenced above. The case was filed against Harbor Freight Tools USA, Inc. (“Harbor Freight” or “Defendant”), pursuant to the California Private Attorneys General Act of 2004, Cal. Labor Code § 2698 *et seq.* (called “PAGA”). The claim was brought on behalf of the State of California and all current and former non-exempt employees employed by Harbor Freight in the State of California in the position of non-exempt retail store employees who worked at least one pay period for Harbor Freight at any time from July 28, 2014 to June 30, 2015 and January 9, 2019 to February 28, 2021 (the “PAGA Period”). You have been identified as one of the employees on whose behalf the case was brought.

The plaintiffs in the case claimed that Harbor Freight owed penalties under PAGA for certain California Labor Code violations. Specifically, the plaintiffs alleged that Harbor Freight (1) failed to pay minimum wages, overtime, and double time wages for all hours worked; (2) failed to pay wages at the agreed-upon rate for all hours worked; (3) failed to provide meal and rest breaks; (4) failed to provide accurate itemized wage statements; (5) failed to provide adequate seating; (6) failed to reimburse employees for business expenses; and (7) failed to pay all wages due upon separation of employment. Harbor Freight denies that it did anything wrong or that it owes any penalties. The parties agreed to resolve the case, and as part of that settlement, Harbor Freight agreed to pay a certain amount of money categorized as PAGA penalties. The settlement of this action does not constitute an admission by Harbor Freight of any of the matters alleged in the case or an admission of liability. Under the PAGA statute, the penalties get divided between the State and the employees. The enclosed check represents your portion of the penalties allocated to the employees.

Your portion of the settlement amount was calculated based on the number of “Qualifying Pay Periods” you worked for Harbor Freight as a non-exempt retail employee during the PAGA Period. The total settlement was \$3,500,000. After deductions of \$1,225,000 for attorneys’ fees, \$x for attorney’s costs, \$50,000 for plaintiffs’ service awards, \$20,000 for payment to the settlement administrator, ILYM Group, Inc., \$x to the Settlement Class of approximately 81 individuals, and \$x for payment to the California Labor & Workforce Development Agency (“LWDA”) under the PAGA statute, the amount remaining to be distributed to employees totaled \$x.

To calculate your portion of the settlement, the total number of Qualifying Pay Periods that you worked from July 28, 2014 to June 30, 2015 and January 9, 2019 to February 28, 2021 to [date of approval], [insert x pay periods], was divided by the total number of Qualifying

Pay Periods for all employees included in the settlement, **[insert x total pay periods]** resulting in your claimed percentage of the settlement amount. Then, this percentage was multiplied by **\$x** to calculate your portion representing the 25% civil penalty allocation to you.

As part of the settlement, the State of California and the named plaintiffs, on behalf of themselves and PAGA Employees to the fullest extent allowed by law, have released and forever discharge Harbor Freight, and its current and former members, managers, owners, shareholders, officers, directors, employees, consultants, accountants, joint venturers, attorneys, representatives, agents, benefit plans, parent companies, subsidiaries, affiliates, related entities, successors, and assigns (“Released Parties”) from all claims, rights, demands, liabilities and causes of action that arose during the PAGA Period, based on the factual allegations pled in the operative complaints and PAGA letters to the LWDA in the Actions, including any claims for attorneys’ fees, costs, or interest resulting therefrom (“Released PAGA Claims” shown in Second Amended Complaint available at **website.com**).

Please refer to the settlement website at **[insert]** to view copies of the Second Amended Complaint filed in this matter.

If you have any questions, you can contact the settlement administrator (whose contact information is at the top of this letter), Plaintiffs’ counsel or Defendant’s counsel:

Christina Humphrey Law, P.C. Christina A. Humphrey, Esq. 591 Telegraph Canyon Rd, #376 Chula Vista, CA 91910 christina@chumphreylaw.com Larry W. Lee, Esq. Diversity Law Group, P.C. 515 S. Figueroa St., Suite 1250 Los Angeles, CA 90071 lwlee@diversitylaw.com Counsel for Plaintiffs	Hiller Farrer, Burrill, LLP Warren J. Higgins, Esq. Elissa Gysi, Esq. 300 South Grand Avenue, 37th Floor Los Angeles, CA 90071 whiggins@hfbllp.com egysi@hfbllp.com Counsel for Harbor Freight
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EXHIBIT B

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("Agreement") is entered into by and between Harbor Freight Tools USA, Inc. ("HFT"), on the one hand, and Ettie Armendariz ("Armendariz"), on the other hand, who agree as follows:

1. The parties to this Agreement desire to settle and dispose of fully and completely any and all existing or potential claims by Armendariz including, but not limited to, any claims arising out of or relating to Armendariz's employment with HFT and any claims arising out of or relating to the facts alleged in Armendariz's Complaint in the matter of Armendariz v. Harbor Freight Tools USA, Inc., et al., San Diego County Superior Court Case No. 37-2017-00004443-CU-OB-CTL ("Civil Action").

2. Assuming this Agreement is not revoked as set forth in Paragraph 7 below, counsel for Armendariz shall promptly file a motion seeking approval of the parties' settlement, which settles and disposes of the Civil Action. Thereafter, within ten (10) business days after the Court enters a final judgment in the Civil Action based on the approval of the parties' settlement in accordance with the Private Attorney General Act of 2004 ("PAGA"), California Labor Code Sections 2698, *et seq.*, and/or any other applicable law, counsel for HFT shall deliver to Douglas Geyman, Law Offices of Douglas E. Geyman, Armendariz's attorney, a settlement check in the amount of Ten Thousand Dollars (\$10,000), made payable to: "Law Offices of Douglas E. Geyman, Client Trust Account." This payment is allocated as follows: five hundred dollars (\$500) to Armendariz as consideration for her release of all claims against HFT and/or the HFT Releasees (as defined below), inclusive of any claim for wages and civil penalties alleged in the Civil Action; two thousand dollars (\$2,000) to Armendariz as an enhancement payment for bringing her Civil Action in a representative capacity; and seven thousand five hundred dollars (\$7,500) for attorney's fees and costs. Counsel for Armendariz shall be solely responsible for transmitting payment directly to Armendariz arising from this settlement, and HFT and/or HFT Releasees shall have no responsibility or obligation in this regard. Armendariz and her attorneys further acknowledge and agree that, except as expressly set forth in this Agreement, HFT shall have no further obligation to Armendariz or her attorneys.

3. The payment in Paragraph 2 is in full and final settlement of any and all claims by Armendariz against HFT and the HFT Releasees (as defined below), including claims for costs and/or attorneys' fees. Armendariz acknowledges and agrees that the above amount exceeds any remuneration to which she was otherwise entitled and Armendariz agrees that, except as expressly set forth in this Agreement, HFT and the HFT Releasees shall have no further obligation to her or her counsel.

4. HFT and its counsel make no representation as to the tax treatment or legal effect of the payment hereunder, and Armendariz is not relying on any statement or representation of HFT, the HFT Releasees, and/or their attorneys in that regard. Appropriate IRS 1099 forms will be issued in connection with this settlement and Armendariz agrees that she will pay, and that she shall be exclusively liable for, the payment of all federal, state and local taxes and penalties

that may be due as a result of this settlement. Armendariz agrees to indemnify HFT and/or the HFT Releasees for any claims made by any taxing or government authority regarding the payment called for herein, including any alleged tax liability, attorneys' fees, penalties, claims for employer contributions for tax, disability, unemployment, social security, and workers' compensation, and all other costs, penalties and interest.

5. The parties' settlement and any Court Order approving it shall release and discharge HFT and/or HFT Releasees from any and all claims for penalties of any kind that are authorized or claimed to be authorized under PAGA and the underlying Labor Code sections upon which any such penalty is premised or sought, and shall bind not only Armendariz but also the State of California Labor and Workforce Development Agency and any of its departments or divisions acting on behalf of Armendariz or whom Armendariz is acting on behalf of, as well as any person or allegedly aggrieved employee who was employed by HFT at any time after November 2, 2015. The scope of the PAGA claims released includes not only the claims actually alleged in the Civil Action, but any claims that could have been alleged in the Civil Action by Armendariz or the State of California Labor and Workforce Development Agency.

6. In consideration of the above, Armendariz covenants not to sue and hereby releases and discharges HFT and all of its predecessors, successors, parent, subsidiary, affiliated and/or related entities, and its and their current and former shareholders, managers, members, directors, officers, supervisors, employees, representatives, agents, and attorneys ("HFT Releasees") from any and all claims whatsoever, whether known or unknown and suspected or unsuspected, that Armendariz has or may have against HFT and/or the HFT Releasees arising out of Armendariz's employment with HFT and/or the HFT Releasees and/or the termination of such employment, and arising prior to Armendariz's execution of this Agreement (hereinafter "Armendariz Released Claims"). Without limitation, the Armendariz Released Claims herein include: any and all claims arising under Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1866, the Civil Rights Act of 1991, the Americans with Disabilities Act ("ADA"), the ADA Amendments Act of 2008, the Rehabilitation Act, the Genetic Information Non-Discrimination Act, the Age Discrimination in Employment Act ("ADEA"), the Employee Retirement Income Security Act ("ERISA"), the Older Workers Benefit Protection Act ("OWBPA"), the Worker Adjustment Retraining Notification Act ("WARN"), the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), the Family Medical Leave Act ("FMLA"), the California Family Rights Act ("CFRA"), the California Fair Employment and Housing Act ("FEHA"), and the California Labor Code; any actual or potential claims arising under any federal, state, or local laws or statutes not specifically identified herein; any actual or potential claims for wrongful termination, constructive discharge, breach of contract, breach of the covenant of good faith and fair dealing, tort, intentional and/or negligent infliction of emotional distress, intentional and/or negligent misrepresentation, negligent supervision, defamation, fraud, employment discrimination, sexual discrimination or harassment, gender discrimination or harassment, age discrimination or harassment, disability discrimination or harassment, racial discrimination or harassment, national origin discrimination or harassment, sexual orientation discrimination or harassment, discrimination or harassment of any other kind, retaliation, failure to prevent discrimination, failure to prevent harassment, failure to prevent retaliation, failure to

hire, failure to promote, physical injuries, personal injuries, economic damages, loss of consortium, punitive damages, wages, overtime, missed meals and breaks, penalties, severance pay, relocation expenses, expenses, expense reimbursements, stocks, stock options, bonuses, sick leave, holiday pay, vacation pay, life insurance, health and medical insurance, or any other fringe benefit; and any other actual or potential claims based upon any act or omission of HFT and/or HFT Releasees occurring prior to Armendariz's execution of this Agreement.

7. This Agreement constitutes a voluntary waiver and release of all of Armendariz's rights and claims under the Age Discrimination in Employment Act and pursuant to the Older Workers Benefit Protection Act ("OWBPA"), Armendariz acknowledges: she has been advised and is aware of her right to review this Agreement with legal counsel of her choice prior to signing it; she further acknowledges that she is aware that she has twenty-one (21) days during which to consider the provisions of this Agreement, although Armendariz may sign and return the Agreement sooner; and she has the right to revoke this Agreement for a period of seven (7) days after her execution of the Agreement. Armendariz may revoke this Agreement during that period by giving written notice to HFT's General Counsel (Marc Friedman) via both overnight mail at Harbor Freight Tools USA, Inc., 26541 Agoura Road, Calabasas, CA 91302, and e-mail at the following e-mail address: MFriedman@harborfreight.com. Accordingly, this Agreement shall not become effective until the eighth day following Armendariz's execution of this Agreement. Notwithstanding the expiration of this revocation period, this Agreement will require Court approval of the parties' settlement and entry of a final judgment in the Civil Action before HFT shall have any obligations under this Agreement.

8. Section 1542 of the Civil Code of the State of California ("Section 1542") provides:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

Armendariz hereby waives all rights under Section 1542 or any other law or statute of similar effect in any jurisdiction that she may have with respect to the Armendariz Released Claims. Armendariz acknowledges that she understands the significance and specifically assumes the risk regarding the consequences of such release and such specific waiver of Section 1542. Armendariz acknowledges and agrees that this Agreement releases all claims existing or arising prior to Armendariz's execution of this Agreement, whether such claims are known or unknown and suspected or unsuspected, and Armendariz forever waives all inquiries and investigations into any and all such claims.

9. In further consideration of the settlement reached herein, Armendariz shall file a motion seeking approval of the parties' settlement, which settles and disposes of the Civil

Action. This Agreement shall not become enforceable unless and until the Court approves the parties' settlement and enters a final judgment in the Civil Action based thereon. Armendariz further agrees to execute any additional documents or perform any other acts as necessary to carry out the terms of this Agreement.

10. Armendariz agrees that she will not otherwise file any charge, civil action, or claim, including without limitation any arbitration claim, or any claim with any local, state or federal agency or court, based upon any of the Armendariz Released Claims against HFT or any of the HFT Releasees.

11. Armendariz represents and affirms that she has reported to HFT all known work-related injuries that she has suffered or sustained during her employment with HFT. This Agreement shall not settle or release any existing worker's compensation claims previously filed by Armendariz.

12. A. Armendariz acknowledges and agrees that her employment with HFT terminated effective March 21, 2016. Except as expressly set forth in this Agreement, HFT and the HFT Releasees shall have no further obligation to Armendariz. Armendariz hereby expressly waives and releases any right to reinstatement with HFT or any of the HFT Releasees. Armendariz agrees not to make an unsolicited application for employment at any time in any capacity with HFT or any of the HFT Releasees, and Armendariz expressly waives and releases any right to be considered for such employment. HFT and the HFT Releasees shall be permitted to disregard and not respond to any unsolicited application concerning Armendariz.

B. Armendariz agrees that she will direct all inquiries regarding her employment with HFT to HFT's Human Resources Department. The Human Resources Department will respond to such inquiries in a manner consistent with HFT's policy by providing dates of employment and position(s) held only. HFT shall not be responsible for any inquiries not directed to the Human Resources Department.

13. Armendariz agrees that she will not disparage HFT or any of its affiliated entities or any past or present officers, directors, supervisors, executives, managers or employees or any of the HFT Releasees nor say anything or do anything that damages or impairs in any way the business organization, goodwill, or reputation of HFT or any of its affiliates or related entities.

14. A. Armendariz agrees to provide such reasonable cooperation and assistance as may be requested in good faith from time to time by HFT with respect to the investigation and handling of any threatened, pending or future litigation, regulatory proceeding, investigation, administrative or other hearing, trial or proceeding, initiated by HFT or any other person, entity or governmental body against HFT and/or the HFT Releasees, provided that HFT will reimburse Armendariz for any reasonable travel and out-of-pocket expenses incurred by Armendariz in providing such cooperation and assistance.

B. Armendariz agrees not to assist any other person in the preparation or

prosecution of any lawsuit, charge, complaint or claim against HFT or any of the HFT Releasees except as required by judicial process or law after Armendariz gives notice of such subpoena, judicial process or action to HFT's General Counsel, Marc Friedman, or his successor so that HFT may fully assert the parties' confidentiality and privacy rights.

15. Armendariz acknowledges that this Agreement is made as a compromise of disputed claims, that HFT specifically denies liability for such claims, and that no act with respect to this Agreement, including the giving of consideration for the Agreement, shall be construed as an admission of liability or responsibility to any person. Neither this Agreement nor anything contained herein shall be admissible in any proceeding as evidence of or an admission by the HFT of any violation of law or duty or of any liability whatsoever to Armendariz or any other person. Notwithstanding the foregoing, this Agreement may be introduced into a proceeding solely for the purpose of enforcing and obtaining Court approval of said Agreement, and any settlement or mediation privilege is hereby waived by the parties with respect to this Agreement for that purpose.

16. Armendariz represents and warrants that she is and at all times relevant herein has been the real party in interest with respect to any claims released herein, represents and warrants that no other individual and/or entity has a lien, claim, or interest in her claims or potential claims, and represents and warrants that she has not heretofore assigned or transferred or purported to assign or transfer by operation of law or otherwise, to any person or entity, any claim embraced in this Agreement, or any portion thereof, or interest therein, that she has against any of the HFT Releasees. Armendariz agrees to indemnify the HFT Releasees (individually and/or severally), and defend and hold them harmless (individually and/or severally) from and against any claims arising out of, related to, or in connection with any such prior assignment or transfer, or any such purported assignment or transfer, of any claims or other matters released in this Agreement.

17. The parties agree that no provision in this Agreement shall be construed or interpreted in any way to limit, restrict or preclude either party hereto from cooperating with any governmental agency in the proper performance of its investigatory or other lawful duties.

18. Any dispute over the formation, validity, enforcement, scope, breach or interpretation of this Agreement and any dispute of any kind whatsoever between Armendariz and HFT and/or the HFT Releasees, if any, shall be submitted and resolved in final and binding arbitration through the American Arbitration Association ("AAA") pursuant to the provisions of the AAA employment arbitration rules or successor rules then in effect, applicable to individually negotiated agreements; except, no arbitrator shall have jurisdiction to grant any remedy or relief that would have been unavailable to the parties had the matter been heard in court in accordance with applicable law, including, but not limited to, awards of attorney's fees and costs. This agreement to arbitrate, including enforcement and vacation of any arbitration award, shall be governed by the procedural and substantive provisions of the Federal Arbitration Act ("FAA"), 9 U.S.C. Sections 1, *et seq.*

19. This Agreement contains the entire agreement and understanding between Armendariz and HFT and/or HFT Releasees and supersedes all prior negotiations and all agreements proposed or otherwise, whether written or oral, concerning the subject matter hereof. This is a fully integrated document.

20. Should any provision, part or term of this Agreement be held to be invalid or unenforceable, the validity and enforceability of the remaining parts, terms and provisions shall not be affected thereby, and a suitable and equitable provision shall be substituted to carry out, so far as may be enforceable and valid, the intent and purpose of the invalid or unenforceable provision.

21. This Agreement shall be binding upon and shall inure to the benefit of Armendariz, HFT and the HFT Releasees and their respective heirs, administrators, successors, and assigns.

22. This Agreement may be executed in counterparts and by facsimile, and each counterpart when executed shall have the efficacy of a signed original. Photographic and facsimile copies of such signed counterparts may be used in lieu of the originals for any purpose.

23. All parties have cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any party on the basis that the party was the drafter.

24. In entering into this Agreement, Armendariz acknowledges and agrees that she is fully aware of her right to discuss any and all aspects of this Agreement with an attorney of her choice, that she has carefully read and fully understands all of the provisions of this Agreement, and that she is voluntarily entering into this Agreement.

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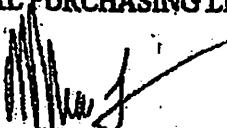
25. Except as provided in Paragraph 18 above, this Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

Executed this 28 day of September 2017, at El Cajon, California.

By: 
ETTIE ARMENDARIZ

Executed this 28 day of September 2017, at Calabasas, California.

HARBOR FREIGHT TOOLS USA, INC.
CENTRAL PURCHASING LLC

By: 
MARC FRIEDMAN,
GENERAL COUNSEL
HARBOR FREIGHT TOOLS USA, INC.

APPROVED AS TO FORM AND CONTENT:

DATED: September 11, 2017

LAW OFFICES OF DOUGLAS E. GEYMAN

By: 
DOUGLAS GEYMAN, ESQ.
Attorney for Ettie Armendariz

HFB 1811431.2 H1660016

HILL, FARRER & BURRILL LLP
WARREN J. HIGGINS (Bar No. 174229)
PATRICK E. MICHELA (Bar No. 173861)
One California Plaza, 37th Floor
300 South Grand Avenue
Los Angeles, CA 90071-3147
Telephone: (213) 620-0460
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Attorneys for Defendant
HARBOR FREIGHT TOOLS USA, INC.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

05/07/2018 at 03:39:00 PM

Clerk of the Superior Court
By E- Filing, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

ETTIE ARMENDARIZ, an individual,

Plaintiff,

vs.

HARBOR FREIGHT TOOLS USA, INC.,
a California corporation, HARBOR
FREIGHT TOOLS, a California
corporation and DOES 1 to 10, Inclusive,

Defendants.

CASE NO. 37-2017-00004443-CU-OE-CTL
[Assigned for all purposes to the Hon. Kenneth J. Medel,
Dept. C-66]

**NOTICE OF ENTRY OF ORDER AND
JUDGMENT**

TO ALL INTERESTED PARTIES HEREIN AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on April 13, 2018, the Court in the above-entitled action entered its Order and Final Judgment Re: Motion/Stipulation to Approve Individual and Representative Action Settlement Under Private Attorney General Act ("PAGA"). A true and correct copy of said Order and Final Judgment is attached to this Notice as **Exhibit A**.

DATED: May 7, 2018

HILL, FARRER & BURRILL LLP

By: /s/ Warren J. Higgins

WARREN J. HIGGINS

Attorneys for Defendant

HARBOR FREIGHT TOOLS USA, INC.

HFB 1906758.1 H1660016

EXHIBIT A

LAW OFFICES OF DOUGLAS E. GEYMAN
DOUGLAS E. GEYMAN, ESQ. (SBN: 159417)
750 B Street, Suite 2870
San Diego, California 92101-8183
Telephone: (619) 232-3533
Facsimile: (619) 232-3593
Email: Douglas@geyman.sdcocmail.com

Attorneys for Plaintiff
ETTIE ARMENDARIZ

HILL, FARRER & BURRILL LLP
WARREN J. HIGGINS, ESQ. (SBN: 174229)
One California Plaza, 37th Floor
300 South Grand Avenue
Los Angeles, CA 90071-3147
Telephone: (213) 620-0460
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Email: whiggins@hillfarrer.com

Attorneys for Defendant
HARBOR FREIGHT TOOLS USA, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

ETTIE ARMENDARIZ, an individual,

Plaintiff,

vs.

HARBOR FREIGHT TOOLS USA, INC.,
a California corporation, HARBOR
FREIGHT TOOLS, a California
corporation and DOES 1 to 10, Inclusive,

Defendants.

Case No. 37-2017-00004443-CU-OE-CTL
[Case Assigned to Hon. Kenneth Medel, Dept. C-66]

**~~PROPOSED~~ ORDER AND FINAL
JUDGMENT RE: MOTION/STIPULATION
TO APPROVE INDIVIDUAL AND
REPRESENTATIVE ACTION
SETTLEMENT UNDER PRIVATE
ATTORNEY GENERAL ACT ("PAGA")**

Date: March 29, 2018
Time: 10:30 a.m.
Dept.: C-66

The motion of Plaintiff ETTIE ARMENDARIZ ("Plaintiff") and Defendant HARBOR
FREIGHT TOOLS USA, INC. ("HFT") to approve their stipulated individual and representative
action settlement under the California Private Attorney General Act, California Labor Code

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
04/13/2018 at 01:57:00 PM
Clerk of the Superior Court
By Patricia Xavier, Deputy Clerk

1 Section 2698 *et seq.* ("PAGA"), came on regularly for hearing on March 29, 2018 at 10:30 a.m.
2 in Department C-66 of the above-entitled Court. Douglas E. Geyman, Esq. appeared as counsel
3 for Plaintiff; and Warren J. Higgins appeared as counsel for HFT.

4 Having considered the Parties' moving papers, their stipulation and all information in
5 support thereof, including the Joint Stipulation Requesting Approval of the Settlement, and the
6 Settlement Agreement attached as Exhibit B to the Parties' motion/stipulation, and good cause
7 appearing, **IT IS HEREBY ORDERED** that the Parties' request for settlement approval is
8 **GRANTED**, subject to the following findings and orders:

9 1. All terms used herein shall have the same meaning as defined in the Settlement
10 Agreement attached as **Exhibit B** to the Parties' motion/stipulation.

11 2. The Court hereby confirms Douglas E. Geyman of the Law Office of Douglas E.
12 Geyman as PAGA Counsel.

13 3. The Court hereby approves the settlement terms set forth in the parties' stipulation
14 and the Settlement Agreement for settlement of the Civil Action, including all claims under
15 PAGA, and finds in this respect that the settlement is, in all respects, fair, adequate, and
16 reasonable and directs the parties to effectuate the settlement according to the terms set forth in
17 their stipulation. The Court finds that the parties were able to reasonably evaluate their respective
18 positions. The Court also finds that settlement now will avoid potentially substantial litigation
19 costs, as well as delay and risks if the parties were to continue to litigate the Civil Action.

20 4. This settlement does not constitute an admission by HFT and/or the HFT
21 Releasees, nor shall any Order approving this settlement or the Final Judgment entered thereon be
22 deemed a finding that the Civil Action or any alleged or released claims had any validity or merit,
23 or that HFT and/or the HFT Releasees engaged in any wrongdoing. Neither the Order approving
24 this settlement, the Final Judgment entered thereon, the Settlement Agreement, nor any document
25 referred to herein, nor any action taken to carry out the settlement, may be construed as, or may
26 be used as, an admission of any fault, wrongdoing, omission, concession, or liability whatsoever
27 by or against HFT and/or the HFT Releasees.

28 5. As set forth in the Settlement Agreement, within ten (10) business days from the

1 date of this Order and Final Judgment, HFT shall pay shall deliver to Douglas Geyman, Law
2 Offices of Douglas E. Geyman, Plaintiff's attorney, a settlement check in the amount of Ten
3 Thousand Dollars (\$10,000), made payable to: "Law Offices of Douglas E. Geyman, Client Trust
4 Account." This payment is inclusive of all attorneys' fees, taxes and costs, and is in full and final
5 settlement of any and all claims by Plaintiff against HFT and the HFT Releasees, whether known
6 or unknown, arising out of Plaintiff's employment and/or the termination of her employment,
7 inclusive of any claim for wages and civil penalties alleged in the Civil Action. The payment
8 shall be allocated by Plaintiff's counsel in the manner specified in the Settlement Agreement.

9 6. HFT shall pay thirty thousand dollars (\$30,000.00) (the "PAGA Payment") as civil
10 penalties under PAGA to resolve the claims of any and all non-party Aggrieved Employees,
11 which group is defined as all non-exempt hourly employees who worked for HFT at any of its
12 retail stores in California during the period of July 1, 2015 until the date of the Order and Final
13 Judgment approving this settlement (the "PAGA Group"). The PAGA Payment shall be
14 distributed to the LWDA and the PAGA Group in the manner provided by the parties' stipulation.

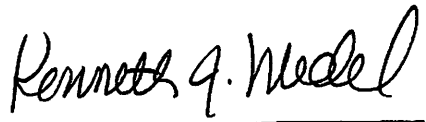
15 7. All members of the PAGA Group who are employed with HFT will receive
16 appropriate credit for their respective portion of the PAGA Payment with or apart from their
17 regular pay; for members of the PAGA Group who are no longer employed by HFT, HFT will
18 send their portion of the PAGA Payment by mail to their last known address of record with the
19 company. Settlement checks issued to the PAGA Group pursuant to this settlement shall expire
20 180 days from the date they are issued by HFT. Any unclaimed funds after the 180-day period
21 shall be remitted to the LWDA.

22 8. Upon entry of this Order and Final Judgment approving this settlement, the
23 LWDA and any employee or former employee of HFT, including but not limited to Plaintiff,
24 acting as a private attorneys general on the LWDA's behalf, will be forever barred from pursuing
25 against HFT any action for civil penalties under the PAGA arising out of any violations of the
26 Labor Code alleged in the Civil Action during the period of July 1, 2015 until the date of the
27 Order and Final Judgment approving this settlement.
28

1 9. Nothing in the parties' settlement, the Settlement Agreement or the Order and
2 Final Judgment approving the settlement will prevent any current or former employee from
3 claiming or pursuing actual or statutory damages for any violation of the Labor Code, unless, like
4 Plaintiff, he or she has already settled and released such claims.

5
6 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

7
8 Dated: April 13, 2018

By: 

HON. KENNETH J. MEDEL
SUPERIOR COURT JUDGE

1 **PROOF OF SERVICE**

2 I, ANA VILLAR, declare:

3 I am a resident of the state of California and over the age of eighteen years, and
4 not a party to the within action; my business address is Hill, Farrer & Burrill LLP, One California
5 Plaza, 37th Floor, Los Angeles, California 90071-3147. On April 4, 2018, I served the within
6 documents:

7 **[PROPOSED] ORDER AND FINAL JUDGMENT RE: MOTION/STIPULATION TO
8 APPROVE INDIVIDUAL AND REPRESENTATIVE ACTION SETTLEMENT
9 UNDER PRIVATE ATTORNEY GENERAL ACT ("PAGA")**

- 10 ☒ **BY ELECTRONIC SUBMISSION AND E-SERVICE VIA ONE LEGAL**
11 I caused the above-entitled document(s) to be electronically filed and e-served
12 through One Legal to those parties on the service list maintained by One Legal.
13 Upon completion of transmission of said document(s), a filing receipt is issued
14 acknowledging receipt, filing and service by One Legal's system. A copy of One
15 Legal's filing receipt will be maintained with the original document(s) in our
16 office.
- 17 ☐ by transmitting a PDF copy via electronic online service of the document(s) listed
18 above.
- 19 ☐ by placing the document(s) listed above in a sealed envelope with postage thereon
20 fully prepaid, in the United States mail at Los Angeles, California addressed as set
21 forth below.
- 22 ☐ by causing personal delivery by Delivery Service of the document(s) listed above
23 to the person(s) at the address(es) set forth below.
- 24 ☐ by placing the document(s) listed above in a sealed envelope and affixing a pre-
25 paid air bill, and causing the envelope to be delivered to a Delivery Service agent
26 for delivery.
- 27 ☐ by uploading the document listed above on the California Labor and Workforce
28 Development Agency website.

22 **Douglas E. Geyman, Esq.**
23 **LAW OFFICES OF DOUGLAS E. GEYMAN**
24 **750 B Street, Suite 2870**
25 **San Diego, CA 92101**
26 **Telephone: (619) 232-3533**
27 **Facsimile: (619) 232-3593**
28 **E-mail: Douglas@geyman.sdcoxmail.com**
Attorneys for Plaintiff
ETTIE ARMENDARIZ

HILL, FARRER & BURRILL LLP
A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AT LAW
ONE CALIFORNIA PLAZA, 37TH FLOOR
300 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071-3147

1 I am readily familiar with the firm's practice of collection and processing
2 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal
3 Service on that same day with postage thereon fully prepaid in the ordinary course of business. I
am aware that on motion of the party served, service is presumed invalid if postal cancellation
date or postage meter date is more than one day after date of deposit for mailing in affidavit.

4 I declare under penalty of perjury under the laws of the State of California that the
5 above is true and correct.

6 Executed on April 4, 2018, at Los Angeles, California.

7 
8 _____
9 ANA VILLAR
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HILL, FARRER & BURRILL LLP
A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AT LAW
ONE CALIFORNIA PLAZA, 37TH FLOOR
300 SOUTH GRAND AVENUE
LOS ANGELES, CALIFORNIA 90071-3147

PROOF OF SERVICE

I, ANA VILLAR, declare:

I am a resident of the state of California and over the age of eighteen years, and not a party to the within action; my business address is Hill, Farrer & Burrill LLP, One California Plaza, 37th Floor, Los Angeles, California 90071-3147. On May 7, 2018, I served the within documents:

NOTICE OF ENTRY OF ORDER AND JUDGMENT

- ☒ **BY ELECTRONIC SUBMISSION AND E-SERVICE VIA ONE LEGAL**
I caused the above-entitled document(s) to be electronically filed and e-served through One Legal to those parties on the service list maintained by One Legal. Upon completion of transmission of said document(s), a filing receipt is issued acknowledging receipt, filing and service by One Legal's system. A copy of One Legal's filing receipt will be maintained with the original document(s) in our office.
- ☐ by transmitting a PDF copy via electronic online service of the document(s) listed above.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.
- ☐ by causing personal delivery by Delivery Service of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by placing the document(s) listed above in a sealed envelope and affixing a prepaid air bill, and causing the envelope to be delivered to a Delivery Service agent for delivery.
- ☒ by uploading the document listed above on the California Labor and Workforce Development Agency website.

SERVICE LIST ATTACHED.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 7, 2018, at Los Angeles, California.

/s/ Ana Villar
ANA VILLAR

SERVICE LIST

Douglas E. Geyman, Esq.
LAW OFFICES OF DOUGLAS E. GEYMAN
750 B Street, Suite 2870
San Diego, CA 92101
Telephone: (619) 232-3533
Facsimile: (619) 232-3593
E-mail: Douglas@geyman.sdc Coxmail.com
Attorneys for Plaintiff
ETTIE ARMENDARIZ
(Via Electronic Service)

California Labor and Workforce Development Agency
Attn.: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
(Via Online Submission)

EXHIBIT C

From: [FormAssembly](#) on behalf of [DIR PAGA Unit](#)
To: [Stefano Congedo](#)
Subject: Thank you for your Proposed Settlement Submission
Date: Tuesday, October 12, 2021 3:03:29 PM

10/12/2021 03:02:34 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: https://urldefense.proofpoint.com/v2/url?u=http-3A__labor.ca.gov_Private-5FAttorneys-5FGeneral-5FAct.htm&d=DwIFaQ&c=euGZstcaTDllvimEN8b7jXrwqOf-v5A_CdpnVfiiMM&r=7Rlg6NdbTA2uG2ioBXmeh7YEe07eVppfLoBrCbL5_ZQ&m=-4XmM3jsI1BNlnC59VmfdN-bEc2IHCozMLjE0teqF4w&s=bd9ZiLMnPy6TG10t7o_yGeoKnR-jcTo1YEobTeiUYhg&e=