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**IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

WILL KAUPELIS and FRANK
ORTEGA, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

HARBOR FREIGHT TOOLS USA,
INC.,

Defendant.

Case No. 8:19-cv-01203-JVS-DFM

**PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT;
SUPPORTING MEMORANDUM
OF POINTS AND
AUTHORITIES**

Date: January 10, 2022

Time: 1:30 p.m.

Courtroom: 10C

Judge: Hon. James Selna

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1 **I. INTRODUCTION**

2 On August 11, 2021, this Court preliminarily approved the Settlement in this
3 case, and directed notice to be sent to the Settlement Class. See Order Granting
4 Preliminary Approval of Class Action Settlement (“PA Order”) (ECF No. 179). The
5 settlement administrator, RG2 Claims Administration LLC (“RG2”), has
6 implemented the Court-approved notice plan, which was designed to reach 80% of
7 the certified Settlement Class. The reaction from the Class has been overwhelmingly
8 positive. There have been only five requests for exclusion, and **no objections**.¹ “A
9 low proportion of opts outs and objections indicates that the class generally approves
10 of the settlement.” *Arreola v. Shamrock Foods Co.*, 2021 WL 4220630, at *5 (C.D.
11 Cal. Sept. 16, 2021) (internal quotation omitted). And, as this Court has held, “the
12 absence of objections and small number of requests for exclusion weighs in favor of
13 final approval.” *Brulee v. DAL Global Servs., LLC*, 2018 WL 6616659 at *6 (C.D.
14 Cal. Dec. 13, 2018) (Selna, J.).

15 The Settlement was reached after years of hard-fought litigation and months of
16 settlement negotiations, including a settlement conference with Magistrate Judge
17 McCormick. Class members are given the choice of cash, gift cards, or a
18 replacement chainsaw. This is an excellent result for the Class, as Class members
19 with proof of purchase are entitled to \$50 in cash or Harbor Freight gift cards
20 (roughly the full dollar amount of the chainsaws), and Class members without proof
21 of purchase can request either \$10 cash or a \$25 Harbor Freight gift card. The
22 Settlement provides for attorneys’ fees and expenses of \$665,000, which is a
23 negative multiplier, and service award payments of \$3,000 each for the two named
24 Plaintiffs, which is comparable to or less than service awards this Court has awarded
25 in other cases. Importantly, Court-awarded attorneys’ fees, costs, and service awards
26 will be paid separately by Defendant and will have no impact on or otherwise

27 _____
28 ¹ The deadline to object or opt-out of the Settlement was November 24, 2021. See
PA Order, at p.1 (ECF No. 179).

1 diminish the benefits paid to the Settlement Class. In all, this is an excellent deal.
2 The Court should have no hesitation in granting final approval.

3 **II. BACKGROUND**

4 **A. Allegations and Procedural History**

5 On June 17, 2019, Plaintiffs filed their Complaint alleging that Defendant
6 misled consumers and breached implied warranties by selling chainsaws with
7 defective power switches. ECF. No. 1. On July 18, 2019, Defendant moved to
8 dismiss Plaintiffs' Complaint, and Plaintiffs opposed Defendant's motion on August
9 19, 2019. The Court denied Defendant's motion on October 9, 2019. Defendant
10 filed its Answer on October 23, 2019.

11 Thereafter, the parties engaged in significant discovery. Specifically, the
12 parties exchanged and met and conferred concerning a number of discovery requests,
13 including multiple sets of interrogatories and requests for production. Defendant
14 produced over 81,000 pages of documents concerning the merits of the case. The
15 parties also litigated multiple motions to compel, a motion for review, and ultimately
16 conducted 13 total depositions of both fact and expert witnesses.

17 Plaintiffs moved for class certification on March 2, 2020, which the Court
18 granted in part and denied in part on September 23, 2020. *See* ECF No. 140. On
19 October 7, 2020, Defendant filed a 23(f) petition before the Ninth Circuit, which the
20 Ninth Circuit denied on November 19, 2020.

21 Over the last year, the parties engaged in substantial arm's-length negotiations
22 in an effort to resolve this action, including a settlement conference with Magistrate
23 Judge McCormick on December 9, 2020. Although the settlement conference was
24 unsuccessful, it was nonetheless a beneficial step in the process and the parties
25 continued to discuss potential resolution over the next several months. The parties
26 agreed on the principal material terms of this settlement on April 27, 2021, and
27 thereafter spent substantial time working together on a long form settlement and
28

1 consulting with a reputable claims administrator, RG/2 Claims Administration, on a
2 notice plan.

3 The Settlement was preliminarily approved on August 11, 2021. ECF No.
4 179. Plaintiffs filed their motion for attorneys' fees, expenses, and service awards on
5 October 25, 2021. *See* ECF No. 183.

6 **B. Summary of the Settlement**

7 **1. Settlement class**

8 The Settlement Class is defined as: All consumers in the United States from
9 2009-present who purchased Harbor Freight Tools chainsaws bearing SKU numbers
10 67255 or 61592 and who have not participated in Harbor Freight's Chainsaw Recall.
11 SA ¶ 8. The Settlement Class consists of approximately 800,000 individuals.

12 **2. Relief**

13 Under the Settlement, Harbor Freight agrees to the following remedies to
14 individuals who have not already participated in Harbor Freight's Chainsaw Recall:
15 (1) Settlement Class Members who still have their chainsaws are entitled to a choice
16 of \$50 cash (i.e., a full refund), a replacement chainsaw (valued at approximately
17 \$50), or a \$50 Harbor Freight gift card;² (2) Settlement Class Members who do not
18 have their chainsaws but have proof of purchase or proof of destruction are entitled
19 to a choice of (a) \$50 cash, or (b) a \$50 Harbor Freight gift card; and (3) Settlement
20 Class Members who do not still have their chainsaws and do not have proof of
21 purchase or destruction are entitled to a choice of (a) \$10 cash, or (b) a \$25 Harbor
22 Freight gift card. Given the number of chainsaws sold minus the number of
23 individuals who have participated in Defendant's recall, the Settlement relief made
24 available is valued between \$8 million and \$40 million.

25
26
27 ² All gift cards made available under this Settlement will have no expiration date, are
28 freely transferrable, redeemable at any Harbor Freight store, and redeemable for all
Harbor Freight products.

1 **3. Attorneys’ fees**

2 Harbor Freight has agreed to pay for court-approved attorneys’ fees and
3 expenses not to exceed \$665,000.

4 **4. Administrative expenses and service awards**

5 Harbor Freight has also agreed to pay for the costs of the settlement notice and
6 administration, and service awards to the two named plaintiffs of up to \$3,000 each.

7 **5. Release**

8 The named plaintiffs, and any Settlement Class Member, “shall be deemed to
9 have, and by operation of the Final Order and Final Judgment shall have, fully,
10 finally and forever released, relinquished, and discharged all Released Claims
11 against the Released Parties. In connection with the Released Claims, each Releasing
12 Party shall be deemed as of the Effective Date to have expressly, knowingly, and
13 voluntarily waived any and all provisions, rights, benefits conferred by Section 1542
14 of the California Civil Code, and any statute, rule, and legal doctrine similar,
15 comparable, or equivalent to Section 1542[.]” SA ¶ 64.³

16 **6. Notice**

17 Following the Court’s grant of preliminary approval to the Settlement, RG/2
18 endeavored to provide notice to Settlement Class Members.

19 Based on internal information provided by Harbor Freight, RG/2 received
20 contact information from approximately 441,236 Class Members. Montague Decl.
21 ¶ 9. On September 10, 2021, RG/2 sent the Summary Class Notice via email to
22 209,490 Class Members for whom email addresses were provided within Harbor
23 Freight’s recordkeeping. *Id.* ¶ 11. RG/2 also researched additional email addresses
24 for Class Members and was able to identify valid email addresses for another 84,992
25 Class Members. *Id.* On September 24, 2021, subsequent to email notice, RG/2
26 mailed postcard notices to 146,854 Class Members for whom Defendant did not have

27 _____
28 ³ “Plaintiffs and Class Members are not releasing any claims for personal injuries.”
Id. ¶ 64.

1 valid email addresses for. *Id.* ¶ 12. Both email and postcard notices directed
2 recipients to the Settlement Website, where they can access additional information
3 about the Settlement. *Id.* ¶¶ 11-12.⁴

4 Individual email and postcard notice was also supplemented by a targeted
5 online media campaign, which began on September 10, 2021. *Id.* ¶ 14. The media
6 campaign consisted of Facebook, Instagram, and YouTube video advertisements, as
7 well as Google Paid Search and Bing Paid Search advertisements where potential
8 Class Members could click on the advertisement and be linked to the Settlement
9 website. *Id.* This digital media campaign produced over 9.6 million impressions
10 online. *Id.* RG/2 designed the notice plan so that Class Notice would be
11 disseminated to 80% of the Settlement Class. *Id.*

12 7. Opt-Out and Objection Process

13 Each person who is included in the definition of the Settlement Class had the
14 right to opt-out. SA ¶ 85. The Summary Notice and Long Form Notice informed
15 each such person of his or her right to request exclusion from the Settlement Class
16 and not to be bound by the Settlement Agreement. *See* Exhibits C-E of 7/9/21 Smith
17 Decl. (ECF No. 174-2).

18 Any person who is included in the definition of the Settlement Class who did
19 not successfully opt out and who wished to object to the proposed Settlement was
20 required to, on or before an Opt-Out and Objection Deadline, mail or file with the
21 Court a written objection to the Settlement. SA ¶ 86.

22 C. Results Of Notice

23 An Email Notice or a Postcard Notice was successfully delivered to 441,236
24 Settlement Class Members. Montague Decl. ¶¶ 9, 11-12. Thus, well over half of the
25 roughly 800,000 identified Settlement Class Members received direct notice. Online
26 advertisements further generated another 9.6 million impressions. *Id.* ¶ 14.

27
28 ⁴ Less than 1% of notices sent by mail were unsuccessfully delivered. Montague Decl. ¶ 13.

1 Following the Opt-Out and Objection Deadline, RG/2 had received 5 requests
2 for exclusion from the settlement. *Id.* ¶ 15. RG/2 received no objections to the
3 Settlement. *Id.* ¶ 16. As of November 25, 2021, RG/2 had received 20,181 claim
4 forms. *Id.* ¶ 17.⁵ Plaintiffs note, however, that this number might increase slightly as
5 timely postmarked claim forms often arrive 10 or more days following a filing
6 deadline. *Id.* In addition, 5,579 Class Products were returned to Harbor Freight stores
7 from July 25, 2021 through November 30, 2021. *Id.* ¶ 18.

8 **III. LEGAL STANDARD**

9 Federal Rule of Civil Procedure Rule 23(e) requires court approval for class-
10 action settlements. Fed. R. Civ. P. 23(e). “When the parties reach a settlement
11 agreement before class certification, a court uses a two-step process to approve a
12 class-action settlement.” *Alvarez v. Sirius XM Radio Inc.*, 2021 WL 1234878 at *5
13 (C.D. Cal. Feb. 8, 2021) (Selna, J.) (citing *Staton v. Boeing Co.*, 327 F.3d 938, 952
14 (9th Cir. 2003)). “First, the court must certify the proposed settlement
15 class. Second, the court must determine whether the proposed settlement is
16 fundamentally fair, adequate, and reasonable.” *Id.* (internal citations omitted).

17 **IV. ARGUMENT**

18 **A. The Court Has Already Preliminary Certified The** 19 **Proposed Class**

20 The Court’s Preliminary Approval Order provisionally certified a Settlement
21 Class after concluding that each of the requirements under Rule 23(a) and (b)(3)
22 were satisfied. PA Order, at 13, ECF No. 179. No substantive changes have
23 occurred since that ruling, and, more importantly, no objections have challenged that
24 conclusion. The Court may therefore rely on the same rationale as explained in the

25 ⁵ By way of comparison, in *Alvarez*, the settlement class consisted “of approximately
26 964,000 individuals” and “Epiq had received 12,029 claim forms.” *Alvarez v. Sirius*
27 *XM Radio Inc.*, 2021 WL 1234878, at *1, *4 (C.D. Cal. Feb. 8, 2021) (Selna, J.).
28 This additionally weighs in support of granting final approval because this settlement
received significantly more claims despite a smaller class size.

1 preliminary approval order to find that class certification is appropriate under Rule
2 23(a) and (b) in connection with final approval. *See Alvarez*, 2021 WL 1234878, at
3 *5 (...for the reasons specified in its preliminary approval order, the Court certifies
4 the Settlement Class for final approval of the Settlement”); *Ochinero v. Ladera*
5 *Lending, Inc.*, 2021 WL 4460334, at *4 (C.D. Cal. July 19, 2021) (Selna, J.) (noting
6 on final approval that “[t]he Court has already certified the Settlement Class for
7 purposes of this Settlement Agreement.”).⁶

8 **B. The Fairness Factors Support Approval Of The**
9 **Settlement**

10 Under Rule 23(e)(2), if the proposed settlement would bind class members,
11 the Court may approve it only after a hearing and only on finding that it is fair,
12 reasonable, and adequate. To make this determination, the Court must consider the
13 following factors:

14 (A) the class representatives and class counsel have adequately represented the
15 class;

16 (B) the proposal was negotiated at arm’s length;

17 (C) the relief provided for the class is adequate, taking into account:

18 (i) the costs, risks, and delay of trial and appeal;

19 (ii) the effectiveness of any proposed method of distributing relief to the
20 class, including the method of processing class-member claims;

21 (iii) the terms of any proposed award of attorneys’ fees, including
22 timing of payment; and

23 (iv) any agreement required to be identified under Rule 23(e)(3); and

24 (D) the proposal treats class members equitably relative to each other.

25 Fed. R. Civ. P. 23(e)(2); *see also Alvarez*, 2021 WL 1234878, at *5.

26 _____
27 ⁶ Plaintiffs incorporate by reference their prior arguments regarding certification of
28 the Settlement Class, as set forth in the Motion for Preliminary Approval, rather than
repeating them here. *See* ECF No. 174-1 at 9:22-14:7.

1 Before the revisions to the Federal Rule of Civil Procedure 23(e), the Ninth
2 Circuit had developed its own list of factors to be considered. *See, e.g., In re*
3 *Bluetooth Headset Products Liability Litigation*, 654 F.3d 935, 964 (9th Cir. 2011)
4 (citing *Churchill Village, L.L.C. v. General Electric*, 361 F.3d 566, 575 (9th Cir.
5 2004)). “The revised Rule 23 ‘directs the parties to present [their] settlement to the
6 court in terms of [this new] shorter list of core concerns[.]’” *Alvarez*, 2021 WL
7 1234878, at *5 (quoting Fed. R. Civ. P. 23(e)(2), 2018 Advisory Committee Notes).
8 “The goal of amended Rule 23(e) is ... to focus the district court and the lawyers on
9 the core concerns of procedure and substance that should guide the decision whether
10 to approve the proposal.” *Id.* (brackets and internal quotations omitted).

11 1. Adequacy Of Representation

12 “Under Rule 23(e)(2)(A), the first factor to be considered is whether the class
13 representatives and class counsel have adequately represented the class. This
14 analysis includes ‘the nature and amount of discovery’ undertaken in the litigation.”
15 *Alvarez*, 2021 WL 1234878, at *5 (quoting Fed. R. Civ. P. 23(e)(2)(A), 2018
16 Advisory Committee Notes).

17 Here, Class Counsel are experienced in class action litigation, including cases
18 regarding unfair business practice claims and false advertising claims. Smith Fee
19 Decl., ECF No. 183-4, ¶¶ 16-17 and Ex. K (Firm Resume). As this Court found in
20 its Preliminary Approval Order:

21 There certainly has been adequate representation by the class
22 representatives and class counsel. This case has been extensively
23 litigated, with the complaint having been filed more than two years
24 ago. Class Counsel have analyzed thousands of pages of documents,
25 engaged in multiple fact and expert witness depositions, and litigated
26 multiple motions to compel. The Parties have also litigated a motion
for class certification. Kaupelis and Ortega have also each sat for a
deposition. This factor therefore weighs in favor of approval.

27 PA Order, at 14-15, ECF No. 179. This same analysis supports final approval of the
28 Settlement.

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2. Negotiated At Arm’s Length

The second Rule 23(e)(2) factor asks the Court to confirm that the proposed settlement was negotiated at arm’s length. Fed. R. Civ. P. 23(e)(2)(B). “As with the preceding factor, this can be “described as [a] ‘procedural’ concern[], looking to the conduct of the litigation and of the negotiations leading up to the proposed settlement.” *Alvarez*, 2021 WL 1234878, at *6 (quoting Fed. R. Civ. P. 23(e)(2), 2018 Advisory Committee Notes). “The involvement of a neutral or court-affiliated mediator or facilitator in settlement negotiations may bear on whether those negotiations were conducted in a manner that would protect and further the class interests.” *Id.* (internal brackets and quotations omitted).

Here, this Court previously determined in its Preliminary Approval Order “that the Settlement Agreement has been negotiated at arm’s length” and that “[t]he Court is satisfied that the conduct of the negotiations was appropriate to protect the Class’s interests.” PA Order, p.15. As noted in the Court’s order, the parties benefited from a mediation before Magistrate Judge McCormick. *Id.*; *see also* July 9, 2021 Smith Decl., ¶ 4, ECF No. 174-2. Further, “[a]ttorneys’ fees were negotiated only after agreement was reached on all material terms of the settlement.” *Id.*; *see also Alvarez*, 2021 WL 1234878, at *6 (citing same fact when concluding the negotiations occurred at arm’s length). These factors support the conclusion that the Settlement was the result of an arm’s length process.

3. Adequacy of Relief Provided For The Class

“The third factor the Court considers is whether ‘the relief provided for the class is adequate, taking in to account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorneys’ fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3).” *Alvarez*, 2021 WL

1 1234878, at *6 (quoting Fed. R. Civ. P. 23(e)(2)(C)). Under this factor, the relief “to
2 class members is a central concern.” *Id.* (internal quotation omitted).

3 As this Court and other courts hold, “the absence of any objections supports
4 the conclusion that the settlement is adequate.” *Hart v. Marriott Int’l, Inc.*, 2019 WL
5 7940685, at *7 (C.D. Cal. June 24, 2019) (Selna, J.); *Ybarra v. Bd. of Trustees of*
6 *Supplemental Income Tr. Fund*, 2019 WL 12536179, at *6 (C.D. Cal. Sept. 30, 2019)
7 (Selna, J.) (“the absence of any objections weighs in favor of final approval.”). As
8 another court in this District has explained, “the absence of a large number of
9 objections to a proposed class action settlement raises a strong presumption that the
10 terms of a proposed class settlement action are favorable to the class members. *Nat’l*
11 *Rural Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 529 (C.D. Cal. 2004);
12 *accord, e.g., Arreola*, 2021 WL 4220630, at *5.

13 Here, there have been no objections to the settlement, and only five
14 exclusions. Montague Decl. ¶¶ 15-16. Given that there were approximately 800,000
15 class members, the absence of objections and the extraordinarily low number of
16 exclusions furnishes strong proof that the Settlement is adequate. As set forth below,
17 the Settlement is also adequate under the more particular factors outlined in Rule
18 23(e)(2)(C).

19 **a. Costs, Risks, And Delay Of Trial And**
20 **Appeal**

21 “A[] central concern [when evaluating a proposed class action settlement] ...
22 relate[s] to the cost and risk involved in pursuing a litigated outcome.” *Alvarez*,
23 2021 WL 1234878, at *8 (quoting Fed. R. Civ. P. 23(e), 2018 Advisory Committee
24 Notes). “In evaluating this factor, the Court ‘must stop short of the detailed and
25 thorough investigation that it would undertake if it were actually trying the case[.]’”
26 *Id.* (quoting *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 130 (2008)).
27 “In the context of a settlement ... the test is not the maximum amount plaintiffs might
28

1 have obtained at trial on the complaint, but rather whether the settlement is
2 reasonable under all of the circumstances.” *Id.* (internal quotation omitted).

3 Here, this factor clearly favors Settlement when balancing the substantial
4 Settlement benefits obtained against the risk of losing everything on summary
5 judgment or trial. For Settlement Class Members who either still have their Class
6 Products, or who have proof of purchase or proof of destruction, the Settlement
7 benefit of a full refund or replacement is probably close to the most that Plaintiff
8 could realistically hope to achieve at trial. And while Settlement Class Members
9 without the product, proof of purchase, or proof of destruction are entitled to less,
10 this Court noted in its Preliminary Approval Order that it is “justifiable” for those
11 Settlement Class Members to receive less given likely difficulties they may have
12 proving that they did in fact purchase the Class Products.” PA Order, p. 19, ECF No.
13 179.

14 In contrast, moving forward on summary judgment and trial would have
15 created substantial risk of obtaining *nothing* for the Settlement Class, as well as
16 consumed substantial resources from the Court and the parties. Moreover, absent
17 settlement, Defendant would likely have taken any opportunity it could to move to
18 decertify the class, thereby creating more risk for class members. In short, given the
19 obstacles and inherent risks Plaintiffs faced with respect to their claims, the
20 substantial benefits of the Settlement Agreement supports approval.

21 **b. Effectiveness of Proposed Method Of Relief**
22 **Distribution**

23 “Next, the Court must consider ‘the effectiveness of any proposed method of
24 distributing relief to the class, including the method of processing class-member
25 claims.’” *Alvarez*, 2021 WL 1234878 at *8 (quoting Fed. R. Civ. P. 23(e)(2)(C)).

26 “‘Often it will be important for the court to scrutinize the method of claims
27 processing to ensure that it facilitates filing legitimate claims. A claims processing
28 method should deter or defeat unjustified claims, but the court should be alert to

1 whether the claims process is unduly demanding.” *Id.* (quoting Fed. R. Civ. P.
2 23(e), 2018 Advisory Committee Notes) (internal citation omitted).

3 Here, there were two methods for obtaining relief. First, Settlement Class
4 Members who still have their Class Products could bring them into one of Harbor
5 Freight Tools nearly 1,200 stores. Approximately 20% of class members who
6 sought relief under the Settlement utilized this method for obtaining a settlement
7 benefit. *See* Montague Decl. ¶ 18 (noting that “5,579 Class Products [were] returned
8 to Harbor Freight stores from July 25, 2021 through November 30, 2021”).
9 Alternatively, class members could log onto the Settlement Website to submit a
10 claim form there, or the Settlement Class Member may print the claim form from
11 that website and mail a filled-in copy to the Settlement Administrator if the Class
12 Member prefers. *See* Settlement Agreement, ¶¶ 70, 72-73 (ECF NO. 174-2). As this
13 Court held in *Alvarez*, “[t]hese facts speak to how the process was not overly
14 demanding and provided a means for deterring unjustified claims.” *Alvarez*, 2021
15 WL 1234878, at *8. The Court therefore should conclude that the proposed method
16 of distributing relief to the Class is effective.

17 **c. Proposed Attorneys’ Fees Award**

18 Third, the Court must consider “the terms of any proposed award of attorneys’
19 fees, including timing of payment.” Fed. R. Civ. P. 23(e)(2)(c). Class Counsel seeks
20 \$665,000 in attorneys’ fees and expenses. This amount is reasonable relative to the
21 benefits of the Settlement for Settlement Class Members, for all the reasons stated in
22 Plaintiffs’ October 25, 2021 Fee Brief. *See* ECF No. 183-1. No class member has
23 objected to the request for attorneys’ fees or service awards.

24 **d. Agreement Identification Requirement**

25 The Court must also evaluate any agreement made in connection with the
26 proposed Settlement. *See* Fed. R. Civ. P. 23(e)(2)(C)(iv), (e)(3). Here, the
27 Settlement Agreement before this Court is the only agreement: “[t]here are no
28 undisclosed side agreements between the parties or with third parties.” Aug. 2, 2021

1 Smith Decl., ¶ 2 (ECF No. 177-1). “Thus, the Court need not evaluate any additional
2 agreements outside of the evaluation it makes of the Settlement Agreement.”
3 *Alvarez*, 2021 WL 1234878, at *8.

4 **4. Equitable Treatment of Class Members**

5 The final Rule 23(e)(2) factor turns on whether the proposed settlement “treats
6 class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(D).
7 ““Matters of concern could include whether the apportionment of relief among class
8 members takes appropriate account of differences among their claims, and whether
9 the scope of the release may affect class members in different ways that bear on the
10 apportionment of relief.”” *Ochinero*, 2021 WL 4460334, at *6 (quoting
11 Fed. R. Civ. P. 23(e)(2)(D), 2018 Advisory Committee Notes).

12 The Settlement distinguishes between (1) Settlement Class Members who still
13 possess Class Products and are willing and able to return their products to a Harbor
14 Freight store; (2) Settlement Class Members who no longer possess a Class Product,
15 but who have proof of purchase or proof of destruction; and (3) Settlement Class
16 Members who no longer have their Class Product, and who have neither proof of
17 purchase or proof of destruction. *See* Settlement Agreement, ¶¶ 45-48 (ECF NO.
18 174-2). Settlement Class Members in the first two groups are eligible to receive
19 either \$50 cash, a \$50 Harbor Freight gift card, or a replacement chainsaw valued at
20 approximately \$50. *See id.* In contrast, Settlement Class Members in the third group
21 are only entitled to either \$10 cash or a \$25 Harbor Freight gift card. *See id.* at ¶ 48.

22 In its Preliminary Approval Order, the Court held that the Settlement
23 Agreement treats each group of the Settlement Class Members equitably. PA Order,
24 p. 19. Nothing has changed that warrants reconsideration of that conclusion. In
25 particular, no Settlement Class Member has objected to the different relief afforded
26 to the different groups.

C. The Proposed Settlement Class Meets The Notice Requirements Under Rule 23(c)(2)(B)

1 Under Rule 23(c)(2)(B), “for any class certified under Rule 23(b)(3)—or upon
2 ordering notice under Rule 23(e)(1) to a class proposed to be certified for purposes
3 of settlement under Rule 23(b)(3)—the court must direct to class members the best
4 notice that is practicable under the circumstances, including individual notice to all
5 members who can be identified through reasonable effort.” Fed. R. Civ. P.
6 23(c)(2)(B). Rule 23(c)(2)(B) further states that the notice may be made by one of
7 the following: United States mail, electronic means, or another type of appropriate
8 means. *Id.* “The notice must clearly and concisely state in plain, easily understood
9 language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the
10 class claims, issues, or defenses; (iv) that a class member may enter an appearance
11 through an attorney if the member so desires; (v) that the court will exclude from the
12 class any member who requests exclusion; (vi) the time and manner for requesting
13 exclusion; and (vii) the binding effect of a class judgment on members under Rule
14 23(c)(3).” *Id.*; *see also Alvarez*, 2021 WL 1234878, at *9 (addressing notice
15 requirements).

16
17 This Court previously approved the plan for sending notice to potential Class
18 Members, but required certain corrections to errors identified in the Long Form
19 Notice. PA Order, p. 20-21. Those corrections were promptly made. *See*
20 Supplemental Submission Regarding Court-Ordered Changes to the Long Form
21 Notice, ECF No. 178. The notice and results are detailed in Sections II(B)(6) and
22 (C) above.

23 “Notice is satisfactory if it generally describes the terms of the settlement in
24 sufficient detail to alert those with adverse viewpoints to investigate and to come
25 forward and be heard.” *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 962 (9th
26 Cir. 2009) (internal quotation marks and citation omitted). “Settlement notices are
27 supposed to present information about a proposed settlement neutrally, simply, and
28

1 understandably[.]” *Id.* “That standard does not require detailed analysis of the
2 statutes or causes of action forming the basis for the plaintiff class's claims, and it
3 does not require an estimate of the potential value of those claims.” *Lane v.*
4 *Facebook, Inc.*, 696 F.3d 811, 826 (9th Cir. 2012). The notice previously approved
5 by the Court and implemented by RG2 satisfies this standard. *See* PA Order at 19-20.
6 Accordingly, the Court should find that the notice to the Settlement Class was fair,
7 adequate, and reasonable.

8 **V. CONCLUSION**

9 For the reasons set forth above, Plaintiffs respectfully request that the Court
10 grant their unopposed Motion for Final Approval of the Settlement. A Proposed
11 Order granting final approval and certifying the Settlement Class is submitted
12 herewith.

13 Dated: December 13, 2021

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