

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

**1.1 Parties.** This Settlement Agreement is entered into by and between John Moore (“Moore”) and Big Lots Stores, Inc. (“Big Lots”), with Moore and Big Lots each individually referred to as a “Party” and collectively as the “Parties.” Moore is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances in consumer products. Big Lots employs ten or more individuals, and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”).

**1.2 General Allegations.** Moore alleges that Big Lots manufactures, imports, sells, or distributes for sale in the State of California, mugs with exterior designs containing lead without first providing the clear and reasonable health hazard warning required by Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

**1.3 Product Description.** The products covered by this Settlement Agreement are mugs with exterior designs that Moore alleges contain lead, and that are sold, or distributed for sale in California by Big Lots, specifically, this Settlement Agreement is limited to the *Larry The Cable Guy Git-R-Done Mug Set (UPC# 8 10763 00251 3)* (collectively, “Products”).

**1.4 Notice of Violation.** On July 5, 2013, Moore served Big Lots and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Big Lots violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to lead. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

**1.5 No Admission.** Big Lots denies the material, factual, and legal allegations made in the Notice, and maintains that all of the products it has sold in California, including the Products, have been, and are, in compliance with all laws. Nonetheless, Big Lots has withdrawn

the Products from sale and will not sell the Products in California in the future unless and until it is confident that the Products are Reformulated Products in compliance with Section 2.1. Nothing in this Settlement Agreement shall be construed as an admission by Big Lots of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Big Lots of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Big Lots. This Section shall not, however, diminish or otherwise affect Big Lots' obligations, responsibilities, and duties under this Settlement Agreement.

**1.6 Effective Date.** For purposes of this Settlement Agreement, the term "Effective Date" shall mean December 16, 2013.

## **2. INJUNCTIVE RELIEF: REFORMULATION**

**2.1 Reformulated Products.** Commencing on January 15, 2014 and continuing thereafter, Big Lots shall only manufacture, ship, sell, or distribute for sale in California, Reformulated Products. For purposes of this Settlement Agreement, "Reformulated Products" are Products limited to the *Larry The Cable Guy Git-R-Done Mug Set (UPC# 8 10763 00251 3)* that contain no more than 90 parts per million ("ppm") (0.09%) in any exterior decorations analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3050B and 6010B, or equivalent methodologies utilized by state and federal agencies to determine lead content in a solid substance.

## **3. MONETARY SETTLEMENT TERMS**

**3.1 Civil Penalty Payments.** Pursuant to Health and Safety Code section 25249.7(b), Big Lots shall pay \$12,000 in civil penalties. This amount reflects a penalty credit of \$24,000 agreed to by Moore after receiving declarations and other evidence from Big Lots indicating that Big Lots, upon receiving the Notice, responded promptly to address Moore's allegations and isolated all unsold inventory until a determination could be made based on the terms of this Settlement Agreement, as to the handling of the Products. Thereafter, Moore received further evidence to his satisfaction, indicating that the unsold inventory would be destroyed in

accordance with all applicable laws.

The penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty paid to Moore. Within five days of the Effective Date, Big Lots shall provide two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$8,000; and (b) “The Chanler Group in Trust for John Moore” in the amount of \$4,000.

**3.2 Attorney Fees and Costs.** The Parties reached an accord on the compensation due to Moore and his counsel under Code of Civil Procedure section 1021.5 for all work performed in this matter. Big Lots agrees to pay \$21,500 for all fees and costs incurred investigating, bringing this matter to the attention of Big Lots’ management, and negotiating a settlement in the public interest.

**3.3 Payment Procedures.** All payments owed under this Settlement Agreement are due within fifteen (15) days of the Effective Date.

**3.3.1 Payment Address for Moore.** All payments to Moore and The Chanler Group under this Settlement Agreement shall be delivered to the following address:

The Chanler Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

**3.3.2 Payment Addresses for OEHHA.** All payments to OEHHA under this Settlement Agreement shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) to one of the following addresses, as appropriate:

For United States Postal Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

For Non-U.S. Postal Delivery or Courier:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95812-4010

**3.3.3 Copy of Payments to OEHHA.** Big Lots agrees to provide Moore's counsel with a copy of the checks to OEHHA simultaneous with payment, to be delivered to the address provided in Section 3.3.1.

**3.3.4 Tax Documentation.** Big Lots agrees to provide a completed IRS 1099 form for its payments to each of the following payees under this Settlement Agreement:

- (a) "John Moore" whose address and tax identification number shall be provided after this Settlement Agreement is fully executed by the Parties;
- (b) "The Chanler Group" (EIN: 94-3171522) at the address provided in section 3.3.1; and
- (c) "Office of Environmental Health Hazard Assessment" (EIN: 68-0284486), 1001 I Street, Sacramento, CA 95814.

**4. CLAIMS COVERED AND RELEASED**

**4.1 Moore's Release of Big Lots.** This Settlement Agreement is a full, final, and binding resolution between Moore and Big Lots of any violation of Proposition 65 that was or could have been asserted by Moore, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Big Lots, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Big Lots directly or indirectly distributes or sells the Products, including, without limitation, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on unwarned exposures to lead from Products manufactured, sold or distributed for sale in California by Big Lots prior to the Effective Date.

In further consideration of the promises and agreements herein contained, Moore, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that he may have against Big Lots and Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to lead from Products manufactured, sold, or distributed for sale in California by Big Lots prior to the Effective Date.

**4.2 Big Lots' Release of Moore.** Big Lots, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have against Moore and his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Moore and his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

**5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

**6. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the state of California and apply within the state of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Big Lots may provide written notice to Moore of any asserted change in the law, and have no further

obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Products are so affected.

**7. NOTICE**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Big Lots Stores, Inc.:

Chadwick P. Reynolds, Esq.  
Big Lots Stores, Inc.  
300 Phillipi Road  
Columbus, OH 43228

With a copy to:

Carol Brophy, Esq.  
Sedgwick LLP  
333 Bush Street, 30<sup>th</sup> Floor  
San Francisco, CA 94104

For Moore:

The Chanler Group  
Attn: Proposition 65 Coordinator  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

Any Party may, from time to time, specify in writing to the other Party a change of address to which all notices and other communications shall be sent.

**8. COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts, and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

9. **POST-EXECUTION ACTIVITIES**

Moore agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

10. **MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties.

11. **AUTHORIZATION**

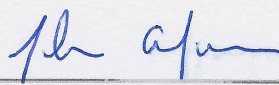
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

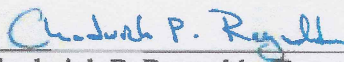
**AGREED TO:**

**AGREED TO:**

Date: DECEMBER 19, 2013

Date: Dec. 18, 2013

By:   
JOHN MOORE

By:   
Chadwick P. Reynolds, Esq.  
Vice President, Deputy General Counsel  
and Assistant Corporate Secretary  
BIG LOTS STORES, INC.

