

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Paul Wozniak (“Wozniak”), Big Lots, Inc. and Big Lots Stores, Inc. (collectively “Big Lots”), with Wozniak and Big Lots each individually referred to as a “Party” and collectively as the “Parties.” Wozniak is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances used in consumer products. Big Lots asserts and represents that it is a retailer and is not the manufacturer of the Products. Wozniak alleges that Big Lots employ ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Wozniak alleges that Big Lots, sells, and/or distributes for sale in California, nylon cooking utensils containing 4,4'-methylenedianiline (“4,4'-MDA”). 4,4'-MDA is listed pursuant to Proposition 65 as a chemical known to cause cancer. Wozniak alleges that Big Lots failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to 4,4'-MDA from nylon cooking utensils.

### 1.3 Product Description

The products that are covered by this Settlement Agreement are nylon cooking utensils containing 4,4'-MDA limited to: *Great Gatherings 5 Pc Mini Nylon Tools, Item#UMI2012006, V#5001869, #330 07 001, #145 810057837 5 083; Great Gatherings 6 Pc Nylon Kitchen Tools Set (Ladle), ITEM#ST-011, V#5001936, #330 07 001, #145 810057814 4 123; Great Gatherings 6 Piece Kitchen Tool Set (Ladle), ITEM#ST-011, V#5001936, #33007 094, #810057814, UPC #4 81005 78140 6; Great Gatherings 14 pc Cookware Set (Ladle), ITEM # VLMXG1418, V#5002226, UPC #4 33001 68740 4; and*

*Master Cuisine Nylon Ladle, ITEM# ST-015A, V# 5001936, #330 07 001, #145 810155311 2 024*, manufactured, sold or distributed for sale in California by Big Lots ("Products").

#### **1.4 Notices of Violation**

On or about May 21, 2014, Wozniak served Big Lots, and certain requisite public enforcement agencies with a 60 Day Notice of Violation, (Notice). On or about June 3, 2015, Wozniak served Big Lots, and certain requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation ("Supplemental Notice"), alleging that Big Lots violated Proposition 65 when it failed to warn its customers and consumers in California that its Products expose users to 4,4'-MDA. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notices.

#### **1.5 No Admission**

Big Lots denies the material, factual, and legal allegations contained in the Notice and maintain that all of the products that it has sold and distributed in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Big Lots of any fact, finding, conclusion, 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, issue of law, or violation of law, such being specifically denied by Big Lots. However, this Section shall not 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 the date the Settlement Agreement is signed by all Parties.

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

### **2.1 Reformulation Commitment**

Commencing on the Effective Date, and continuing thereafter, Big Lots shall only sell, or distribute for sale, in California “Reformulated Products.” For purposes of this Settlement Agreement, Reformulated Products shall:

- i.* contain less than or equal to 200 parts per million (“ppm”) 4,4’-MDA by weight using validated preparation and analytical methods used to detect the presence of 4,4’-MDA in a solid substance; and
- ii.* produce a leach result of 10 ug/L or less 4,4’-MDA by digesting the food contact end of the product into 100 ml of 3% acetic acid de-ionized water for 2 hours at 100°C, replenishing the acetic acid solution as needed to maintain 100 ml, and analyzing the leachate using a validated method to detect the presence of 4,4’-MDA in a liquid.

The testing shall be conducted in an accredited laboratory with qualified personnel. All analytical reports must contain quality control data that verify the laboratory’s performance for the results in each analytical report.

### **2.2 Grace Period for Existing Inventory of Products**

Wozniak agrees that Big Lots may continue to sell and offer for sale in California those Products currently in Big Lots’ existing inventory labeled with a clear and reasonable warning pursuant to this Section. Big Lots further agrees that the warning will be prominently placed with such conspicuousness when compared with other words, statements, designs or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning affixed to the packaging, label, tag, or directly to a Product sold in California and containing the following statement:

**WARNING:** This product contains a chemical known to  
the State of California to cause cancer.

Big Lots shall refrain from selling in California Products with warning labels from its existing inventory after August 15, 2016. After this date, Big Lots shall only sell Reformulated Products in California pursuant to Section 2.1 above, whether or not Big Lots' existing inventory has been emptied.

**3. MONETARY SETTLEMENT TERMS**

**3.1 Civil Penalty Payments**

Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in this Settlement Agreement, within fourteen days of the Effective Date Big Lots shall pay \$15,000 in civil penalties. The civil penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment ("OEHHA") by Wozniak. Big Lots shall write a check to "Paul Wozniak, Client Trust Account," and remit it to the address provided in Section 3.3 below.

**3.2 Attorneys' Fees and Costs**

The Parties reached an accord on the compensation due to Wozniak and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, Big Lots agree to pay \$25,000 to Wozniak and his counsel 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. Big Lots' payment shall be due within fourteen days of the Effective Date, and delivered to the address in Section 3.3 in the form of a check payable to "The Chanler Group."

### **3.3 Payment Address**

All payments required by 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

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 Wozniak's Release of Big Lots**

This Settlement Agreement is a full, final and binding resolution between Wozniak, as an individual and not on behalf of the public, and Big Lots, of any violation of Proposition 65 that was or could have been asserted by Wozniak on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against Big Lots, their parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Big Lots directly or indirectly distribute or sell Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on their failure to warn about alleged exposures to 4,4'-MDA contained in the Products that were distributed, sold and/or offered for sale by Big Lots in California before the Effective Date, as alleged in the notice of violation.

In further consideration of the promises and agreements herein contained, Wozniak as an individual and not on behalf of the public, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all Wozniak's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Wozniak may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to 4,4'-MDA in the Products, as alleged in the notice of violation,

distributed, sold and/or offered for sale by Big Lots, before the Effective Date (collectively "claims"), against Big Lots and Releasees.

The releases provided by Wozniak under this Settlement Agreement are provided solely on Wozniak's behalf and are not releases on behalf of the public.

#### **4.2 Big Lots' Release of Wozniak**

Big Lots, on their own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Wozniak and his attorneys and other representatives, for any and all actions taken or statements made by Wozniak 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 of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining 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 otherwise rendered inapplicable by reason of law generally, as to Big Lots specifically as a result of a statutory exemption, or as to the Products, then Big Lots may provide written notice to Wozniak of any asserted change in the law, or its applicability to Big Lots or the Products, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, Big Lots or the Products are so affected.

#### **7. NOTICE**

Unless specified herein, all correspondence and notice 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:

**Big Lots**

David Campisi, CEO  
Big Lots, Inc. and  
Big Lots Stores, Inc.  
P.O. Box 28512  
Columbus, OH 43228

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

**Wozniak**

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

Any Party may, from time to time, specify in writing to the other 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. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Wozniak and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

**10. MODIFICATION**

This Settlement Agreement may be modified only by 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:**

Date: 2/10/2016

By: 

**PAUL WOZNIAK**

**AGREED TO:**

Date: 2/13/16

By: 

**Bob LeBrun, Vice President  
BIG LOTS, INC. and  
BIG LOTS STORES, INC.**