
1. INTRODUCTION

1.1 The Parties

This Private Settlement Agreement (hereinafter "Private Settlement") is hereby entered into by and between Kingpun Cheng, as an individual, (hereinafter "Cheng") and Big Lots Stores, Inc. (hereafter "Big Lots"). Big Lots and Cheng shall be collectively referred to as the "Parties" and each of them as a "Party." Cheng is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products.

1.2 Allegations

Cheng alleges that Big Lots sold in the State of California Aprima Cotton Rich 6 Piece Queen Sheet Set 800 Thread Count UPC481035637100, Just Home 3-Piece Twin Sheet Set RN #71159 UPC481035879203, and AutoMatics 12V Auto Air Compressor UPC481009168401; each containing DEHP (Di[2--Ethylhexyl] Phthalate), and that such sales have not been accompanied by the requisite Proposition 65 warnings. DEHP (Di[2--Ethylhexyl] Phthalate) is listed under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects and reproductive toxicity. Cheng has cited the Products as examples of the cotton rich 6-piece queen sheet set zipper containers, 3-piece twin sheet sets zipper containers, and auto air compressors that are the subjects of his allegations.

1.3 Product Description

The products that are covered by this Private Settlement are defined as Aprima Cotton Rich 6 Piece Queen Sheet Set 800 Thread Count UPC481035637100, Just Home 3-Piece Twin Sheet Set RN #71159 UPC481035879203, and AutoMatics 12V Auto Air Compressor UPC481009168401 sold by Big Lots in California. All such items shall be collectively referred to herein as the "Products."

1.4 Notices of Violation

On or about July 3, 2018 and August 23, 2018, Cheng served Big Lots and various public enforcement agencies with various documents entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notices"), alleging that Big Lots was in violation of Proposition 65 for failing to warn consumers and customers that the Products exposed users in California to DEHP (Di[2--Ethylhexyl] Phthalate).

No public enforcer diligently prosecuted the claims threatened in any of the Notices within sixty days plus service time after service of the Notices by Cheng.

For purposes of this Private Settlement only, the Parties stipulate that in the event of enforcement of this Private Settlement or a dispute arises regarding this Private Settlement, the Superior Court of California, County of San Diego has proper jurisdiction over Big Lots as to the

allegations contained in the 60 day notices served on or about July 3, 2018, and August 23, 2018, and that venue is proper in the County of San Diego.

Nothing in this Private Settlement nor compliance with its terms, shall constitute or be construed, considered, offered or admitted as evidence of an admission or evidence of fault, wrongdoing, or liability by Big Lots, its officers, directors, employees, or parents, subsidiaries or affiliated corporations, in any administrative or judicial proceeding or litigation in any court, agency or forum of any fact, finding, issue of law, or violation of law; nor shall compliance with this Private Settlement constitute or be construed as an admission by Big Lots of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Big Lots under this Private Settlement.

1.6 Effective Date

For purposes of this Private Settlement, the term "Effective Date" shall mean the date this Private Settlement is signed by all parties.

2. INJUNCTIVE RELIEF

Commencing on the Effective Date, Big Lots agrees to cease selling and no longer ship for sale, sell, or offer for sale in California any of the Products that are manufactured, distributed or sold by Big Lots containing more than 0.1% (1,000 parts per million, or "1,000 ppm") DEHP (Di[2--Ethylhexyl] Phthalate).

2.1 **Warning Alternative.** As an alternative to ceasing to offer for sale, the Products, commencing on the Effective Date, Products that Big Lots ships for sale, sells or offers for sale in California shall be accompanied by a warning as described in Section 2.2 below.

2.2 **Warnings.** Whenever a clear and reasonable warning is required under Section 2.1 for Products offered for sale in the State of California, it shall state one of the warnings described in Section 2.3 in such a conspicuous and prominent manner as to be likely to be read and understood by the consumer prior to or at the time of the sale or purchase.

2.3 The Parties agree that any of the following warnings shall constitute a compliant warning for DEHP in the Products:

(a) for AutoMatics 12V Auto Air Compressor UPC 481009168401, the text, "**WARNING:** This product can expose you to chemicals including Di(2-ethylhexyl)phthalate (DEHP), which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov." accompanied by and placed to the right of a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline sized to be no smaller than the word, "WARNING" as provided by regulations adopted on or about August 30, 2016;

OR

(b) for Aprima Cotton Rich 6 Piece Queen Sheet Set 800 Thread Count UPC481035637100 and Just Home 3-Piece Twin Sheet Set UPC481035879203, the text "**WARNING:** This product's bag can expose you to chemicals including Di(2-ethylhexyl)phthalate (DEHP), which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov." accompanied by and placed to the right of a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline sized to be no smaller than the word, "WARNING" as provided by regulations adopted on or about August 30, 2016;

OR

(c) the text "**WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov/.](http://www.P65Warnings.ca.gov/)," accompanied by and placed to the right of a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline sized to be no smaller than the word, "WARNING" as provided by regulations adopted on or about August 30, 2016.

The triangular warning symbol specified in Section 2.3 shall be in yellow with a black exclamation mark; *provided however*, the symbol may be printed in black and white if the Product label is not printed against a yellow background.

2.4 Point of Sale Warnings. Big Lots may also provide a point-of-sale warning. Such warning shall be presented in any of the following forms:

(a) In-store sales. Customers purchasing Products directly from Big Lots' California retail stores will receive the Proposition 65 warnings set forth in Section above via register purchase display and on customers' printed receipts.

(b) Internet sales. California Customers purchasing Products via Big Lots' internet website will receive the Proposition 65 warnings set forth in Section above via the "Specifications" section of the Product page.

Plaintiff agrees any such warnings comply with both Proposition 65 and the terms of this Settlement Agreement

2.5 The Parties agree that the specifications for Compliant Warnings in this Settlement Agreement comply with Proposition 65 and its regulations as of the date of this Settlement Agreement, and with regulations adopted on or about August 30, 2016, and which became effective on August 30, 2018.

2.6 If modifications or amendments to Proposition 65 or its regulations after the Effective Date are inconsistent with, or provide warning specifications or options different from, the specifications in this Settlement Agreement, Defendant may modify the content and delivery methods of its warnings to conform to the modified or amended provisions of Proposition 65 or its regulations.

3. PAYMENTS PURSUANT TO HEALTH & SAFETY CODE §25249.7(b)

With regard to all claims that have been raised or which could be raised with respect to the alleged failure to warn pursuant to Proposition 65 with regard to DEHP (Di[2--Ethylhexyl] Phthalate) in the Products and taking into consideration the prompt and cooperative manner with which Big Lots has taken in correcting the alleged violation; Big Lots shall pay a civil penalty of \$800.00 pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to Cheng, as provided by California Health & Safety Code § 25249.12(d) and the instructions directly below.

Big Lots shall issue two separate checks for the penalty payment: (a) one check made payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of the total penalty (i.e., \$600.00); and (b) one check in an amount representing 25% of the total penalty (i.e., \$200.00) made payable directly to Cheng. Big Lots shall mail these payments within ten (10) business days after the Effective Date at which time such payments shall be mailed to the following addresses respectively:

For United States Postal Delivery to OEHHA:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
PO Box 4010, MS #19B
Sacramento, CA 95812-4010

For Non-United States Postal Delivery to OEHHA:

Mike Gyurics
Office of Environmental Health Hazard Assessment
Fiscal Operations
1001 "I" Street
Mail Stop 12-B
Sacramento, CA 95814

For Delivery of Mr. Cheng's portion of the civil penalty payment:

Mr. Kingpun Cheng
C/O Sy and Smith, PC
11622 El Camino Real, Suite 100
San Diego, CA 92130

4. REIMBURSEMENT OF FEES AND COSTS

The parties reached an accord on the compensation due to Cheng and his counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Big Lots shall reimburse Cheng's counsel for fees and costs incurred as a result of investigating, bringing this

matter to Big Lots' attention, and negotiating a settlement in the public interest. Big Lots shall pay Cheng's counsel \$15,500.00 for all attorneys' fees, expert and investigation fees and related costs associated with this matter and the Notice. Big Lots shall send a check payable to "Sy and Smith, PC" within ten (10) business days of the Effective Date to Sy and Smith, PC, 11622 El Camino Real, Suite 100, San Diego, CA 92130.

5. RELEASE OF ALL CLAIMS

5.1 Release of Big Lots

Cheng, on behalf of himself, his past and current agents, representatives, attorneys, and successors and/or assignees, releases Big Lots and any of its downstream or upstream distributors, wholesalers, licensors, licensees, auctioneers, retailers, manufacturers, their parent, and all subsidiaries and affiliates thereof and their respective employees, agents, and assigns, affiliates and subsidiaries, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees") from all claims for violations of Proposition 65 up through the Effective Date based on exposure to DEHP from the Products as set forth in the Notices of Violation. Compliance with the terms of this Private Settlement constitutes compliance with Proposition 65 with respect to exposures to DEHP (Di[2--Ethylhexyl] Phthalate) from the Products.

In addition to the foregoing, Cheng, on behalf of himself, his past and current agents, representatives, attorneys, and successors and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases any other claims that he could make against Big Lots or the Releasees arising prior to the Effective Date with respect to violations of Proposition 65 based upon the Products. With respect to the foregoing waivers and releases in this paragraph, Cheng hereby specifically waives any and all rights and benefits which he now has, or in the future may have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which provides as follows:

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

5.2 Big Lots Release of Cheng

Big Lots waives any and all claims against Cheng, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Cheng and his attorneys and other representatives in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter.

6. CONFIDENTIALITY AND NON-DISPARAGEMENT

The Parties agree to refrain from taking action or making statements, written, oral or through any form of social media, which disparage or defame the goodwill or reputation of the other Party.

7. SEVERABILITY AND MERGER

If, subsequent to the execution of this Private Settlement, any of the provisions of this document are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

This Private Settlement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

8. GOVERNING LAW

The terms of this Private Settlement shall be governed by the laws of 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 shall have no further obligations pursuant to this Private Settlement with respect to the products to the extent the Products are so affected.

9. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Private Settlement shall be in writing and personally delivered or sent by: electronic mail and either (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

For Big Lots:

Carol Brophy
Steptoe & Johnson LLP
1 Market Street
Steuart Tower, Suite 1800
San Francisco, CA 94105

For Cheng:

Parker A. Smith
Sy and Smith, PC
11622 El Camino Real, Suite 100
San Diego, CA 92130

Any party, from time to time, may specify in writing by the means set forth above to the other party a change of address to which all notices and other communications shall be sent.

10. COUNTERPARTS; FACSIMILE SIGNATURES; BINDING EFFECT

This Private Settlement may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. This Private Settlement shall apply to, be binding upon, and inure to the benefit of, Cheng, Big Lots and the Releasees identified above.

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Cheng agrees to comply with the requirements set forth in California Health & Safety Code §25249.7(f).

12. MODIFICATION

This Private Settlement may be modified only by further written agreement of the Parties.

13. ATTORNEY'S FEES

13.1 A Party who unsuccessfully brings or contests an action arising out of this Private Settlement shall be required to pay the prevailing Party's reasonable attorney's fees and costs.

14. AUTHORIZATION

The undersigned are authorized to execute this Private Settlement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this document and certifies that he or she is fully authorized by the Party he or she represents to execute the Private Settlement on behalf of the Party and legally bind that Party.

IT IS HEREBY AGREED TO:

By: Kingpun Cheng
Kingpun Cheng

Date: 2019-9-26

IT IS HEREBY AGREED TO:

By: Kevin Kuehl
On Behalf of: Big Lots, Inc.
Title: VP DMM

Date: 9/25/19

A circular stamp containing a stylized letter 'W' in the center. To the right of the stamp, the date '9/20/19' is handwritten.