SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Kim Embry ("Embry"), on the one hand, and Big Lots Stores, Inc. ("Big Lots"), on the other hand, with Embry and Big Lots Stores, Inc. each individually referred to as a "Party" and collectively as the "Parties." Embry 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 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, California Health and Safety Code § 25249.6 *et seq.* ("Proposition 65").

1.2 General Allegations

Embry alleges that Big Lots sells and distributes for sale in California, Zrike Brands Pet Mug that contain Lead (Pb) and that it does so without first providing the health hazard warning required by Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to cause cancer and birth defects or other reproductive harm.

1.3 Product Description

The products covered by this Settlement Agreement are defined as, and expressly limited to, Zrike Brands Pet Mug, SKU 810341555, that contains lead and that is sold or distributed for sale in California by Big Lots without first providing a clear and reasonable warning as required by Proposition 65 (the "Product").

1.4 Notice of Violation

On September 26, 2018, Embry served Big Lots, R Squared Sales and Logistics, LLC, the California Attorney General and other requisite public enforcers 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 of the health risks associated with exposures to lead from the Product. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

Big Lots denies the material, factual, and legal allegations in the Notice and maintains that all of the products it sold and/or distributed for sale in California, including the Product, 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. 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 ninety (90) days following the execution of this Settlement Agreement by the Parties.

2. INJUNCTIVE RELIEF: Cease to Sell the Products

2.1 Commencing on the Effective Date, Big Lots agrees to cease selling and no longer ship for sale, or offer for sale in California, any of the Products that are sold by Big Lots containing more than 100 parts per million (0.01%) of Lead.

2.2 Clear and Reasonable Warning Alternative

2.2.1 As an alternative to ceasing to offer for sale the Products, commencing on the Effective Date, and continuing thereafter, Products that Big Lots ships for sale, sells or offers for sale in California shall be accompanied by a health hazard warning as provided for in Sections 2.2.2 or 2.2.3 below.

2.2.2 General Warning Requirements

Big Lots agrees that each warning shall be prominently placed with such conspicuousness, as 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 before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

For purposes of this Settlement Agreement, a clear and reasonable warning for the Product

shall consist of a warning affixed to the packaging, label, tag, or directly to each Product sold in California by Big Lots that contains one of the following statements:

> **WARNING**: This product can expose you to chemicals including Lead, which is known to the State of California to cause cancer, birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.
>
> OR
>
> **WARNING**: Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

The warning shall also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word "WARNING".

2.2.3. Point of Sale Warnings

Big Lots may 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 2.2.2 above via register purchase display and on customers' printed receipts.

b) Internet sales of the Products. California customers purchasing Products via Big Lots' internet website will receive the following Proposition 65 warning via the "Specifications" section of the Product Display page:

> **WARNING**: This product can expose you to chemicals including Lead, which is known to the State of California to cause cancer, birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

The warning shall be accompanied by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. The symbol shall be placed to the left of the text of the warning, in a size no smaller than

the height of the word "WARNING". Plaintiff agrees the warnings in Sections 2.2.2 and 2.2.3 comply with both Proposition 65 and the terms of this Settlement Agreement.

2.3 Grace Period for Existing Inventory of Products

The injunctive requirements of Section 2 shall not apply to Products that are already in the stream of commerce as of the Effective Date, which Products are expressly subject to the releases provided in Section 4.1.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Big Lots Stores, Inc. agrees to pay one thousand dollars ($1,000) in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code §§ 25249.12(c)(1) & (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 amount retained by Embry. Within ten (10) business days of the date this Settlement Agreement is executed by the Parties, Big Lots Stores, Inc. shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of $750 [75% of total penalty] and (b) Kim Embry, payable to the "Glick Law Group Client Trust Account", in the amount of $250 [25% of penalty].

All payments owed to OEHHA (EIN: 68-0284486), pursuant to this Section shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

All penalty payments owed to Embry shall be sent to:

Noam Glick
Glick Law Group
225 Broadway, Suite 2100
San Diego, CA 92101

3.2 Attorney Fees and Costs

The Parties reached an accord on the compensation due to Embry and her counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, within ten (10) business days of the date this Settlement Agreement is executed by the Parties, Big Lots Stores, Inc. agrees to pay $14,000 to Embry and her counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Big Lot Stores' management and negotiating a settlement. Big Lots Store's payment shall be delivered in the form of two checks: (1) one check for $7,000 [50% of total attorneys fees] payable to "Glick Law Group"; and (2) one check for $7,000 [50% of total attorneys fees] payable to "Nicholas & Tomasevic LLP."

3.3 Payment Address

All payments required under this Section shall be delivered to:

Noam Glick
Glick Law Group
225 Broadway, Suite 2100
San Diego, CA 92101

4. CLAIMS COVERED AND RELEASED

4.1 Embry's Release of Big Lots Stores, Inc.

This Settlement Agreement is a full, final, and binding resolution between Embry, on her own behalf and not on behalf of the public, and Big Lots Stores, Inc. of any violation of Proposition 65 that was or could have been asserted by Embry, on her own behalf, on behalf of her past and current agents, representatives, attorneys, successors and assignees, against Big Lots Stores, Inc. and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, each upstream entity from whom the Product was purchased by Big Lots Stores, Inc., and each entity to whom Big Lots Stores, Inc. directly or indirectly distributes or sells the Product, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees ("Releasees"), based on the failure to warn about exposures to lead in the Product manufactured, sold or distributed for sale in California by Big Lots Stores, Inc. before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Embry on her own behalf and not on behalf of the public, on behalf of her past and current agents, representatives, attorneys, successors and assignees hereby waives any and all rights she may have to institute or participate in, directly or indirectly, any form of legal action and releases all claims against Big Lots Stores, Inc. and Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses including, but not exclusively, investigation fees, expert fees and attorney fees arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to lead in the Product manufactured, distributed, sold or offered for sale by Big Lots Stores, Inc., before the Effective Date.

4.2 Big Lots Stores, Inc.'s Release of Embry

Big Lots Stores, Inc., on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Embry and her attorneys and other representatives, for any and all actions taken or statements made by Embry and her 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 Product.

4.3 California Civil Code Section 1542

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Product will develop or be discovered. Embry on behalf of herself only, on one hand, and Big Lots Stores, Inc. on behalf of itself only, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims up through the Effective Date. The Parties acknowledge that the claims released in Sections 4.1 and 4.2 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

> **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.**

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.

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:

For Big Lots Stores, Inc.:

Carol R. Brophy
Steptoe & Johnson LLP

One Market Street
Steuart Tower 18th Floor
San Francisco, CA 94105

For Embry:

Noam Glick
Glick Law Group
225 Broadway, Suite 2100
San Diego, CA 92101

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)

Embry and her attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 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:	**AGREED TO:**
Date: June 13, 2019	Date: 6/13/19
By:	By:
KIM EMBRY	BIG LOTS STORES, INC