

SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC, BIG LOTS STORES, INC., AND AMERICAN KENNEL CLUB, INC.

1. RECITALS

1.1 The Parties

1.1.1 This Settlement Agreement (“Agreement”) is entered into by and between APS&EE, LLC (“APS&EE”), on the one hand, and Big Lots Stores, Inc. (“Big Lots”) and American Kennel Club, Inc. (“AKC” and collectively with Big Lots, the “Defendants”), on the other hand. APS&EE and Defendants shall hereinafter collectively be referred to as the “Parties” and each individually as a “Party.”

1.1.2 APS&EE is an organization based in California with an interest in protecting the environment, improving human health and the health of ecosystems, and supporting environmentally sound practices, which includes promoting awareness of exposure to toxic chemicals and reducing exposure to hazardous substances found in consumer products.

1.1.3 APS&EE alleges that Defendants are each a person in the course of doing business as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition 65”).

1.2 Allegations

1.2.1 APS&EE alleges that AKC licensed its name for use on AKC Select Rain Coat, SKU 810379257, SKU 810379258, and SKU 810379259 (hereinafter the “Products”), sold, manufactured, and/or distributed for sale by BH Pet Gear and Big Lots in the State of California, exposing users of the Products in California to Lead without providing “clear and reasonable warnings” in violation of Proposition 65. Lead is listed by the State of California as a chemical known to cause cancer and birth defects or other reproductive harm.

1.2.2 On July 16, 2018, APS&EE provided a Sixty-Day Notice of Violation (the “Notice”) to Big Lots, AKC, and the various public enforcement agencies

regarding the alleged violation of Proposition 65 with respect to the Products. On September 27, 2018, APS&EE provided a Supplemental Sixty-Day Notice of Violation (“Supplemental Notice”) to Big Lots, AKC, European Home Design, LLC, BH Pet Gear, LLC, and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products. The Notice and Supplemental Notice shall hereinafter collectively be referred to as the “Notices.”

1.3 No Admissions

Defendants deny all allegations in APS&EE’s Notices and maintain that the Products have been, and are, in compliance with all laws including Proposition 65, and that Defendants have not violated Proposition 65. AKC further denies that Proposition 65 has any application to it as a licensor that never manufactured, sold, or distributed for sale any of the Products. This Agreement shall not be construed as an admission of liability by Defendants but to the contrary as a compromise of claims that are expressly contested and denied. However, nothing in this section shall affect the Parties’ obligations, duties, and responsibilities under this Agreement.

1.4 Compromise

The Parties enter into this Agreement in order to resolve the controversy described above in a manner consistent with prior Proposition 65 settlements and consent judgments that were entered in the public interest and to avoid prolonged and costly litigation between them.

1.5 Effective Date

The “Effective Date” shall be the date upon which a complete and fully executed copy of the Agreement is delivered to each Party or its counsel.

2. INJUNCTIVE RELIEF

2.1 Reformulation Option

2.1.1 As of the Effective Date, Big Lots shall not distribute, sell or offer for sale the Products in California unless (a) the Products contain no more than 100 parts

per million (0.01%) of Lead (“Reformulated Product”), or (b) the Product is distributed, sold, or offered for sale with a clear and reasonable warning as described below in Section 2.2.

2.1.2 As of the Effective Date, AKC shall not enter into any new license agreements that license its name for use on the AKC Select Rain Coat (SKU 810379257, SKU 810379258, and SKU 810379259) in California unless the licensee agrees that (a) the products identified in the Section 2.1.2 contain no more than 100 parts per million (0.01%) of Lead (“Reformulated Product”) or (b) the products identified in this Section 2.1.2 are distributed, sold, or offered for sale with a clear and reasonable warning as described below in Section 2.2. AKC shall be entitled to rely on the assurances of any licensee and shall not be liable for any failure by licensee following an agreement from licensee to comply with this section.

2.2 Clear And Reasonable Warning Alternative

2.2.1 For any Products that are not Reformulated Products, such Products manufactured and distributed after the Effective Date and sold in California shall be accompanied by a clear and reasonable warning. Warnings for Products that are not Reformulated Products shall comply with 27 Cal. Code Regs. § 25601, et seq. (operative Aug. 30, 2018) or use a warning with the capitalized and emboldened wording identical to either one of the following:

(Long-Form warning):

WARNING: This product can expose you to chemicals including Lead 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.

OR

(Short-Form warning):

WARNING: Cancer and Reproductive Harm –
www.P65Warnings.ca.gov.

Each warning method shall be accompanied by 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”. After the Effective Date, AKC shall advise any new licensee producing and selling the Products in California of the foregoing.

2.2.2 Where utilized as an alternative to meeting the reformulation criteria set forth in Section 2.1, the warning content set forth in Section 2.2.1 shall be provided using any one of the following methods:

2.2.2.1 With the unit package of the Products or affixed to the Products. Such warning shall be prominently affixed to or printed on each Product’s label or package or the Product itself, with such conspicuousness as compared with other words, statements or designs as to render it likely to be read and understood by an ordinary consumer prior to sale. If printed on the label, the warning may be contained in the same section that states other safety warnings, if any, concerning the use of the Product, and must not require the consumer to use considerable effort to find or seek out the warning.

2.3 In lieu of the preceding warning content and methods set forth above, Defendants may use any warning content and method that complies with Title 27, California Code of Regulations, section 25600 et seq., operative August 30, 2018, and as amended subsequently thereafter.

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

In settlement of all claims referred to in this Agreement, Defendants shall collectively pay a total civil penalty of two thousand dollars (\$2,000) to be apportioned in accordance with Health and Safety Code section 25249.12(c)(1) and (d), with 75% (\$1,500) for State of California Office of Environmental Health Hazard Assessment

("OEHHA"), and the remaining 25% (\$500) for APS&EE.

Big Lots shall issue two (2) checks for the civil penalty: (1) a check or money order made payable to "OEHHA" in the amount of \$1,500; and (2) a check or money order made payable to "Law Offices of Lucas T. Novak" in the amount of \$500 which Law Offices of Lucas T. Novak shall subsequently disburse to APS&EE. Defendants shall remit the payments within ten (10) business days of the Effective Date, to:

Lucas T. Novak, Esq.
LAW OFFICES OF LUCAS T. NOVAK
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

3.2 Reimbursement Of APS&EE's Fees And Costs

Big Lots shall reimburse APS&EE's experts' and attorney's fees and costs incurred in prosecuting the instant action, for all work performed through execution of this Agreement. Accordingly, Big Lots shall issue a check or money order made payable to "Law Offices of Lucas T. Novak" in the amount of eighteen thousand dollars (\$18,000). Defendants shall remit the payment within ten (10) business days of the Effective Date, to:

Lucas T. Novak, Esq.
LAW OFFICES OF LUCAS T. NOVAK
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

4. RELEASES

4.1 This Settlement Agreement is a full, final, and binding resolution between APS&EE, on the one hand, and, on the other hand, (a) Defendants; (b) all distributors, wholesalers, manufacturers, customers, retailers, franchisees, cooperative members, and licensees of the entities described in (a), above, including but not limited to European Home Design, LLC and BH Pet Gear, LLC; and (c) all past and current owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers,

directors, insurers, agents, attorneys, predecessors, successors, and assigns of the entities and individuals described in (a) and (b), above (the released entities and individuals identified in (a), (b) and (c), above, are collectively referred to as “Releasees”) of any violation(s) or alleged violation(s) of Proposition 65 that has been, could have been or may in the future be asserted against the Releasees regarding exposing persons to Lead and/or the failure to warn about exposure to Lead arising in connection with the Products sold by Big Lots in California prior to the Effective Date.

4.2 APS&EE, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives with respect to the Products all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that it 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 limited to, investigation fees, expert fees, and attorneys’ fees) (collectively “Claims”), against Releasees, but only to the extent that such legal actions or Claims arise under Proposition 65 with respect to exposures to Lead in the Products sold by Big Lots in California prior to the Effective Date.

4.3 Defendants’ Release Of APS&EE

Defendants, and on behalf of Releasees, by this Agreement waive all rights to institute any form of legal action against APS&EE, its shareholders, directors, members, officers, employees, attorneys, experts, successors and assignees for actions or statements made or undertaken, whether in the course of investigating claims or seeking enforcement of Proposition 65 against them in this matter. If any Releasee should institute any such action, then APS&EE’s release of said Releasee in this Agreement shall be rendered null and void.

4.4 Waiver Of Unknown Claims

Each of the Parties acknowledges that it is familiar with Section 1542 of Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Each of the Parties waives and relinquishes any right or benefit it has or may have under Section 1542 of California Civil Code or any similar provision under the statutory or non-statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits. The Parties acknowledge that each may subsequently discover facts in addition to, or different from, those that it believes to be true with respect to the claims released herein. The Parties agree that this Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding the discovery of such additional or different facts.

5. SEVERABILITY

Should any part or provision of this Agreement for any reason be declared by a Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue in full force and effect.

6. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California.

7. NOTICE

All correspondence and notice required to be provided under this Agreement shall be in writing and delivered personally or sent by first class or certified mail addressed as follows:

TO BIG LOTS: Carol R. Brophy, Esq. Steptoe & Johnson, LLP One Market Street Steuart Tower 18th Floor San Francisco, CA 94105	TO APS&EE: Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069
TO AKC: Trenton Norris, Esq. Vanessa C. Adriance, Esq. Arnold & Porter 777 South Figueroa Street 44th Floor Los Angeles, CA 90017	

8. COUNTERPARTS

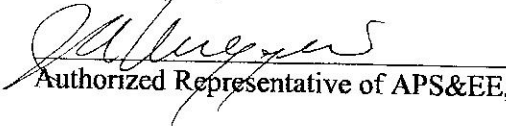
This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute the same document. Execution and delivery of this Agreement by e-mail, facsimile, or other electronic means shall constitute legal and binding execution and delivery. Any photocopy of the executed Agreement shall have the same force and effect as the originals.

9. AUTHORIZATION

The undersigned are authorized to execute this Agreement on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Agreement. Each Party warrants to the other that it is free to enter into this Agreement and is not subject to any conflicting obligation that will or might prevent or interfere with the execution or performance of this Agreement by said Party.

AGREED TO:

Date: 3/10/19

By: 
 Authorized Representative of APS&EE, LLC

AGREED TO:

Date:

5-9-19

By:



Authorized Representative of Big Lots Stores, Inc.

AGREED TO:

Date:

By:

Authorized Representative of American Kennel Club, Inc.

AGREED TO:

Date: _____

By: _____
Authorized Representative of Big Lots Stores, Inc.

AGREED TO:

Date: 5/9/2019

By: Joseph Buffuto, CFO / Gene D. Vander, Executive Secretary
Authorized Representative of American Kennel Club, Inc.