

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

ALAN WILLIS, Individually and on Behalf of)	No. 2:12-cv-00604-MHW-KAJ
All Others Similarly Situated,)	
)
Plaintiff,)	<u>CLASS ACTION</u>
)
vs.)	
)
BIG LOTS, INC., et al.,)	
)
Defendants.)	
_____)	

STIPULATION OF SETTLEMENT

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[Additional counsel appear on signature page.]

This Stipulation of Settlement, dated May 16, 2018 (the “Stipulation”), is made and entered into by and among the following Settling Parties to the above-captioned litigation (the “Litigation”): (i) the Court-appointed Class Representatives City of Pontiac General Employees’ Retirement System and Teamsters Local 237 Additional Security Benefit Fund (“Class Representatives”) on behalf of themselves and each of the Class Members, by and through their counsel of record in the Litigation; and (ii) Big Lots, Inc. (“Big Lots” or the “Company”), Steven S. Fishman, Joe R. Cooper, Charles W. Haubiel, II, and Timothy A. Johnson (collectively, “Defendants”), by and through their counsel of record in the Litigation. The Stipulation is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims, upon and subject to the terms and conditions hereof and subject to the approval of the United States District Court for the Southern District of Ohio, Eastern Division (the “Court”).

I. THE LITIGATION

This matter is pending before the Honorable Michael H. Watson in the United States District Court for the Southern District of Ohio, Eastern Division. Plaintiffs allege that Defendants violated SEC Rule 10b-5 and §§10(b), 20A and 20(a) of the Securities Exchange Act of 1934 by providing false and misleading information to investors regarding Big Lots’ performance and prospects between February 2, 2012 and August 23, 2012, which artificially inflated the price of Big Lots’ stock.

Plaintiffs brought this action on July 9, 2012. Plaintiffs filed an amended complaint on April 4, 2013. Defendants filed a motion to dismiss Plaintiffs’ claims, which the Court granted in part and denied in part on January 21, 2016. In that decision, the Court dismissed all claims in connection with alleged false and misleading statements prior to March 2, 2012. On March 25, 2016, Defendants filed an answer to the amended complaint. On March 17, 2017, after extensive discovery and detailed briefing, the Court certified a class of stockholders covering the class period

March 2, 2012 through August 23, 2012. Additionally, the Court appointed City of Pontiac General Employees' Retirement System and Teamsters Local 237 Additional Security Benefit Fund as Class Representatives and Robbins Geller Rudman & Dowd LLP as Class Counsel.

On August 23, 2017, the U.S. Court of Appeals for the Sixth Circuit granted Defendants' petition for permission to appeal the Court's grant of class certification. Defendants moved for a stay of all district court proceedings until Defendants' appeal to the Sixth Circuit was resolved. The Court granted Defendants' motion on September 19, 2017, and stayed all proceedings except for the exchange of expert reports, which was completed on October 27, 2017. The parties completed briefing on Defendants' appeal on January 12, 2018.

At the time the parties agreed to settle this matter, the parties had completed non-expert discovery, including production and review of nearly one million pages of documents and taking nearly 30 fact witness depositions and had exchanged expert reports. Oral argument before the Sixth Circuit was scheduled for April 25, 2018. Had the appeal been unsuccessful, the parties would have conducted expert depositions and commenced briefing on any motions for summary judgment.

On May 5, 2016 and September 28, 2017, the parties participated in mediation sessions with the assistance of Robert A. Meyer. In advance of the May 2016 and September 2017 sessions, the parties submitted detailed descriptions of their case and defenses, and voluminous collections of the evidence in support of their arguments. The parties, through Mr. Meyer, engaged in protracted negotiations before reaching agreement to resolve this matter for \$38 million.

II. CLAIMS OF THE CLASS AND BENEFITS OF SETTLEMENT

Class Representatives believe that the claims asserted in the Litigation have merit and that the evidence developed to date supports those claims. Class Representatives also have taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as this Litigation, as well as the difficulties and delays inherent in such litigation. Class

Representatives also are mindful of the inherent problems of proof under and possible defenses to the claims asserted in the Litigation. Class Counsel believes that the Settlement set forth in this Stipulation confers substantial benefits upon the Class particularly considering the expense and length of continued proceedings necessary to prosecute the Litigation against Defendants through trial as well as potential post-trial proceedings, including appeals. Based on their evaluation, Class Representatives and Class Counsel have determined that the Settlement set forth in this Stipulation is in the best interests of the Class, and that the Settlement provided for herein is fair, reasonable and adequate.

III. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY

Defendants have denied and continue to deny each and all of the claims and contentions alleged by Plaintiffs in the Litigation. Defendants expressly have denied and continue to deny all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Litigation. Defendants' decision to settle the Litigation is based on the conclusion that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation, and that it would be beneficial to avoid lengthy, distracting and time-consuming litigation, and the burden, inconvenience, and expense connected therewith, and the uncertainty and risks inherent in any litigation, especially in complex cases like this Litigation.

IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Class Representatives (for themselves and on behalf of the Class Members) and Defendants, by and through their respective counsel of record, that, subject to the approval of the Court, the Litigation and the Released Claims shall be finally and fully compromised, settled, and released, and the

Litigation shall be dismissed with prejudice, upon and subject to the terms and conditions of the Stipulation, as follows:

1. Definitions

As used in the Stipulation the following terms have the meanings specified below:

1.1 “Authorized Claimant” means any Class Member whose claim for recovery has been allowed pursuant to the terms of the Stipulation.

1.2 “Claims Administrator” means the firm of Gilardi & Co. LLC.

1.3 “Class” means all Persons who purchased the common stock of Big Lots, Inc. between March 2, 2012 and August 23, 2012. Excluded from the Class are Defendants, the officers and directors of the Company, members of their immediate families and their legal representatives, heirs, successors, or assigns of any entity in which Defendants have or had a controlling interest. Also excluded from the Class are those Persons who timely and validly request exclusion from the Class pursuant to the Notice of Pendency and Proposed Settlement of Class Action to be sent to Class Members pursuant to the Preliminary Approval Order.

1.4 “Class Counsel” means Robbins Geller Rudman & Dowd LLP or its successor(s).

1.5 “Class Member” or “Class Members” mean any Person who falls within the definition of the Class as set forth in ¶1.3 of the Stipulation.

1.6 “Class Period” means the period commencing on March 2, 2012, and ending on August 23, 2012, inclusive.

1.7 “Class Representatives” means City of Pontiac General Employees’ Retirement System and Teamsters Local 237 Additional Security Benefit Fund.

1.8 “Defendants” means Big Lots, Inc., Steven S. Fishman, Joe R. Cooper, Charles W. Haubiel, II, and Timothy A. Johnson.

1.9 “Defendants’ Released Claims” means all claims, demands, losses, rights, and causes of action of any nature whatsoever (including Unknown Claims as defined below) whether accrued or unaccrued, fixed or contingent, liquidated or unliquidated, whether arising under federal, state, common or foreign law, or any other law, rule or regulation, which now exist, or heretofore have existed, that have been or could have been asserted in the Litigation or any forum by the Released Persons or any of them against the Class Representatives, Plaintiffs, Class Members, or Plaintiffs’ Counsel, that arise out of or relate in any way to the institution, prosecution, resolution, or settlement of the Released Claims and/or the Litigation against the Released Persons, except for claims related to the enforcement of the Settlement.

1.10 “Effective Date” means the first date by which all of the events and conditions specified in ¶7.1 of the Stipulation have been met and have occurred.

1.11 “Escrow Agent” means Robbins Geller Rudman & Dowd LLP or its successor(s).

1.12 “Final” means when the last of the following with respect to the Order and Final Judgment, substantially in the form of Exhibit B attached hereto, shall occur: (i) the expiration of three (3) business days after the time for the filing of any motion to alter or amend the Order and Final Judgment under Federal Rule of Civil Procedure 59(e) without any such motion having been filed; (ii) the expiration of the time for the filing or noticing of any appeal from the Order and Final Judgment without any appeal having been filed; and (iii) if such motion to alter or amend is filed or if an appeal is filed or noticed, then immediately after the determination of that motion or appeal so that the Order and Final Judgment is no longer subject to any further judicial review or appeal whatsoever, whether by reason of affirmance by court of last resort, lapse of time, voluntary dismissal of the appeal or otherwise, and in such a manner as to permit the consummation of the Settlement in accordance with the terms and conditions of this Stipulation. For purposes of this paragraph, an appeal shall include any petition for a writ of certiorari or other writ that may be filed

in connection with the approval or disapproval of this Settlement. An appeal and a motion to alter or amend the Order and Final Judgment shall not include any motion to alter or amend or appeal that concerns only the issue of attorneys' fees and expenses, a payment to Class Representatives pursuant to 15 U.S.C. §78u-4(a)(4) or the Plan of Allocation. Any proceeding or order, or any appeal or petition for a writ of certiorari pertaining solely to any plan of allocation and/or application for attorneys' fees or expenses and/or any 15 U.S.C. §78u-4(a)(4) award to Class Representatives shall not in any way delay or preclude the Order and Final Judgment from becoming Final.

1.13 "Final Approval Hearing" means the hearing to determine whether the proposed Settlement embodied by this Stipulation is fair, reasonable, and adequate to the Class, and whether the Court should (i) enter an Order and Final Judgment approving the proposed Settlement, (ii) approve the Plan of Allocation of Settlement proceeds, and (iii) award attorneys' fees and expenses to Class Counsel and award Class Representatives their time and expenses.

1.14 "Liaison Counsel" means Murray Murphy Moul + Basil LLP or its successor(s).

1.15 "Order and Final Judgment" means the judgment to be rendered by the Court, substantially in the form attached hereto as Exhibit B.

1.16 "Person" means a natural person, individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and all of their respective spouses, heirs, beneficiaries, executors, administrators, predecessors, successors, representatives, or assignees.

1.17 "Plaintiffs" means City of Pontiac General Employees' Retirement System, Teamsters Local 237 Additional Security Benefit Fund and Alan Willis.

1.18 “Plaintiffs’ Counsel” means Class Counsel and any other counsel who have represented one or more Plaintiffs in the Litigation.

1.19 “Plan of Allocation” means a plan or formula of allocation of the Settlement Fund whereby the Settlement Fund shall be distributed to Authorized Claimants after payment of expenses of notice and administration of the Settlement, Taxes and Tax Expenses, and such attorneys’ fees, expenses (including an award to Class Representatives pursuant to 15 U.S.C. §78u-4(a)(4)), and interest as may be awarded by the Court. Any Plan of Allocation is not part of the Stipulation, and Defendants and their Related Parties shall have no responsibility or liability with respect thereto.

1.20 “Preliminary Approval Order” means the order described in ¶3.1 hereof.

1.21 “Related Parties” means each of Defendants’ present and former parents, subsidiaries, affiliates, predecessors, successors, joint venturers and assigns, and each of their respective officers, directors, employees, partners, controlling shareholders, principals, trustees, attorneys, auditors, accountants, investment bankers, underwriters, consultants, agents, insurers, re-insurers, spouses, estates, related or affiliated entities, any entity in which a Defendant has a controlling interest, any members of any Defendant’s immediate family, any trust of which any Defendant is the settlor or which is for the benefit of any Defendant and/or member(s) of his family, and each of the heirs, executors, administrators, predecessors, successors, and assigns of the foregoing.

1.22 “Released Claims” means any and all rights, liabilities, suits, debts, obligations, demands, damages, losses, judgments, matters, issues, claims (including Unknown Claims as defined below), and causes of action of every nature and description whatsoever, in law or equity, whether accrued or unaccrued, fixed or contingent, liquidated or unliquidated, whether arising under federal, state, local, statutory, common law, foreign law, or any other law, rule, or regulation, and whether class and/or individual in nature, concerning, based on, arising out of, or in connection with both: (i) the purchase of Big Lots common stock by Plaintiffs or any Class Member during the Class

Period; and (ii) the allegations, transactions, acts, facts, matters, occurrences, disclosures, statements, SEC filings, representations, omissions, or events that were or could have been alleged or asserted in the Litigation. Released Claims do not include claims to enforce the Settlement.

1.23 “Released Persons” means each and all of the Defendants and their Related Parties.

1.24 “Settlement” means the settlement of the Litigation as set forth in this Stipulation.

1.25 “Settlement Amount” means the principal amount of \$38,000,000, to be paid pursuant to ¶2.1 of this Stipulation.

1.26 “Settlement Fund” means the Settlement Amount plus any interest that may accrue thereon.

1.27 “Settling Parties” means, collectively, each of the Defendants and the Class Representatives on behalf of themselves and each of the Class Members.

1.28 “Stipulation” means this Stipulation of Settlement, including the recitals and Exhibits hereto.

1.29 “Supplemental Agreement” means the agreement described in ¶7.4.

1.30 “Taxes” means all taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund as described in ¶2.8.

1.31 “Tax Expenses” means expenses and costs incurred in connection with the calculation and payment of taxes or the preparation of tax returns and related documents including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs relating to filing (or failing to file) the returns described in ¶2.8.

1.32 “Unknown Claims” means any of the Released Claims which Plaintiffs or any Class Member does not know or suspect to exist in such party’s favor at the time of the release of the Released Persons, and any of the Defendants’ Released Claims that the Released Persons do not know or suspect to exist in his, her or its favor at the time of the release of the Class Representatives,

Plaintiffs, each and all of the Class Members and Plaintiffs' Counsel, which, if known by such party, might have affected such party's settlement with and release of the Released Persons or Class Representatives, Plaintiffs, each and all of the Class Members and Plaintiffs' Counsel, or might have affected such party's decision not to object to this Settlement. With respect to any and all Released Claims and the Defendants' Released Claims, upon the Effective Date, the Class Representatives and Defendants shall expressly, and each of the Class Members and Released Persons shall be deemed to have, and by operation of the Order and Final Judgment shall have, expressly waived to the fullest extent permitted by law, the provisions, rights, and benefits of California Civil Code §1542, which provides:

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.

Class Representatives and Defendants shall expressly, and each of the Class Members and Released Persons shall be deemed to have, and by operation of the Order and Final Judgment shall have, expressly waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code §1542. The Class Representatives, Class Members, and the Released Persons may hereafter discover facts in addition to or different from those which such party now knows or believes to be true with respect to the subject matter of the Released Claims and the Defendants' Released Claims, but the Class Representatives and Defendants shall expressly, and each Class Member and Released Person, upon the Effective Date, shall be deemed to have, and by operation of the Order and Final Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, or the Defendants' Released Claims, as the case may be, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing

or coming into existence in the future, including, but not limited to, conduct that is negligent, reckless, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Class Representatives and Defendants acknowledge, and the Class Members and Released Persons shall be deemed by operation of the Order and Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

2. The Settlement

a. The Settlement Fund

2.1 In consideration of the terms of this Stipulation, Defendants shall cause Thirty-Eight Million Dollars (\$38,000,000) to be paid or deposited into the account maintained by the Escrow Agent (“Escrow Account”) by no later than twenty (20) days following the later of (a) the filing of an order by the Court preliminarily approving the Settlement and providing for notice, or (b) the receipt by Defendants’ counsel of the information necessary to effectuate a transfer of funds to the Escrow Account, including wiring instructions that include the bank name and ABA routing number, account name and number, and a signed W-9 reflecting a valid taxpayer identification number for the qualified settlement fund in which the Settlement Amount is to be deposited.

b. The Escrow Agent

2.2 The Escrow Agent will invest the Settlement Fund created pursuant to ¶2.1 hereof only in instruments backed by the full faith and credit of the United States Government or an agency thereof, or fully insured by the United States Government or an agency thereof, and will reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. All risks related to the investment of the Settlement Fund in accordance with the guidelines set forth in this paragraph shall be borne by the Settlement Fund, and neither Defendants nor their Related

Parties shall have any responsibility for, interest in, or liability whatsoever with respect to investment decisions or the actions of the Escrow Agent or any transactions executed by the Escrow Agent.

2.3 The Escrow Agent shall not disburse the Settlement Fund except pursuant to: (i) the Stipulation; (ii) an order of the Court; or (iii) prior written agreement of counsel for Defendants and Class Counsel.

2.4 The Escrow Agent is authorized to execute such transactions on behalf of the Class Members as are consistent with the terms of the Stipulation.

2.5 All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed or returned pursuant to the Stipulation and/or further order(s) of the Court.

2.6 Notwithstanding the fact that the Effective Date has not yet occurred, the Escrow Agent may pay from the Settlement Fund the costs and expenses reasonably and actually incurred in connection with providing notice to members of the Class, mailing the Notice of Pendency and Proposed Settlement of Class Action (the “Notice”) and Proof of Claim and Release form and publishing notice (such amount shall include, without limitation, the actual costs of publication, printing and mailing the Notice, and reimbursement to nominee owners for forwarding notice to their beneficial owners), soliciting Class claims, assisting with the filing of claims, administering and distributing the Net Settlement Fund to Authorized Claimants, processing Proof of Claim and Release forms, and paying escrow fees and costs, if any, and the administrative expenses incurred and fees charged by the Claims Administrator in connection with providing notice and processing the submitted claims (“Notice and Administration Costs”). In the event that the Settlement does not become Final, any money paid or incurred for the above purposes, including any related fees, shall not be returned or repaid to Defendants or their insurers.

2.7 Neither Defendants nor their Related Parties are responsible for any costs and expenses reasonably and actually incurred in connection with providing notice to the Class, locating Class Members, assisting with the filing of claims, administering and distributing the Net Settlement Fund to Authorized Claimants, processing Proof of Claim and Release forms, or paying escrow fees and costs, nor shall they be liable for any claims with respect thereto.

c. Taxes

2.8 (a) The Settling Parties and their counsel agree that the Settlement Fund is intended to be and should be treated as being at all times a “qualified settlement fund” within the meaning of Treas. Reg. §1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this ¶2.8, including the “relation-back election” (as defined in Treas. Reg. §1.468B-1(j)(2)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such Treasury regulations promulgated under §1.468B of the Internal Revenue Code of 1986, as amended (the “Code”). It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(b) For the purpose of §1.468B of the Code and the Treasury regulations promulgated thereunder, the Escrow Agent shall be designated as the “administrator” of the Settlement Fund. The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treas. Reg. §1.468B-2(k)). Such returns (as well as the election described in ¶2.8(a) hereof) shall be consistent with this ¶2.8 and in all events shall reflect that all Taxes as defined in ¶1.30 hereof (including any estimated Taxes, interest, or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in ¶2.8(c) hereof.

(c) All: (a) Taxes (including any estimated Taxes, interest, or penalties) arising with respect to the income earned by the Settlement Fund, including any Taxes or tax detriments that may be imposed upon any Released Person with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes; and (b) Tax Expenses and costs incurred in connection with the operation and implementation of this ¶2.8 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this ¶2.8), shall be paid out of the Settlement Fund. In no event shall any Released Person have any responsibility for or liability with respect to the Taxes or the Tax Expenses. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court, and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amount, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(1)(2)); any Released Persons are not responsible therefor nor shall they have any liability with respect thereto. The Settling Parties hereto agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this ¶2.8.

d. Termination of Settlement

2.9 In the event that the Settlement is not approved, or the Stipulation is terminated, canceled, or fails to become effective for any reason, including, without limitation, in the event the Order and Final Judgment is reversed or vacated following any appeal taken therefrom, or is successfully collaterally attacked, the Settlement Fund, less expenses actually incurred or due and

owing from the Settlement Fund for the Notice and Administration Costs of the Settlement pursuant to ¶2.6 above and Taxes and Tax Expenses pursuant to ¶2.8 above, shall be refunded in accordance with the instructions to be provided by counsel for Defendants within ten (10) business days of the availability of the monies from the investments authorized herein or as otherwise agreed upon in writing by counsel for Defendants.

3. Preliminary Approval Order and Settlement Hearing

3.1 Promptly after execution of the Stipulation, the Class Representatives shall submit this Stipulation together with its Exhibits to the Court, and Class Counsel shall apply for entry of the Preliminary Approval Order, substantially in the form and content of Exhibit A attached hereto, requesting, *inter alia*, the preliminary approval of the Settlement set forth in the Stipulation, approval for the mailing of the Notice and the Proof of Claim and Release form, substantially in the forms of Exhibits A-1 and A-2 attached hereto, and approval of the publication of a Summary Notice, substantially in the form of Exhibit A-3 attached hereto, or such other substantially similar form agreed to by the Settling Parties.

3.2 Class Counsel will request that the Court hold the Final Approval Hearing and finally approve the Settlement as set forth herein. At or after the Final Approval Hearing, Class Counsel also will request that the Court approve the proposed Plan of Allocation as well as the Fee and Expense Application.

3.3 Defendants shall be responsible for the expense and timely service of any notice that might be required pursuant to the Class Action Fairness Act, 28 U.S.C. §1715 (“CAFA”), including by mailing out the CAFA notice within ten (10) calendar days of the filing of this Stipulation with the Court. Defendants shall promptly inform Class Counsel that such timely mailing has occurred.

4. Releases

4.1 Upon the Effective Date, as defined in ¶1.10 hereof, the Class Representatives shall, and each and all of the Class Members shall be deemed to have, and by operation of the Order and Final Judgment shall have, fully, finally, and forever remised, released, relinquished, and discharged all Released Claims (including, without limitation, Unknown Claims) against the Released Persons, regardless of whether such Class Member executes and delivers the Proof of Claim and Release form. Claims relating to the enforcement of the Settlement shall not be released.

4.2 Upon the Effective Date, as defined in ¶1.10 hereof, the Class Representatives and each and all of the Class Members are forever barred and enjoined from commencing, instituting, or continuing to prosecute any action or proceeding in any court of law or equity, arbitration tribunal, administrative forum, or other forum of any kind, asserting any of the Released Claims against any or all of the Released Persons.

4.3 The Proof of Claim and Release to be executed by Class Members shall release all Released Claims against the Released Persons and shall be substantially in the form contained in Exhibit A-2 attached hereto.

4.4 Upon the Effective Date, as defined in ¶1.10 hereof, each of the Released Persons shall be deemed to have, and by operation of the Order and Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged Class Representatives, each and all of the Class Members, and Plaintiffs' Counsel from all Defendants' Released Claims, and shall forever be enjoined from prosecuting such claims. Claims relating to the enforcement of the Settlement shall not be released.

5. Administration and Calculation of Claims, Final Awards, and Supervision and Distribution of Settlement Fund

5.1 The Claims Administrator, subject to such supervision and direction of the Court and/or Class Counsel, as set forth below, shall administer and calculate the claims submitted by

Class Members and shall oversee distribution of the Net Settlement Fund (defined below) to Authorized Claimants.

5.2 The Settlement Fund shall be applied as follows:

(a) to pay the Notice and Administration Costs;

(b) to pay the Taxes and Tax Expenses;

(c) to pay Plaintiffs' Counsel's Court-approved attorneys' fees and expenses with interest thereon (the "Fee and Expense Award") and Class Representatives' time and expenses pursuant to 15 U.S.C. §78u-4(a)(4), if and to the extent allowed by the Court; and

(d) to distribute the balance of the Settlement Fund (the "Net Settlement Fund") to Authorized Claimants as allowed by the Stipulation, the Plan of Allocation, or the Court.

5.3 Upon the Effective Date and thereafter, and in accordance with the terms of the Stipulation, the Plan of Allocation, or such further approval and further order(s) of the Court as may be necessary or as circumstances may require, the Net Settlement Fund shall be distributed to Authorized Claimants, subject to and in accordance with the terms of this Stipulation.

5.4 Each Class Member shall be required to submit a Proof of Claim and Release form signed under penalty of perjury, substantially in a form approved by the Court, supported by such documents as are designated therein, including proof of the transactions claimed, and such other documents or proof as the Claims Administrator, in its discretion, may deem acceptable.

5.5 All Proof of Claim and Release forms must be submitted by the date specified in the Notice unless such period is extended by order of the Court. Any Class Member who fails to submit a Proof of Claim and Release form by such date shall be forever barred from receiving any payment pursuant to this Stipulation (unless, by order of the Court, a later-submitted Proof of Claim and Release form by such Class Member is approved, or a later-submitted Proof of Claim and Release form is otherwise allowed), but shall in all other respects be bound by all of the terms of this

Stipulation and the Settlement, including the terms of the Order and Final Judgment to be entered in the Litigation and the releases provided for herein, and will be barred from bringing any action against the Released Persons concerning the Released Claims. Notwithstanding the foregoing, Class Counsel shall have the discretion (but not the obligation) to accept for processing late submitted claims so long as the distribution of the Net Settlement Fund to Authorized Claimants is not materially delayed. No person shall have any claim against Class Representatives, Class Counsel or the Claims Administrator by reason of the decision to exercise such discretion whether to accept late submitted claims.

5.6 Each Person who submits a Proof of Claim and Release form shall be deemed to have submitted to the jurisdiction of the Court with respect to the Person's claim to the Net Settlement Fund.

5.7 Except for Defendants' obligation to cause payment of the Settlement Amount into the Escrow Account as set forth herein, the Released Persons shall have no responsibility for, interest in, or liability whatsoever with respect to the investment or distribution of the Settlement Fund, the Plan of Allocation, the determination, administration, or calculation of claims, the payment or withholding of Taxes or Tax Expenses, or any losses incurred in connection therewith.

5.8 No Person shall have any claim against Class Representatives, Class Counsel, the Escrow Agent, Plaintiffs' Counsel or the Claims Administrator, or any Released Person or counsel for Defendants based on distributions made substantially in accordance with this Stipulation and the Settlement contained herein, the Plan of Allocation, or further order(s) of the Court.

5.9 Defendants shall not have a reversionary interest in the Net Settlement Fund. In order for a Class Member to continue to be an Authorized Claimant entitled to receive a distribution from the Net Settlement Fund, such Class Member must cash such distribution within the time period prescribed on such payment. No Class Member has an interest in the Net Settlement Fund until

cashing a distribution from the Net Settlement Fund, and any Class Member who fails to cash such distribution within the prescribed time period shall be forever barred from receiving any further distributions pursuant to this Stipulation. The Claims Administrator shall make reasonable efforts to have Class Members who are entitled to participate in the distribution of the Net Settlement Fund cash their distributions within the prescribed period, following which any balance remaining in the Net Settlement Fund shall be re-distributed, if feasible, among Authorized Claimants who have cashed their payments in connection with prior distributions of the Net Settlement Fund, in an equitable and economical fashion. These redistributions shall be repeated to remaining Authorized Claimants until the balance remaining in the Net Settlement Fund is *de minimis* and any such residual remaining amount shall thereafter be distributed to an appropriate non-profit organization selected by Class Counsel.

5.10 It is understood and agreed by the Settling Parties that any proposed Plan of Allocation of the Net Settlement Fund including, but not limited to, any adjustments to an Authorized Claimant's claim set forth therein, is not a part of this Stipulation and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in the Stipulation, and any order or proceeding relating to the Plan of Allocation shall not operate to terminate or cancel the Stipulation or affect the finality of the Court's Order and Final Judgment approving the Stipulation and the Settlement set forth therein, or any other orders entered pursuant to the Stipulation.

6. Plaintiffs' Counsel's Attorneys' Fees and Expenses

6.1 Class Counsel may submit an application (the "Fee and Expense Application") for distributions to it from the Settlement Fund for: (a) an award of attorneys' fees; (b) payment of expenses or charges resulting from the prosecution of the Litigation; and (c) any interest on such attorneys' fees and expenses at the same rate and for the same periods as earned by the Settlement

Fund. In addition, Class Representatives may seek payment from the Settlement Fund pursuant to 15 U.S.C. §78u-4(a)(4) for their time and expenses in representing the Class. Class Counsel reserves the right to make additional applications for access to the Settlement Fund for fees and expenses incurred.

6.2 The Fee and Expense Award shall be paid to Class Counsel from the Settlement Fund, as ordered, immediately after the Court executes an order awarding such fees and expenses, notwithstanding the existence of any appeal or potential for appeal thereof. Class Counsel shall thereafter allocate, subject to the conditions below, the attorneys' fees amongst Plaintiffs' Counsel in a manner in which it in good faith believes reflects the contributions of such counsel to the initiation, prosecution and/or resolution of the Litigation. In the event that the Effective Date of the Settlement does not occur, or the Order and Final Judgment or the Fee and Expense Award is reversed or modified, or the Stipulation is canceled or terminated for any other reason by a final judgment or order not subject to further review, and in the event that the Fee and Expense Award has been paid to any extent, then Plaintiffs' Counsel shall be severally obligated to repay that portion of the fees and/or expenses that results from the reversal or modification. Each such Plaintiffs' Counsel's law firm, as a condition of receiving such fees and expenses, on behalf of itself and each partner, shareholder or member of it, agrees that the law firm and its partners, shareholders, and/or members are subject to the jurisdiction of the Court for the purposes of enforcing the provisions of this paragraph.

6.3 Any appeal from any order relating to the Fee and Expense Application or reversal or modification thereof shall not operate to terminate or cancel the Stipulation or affect or delay the finality of the Order and Final Judgment approving the Settlement set forth herein.

6.4 The Released Persons shall have no responsibility for, and no liability whatsoever with respect to, any payment to Class Representatives, Class Counsel, Liaison Counsel, Plaintiffs, Plaintiffs' Counsel or any other counsel or Person who receives payment from the Settlement Fund.

6.5 The Released Persons shall have no responsibility for, and no liability whatsoever with respect to, the allocation among Plaintiffs' Counsel, and/or any other Person who may assert some claim thereto, of any Fee and Expense Award that the Court may make in the Litigation.

7. Conditions of Settlement, Effect of Disapproval, Cancellation or Termination

7.1 The Effective Date of the Stipulation shall be conditioned on the occurrence of all of the following events:

(a) Defendants have made or caused the contributions to be made to the Escrow Account, as required by ¶2.1 above;

(b) the Court has entered the Preliminary Approval Order, as required by ¶3.1 hereof;

(c) the Settling Parties have not exercised their respective options to terminate the Stipulation pursuant to ¶¶7.3 and 7.4 hereof;

(d) the Court has approved the Settlement, following notice to the Class Members and the Final Approval Hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure;

(e) the Court has entered the Order and Final Judgment, or a judgment substantially in the form of Exhibit B attached hereto; and

(f) the Order and Final Judgment has become Final, as defined in ¶1.12 hereof.

7.2 This is not a claims-made settlement. As of the Effective Date, Defendants, their insurance carriers, and/or any such Persons or entities funding the Settlement on the Defendants' behalf, shall not have any right to the return of the Settlement Fund or any portion thereof for any reason. Upon the occurrence of all of the events referenced in ¶7.1 hereof, any and all remaining

interest or right of Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished. If all of the conditions specified in ¶7.1 hereof are not met, then this Stipulation shall be canceled and terminated subject to ¶7.5 hereof unless Class Counsel and counsel for Defendants mutually agree in writing to proceed with the Settlement.

7.3 The Settling Parties shall have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so (“Termination Notice”) to all other parties hereto within thirty (30) days of: (a) the Court’s declining to enter the Preliminary Approval Order in any material respect; (b) the Court’s refusal to approve the Settlement or any material part of it; (c) the Court’s declining to enter the Order and Final Judgment in any material respect; (d) the date upon which the Order and Final Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court and that decision is Final; (e) as otherwise set forth in the Settling Parties’ Supplemental Agreement, as provided below; or (f) the Effective Date not otherwise occurring. No order of the Court or modification or reversal on appeal of any order of the Court concerning the Plan of Allocation or the amount of any attorneys’ fees, expenses, and interest awarded by the Court to Class Counsel, Liaison Counsel, Class Representatives, Plaintiffs, or Plaintiffs’ Counsel shall constitute grounds for cancellation or termination of the Settlement.

7.4 If prior to the Settlement Hearing, the value of valid claims pursuant to the Plan of Allocation of Big Lots common stock purchased during the Class Period by Persons who would otherwise be members of the Class, but who request exclusion from the Class, exceeds the amount specified in a separate supplemental agreement (“Supplemental Agreement”) between the Settling Parties, Big Lots shall have the option to terminate the Stipulation in accordance with the procedures set forth in the Supplemental Agreement. The Supplemental Agreement and all of its terms are hereby incorporated into this Stipulation (and vice versa); however, the Supplemental Agreement will not be filed with the Court unless and until a dispute among the Settling Parties concerning its

interpretation or application arises. If required by the Court, the Supplemental Agreement and/or any of its terms may be disclosed *in camera* to the Court for purposes of approval of the Settlement, but such disclosure shall be carried out to the fullest extent possible in accordance with the practices of the Court so as to preserve the confidentiality of the Supplemental Agreement. Copies of all requests for exclusion received and copies of all written revocations of requests for exclusion received shall be simultaneously sent to counsel for Defendants and to Class Counsel within a reasonable time of receipt by the Claims Administrator. The Claims Administrator shall provide Class Counsel and Defendants' counsel with the calculated value of all valid opt-outs received seven (7) days after the opt-out deadline.

7.5 In the event that the Settlement is not approved by the Court or is terminated or fails to become effective in accordance with the terms of this Stipulation, the Settling Parties shall be restored to their respective positions in the Litigation as of April 6, 2018. In such event, the terms and provisions of the Stipulation, with the exception of ¶¶2.6-2.9 and 7.5-7.6 hereof, shall have no further force and effect with respect to the Settling Parties and shall not be used in the Litigation or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Stipulation shall be treated as vacated, *nunc pro tunc*.

7.6 If the Effective Date does not occur, or if the Stipulation is terminated pursuant to its terms, neither Class Representatives nor Plaintiffs' Counsel shall have any obligation to repay any amounts actually and properly disbursed from the Settlement Fund for Notice and Administration Costs pursuant to ¶2.6 or Taxes and Tax Expenses pursuant to ¶2.8 hereof. In addition, any expenses already incurred and properly chargeable to the Settlement Fund for Notice and Administration Costs pursuant to ¶2.6 or Taxes and Tax Expenses pursuant to ¶2.8 hereof at the time of such termination or cancellation, but which have not been paid, shall be paid by the Escrow Agent

in accordance with the terms of the Stipulation prior to the balance being refunded in accordance with ¶2.9 hereof.

7.7 In the event of a final order of a court of competent jurisdiction, not subject to any further proceedings, determining the transfer of the Settlement Fund, or any portion thereof, by or on behalf of any Defendant to be a preference, voidable transfer, fraudulent transfer or similar transaction under Title 11 of the United States Code (Bankruptcy) or applicable state law and any portion thereof is required to be refunded and such amount is not promptly deposited in the Settlement Fund by or on behalf of any other Defendant, then, at the election of Class Counsel, as to the Defendant as to whom such order applies, the Settlement may be terminated and the releases given and the Judgment entered in favor of such Defendant pursuant to the Settlement shall be null and void. In such instance, the releases given and the Judgments entered in favor of other Defendants shall remain in full force and effect. Alternatively, Class Counsel may elect to terminate the entire Settlement as to all Defendants and all of the releases given and the Judgments entered in favor of the Defendants pursuant to the Settlement shall be null and void and the Class Representatives may proceed as if the Settlement were never entered into.

8. No Admission of Wrongdoing

8.1 Neither the Settlement nor Defendants' execution of this Stipulation, nor any act performed or document executed pursuant to or in furtherance of this Stipulation or the Settlement, shall constitute an admission by any Released Person: (i) of the validity or infirmity of any Released Claim, of any allegation made in the action, or of any wrongdoing, violation of law, or liability whatsoever; or (ii) that recovery could be had in any amount should the action not be settled. Defendants vigorously deny any wrongdoing and liability and maintain that their conduct at all times was legal and proper. Neither this Stipulation, nor any term hereof, may be offered into evidence in

any proceeding or used in any manner as an admission or implication of liability or fault on the part of Defendants or any other Person.

8.2 Class Representatives' execution of this Stipulation does not constitute an admission by Class Representatives: (i) of the lack of any wrongdoing, violation of law, or liability on behalf of any Defendant whatsoever; or (ii) that recovery could not be had should the action not be settled. Neither this Stipulation, nor any term hereof, may be offered into evidence in any proceeding or used in any manner as an admission or concession by Class Representatives that Defendants have not engaged in any wrongdoing or that their conduct was at all times legal and proper.

9. Miscellaneous Provisions

9.1 The Settling Parties: (a) acknowledge that it is their intent to consummate this agreement, (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Stipulation, and (c) agree to exercise their best efforts and to act in good faith to accomplish the foregoing terms and conditions of the Stipulation.

9.2 This Stipulation, the Exhibits attached hereto, and the Supplemental Agreement constitute the entire agreement between the Settling Parties as to the subject matter hereof and supersede any prior or contemporaneous written or oral agreements or understandings between the Settling Parties. No representations, warranties, or inducements have been made to any party concerning the Stipulation, its Exhibits, or the Supplemental Agreement other than the representations, warranties, and covenants contained and memorialized in such documents.

9.3 Except as otherwise provided for herein, each party shall bear his, her or its own costs.

9.4 The Settling Parties intend this Settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The Settlement compromises all claims that were contested and shall not be deemed an admission by any Settling Party as to the merits of any

claim or defense. The Settling Parties agree and the Order and Final Judgment will contain a finding consistent with the provisions of 15 U.S.C. §78u-4(c)(1) that, during the course of the Litigation, the Settling Parties and their respective counsel at all times complied with the requirements of Rule 11(b) of the Federal Rules of Civil Procedure. The Settling Parties agree that the amount paid to the Escrow Account and the other terms of the Settlement were negotiated in good faith by the Settling Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum that the Litigation was brought or defended in bad faith or without a reasonable basis.

9.5 This Stipulation, whether or not consummated, and any negotiations, discussions, or proceedings in connection herewith shall not be:

(a) offered against any Released Person as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by any Released Person of the truth of any fact alleged by the Class Members, the validity of any claim that has been or could have been asserted in the Litigation, the deficiency of any defense that has been or could have been asserted in the Litigation, or of any liability, negligence, fault, or wrongdoing of any Released Person;

(b) offered against any Released Person as evidence of a presumption, concession, admission of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by any Released Person;

(c) offered against any Released Person as evidence of a presumption, concession, or admissibility of any liability, negligent, fault, or wrongdoing, or in any way referred to for any other reason as against any of the parties to the Stipulation, in any other civil, criminal, or administrative action or proceeding other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; provided, however, that any Released Person may file the

Stipulation and/or the Order and Final Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim. In addition, nothing contained in this paragraph shall prevent this Stipulation (or any agreement or order relating thereto) from being used, offered, or received in evidence in any proceeding to approve, enforce, or otherwise effectuate the Stipulation (or any agreement or order relating thereto) or the Order and Final Judgment, or to enforce or effectuate provisions of this Settlement, the Final Judgment, or the Proofs of Claim and Release as to any Released Person; or

(d) construed against any Released Person as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial.

9.6 Except as otherwise provided for herein, all agreements made and orders entered during the course of the Litigation relating to the confidentiality of information shall survive this Stipulation.

9.7 All of the Exhibits to the Stipulation are material and integral parts hereof and are fully incorporated herein by this reference.

9.8 The Stipulation may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

9.8 Each counsel or other Person executing the Stipulation or any of its Exhibits on behalf of any party hereto hereby warrants that such Person has the full authority to do so.

9.9 The Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of executed counterparts shall be filed with the Court.

9.10 The Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties.

9.11 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Stipulation, and the Settling Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Stipulation.

9.12 The waiver by one party of any breach of this Stipulation by any other party shall not be deemed a waiver by any other party or a waiver of any other prior or subsequent breach of this Stipulation.

9.13 The Stipulation and the Exhibits attached hereto and the Supplemental Agreement shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of Ohio, and the rights and obligations of the parties to the Stipulation shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of Ohio without giving effect to that State's choice-of-law principles.

9.14 The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

9.15 This Stipulation shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Settling Parties, it being recognized that it is the result of arm's-length negotiations between the Settling Parties and the Settling Parties have contributed substantially and materially to the preparation of this Stipulation.

IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to be executed, by their duly authorized attorneys, dated May 16, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2018, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 18, 2018.

s/ JOSEPH F. MURRAY

JOSEPH F. MURRAY

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Manual Notice List

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- (No manual recipients)