

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. )	
)	

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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.

ROBBINS GELLER RUDMAN  
& DOWD LLP  
DAVID W. MITCHELL  
LUCAS F. OLTS  
AUSTIN P. BRANE  
BRIAN E. COCHRAN  
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Attorneys for Defendants

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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## **Mailing Information for a Case 2:12-cv-00604-MHW-KAJ Willis v. Big Lots, Inc. et al**

### **Electronic Mail Notice List**

The following are those who are currently on the list to receive e-mail notices for this case.

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## Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)

**EXHIBIT A**

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, ) CLASS ACTION  
 )  
vs. )  
 )  
BIG LOTS, INC., et al., )  
 )  
Defendants. )  
\_\_\_\_\_ )

[PROPOSED] ORDER PRELIMINARILY APPROVING SETTLEMENT  
AND PROVIDING FOR NOTICE

EXHIBIT A

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Lead Counsel for Plaintiff

WHEREAS, an action pending before this Court is styled *Alan Willis v. Big Lots, Inc., et al.*, No. 2:12-cv-00604-MHW-KAJ (the “Litigation”);

WHEREAS, the Settling Parties having made a motion, pursuant to Federal Rule of Civil Procedure 23(e), for an order preliminarily approving the Settlement of this Litigation, in accordance with a Stipulation of Settlement dated May 16, 2018 (the “Stipulation”), which, together with the Exhibits annexed thereto, sets forth the terms and conditions for a proposed Settlement of the Litigation between the Settling Parties and for dismissal of the Litigation against the Released Persons with prejudice upon the terms and conditions set forth therein; and the Court having read and considered the Stipulation and the Exhibits annexed thereto; and

WHEREAS, unless otherwise defined, all terms used herein have the same meanings as set forth in the Stipulation.

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The Court has reviewed the Stipulation and does hereby preliminarily approve the Settlement set forth therein, subject to further consideration at the hearing described below.

2. A hearing shall be held before this Court on \_\_\_\_\_, 2018, at \_\_\_\_ .m. [a date that is approximately 100 calendar days from the Notice Date] (the “Final Approval Hearing”), at the United States District Court for the Southern District of Ohio, Eastern Division, Joseph P. Kinneary U.S. Courthouse, 85 Marconi Boulevard, Columbus, Ohio 43215, to determine whether the proposed Settlement of the Litigation on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to the Class and should be approved by the Court; to determine whether an Order and Final Judgment as provided in ¶1.15 of the Stipulation should be entered; to determine whether the proposed Plan of Allocation should be approved; to determine the amount of attorneys’ fees and expenses that should be awarded to Class Counsel; to determine any award to Class Representatives pursuant to 15 U.S.C. §78u-4(a)(4); to hear any objections by Class

Members to: (i) the Settlement or Plan of Allocation; (ii) the award of attorneys' fees and expenses to Class Counsel; and (iii) the awards to Class Representatives pursuant to 15 U.S.C. §78u-4(a)(4); and to consider such other matters the Court deems appropriate. The Court may adjourn the Final Approval Hearing without further notice to the Class.

3. The Court approves the form, substance, and requirements of the Notice of Pendency and Proposed Settlement of Class Action ("Notice") and Proof of Claim and Release form, substantially in the forms annexed hereto as Exhibits A-1 and A-2, respectively.

4. The Court approves the form of the Summary Notice, substantially in the form annexed hereto as Exhibit A-3.

5. The firm of Gilardi & Co. LLC ("Claims Administrator") is hereby appointed to supervise and administer the notice procedure as well as the processing of claims as more fully set forth below.

6. Not later than \_\_\_\_\_, 2018 [a date fourteen (14) calendar days after the Court signs and enters this Order] (the "Notice Date"), the Claims Administrator shall cause a copy of the Notice and Proof of Claim and Release form, substantially in the forms annexed hereto, to be mailed by First-Class Mail to all Class Members who can be identified with reasonable effort and to be posted on its website at [www.BigLotsSecuritiesSettlement.com](http://www.BigLotsSecuritiesSettlement.com).

7. Not later than \_\_\_\_\_, 2018 [a date ten (10) calendar days after the Notice Date], the Claims Administrator shall cause the Summary Notice to be published once in *The Wall Street Journal*, once in *Investor's Business Daily*, and once over a national newswire service.

8. At least seven (7) calendar days prior to the Final Approval Hearing, Class Counsel shall serve on Defendants' counsel and file with the Court proof, by affidavit or declaration, of such mailing and publishing.

9. Nominees who purchased shares of Big Lots common stock for the benefit of another Person during the Class Period shall be requested to send the Notice and Proof of Claim and Release form to such beneficial owners of Big Lots common stock within ten (10) calendar days after receipt thereof, or send a list of the names and addresses of such beneficial owners to the Claims Administrator within ten (10) calendar days of receipt thereof, in which event the Claims Administrator shall promptly mail the Notice and Proof of Claim and Release form to such beneficial owners.

10. The form and content of the notice program described herein and the methods set forth herein for notifying the Class of the Settlement and its terms and conditions, the Fee and Expense Application, and the Plan of Allocation meet the requirements of Rule 23 of the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act of 1995, and due process, constitute the best notice practicable under the circumstances, and shall constitute due and sufficient notice to all Persons entitled thereto.

11. All fees, costs, and expenses incurred in identifying and notifying members of the Class shall be paid from the Settlement Fund and in no event shall any of the Released Persons bear any responsibility for such fees, costs, or expenses.

12. All members of the Class (except Persons who request exclusion pursuant to ¶15 below) shall be bound by all determinations and judgments in the Litigation concerning the Settlement, including, but not limited to, the releases provided for therein, whether favorable or unfavorable to the Class, regardless of whether such Persons seek or obtain by any means, including, without limitation, by submitting a Proof of Claim and Release form or any similar document, any distribution from the Settlement Fund or the Net Settlement Fund.

13. Class Members who wish to participate in the Settlement shall complete and submit the Proof of Claim and Release form in accordance with the instructions contained therein. Unless

the Court orders otherwise, all Proofs of Claim and Release must be postmarked or submitted electronically no later than \_\_\_\_\_, 2018 [a date ninety (90) calendar days from the Notice Date]. Any Class Member who does not submit a Proof of Claim and Release within the time provided shall be barred from sharing in the distribution of the proceeds of the Net Settlement Fund, unless otherwise ordered by the Court, but shall nevertheless be bound by any final judgment entered by the Court. Notwithstanding the foregoing, Class Counsel shall have the discretion (but not the obligation) to accept late-submitted claims for processing by the Claims Administrator so long as distribution of the Net Settlement Fund is not materially delayed thereby. 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.

14. Any member of the Class may enter an appearance in the Litigation, at his, her, or its own expense, individually or through counsel of his, her, or its own choice. If they do not enter an appearance, they will be represented by Class Counsel.

15. Any Person falling within the definition of the Class may, upon request, be excluded or “opt out” from the Class. Any such Person must submit to the Claims Administrator a request for exclusion (“Request for Exclusion”), by First-Class Mail, postmarked no later than \_\_\_\_\_, 2018 [a date twenty-one (21) calendar days prior to the Final Approval Hearing]. A Request for Exclusion must be signed and state: (a) the name, address, and telephone number of the Person requesting exclusion; (b) all of the Person’s purchases and sales of Big Lots common stock between March 2, 2012 and August 23, 2012, inclusive, including the dates and the number of shares of Big Lots common stock purchased or sold, and the price paid or received for each such purchase or sale; and (c) that the Person wishes to be excluded from the Class. All Persons who submit valid and timely Requests for Exclusion in the manner set forth in this paragraph shall have no rights under the

Stipulation, shall not share in the distribution of the Net Settlement Fund, and shall not be bound by the Stipulation or any final judgment.

16. The Claims Administrator shall cause to be provided simultaneously to Class Counsel and Defendants' counsel copies of all Requests for Exclusion, and any written revocation of Requests for Exclusion, as expeditiously as possible.

17. Any member of the Class may appear and object if he, she, or it has any reason why the proposed Settlement of the Litigation should not be approved as fair, reasonable and adequate, or why a judgment should not be entered thereon, why the Plan of Allocation should not be approved, why fees, costs, and expenses should not be awarded to Class Counsel or Class Representatives; provided, however, that no Class Member or any other Person shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, or, if approved, the Judgment to be entered thereon approving the same, or the order approving the Plan of Allocation, or any fees and expenses to be awarded to Class Counsel or Class Representatives, unless written objections and copies of any papers and briefs are received by Robbins Geller Rudman & Dowd LLP, David W. Mitchell, 655 West Broadway, Suite 1900, San Diego, CA 92101, and Cravath, Swaine & Moore LLP, Michael A. Paskin, 825 Eighth Avenue, New York, NY 10019, no later than \_\_\_\_\_, 2018 [a date twenty-one (21) calendar days prior to the Final Approval Hearing] and said objections, papers and briefs are filed with the Clerk of the United States District Court for the Southern District of Ohio, Eastern Division, no later than \_\_\_\_\_, 2018. Any member of the Class who does not make his, her, or its objection in the manner provided shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the proposed Settlement as incorporated in the Stipulation, to the Plan of Allocation, or to the award of fees, costs, and expenses to Class Counsel or Class Representatives, unless otherwise ordered by the Court. Attendance at the Final Approval Hearing is not necessary.



However, Persons wishing to be heard orally in opposition to the approval of the Settlement, the Plan of Allocation, and/or the application for an award of fees, costs, and expenses are required to indicate in their written objection their intention to appear at the hearing. Class Members do not need to appear at the Final Approval Hearing or take any other action to indicate their approval.

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

19. All papers in support of the Settlement, Plan of Allocation, and any application by Class Counsel for attorneys' fees and expenses and payment of time and expenses to Class Representatives shall be filed and served no later than \_\_\_\_\_, 2018 [a date thirty-five (35) calendar days prior to the Final Approval Hearing] and any reply papers shall be filed and served no later than \_\_\_\_\_, 2018 [a date seven (7) calendar days prior to the Final Approval Hearing].

20. The Released Persons shall have no responsibility for the Plan of Allocation or any application for attorneys' fees or expenses submitted by Class Counsel or Class Representatives, and such matters will be considered by the Court separately from the fairness, reasonableness, and adequacy of the Settlement.

21. At or after the Final Approval Hearing, the Court shall determine whether the Plan of Allocation proposed by Class Counsel, and any application for attorneys' fees and expenses, should be approved.

22. All reasonable expenses incurred in identifying and notifying Class Members as well as administering the Settlement Fund shall be paid as set forth in the Stipulation. In the event the Court does not approve the Settlement, or it otherwise fails to become effective, neither Class Representatives nor any of their counsel shall have any obligation to repay any amounts actually and properly incurred or disbursed pursuant to ¶¶2.6 or 2.8 of the Stipulation.

23. Neither the Stipulation, nor any of its terms or provisions, nor any of the negotiations, discussions, proceedings connected with it, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement may be construed as an admission or concession by the Defendants or any other Released Persons of the truth of any of the allegations in the Litigation, or of any liability, fault, or wrongdoing of any kind, or offered or received in evidence, or otherwise used by any person in the Litigation, or in any other action or proceeding, whether civil, criminal, or administrative, in any court, administrative agency, or other tribunal, except in connection with any proceeding to enforce the terms of the Stipulation. The Released Persons, Class Representatives, Class Members, and each of their counsel may file the Stipulation and/or the 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.

24. All proceedings in the Litigation are stayed until further order of this Court, except as may be necessary to implement the Settlement or comply with the terms of the Stipulation. Pending final determination of whether the Settlement should be approved, neither the Class Representatives nor any Class Member, either directly, representatively, or in any other capacity shall commence or prosecute against any of the Released Persons any action or proceeding in any court or tribunal asserting any of the Released Claims.

25. The Court reserves the right to alter the time or the date of the Final Approval Hearing without further notice to the members of the Class, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The Court may approve the Settlement, with such modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to the Class.

26. If the Settlement fails to become effective as defined in the Stipulation or is terminated, then, in any such event, the Stipulation, including any amendment(s) thereof, except as expressly provided in the Stipulation, and this Order shall be null and void, of no further force or effect, and without prejudice to any Settling Party, and may not be introduced as evidence or used in any actions or proceedings by any person or entity against the Settling Parties, and they shall be deemed to have reverted to their respective litigation positions in the Litigation as of April 6, 2018.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE MICHAEL H. WATSON  
UNITED STATES DISTRICT JUDGE

**EXHIBIT A-1**

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. )	
_____ )	

NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF CLASS ACTION

EXHIBIT A-1

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Lead Counsel for Plaintiff

**TO: ALL PERSONS WHO PURCHASED THE COMMON STOCK OF BIG LOTS, INC. (“BIG LOTS”) BETWEEN MARCH 2, 2012 AND AUGUST 23, 2012, INCLUSIVE (THE “CLASS”)**

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THIS LITIGATION. PLEASE NOTE THAT IF YOU ARE A CLASS MEMBER, YOU MAY BE ENTITLED TO SHARE IN THE PROCEEDS OF THE SETTLEMENT DESCRIBED IN THIS NOTICE. TO CLAIM YOUR SHARE OF THE SETTLEMENT PROCEEDS, YOU MUST SUBMIT A VALID PROOF OF CLAIM AND RELEASE FORM (“PROOF OF CLAIM”) **POSTMARKED OR SUBMITTED ONLINE ON OR BEFORE [INSERT DATE]**.

This Notice of Pendency and Proposed Settlement of Class Action (“Notice”) has been sent to you pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Southern District of Ohio, Eastern Division (the “Court”). The purpose of this Notice is to inform you of the proposed settlement of the Litigation (the “Settlement”) and of the hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement and the proposed Plan of Allocation of the Settlement proceeds, as well as counsel’s application for fees and expenses. This Notice describes the rights you may have in connection with your participation in the Settlement, what steps you may take in relation to the Settlement and this Litigation, and, alternatively, what steps you must take if you wish to be excluded from the Class and this Litigation. The terms of the Settlement are set forth in the Stipulation of Settlement dated May 16, 2018 (“Stipulation”).<sup>1</sup>

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>SUBMIT A PROOF OF CLAIM</b>	The only way to be eligible to receive a payment. Proofs of Claim must be <b>postmarked or submitted online on or before [Insert Date]</b> .
<b>EXCLUDE YOURSELF</b>	Receive no payment. This is the only option that potentially allows you to ever be part of any other lawsuit against the Defendants or any other Released Persons about the legal claims related to the issues raised in this Litigation. Exclusions must be <b>postmarked on or before [Insert Date]</b> .
<b>OBJECT</b>	Write to the Court about why you oppose the Settlement, the Plan of Allocation, and/or the request for attorneys’ fees and expenses and/or any award to Class Representatives for their time and expense in representing the Class. You will still be a member of the Class. Objections must be <b>received by the Court and counsel on or before [Insert Date]</b> .

<sup>1</sup> The Stipulation can be viewed and/or downloaded at [www.BigLotsSecuritiesSettlement.com](http://www.BigLotsSecuritiesSettlement.com). All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings provided in the Stipulation.

<b>GO TO A HEARING</b>	Ask to speak in Court about the fairness of the Settlement. Requests to speak must be <b>received by the Court and counsel on or before [Insert Date]</b> .
<b>DO NOTHING</b>	Receive no payment. Give up your rights.

### **SUMMARY OF THIS NOTICE**

#### **Statement of Class Recovery**

Pursuant to the Settlement described herein, the Settlement Amount is \$38 million. Class Representatives' damages expert estimates that approximately 50.3 million shares of Big Lots common stock may have been damaged during the Class Period. If 100% of those shares submit a claim, the average recovery per share of common stock is approximately \$0.75 before deduction of any taxes on any income earned on the Settlement Amount, notice and administration costs and the attorneys' fee and expense award as determined by the Court. A Class Member's actual recovery will be a proportion of the Net Settlement Fund determined by that claimant's claim as compared to the total claims of all Class Members who submit valid Proofs of Claim. An individual Class Member may receive more or less than this estimated average amount depending on the number of claims submitted, when during the Class Period a Class Member purchased Big Lots common stock, the price paid, and whether those shares were held or sold, and, if sold, when they were sold and the amount received. *See* Plan of Allocation as set forth at pages \_\_\_ below for more information on your claim.

#### **Statement of Potential Outcome of Litigation**

The parties disagree on both liability and damages and do not agree on the average amount of damages per Big Lots common stock that would be recoverable if the Class prevailed on each claim alleged. Among other things, Defendants deny that: (i) they violated any federal securities laws; (ii) they made any false or misleading statements or omissions; (iii) the alleged misstatements and omissions influenced the trading price of Big Lots common stock at various times during the Class Period; (iv) Big Lots common stock was artificially inflated during the Class Period; or (v) damages were suffered by members of the Class as a result of their alleged conduct. Defendants have expressly denied and continue to deny all charges of wrongdoing or liability against them arising out of any of the conduct, acts, misstatements, or omissions alleged, or that could have been alleged, in this action, and deny any and all liability to the Plaintiffs or the Class and deny that Plaintiffs or the Class have suffered any damages.

#### **Statement of Attorneys' Fees and Expenses Sought**

Class Counsel will apply to the Court for an award of attorneys' fees of 28% of the Settlement Amount, plus expenses not to exceed \$900,000, plus interest earned on both amounts at the same rate as earned on the Settlement Fund. Since the Litigation's inception in 2012, Class Counsel has expended considerable time and effort in the prosecution of this Litigation and preparing the case for trial on a contingent fee basis and advanced the expenses of the Litigation in the expectation that if they were successful in obtaining a recovery for the Class they would be paid from such recovery. In this type of litigation it is customary for counsel to be awarded a percentage of the common fund recovery as their attorneys' fees. The requested fees and expenses amount to an average of

approximately \$0.23 per damaged common share. In addition, Class Representatives may seek reimbursement of up to \$12,500 each for time and expenses in representing the Class.

### **Further Information**

For further information regarding the Litigation, this Notice or to review the Stipulation of Settlement, please contact the Claims Administrator toll-free at 1-844-857-5171 or visit the website [www.BigLotsSecuritiesSettlement.com](http://www.BigLotsSecuritiesSettlement.com).

You may also contact representatives of counsel for the Class: Rick Nelson, Shareholder Relations, Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101, 1-800-449-4900, [www.rgrdlaw.com](http://www.rgrdlaw.com).

Please Do Not Call the Court or Defendants with Questions About the Settlement.

### **Reasons for the Settlement**

The principal reason for the Settlement is the benefit to be provided to the Class now. This benefit must be compared to the risk that no recovery might be achieved after summary judgment motions, a contested trial and likely appeals, possibly years into the future.

Defendants have denied and continue to deny each and all of the claims and contentions alleged by Plaintiffs in the Litigation.

## **BASIC INFORMATION**

### **1. Why did I get this notice package?**

You or someone in your family may have purchased Big Lots common stock during the time period March 2, 2012 and August 23, 2013, inclusive (“Class Period”).

The Court directed that this Notice be sent to Class Members because they have a right to know about the proposed Settlement of this class action lawsuit, and about all of their options, before the Court decides whether to approve the Settlement.

This Notice explains the class action lawsuit, the Settlement, Class Members’ legal rights, what benefits are available, who is eligible for them, and how to get them.

The Court in charge of the Litigation is the United States District Court for the Southern District of Ohio, Eastern Division, and the case is known as *Alan Willis v. Big Lots, Inc., et al.*, No. 2:12-cv-00604-MHW-KAJ. The case has been assigned to the Honorable Michael H. Watson. The Court-appointed Class Representatives, City of Pontiac General Employees’ Retirement System and Teamsters Local 237 Additional Security Benefit Fund, represent the Class, and the parties they sued and who have now settled are called Defendants.

### **2. What is this lawsuit about?**

Plaintiffs allege that Big Lots and several of its officers, former Chairman and Chief Executive Officer, Steven S. Fishman, former President of Big Lots Canada and Chief Financial



Officer, Joe R. Cooper, former General Counsel, Charles W. Haubiel, II, and former Senior Vice President of Finance and current Chief Financial Officer, Timothy A. Johnson, violated SEC Rule 10b-5 and Sections 10(b), 20(a), and 20A of the Securities Exchange Act of 1934 by ***making false and misleading statements to investors concerning Big Lots's success of operations and financial condition.***

Plaintiffs brought this action on July 9, 2012, and following a motion to dismiss brought by Defendants, ultimately succeeded in defeating Defendants' challenge to dismissal of some of their claims. On March 17, 2017, after extensive discovery and detailed briefing, Judge Watson certified a class of stock purchasers covering the class period March 2, 2012 through August 23, 2012. The parties have completed non-expert discovery, including the production and review of approximately one million pages of documents and taking nearly 30 fact witness depositions. At the time the parties agreed to settle this matter, oral argument on Defendants' appeal of class certification to the United States Court of Appeals for 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 mediation 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.

Defendants deny each and all of the claims and contentions of wrongdoing alleged by Plaintiffs in the Litigation. Defendants contend that they did not make any materially false or misleading statements, and that they disclosed all material information required to be disclosed by the federal securities laws. Defendants also contend that any losses suffered by members of the Class were not caused by any allegedly false or misleading statements by Defendants.

**3. Why is this a class action?**

In a class action, one or more people called plaintiffs sue on behalf of people who have similar claims. Here, all of the people with similar claims are referred to as the Class or Class Members. One court resolves the issues for all Class Members, except for those Class Members who exclude themselves from the Class.

**4. Why is there a settlement?**

The Court has not decided in favor of the Defendants or the Class. Instead, both sides agreed to the Settlement to avoid the costs and risks of further litigation, including trial and post-trial appeals, and Class Representatives agreed to the Settlement in order to ensure that Class Members will receive compensation. Class Representatives and Class Counsel believe the Settlement is in the best interest of all Class Members in light of the possibility that continued litigation could result in no recovery at all.

## WHO IS IN THE SETTLEMENT

To see if you will get money from this Settlement, you first have to decide if you are a Class Member.

### 5. How do I know if I am part of the Settlement?

The Court ordered that everyone who fits this description is a Class Member: *all Persons who purchased the common stock of Big Lots between March 2, 2012 and August 23, 2012*, except those Persons and entities that are excluded, as described below.

### 6. Are there exceptions to being included?

Excluded from the Class are Defendants, the officers and directors of Big Lots, 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 this Notice. *See Questions 13-14 below.*

### 7. What if I am still not sure if I am included?

If you are still not sure whether you are included, you can ask for free help. You can contact the Claims Administrator toll-free at 1-844-857-5171, or you can fill out and return the Proof of Claim enclosed with this Notice package, to see if you qualify.

## THE SETTLEMENT BENEFITS – WHAT YOU GET

### 8. What does the Settlement provide?

In exchange for the Settlement and the release of the Released Claims (defined below) as well as dismissal of the Litigation, Defendants have agreed that a payment of \$38 million will be made by Defendants (or on their behalf) to be divided, after taxes, fees, and expenses, *pro rata* pursuant to the Plan of Allocation described below, among all Class Members who send in a valid Proof of Claim.

### 9. How much will my payment be?

Your share of the fund will depend on several things, including how many Class Members submit timely and valid Proofs of Claim, the total dollar amount of the claims represented by the valid Proofs of Claim that Class Members send in, the number of shares of Big Lots common stock you purchased, how much you paid for the shares, when you purchased them, and if you sold your shares and for how much. *See the Plan of Allocation at pages \_\_\_ hereof for more information.*

## HOW YOU GET A PAYMENT – SUBMITTING A CLAIM FORM

### 10. How can I receive a payment?

To qualify for a payment, you must submit a Proof of Claim. A Proof of Claim is enclosed with this Notice or it may be downloaded at [www.BigLotsSecuritiesSettlement.com](http://www.BigLotsSecuritiesSettlement.com). Read the instructions carefully, fill out the Proof of Claim, include all the documents the form asks for, sign it, and mail or submit it online so that it is postmarked (if mailed) or received (if filed electronically) no later than [Insert Date]. The Proof of Claim may be submitted online at [www.BigLotsSecuritiesSettlement.com](http://www.BigLotsSecuritiesSettlement.com).

### 11. When would I receive my payment?

The Court will hold a Final Approval Hearing on \_\_\_\_\_, 2018, to decide whether to approve the Settlement. If the Court approves the Settlement after that, there might be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. It also takes time for all the Proofs of Claim to be processed. Please be patient.

### 12. What am I giving up to receive a payment or to stay in the Class?

Unless you exclude yourself, you will remain a Class Member, and that means that, if the Settlement is approved, you will give up all “Released Claims” (as defined below), including “Unknown Claims” (as defined below), against the “Released Persons” (as defined below):

- “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.
- “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.
- “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.

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

If you remain a member of the Class, all of the Court's orders will apply to you and legally bind you.

### **EXCLUDING YOURSELF FROM THE CLASS**

If you do not want a payment from this Settlement, and you want to keep the right to sue the Defendants and the other Released Persons, on your own, about the legal issues in this Litigation, then you must take steps to remove yourself from the Class. This is called excluding yourself. *If you are requesting exclusion because you want to bring your own lawsuit based on the matters alleged in the Litigation, you may want to consult an attorney and discuss whether any individual claim that you may wish to pursue would be time-barred by the applicable statutes of limitations or repose.*

13. <b>How do I get out of the Class?</b>
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To exclude yourself from the Class, you must send a letter by First-Class Mail stating that you "request exclusion from the Class in the *Big Lots Securities Litigation*." To be valid, your letter must include the date(s), price(s), and number(s) of all purchases and sales of Big Lots common stock between March 2, 2012 and August 23, 2012, inclusive. In addition, you must include your name, address, telephone number, and your signature. You must submit your exclusion request **postmarked no later than \_\_\_\_\_ [Insert Date]** to:

*Big Lots Securities Litigation*  
c/o Gilardi & Co. LLC  
Claims Administrator  
EXCLUSIONS  
3301 Kerner Blvd.  
San Rafael, CA 94901

If you ask to be excluded, you will not get any payment, and you cannot object to the Settlement. You will not be legally bound by anything that happens in this lawsuit, and you may be able to sue the Defendants and the other Released Persons in the future.

**14. If I do not exclude myself, can I sue the Defendants and the other Released Persons for the same thing later?**

No. Unless you exclude yourself, you give up any rights to sue the Defendants and the other Released Persons for any and all Released Claims. If you have a pending lawsuit against the Released Persons, speak to your lawyer in that case immediately. You must exclude yourself from this Litigation to continue your own lawsuit. **Remember, the exclusion deadline is [Insert Date].**

**THE LAWYERS REPRESENTING YOU**

**15. Do I have a lawyer in this case?**

The Court ordered that the law firm of Robbins Geller Rudman & Dowd LLP represent the Class, including you. These lawyers are called Class Counsel. You will not be charged for these lawyers. They will be paid from the Settlement Fund to the extent the Court approves their application for fees and expenses. If you want to be represented by your own lawyer, you may hire one at your own expense.

**16. How will the lawyers be paid?**

Class Counsel will move the Court for an award of attorneys' fees of 28% of the Settlement Amount and for expenses in an amount not to exceed \$900,000, which were incurred in connection with the Litigation, plus interest on such fees and expenses at the same rate earned on the Settlement Fund. In addition, the Class Representatives may seek up to \$12,500 each for their time and expenses in representing the Class. Such sums as may be approved by the Court will be paid from the Settlement Fund.

The attorneys' fees and expenses requested will be the only payment to Plaintiffs' Counsel for their efforts in achieving this Settlement and for their risk in undertaking this representation on a wholly contingent basis. To date, Plaintiffs' Counsel have not been paid for their services for conducting this Litigation on behalf of Class Representatives and the Class nor for the substantial litigation expenses Plaintiffs' Counsel have incurred. The fee requested will compensate Plaintiffs' Counsel for their work in achieving the Settlement Fund and is within the range of fees awarded to class counsel under similar circumstances in other cases of this type.

**OBJECTING TO THE SETTLEMENT**

**17. How do I tell the Court that I object to the proposed Settlement?**

If you are a Class Member, you can write to the Court to object to or comment positively on the proposed Settlement, the proposed Plan of Allocation, or Class Counsel's fee and expense application. The Court will consider your views. To object, you must send a signed letter saying that you object to the proposed Settlement, the proposed Plan of Allocation, the application for fees and expenses, and/or the request by Class Representatives for payment for their time and expenses in representing the Class and the reasons you object. Be sure to include your name, address, telephone number, and your signature, identify the date(s), price(s), and number(s) of shares of Big Lots common stock you purchased and sold during the Class Period, and state the reasons why you object. Your objection must reference *Alan Willis v. Big Lots, Inc., et al.*, No. 2:12-cv-00604-MHW-



KAJ, and be filed with the Court and mailed or delivered to each of the following addresses such that it is **received no later than [Insert Date]**:

<b>COURT</b>	<b>CLASS COUNSEL</b>	<b>DEFENDANTS' COUNSEL</b>
Clerk of the Court UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF OHIO EASTERN DIVISION Joseph P. Kinneary U.S. Courthouse 85 Marconi Boulevard Columbus, OH 43215	David W. Mitchell ROBBINS GELLER RUDMAN & DOWD LLP 655 West Broadway, Suite 1900 San Diego, CA 92101	Michael A. Paskin CRAVATH, SWAINE & MOORE LLP 825 Eighth Avenue New York, NY 10019

**18. What is the difference between objecting and excluding myself?**

Objecting is simply telling the Court that you do not like something about the proposed Settlement, the Plan of Allocation, or the fee and expense application. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be part of the Class.

**THE COURT'S FINAL APPROVAL HEARING**

The Court will hold a hearing to decide whether to approve the proposed Settlement. You may attend and you may ask to speak, but you do not have to.

**19. When and where will the Court decide whether to approve the proposed Settlement?**

The Court will hold a Final Approval Hearing at    :        .m., on    ,    , **2018**, at the United States District Court for the Southern District of Ohio, Eastern Division, Joseph P. Kinneary U.S. Courthouse, 85 Marconi Boulevard, Columbus, Ohio 43215. At the hearing the Court will consider whether the Settlement and proposed Plan of Allocation are fair, reasonable, and adequate and whether Class Counsel's fee and expense application should be granted. The Court will also consider Class Representatives' request for their time and expenses in representing the Class. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. After the Final Approval Hearing, the Court will decide whether to approve the Settlement, the Plan of Allocation, the amount of attorneys' fees and expenses and Class Representatives' request for their time and expenses in representing the Class. We do not know how long these decisions will take. The Court may change the date and time of the Final Approval Hearing without another notice being sent to Class Members. If you want to attend the hearing, you may wish to check with Class Counsel beforehand to be sure that the date and/or time has not changed.

**20. Do I have to come to the hearing?**

No. Class Counsel will answer questions the Court may have. But, you are welcome to come at your own expense. If you send an objection or statement in support of the Settlement, you are not required to come to Court to discuss it. As long as you mailed your statement in support of the Settlement or written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but you are not required to do so. Class Members do not need to appear at the hearing or take any other action to indicate their approval.

**21. May I speak at the hearing?**

If you object to the Settlement, the Plan of Allocation, the fee and expense application, or Class Representatives' request for their time and expenses in representing the Class, you may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include with your objection (*see* question 17 above) a statement saying that it is your "Notice of Intention to Appear in the *Big Lots Securities Litigation*." Persons who intend to object to the Settlement, the Plan of Allocation, the application for an award of attorneys' fees and expenses, or Class Representatives' request for their time and expenses in representing the Class and desire to present evidence at the Final Approval Hearing must include in their written objections the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the Final Approval Hearing. You cannot speak at the hearing if you exclude yourself.

**IF YOU DO NOTHING**

**22. What happens if I do nothing at all?**

If you do nothing, you will get no money from this Settlement. But, unless you exclude yourself, you will not be able to start a lawsuit or be part of any other lawsuit against the Released Persons about the legal issues in this case, ever again.

**GETTING MORE INFORMATION**

**23. Are there more details about the proposed Settlement?**

This Notice summarizes the proposed Settlement. More details are in the Stipulation. You can obtain answers to common questions regarding the proposed Settlement by contacting the Claims Administrator toll-free at 1-844-857-5171. A copy of the Stipulation and other relevant documents are also available on the Settlement website at [www.BigLotsSecuritiesSettlement.com](http://www.BigLotsSecuritiesSettlement.com). You may also contact a representative of Class Counsel: Rick Nelson, Shareholder Relations, Robbins Geller Rudman & Dowd LLP, 655 West Broadway, Suite 1900, San Diego, CA 92101, Telephone: 1-800-449-4900.

**24. How do I get more information?**

For even more detailed information concerning the matters involved in this Litigation, reference is made to the pleadings, the Stipulation, to the Orders entered by the Court and the other papers filed in the Litigation, which may be inspected at the Office of the Clerk of the United States District Court for the Southern District of Ohio, Eastern Division, Joseph P. Kinneary U.S.



Courthouse, 85 Marconi Boulevard, Columbus, Ohio 43215, during regular business hours. For a fee, all papers filed with the Court in this Litigation are available at [www.pacer.gov](http://www.pacer.gov).

### **PLAN OF ALLOCATION OF NET SETTLEMENT FUND AMONG CLASS MEMBERS**

The Settlement Fund, less all taxes, approved fees, and expenses (the “Net Settlement Fund”) will be distributed to Class Members who submit timely and valid Proofs of Claim to the Claims Administrator (“Authorized Claimants”) pursuant to the Plan of Allocation (the “Plan”) described below.

The Plan provides that an Authorized Claimant will be eligible to participate in the distribution of the Net Settlement Fund only if the Authorized Claimant purchased Big Lots common stock during the “Class Period,” between March 2, 2012 and August 23, 2012, inclusive.

Defendants will not have any involvement or responsibility for the terms or application of the Plan.

The Claims Administrator will determine each Authorized Claimant’s *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant’s “Recognized Loss” calculated using the Court-approved Plan. The Recognized Loss formula (described below) is not intended to estimate the amount that will be paid to Authorized Claimants from the Net Settlement Fund. Rather, the Recognized Loss formula is the basis upon which the Net Settlement Fund will be allocated among Authorized Claimants on a *pro rata* basis. The Court may approve the Plan, or modify it, without additional notice to the Class. However, any order modifying the Plan will be posted on the Settlement website at: [www.BigLotsSecuritiesSettlement.com](http://www.BigLotsSecuritiesSettlement.com).

If any of the formulas set forth below yield an amount less than \$0.00, the claim is \$0.00.

#### **A. Eligible Securities**

The Big Lots securities for which an Authorized Claimant may be entitled to receive a distribution from the Net Settlement Fund consist of Big Lots common stock (CUSIP: 089302103) purchased during the Class Period.

#### **B. Recognized Claim**

To the extent there are sufficient funds in the Net Settlement Fund, each Authorized Claimant will receive an amount equal to the Authorized Claimant’s “Recognized Claim,” as described below. If, however, as expected, the amount in the Net Settlement Fund is not sufficient to pay the total Recognized Claim of each Authorized Claimant, then each Authorized Claimant shall be paid the Authorized Claimant’s *pro rata* share of the Net Settlement Fund, *i.e.*, the Recognized Claim multiplied by the ratio of the Net Settlement Fund to the aggregate amount of the Recognized Claims of all Authorized Claimants. Payment in this manner shall be deemed conclusive against all Authorized Claimants.

The Plan reflects the Plaintiffs’ allegations that, over the course of the Class Period, the trading prices of the Big Lots common stock were artificially inflated as a result of the Defendants’ misrepresentations and omissions.

For purposes of this Settlement only, Recognized Claims will be calculated as follows:

The allocation below is based on the following inflation per share amounts for Class Period common stock purchases and sales as well as the statutory PSLRA 90-day look-back amount of \$29.97. Furthermore, if any of the formulas set forth below yield an amount less than \$0.00, the claim per share is \$0.00.

<b>Inflation Period</b>	<b>Inflation per Share</b>
March 2, 2012 – March 28, 2012	\$20.79
March 29, 2012 – April 23, 2012	\$18.76
April 24, 2012 – August 22, 2012	\$7.91
August 23, 2012	\$0.00

For shares of Big Lots common stock purchased on or between March 2, 2012 through August 22, 2012, the claim per share shall be as follows:

- (a) If sold prior to March 29, 2012, the claim per share is \$0.00.
- (b) If sold on or between March 29, 2012 through August 22, 2012, the claim per share shall be the lesser of: (i) the inflation per share at the time of purchase less the inflation per share at the time of sale; and (ii) the difference between the purchase price and the selling price.
- (c) If retained at the end of August 22, 2012 and sold on or before November 20, 2012, the claim per share shall be the least of: (i) the inflation per share at the time of purchase; (ii) the difference between the purchase price and the selling price; and (iii) the difference between the purchase price and the average closing price up to the date of sale as set forth in the table below.
- (d) If retained at the close of trading on November 20, 2012, or sold thereafter, the claim per share shall be the lesser of: (i) the inflation per share at the time of purchase; and (ii) the difference between the purchase price and \$29.97.

For shares of Big Lots common stock purchased on August 23, 2012, the claim per share is \$0.00.<sup>2</sup>

<b>DATE</b>	<b>PRICE</b>	<b>AVERAGE CLOSING PRICE</b>
8/23/2012	\$30.76	\$30.76
8/24/2012	\$30.28	\$30.52
8/27/2012	\$30.64	\$30.56
8/28/2012	\$31.10	\$30.70
8/29/2012	\$30.43	\$30.64

<sup>2</sup> Please note that although the Class Period includes August 23, 2012, shares of Big Lots common stock that were purchased on August 23, 2012 are not eligible for a recovery under the Plan of Allocation because the August 23, 2012 disclosure that Plaintiffs allege corrected earlier alleged misrepresentations and omissions was made before the opening of trading that day.

<b>DATE</b>	<b>PRICE</b>	<b>AVERAGE CLOSING PRICE</b>
8/30/2012	\$30.37	\$30.60
8/31/2012	\$30.44	\$30.57
9/4/2012	\$30.57	\$30.57
9/5/2012	\$30.56	\$30.57
9/6/2012	\$30.60	\$30.58
9/7/2012	\$30.67	\$30.58
9/10/2012	\$30.51	\$30.58
9/11/2012	\$30.43	\$30.57
9/12/2012	\$30.39	\$30.55
9/13/2012	\$30.46	\$30.55
9/14/2012	\$31.83	\$30.63
9/17/2012	\$31.74	\$30.69
9/18/2012	\$31.56	\$30.74
9/19/2012	\$31.44	\$30.78
9/20/2012	\$31.19	\$30.80
9/21/2012	\$30.90	\$30.80
9/24/2012	\$30.87	\$30.81
9/25/2012	\$29.59	\$30.75
9/26/2012	\$29.65	\$30.71
9/27/2012	\$29.43	\$30.66
9/28/2012	\$29.58	\$30.62
10/1/2012	\$30.14	\$30.60
10/2/2012	\$29.65	\$30.56
10/3/2012	\$29.80	\$30.54
10/4/2012	\$30.29	\$30.53
10/5/2012	\$30.71	\$30.53
10/8/2012	\$30.43	\$30.53
10/9/2012	\$30.07	\$30.52
10/10/2012	\$30.38	\$30.51
10/11/2012	\$30.32	\$30.51
10/12/2012	\$30.07	\$30.50
10/15/2012	\$30.84	\$30.51
10/16/2012	\$30.89	\$30.52
10/17/2012	\$30.60	\$30.52
10/18/2012	\$29.94	\$30.50
10/19/2012	\$29.22	\$30.47
10/22/2012	\$29.43	\$30.45
10/23/2012	\$28.65	\$30.41
10/24/2012	\$29.00	\$30.37
10/25/2012	\$29.21	\$30.35
10/26/2012	\$28.78	\$30.31
10/31/2012	\$29.13	\$30.29
11/1/2012	\$30.52	\$30.29
11/2/2012	\$30.29	\$30.29
11/5/2012	\$30.53	\$30.30
11/6/2012	\$31.14	\$30.31
11/7/2012	\$30.57	\$30.32
11/8/2012	\$29.65	\$30.31
11/9/2012	\$28.93	\$30.28
11/12/2012	\$28.91	\$30.26

<b>DATE</b>	<b>PRICE</b>	<b>AVERAGE CLOSING PRICE</b>
11/13/2012	\$27.48	\$30.21
11/14/2012	\$26.86	\$30.15
11/15/2012	\$27.39	\$30.10
11/16/2012	\$27.19	\$30.05
11/19/2012	\$27.90	\$30.02
11/20/2012	\$27.55	\$29.97

### **ADDITIONAL PROVISIONS**

If a Class Member held Big Lots common stock at the beginning of the Class Period or made multiple purchases or sales of Big Lots common stock during the Class Period, the starting point for calculating an Authorized Claimant's Recognized Claim is to match the Authorized Claimant's holdings and purchases to their sales using the FIFO (*i.e.*, "first-in-first-out") method. Under the FIFO method, shares sold during the Class Period will be matched, in chronological order first against shares held at the beginning of the Class Period. The remaining sales of shares during the Class Period will then be matched, in chronological order against shares purchased during the Class Period.

Purchases and sales of Big Lots common stock shall be deemed to have occurred on the "contract" or "trade" date as opposed to the "settlement" or "payment" date. The receipt or grant by gift, inheritance or operation of law of shares during the Class Period shall not be deemed a purchase or sale of shares for the purpose of calculating Recognized Claims, unless (i) the donor or decedent purchased such shares during the Class Period; and (ii) no Proof of Claim was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to such shares.

A Class Member will be eligible to receive a distribution from the Net Settlement Fund only if that Class Member had a net overall loss, after all profits from transactions in all shares purchased during the Class Period are subtracted from all losses from transactions in all shares purchased during the Class Period. No distributions will be made to Authorized Claimants who would otherwise receive a distribution of less than \$10.00.

All distributions to Authorized Claimants from the Net Settlement Fund shall be void after a prescribed number of days. An Authorized Claimant who fails to cash a distribution within that time period from the date of the distribution forfeits his, her or its interest in that distribution, and continues to be bound by all of the terms of the Stipulation and the Settlement, including the terms of the Order and Final Judgment to be entered in the Litigation and the releases provided for therein, and will be barred from bringing any action against the Released Persons concerning the Released Claims.

The Court has reserved jurisdiction to allow, disallow, or adjust the claim of any Class Member on equitable grounds.

Payment pursuant to the Plan set forth above shall be conclusive against all Authorized Claimants. No Person shall have any claim against Class Representatives, Class Counsel, Plaintiffs' Counsel, any claims administrator, or other Person designated by Class Representatives' counsel, or Defendants or Defendants' counsel based on distributions made substantially in accordance with the Stipulation and the Settlement contained therein, the Plan, or further orders of the Court. All Class

Members who fail to complete and file a valid and timely Proof of Claim shall be barred from participating in distributions from the Net Settlement Fund (unless otherwise ordered by the Court), but otherwise shall be bound by all of the terms of the Stipulation, including the terms of any judgment entered and the releases given.

**SPECIAL NOTICE TO SECURITIES BROKERS AND OTHER NOMINEES**

If you purchased any shares of Big Lots common stock during the Class Period for the beneficial interest of an individual or organization other than yourself, the Court has directed that, **WITHIN TEN (10) CALENDAR DAYS OF YOUR RECEIPT OF THIS NOTICE**, you either (a) provide to the Claims Administrator the name and last known address of each person or organization for whom or which you purchased such securities during such time period, or (b) request additional copies of this Notice and the Proof of Claim, which will be provided to you free of charge, and within ten (10) calendar days mail the Notice and Proof of Claim directly to the beneficial owners of the securities referred to herein. If you choose to follow alternative procedure (b), upon such mailing, you must send a statement to the Claims Administrator confirming that the mailing was made as directed and retain the names and addresses for any future mailings to Class Members. You are entitled to reimbursement from the Settlement Fund of your reasonable expenses actually incurred in connection with the foregoing, including reimbursement of postage expense and the cost of ascertaining the names and addresses of beneficial owners. Your reasonable expenses will be paid upon request and submission of appropriate supporting documentation. All communications concerning the foregoing should be addressed to the Claims Administrator:

*Big Lots Securities Litigation*  
c/o Gilardi & Co. LLC  
Claims Administrator  
P.O. Box 30224  
College Station, TX 77842-3224  
1-844-857-5171  
[www.BigLotsSecuritiesSettlement.com](http://www.BigLotsSecuritiesSettlement.com)

DATED: \_\_\_\_\_

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

**EXHIBIT A-2**

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. )	
_____ )	

PROOF OF CLAIM AND RELEASE

EXHIBIT A-2

MURRAY MURPHY MOUL + BASIL LLP  
 JOSEPH F. MURRAY, Trial Attorney (0063373)  
 BRIAN K. MURPHY (0070654)  
 1114 Dublin Road  
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Liaison Counsel

ROBBINS GELLER RUDMAN  
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 DAVID W. MITCHELL  
 LUCAS F. OLTS  
 AUSTIN P. BRANE  
 BRIAN E. COCHRAN  
 KEVIN A. LAVELLE  
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 San Diego, CA 92101  
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 619/231-7423 (fax)  
 E-mail: davidm@rgrdlaw.com  
 E-mail: lolts@rgrdlaw.com  
 E-mail: bcochran@rgrdlaw.com  
 E-mail: klavelle@rgrdlaw.com

Lead Counsel for Plaintiff

**I. GENERAL INSTRUCTIONS**

1. To recover as a member of the Class based on your claims in the action entitled *Alan Willis v. Big Lots, Inc., et al.*, No. 2:12-cv-00604-MHW-KAJ (the “Litigation”), you must complete and, on page \_\_ hereof, sign this Proof of Claim and Release (“Proof of Claim Form”). If you fail to file a properly addressed (as set forth in paragraph 3 below) Proof of Claim Form, your claim may be rejected and you may be precluded from any recovery from the Net Settlement Fund created in connection with the proposed Settlement of the Litigation.

2. Submission of this Proof of Claim Form, however, does not assure that you will share in the proceeds of the Settlement of the Litigation.

**3. YOU MUST MAIL OR SUBMIT ONLINE YOUR COMPLETED AND SIGNED PROOF OF CLAIM FORM, ACCOMPANIED BY COPIES OF THE DOCUMENTS REQUESTED HEREIN, ON OR BEFORE [INSERT DATE], ADDRESSED AS FOLLOWS:**

*Big Lots Securities Settlement*  
c/o Gilardi & Co. LLC  
Claims Administrator  
P.O. Box 30224  
College Station, TX 77842-3224  
Online Submissions: [www.BigLotsSecuritiesSettlement.com](http://www.BigLotsSecuritiesSettlement.com)

If you are NOT a member of the Class, as defined in the Notice of Pendency and Proposed Settlement of Class Action (the “Notice”), DO NOT submit a Proof of Claim Form.

4. If you are a member of the Class and you do not timely request exclusion in connection with the proposed Settlement, you will be bound by the terms of any judgment entered in the Litigation, including the releases provided therein, **WHETHER OR NOT YOU SUBMIT A PROOF OF CLAIM FORM.**



## **II. CLAIMANT IDENTIFICATION**

If you purchased the common stock of Big Lots, Inc. (“Big Lots”) between March 2, 2012 and August 23, 2012, inclusive, use Part I of this form entitled “Claimant Identification” to list the claimant name, mailing address, and account information if relevant (such as for a claim submitted on behalf of an IRA, Trust, or estate account). Please list the most current claimant or account name as you would like the information to appear on the check, if eligible for payment. Please also provide a telephone number and/or e-mail address, as the Claims Administrator may need to contact you with questions about the claim submitted. If your Claimant Identification information changes, please notify the Claims Administrator in writing at the address above.

If you are acting in a representative capacity on behalf of a Class Member (for example, as an executor, administrator, trustee, or other representative), you must submit evidence of your current authority to act on behalf of that Class Member. Such evidence would include, for example, letters testamentary, letters of administration, or a copy of the trust documents or other documents which provide you with the authority to submit the claim. Please also indicate your representative capacity under your signature on page \_\_ of this Proof of Claim Form.

**NOTICE REGARDING ELECTRONIC FILES:** Certain claimants with large numbers of transactions may request to, or may be requested to, submit information regarding their transactions in electronic files. If you have a large number of transactions and wish to file your claim electronically, you must contact the Claims Administrator at [edata@gilardi.com](mailto:edata@gilardi.com) to obtain the required file layout.

## **III. CLAIM FORM**

Use Part II of this form entitled “Schedule of Transactions in Big Lots Common Stock” to supply all required details of your transaction(s) in Big Lots common stock. If you need more space

or additional schedules, attach separate sheets giving all of the required information in substantially the same form. Sign and print or type your name on each additional sheet.

On the schedules, provide all of the requested information with respect to *all* of your purchases and *all* of your sales of Big Lots common stock between March 2, 2012 and November 20, 2012, inclusive, whether such transactions resulted in a profit or a loss. You must also provide all of the requested information with respect to *all* of the shares of Big Lots common stock you held at the close of trading on March 1, 2012, August 23, 2012, and November 20, 2012. Failure to report all such transactions may result in the rejection of your claim.

List these transactions separately and in chronological order, by trade date, beginning with the earliest. You must accurately provide the month, day, and year of each transaction you list.

The date of covering a “short sale” is deemed to be the date of purchase of Big Lots common stock. The date of a “short sale” is deemed to be the date of sale of Big Lots common stock.

Copies of stockbroker confirmation slips, stockbroker statements, or other documents evidencing your transactions in Big Lots common stock should be attached to your claim. If any such documents are not in your possession, please obtain a copy or equivalent documents from your broker because these documents are necessary to prove and process your claim. Failure to provide this documentation could delay verification of your claim or result in rejection of your claim.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

EASTERN DIVISION

*Alan Willis v. Big Lots, Inc., et al.,*

No. 2:12-cv-00604-MHW-KAJ

PROOF OF CLAIM AND RELEASE

Must Be Postmarked (if Mailed) or Received (if Filed Electronically) No Later Than:

**[Insert Date]**

Please Type or Print

PART I: CLAIMANT IDENTIFICATION

\_\_\_\_\_  
Owner's Name (First, Middle, Last)

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State or Province

\_\_\_\_\_  
Zip Code or Postal Code

\_\_\_\_\_  
Country

\_\_\_\_\_  
Social Security Number or  
Taxpayer Identification Number

\_\_\_\_\_  
Individual  
Corporation/Other

\_\_\_\_\_  
Area Code

\_\_\_\_\_  
Telephone Number (work)

\_\_\_\_\_  
Area Code

\_\_\_\_\_  
Telephone Number (home)

\_\_\_\_\_  
E-Mail Address

**PART II: SCHEDULE OF TRANSACTIONS IN BIG LOTS COMMON STOCK**

- A. Number of shares of Big Lots common stock held at the close of trading on March 1, 2012: \_\_\_\_\_
- B. Purchases of Big Lots common stock (March 2, 2012 – November 20, 2012, inclusive):

Trade Date Month Day Year	Number of Shares Purchased	Total Purchase Price
1. _____	_____	\$ _____
2. _____	_____	\$ _____
3. _____	_____	\$ _____

If any purchase listed above covered a “short sale,” please mark Yes: \_\_Yes

- C. Sales of Big Lots common stock (March 2, 2012 – November 20, 2012, inclusive):

Trade Date Month Day Year	Number of Shares Sold	Total Sale Price
1. _____	_____	\$ _____
2. _____	_____	\$ _____
3. _____	_____	\$ _____

- D. Number of shares of Big Lots common stock held at the close of trading on August 23, 2012: \_\_\_\_\_
- E. Number of shares of Big Lots common stock held at the close of trading on November 20, 2012: \_\_\_\_\_

If you require additional space, attach extra schedules in the same format as above. Sign and print your name on each additional page.

**YOUR SIGNATURE ON PAGE \_\_ WILL CONSTITUTE YOUR  
ACKNOWLEDGMENT OF THE RELEASE.**

**IV. SUBMISSION TO JURISDICTION OF COURT AND ACKNOWLEDGMENTS**

I (We) submit this Proof of Claim Form under the terms of the Stipulation of Settlement dated as of May 16, 2018 (“Stipulation”) described in the Notice. I (We) also submit to the jurisdiction of the United States District Court for the Southern District of Ohio, Eastern Division with respect to my (our) claim as a Class Member and for purposes of enforcing the release set forth herein. I (We) further acknowledge that I am (we are) bound by and subject to the terms of any judgment that may be entered in the Litigation. I (We) agree to furnish additional information to the Claims Administrator to support this claim if requested to do so. I (We) have not submitted any other claim in connection with the purchase of Big Lots common stock and know of no other person having done so on my (our) behalf.

**V. RELEASE**

1. I (We) hereby acknowledge full and complete satisfaction of, and do hereby fully, finally, and forever settle, release, and discharge from the Released Claims each and all of the Released Persons as provided in the Stipulation.

2. “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.

3. “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.

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

5. “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.

6. This release shall be of no force or effect unless and until the Court approves the Stipulation and the Settlement becomes effective on the Effective Date.

7. I (We) hereby warrant and represent that I (we) have not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, any matter released pursuant to this release or any other part or portion thereof.

8. I (We) hereby warrant and represent that I (we) have included information about all of my (our) transactions in Big Lots common stock which are the subject of this claim, as well as the opening and closing positions in such securities held by me (us) on the dates requested in this Proof of Claim Form.

I declare under penalty of perjury under the laws of the United States of America that the foregoing information supplied by the undersigned is true and correct.

Executed this \_\_\_\_\_ day of \_\_\_\_\_ in \_\_\_\_\_  
(Month/Year) (City)

\_\_\_\_\_  
(State/Country)

\_\_\_\_\_  
(Sign your name here)

\_\_\_\_\_  
(Type or print your name here)

\_\_\_\_\_  
(Capacity of person(s) signing,  
*e.g.*, Beneficial Purchaser,  
Executor or Administrator)

**ACCURATE CLAIMS PROCESSING TAKES A  
SIGNIFICANT AMOUNT OF TIME.  
THANK YOU FOR YOUR PATIENCE.**

Reminder Checklist:

1. Please sign the above release and declaration.
2. Remember to attach supporting documentation, if available.
3. Do not send original stock certificates.
4. Keep a copy of your Proof of Claim Form for your records.
5. If you desire an acknowledgment of receipt of your Proof of Claim Form, please send it Certified Mail, Return Receipt Requested.



6. If you move, please send your new address to the address below.

**THIS PROOF OF CLAIM FORM MUST BE SUBMITTED ONLINE OR MAILED NO LATER THAN \_\_\_\_\_, ADDRESSED AS FOLLOWS:**

*Big Lots Securities Settlement*  
c/o Gilardi & Co. LLC  
Claims Administrator  
P.O. Box 30224  
College Station, TX 77842-3224  
[www.BigLotsSecuritiesSettlement.com](http://www.BigLotsSecuritiesSettlement.com)

# **EXHIBIT A-3**

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. )	
_____ )	

SUMMARY NOTICE

EXHIBIT A-3

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 E-mail: klavelle@rgrdlaw.com

Lead Counsel for Plaintiff

**TO: ALL PERSONS WHO PURCHASED THE COMMON STOCK OF BIG LOTS, INC. (“BIG LOTS”) BETWEEN MARCH 2, 2012 AND AUGUST 23, 2012, INCLUSIVE**

YOU ARE HEREBY NOTIFIED, pursuant to an Order of the United States District Court for the Southern District of Ohio, Eastern Division, that a hearing will be held on \_\_\_\_\_, 2018, at \_\_\_\_:\_\_\_\_.m., before the Honorable Michael H. Watson, United States District Judge, at the United States District Court for the Southern District of Ohio, Eastern Division, Joseph P. Kinneary U.S. Courthouse, 85 Marconi Boulevard, Columbus, Ohio 43215, for the purpose of determining: (1) whether the proposed Settlement of the Litigation for \$38 million should be approved by the Court as fair, reasonable, and adequate; (2) whether a Final Judgment and Order of Dismissal with Prejudice should be entered by the Court; (3) whether the Plan of Allocation for the Net Settlement Fund is fair, reasonable, and adequate and should be approved; and (4) whether the application of Class Counsel for the payment of attorneys’ fees and expenses and Class Representatives’ awards pursuant to 15 U.S.C. §78u-4(a)(4) should be approved.

IF YOU PURCHASED THE COMMON STOCK OF BIG LOTS DURING THE TIME PERIOD COMMENCING ON MARCH 2, 2012, AND ENDING ON AUGUST 23, 2012, INCLUSIVE (THE “CLASS PERIOD”), YOUR RIGHTS MAY BE AFFECTED BY THE SETTLEMENT OF THIS LITIGATION, INCLUDING THE RELEASE OF CLAIMS YOU MAY POSSESS RELATING TO YOUR PURCHASE OF THE COMMON STOCK OF BIG LOTS DURING THE CLASS PERIOD. If you have not received a detailed Notice of Pendency and Proposed Settlement of Class Action (“Notice”) and a copy of the Proof of Claim and Release form, you may obtain copies by writing to *Big Lots Securities Settlement*, c/o Gilardi & Co. LLC, Claims Administrator, P.O. Box 30224, College Station, TX 77842-3224, or on the Internet at [www.BigLotsSecuritiesSettlement.com](http://www.BigLotsSecuritiesSettlement.com). If you are a Class Member, in order to share in the distribution of the Net Settlement Fund, you must submit a Proof of Claim and Release by mail

(*postmarked no later than* \_\_\_\_\_) or online *no later than* \_\_\_\_\_, establishing that you are entitled to recovery.

If you purchased Big Lots common stock during the Class Period and you desire to be excluded from the Class, you must submit a request for exclusion so that it is *postmarked no later than* \_\_\_\_\_, 2018, in the manner and form explained in the detailed Notice referred to above. All members of the Class who do not timely and validly request exclusion from the Class in the manner set forth in the Notice will be bound by any judgment entered in the Litigation pursuant to the Stipulation of Settlement.

Any objection to the Settlement, the Plan of Allocation, Class Counsel's request for attorneys' fees and expenses, and Class Representatives' request for their time and expenses must be **received** by each of the following recipients *no later than* \_\_\_\_\_, 2018:

CLERK OF THE COURT  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION  
Joseph P. Kinneary U.S. Courthouse  
85 Marconi Boulevard  
Columbus, Ohio 43215

*Class Counsel:*

ROBBINS GELLER RUDMAN & DOWD LLP  
DAVID W. MITCHEL  
655 West Broadway, Suite 1900  
San Diego, CA 92101

*Counsel for Defendants:*

CRAVATH, SWAINE & MOORE LLP  
MICHAEL A. PASKIN  
825 Eighth Avenue  
New York, NY 10019

**PLEASE DO NOT CONTACT THE COURT OR THE CLERK'S OFFICE REGARDING THIS NOTICE.** If you have any questions about the Settlement, you may contact Class Counsel at the address listed above or visit the website listed above.

DATED: \_\_\_\_\_, 2018

BY ORDER OF THE COURT  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

# **EXHIBIT B**

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. )	
_____ )	

[PROPOSED] FINAL JUDGMENT AND ORDER OF DISMISSAL WITH PREJUDICE

EXHIBIT B

MURRAY MURPHY MOUL + BASIL LLP  
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 LUCAS F. OLTS  
 AUSTIN P. BRANE  
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 E-mail: klavelle@rgrdlaw.com

Lead Counsel for Plaintiff



This matter came before the Court for hearing pursuant to the Order Preliminarily Approving Settlement and Providing for Notice (“Preliminary Approval Order”) dated \_\_\_\_\_, 2018, on the application of the Settling Parties for approval of the Settlement set forth in the Stipulation of Settlement dated May 16, 2018 (the “Stipulation”). Due and adequate notice having been given to the Class as required in said Order, and the Court having considered all papers filed and proceedings had herein and otherwise being fully informed in the premises and good cause appearing therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. This Final Judgment and Order of Dismissal with Prejudice (“Order and Final Judgment” or “Judgment”) incorporates by reference the definitions in the Stipulation, and all terms used herein shall have the same meanings as set forth in the Stipulation, unless otherwise set forth herein.

2. This Court has jurisdiction over the subject matter of the Litigation and over all Settling Parties to the Litigation, including all members of the Class.

3. Pursuant to Federal Rule of Civil Procedure 23, this Court hereby approves the Settlement set forth in the Stipulation and finds that said Settlement is, in all respects, fair, reasonable, and adequate to the Class.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Court finds that the Settlement is fair, reasonable, and adequate as to each of the Settling Parties, and that the Settlement set forth in the Stipulation is hereby finally approved in all respects, and the Settling Parties are hereby directed to perform its terms.

5. Accordingly, the Court authorizes and directs implementation of the terms and provisions of the Stipulation, as well as the terms and provisions hereof. The Court hereby dismisses with prejudice the Litigation and all claims contained therein and all of the Released Claims as against the Released Persons, except as and to the extent provided in the Stipulation and herein.

6. Upon the Effective Date hereof, and as provided in the Stipulation, Class Representatives and each and all of the Class Members, other than those listed on Exhibit A hereto, shall be deemed to have, and by operation of this 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, except for claims relating to the enforcement of the Settlement.

7. Upon the Effective Date hereof, and as provided in the Stipulation, 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.

8. Upon the Effective Date hereof, and as provided in the Stipulation, each of the Released Persons shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released, relinquished, and discharged Class Representatives, each and all of the Class Members, other than those listed on Exhibit A hereto, and Plaintiffs' Counsel from Defendants' Released Claims, and shall forever be enjoined from prosecuting such claims, except for claims relating to the enforcement of the Settlement.

9. The Notice of Pendency and Proposed Settlement of Class Action given to the Class in accordance with the Preliminary Approval Order entered on \_\_\_\_\_, 2018, was the best notice practicable under the circumstances, including the individual notice to all members of the Class who could be identified through reasonable effort. Said notice provided the best notice practicable under the circumstances of those proceedings and of the matters set forth therein, including the proposed Settlement set forth in the Stipulation, to all Persons entitled to such notice,

and said notice fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, and the requirements of the Private Securities Litigation Reform Act of 1995, and all other applicable law and rules.

10. Separate orders shall be entered regarding the proposed Plan of Allocation and Class Counsel's motion for attorneys' fees and expenses as allowed by the Court. Any plan of allocation submitted by Class Counsel or any order entered regarding any attorneys' fee and expense application shall in no way disturb or affect this Judgment and shall be considered separate from this Judgment.

11. Neither the Stipulation nor any of its terms or provisions, nor any of the negotiations, discussions, proceedings connected with it, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any of the allegations in the Litigation or of the validity of any Released Claim, or of any wrongdoing or liability of the Released Persons; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Persons in any civil, criminal, or administrative proceeding in any court, arbitration proceeding, administrative agency, or forum or tribunal in which the Released Persons are or become parties; or (c) is or may be deemed to be or may be used as an admission or evidence that any claims asserted by Class Representatives were not valid or that the amount recoverable was not greater than the Settlement Amount, in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. The Released Persons, Class Representatives, Class Members, and their respective counsel may file the Stipulation and/or this 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. The Settling

Parties may file the Stipulation and/or this Judgment in any proceedings that may be necessary to consummate or enforce the Stipulation, the Settlement, or the Judgment.

12. Without affecting the finality of this Judgment in any way, this Court hereby retains continuing exclusive jurisdiction over: (a) implementation of this Settlement and any award or distribution of the Settlement Fund, including interest earned thereon; (b) disposition of the Settlement Fund; (c) hearing and determining applications for attorneys' fees and expenses and interest in the Litigation; and (d) all Settling Parties hereto for the purpose of construing, enforcing, and administering the Stipulation.

13. The Court finds 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.

14. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, or the Effective Date does not occur, or in the event that the Settlement Fund, or any portion thereof, is returned to the Defendants, then this Judgment shall be rendered null and void to the extent provided by and in accordance with the Stipulation and shall be vacated and, in such event, all orders entered and releases delivered in connection herewith shall be null and void to the extent provided by and in accordance with the Stipulation.

15. Without further order of the Court, the Settling Parties may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

16. The Court directs immediate entry of this Judgment by the Clerk of the Court.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE MICHAEL H. WATSON  
UNITED STATES DISTRICT JUDGE