

## **CONFIDENTIAL SETTLEMENT AGREEMENT AND GENERAL RELEASE**

This Confidential Settlement Agreement and General Release (“SETTLEMENT AGREEMENT”) is made and entered by and between on the one hand BIG O TIRES, LLC (“BIG O TIRES”), and on the other hand MATEEL ENVIRONMENTAL JUSTICE FOUNDATION (“MATEEL”). MATEEL and BIG O TIRES may be referred to hereinafter individually as a “Party” or collectively as the “Parties.”

### **DEFINITIONS**

For purposes of this SETTLEMENT AGREEMENT, the terms below have the following meanings:

A. “ACTION” refers to the claims asserted in the state court action Case No CGC-14-543233 pending before the Superior Court of the State of California, County of San Francisco and known as *Mateel Environmental Justice Foundation v. Big O Tires, LLC*, et. al. filed on December 16, 2014.

B. “MATEEL” means Plaintiff MATEEL ENVIRONMENTAL JUSTICE FOUNDATION, the plaintiff in the ACTION, and MATEEL’s current and former agents, employees, managers, contractors, administrators, successors, assigns, and all others claiming through or by MATEEL.

C. “BIG O TIRES” means, collectively, BIG O TIRES, LLC, including each of their parents, subsidiaries, affiliates, related entities and divisions and it and their respective: (i) predecessors, successors, and assigns and (ii) current and former agents, heirs, executors, administrators, principals, officers, directors, shareholders, employees, founders, members, assigns, insurers, attorneys, and all others claiming through or by any of them. “BIG O TIRES” does not include Big O Tires franchisees.

### **RECITALS**

1. On or about December 16, 2014, MATEEL filed the ACTION against BIG O TIRES and additional defendants based on allegations that defendants did not give clear and reasonable warnings to those residents of California who handle and use automotive batteries that utilize leaded terminals as pertains to a number of products listed in a Proposition 65 Notice of Violation letter affixed to the Complaint in the ACTION.

2. The Parties have reached a settlement of MATEEL’s actual and potential claims against BIG O TIRES, including but not limited to those alleged in the ACTION and references in the Proposition 65 Notice of Violation letter.

3. The Parties desire to memorialize the terms of such settlement in this SETTLEMENT AGREEMENT as hereinafter set forth.

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**1. Pending and Future Legal or Administrative Actions; Covenant Not to Sue.**

1.1 MATEEL represents that it has filed no actions, and has filed no administrative proceedings against BIG O TIRES other than the Action.

1.2 Subject to the terms herein, to the fullest extent that MATEEL may permissibly agree to do so by law, MATEEL shall not institute, submit or file, or permit to be instituted, submitted or filed on MATEEL's behalf, nor knowingly and willfully bring any action for or participate as a class member in, any lawsuit, claim or complaint against BIG O TIRES with any court or other forum, under any federal, state, provincial or local law, regulation, or ordinance, contract, quasi-contract, the common law, public policy, or any constitution, including, without limitation, the Uniform Commercial Code, UFTA, California Commercial Code, Government Code, the California Health and Safety Code, including, but not limited to, Sections 25249.5, 25249.6, and 25249.7. In the event that MATEEL institutes or becomes a party to any such lawsuit, claim or complaint, the legal claims shall be dismissed with prejudice and with an award of attorneys' fees and costs to the other Party(s) reasonably and necessarily incurred as a result.

MATEEL shall not encourage, or cooperate with, or volunteer to assist, any other party in pursuing or bringing any litigation or any legal claims against BIG O TIRES, unless compelled to do so by legal process, and only to the extent compelled to do so. Nothing in this SETTLEMENT AGREEMENT, however, shall preclude MATEEL from cooperating with or participating in any investigation by any law enforcement agency as compelled by law.

1.3 Within three business days of receiving the SETTLEMENT AMOUNT set forth in section 4 of this Agreement, MATEEL shall dismiss the ACTION with prejudice. MATEEL shall further take all action necessary to secure the dismissal of the ACTION with prejudice.

**2. General Release of Claims.**

2.1 MATEEL hereby releases and forever discharges BIG O TIRES from all causes of action, claims, judgments, obligations, theories, attorneys' fees, damages, costs and/or liabilities of whatever kind or character, known or unknown, suspected or unsuspected, including, but not limited to, those arising under any federal, state, provincial or local law, regulation or ordinance, contract, quasi-contract, the common law, public policy, or any constitution, such as, without limitation, Uniform Commercial Code, UFTA, California Commercial Code, Government Code section 12940 *et seq.*, and the California Health and Safety Code, including, but not limited to, Sections 25249.5, 25249.6, and 25249.7. Without limiting the generality of the foregoing, MATEEL's general release of all claims against BIG O TIRES includes a release of any and all claims alleged in the ACTION.

2.2 MATEEL represents and warrants that it has not assigned or subrogated any claim against BIG O TIRES or authorized any other person or entity to assert such a claim or claims on their behalf.

2.3 Except as otherwise provided herein, each party hereto will bear its own attorneys' fees and costs incurred in connection with the ACTION, including all attorneys' fees and costs associated with filing the ACTION and negotiating this settlement.

**3. Waiver of California Civil Code Section 1542.**

This SETTLEMENT AGREEMENT extends to all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected, past or present, which MATEEL has, or may have, against BIG O TIRES. MATEEL thus expressly waives all of its rights under Section 1542 of the California Civil Code. Such Section reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

MATEEL understands and acknowledges that MATEEL may hereafter discover facts different from or in addition to those that MATEEL now believes to be true with respect to the matters released herein. MATEEL assumes any and all risk of mistake (or discovery of additional facts) in connection with the circumstances involved in the matters giving rise to this SETTLEMENT AGREEMENT.

**4. Settlement Payment and Other Consideration.**

4.1 In consideration of MATEEL's releases and other promises herein and pursuant to the other terms and conditions contained in this SETTLEMENT AGREEMENT, BIG O TIRES agrees to pay MATEEL the total amount of FORTY THOUSAND DOLLARS AND ZERO CENTS (\$40,000.00) (the "SETTLEMENT AMOUNT"). The SETTLEMENT AMOUNT shall be paid in two checks as follows: \$37,000 shall be made payable to Klamath Environmental Law Center as reimbursement for attorney's fees and costs incurred in litigating and investigating this matter on behalf of Mateel. \$3,000 shall be made payable to the Ecological Rights Foundation in lieu of reimbursement for further costs and fees foregone by Mateel.

4.2 Within two (2) days of receiving and original signed version of this SETTLEMENT AGREEMENT from MATEEL'S counsel, BIG O TIRES'S counsel shall forward the SETTLEMENT AGREEMENT to BIG O TIRES. Within seven (7) days of BIG O TIRES's receipt, through counsel, BIG O TIRES shall deliver to BIG O TIRES's counsel the SETTLEMENT AMOUNT, as defined above, provided by BIG O TIRES executes the SETTLEMENT AGREEMENT. Within five (5) days of receiving the SETTLEMENT AMOUNT from BIG O TIRES, BIG O TIRES' counsel shall forward the SETTLEMENT AMOUNT by overnight mail to MATEEL'S counsel.

4.3 MATEEL expressly authorizes BIG O TIRES to deliver the SETTLEMENT AGREEMENT and the checks for the SETTLEMENT AMOUNT to their counsel William Verick on MATEEL's behalf. MATEEL and their counsel must submit to BIG O TIRES's counsel IRS W-9 Forms for any payee prior to issuance of any check for the payment of the SETTLEMENT AMOUNT.

4.4 It is understood that payment of the SETTLEMENT AMOUNT is made to compromise and release all of MATEEL's potential and actual claims against BIG O TIRES, including all claims for damages against BIG O TIRES alleged in the ACTION or otherwise.

Except as otherwise provided herein, the Parties acknowledge that they are each to bear their own costs and attorneys' fees incurred in the prosecution or defense of the claims alleged in the ACTION, including with regard to negotiation of this Settlement Agreement. Plaintiff also acknowledges that to the extent that the settlement requires judicial approval, Plaintiff shall be responsible solely for all attorney's fees and costs incurred in securing said judicial approval, and any other act necessary to secure both the settlement and dismissal of the ACTION with prejudice.

4.5 MATEEL represents and acknowledges that the SETTLEMENT AMOUNT received from BIG O TIRES shall be in full compliance and adherence to all statutory or legal duties, obligations, or agreements now existing or ever existing at any time by and between MATEEL and BIG O TIRES, arising as a result of any Proposition 65 Notice of Violation or any other purpose under the California Health and Safety Code as stated in the Complaint in this ACTION that incorporates by reference thereto the Proposition 65 Notice of Violation.

4.6 MATEEL is advised to seek the advice of their tax counsel concerning any responsibility to pay taxes on the SETTLEMENT AMOUNT. MATEEL agrees to assume all tax obligations, if any, as to the monies respectively received by it, and agree to defend, indemnify, and hold harmless BIG O TIRES in the event of any liability imposed against them arising out of their failure to pay any taxes on any portion of the SETTLEMENT AMOUNT.

4.7 MATEEL acknowledges that to the extent that any administrative fees, fines, levies, assessments or other payments arise out of the allegations set forth in the ACTION that MATEEL shall indemnify BIG O TIRES for any such payments out of the funds provided in the SETTLEMENT AMOUNT.

4.8 MATEEL acknowledges that they would not otherwise be entitled to the consideration set forth in this entire Section 4, were it not for their covenants, promises, and releases set forth hereunder.

## **5. Denial of Liability.**

The Parties expressly recognize and agree that the making of this SETTLEMENT AGREEMENT does not in any way constitute an admission or concession of wrongdoing on the part of BIG O TIRES.

## **6. Confidentiality.**

6.1 MATEEL understands and acknowledges that maintaining the confidentiality of this SETTLEMENT AGREEMENT, including its terms, constitutes a material term and important part of the consideration for this SETTLEMENT AGREEMENT. Except as otherwise provided in this Section, MATEEL shall keep the existence, terms and conditions of the SETTLEMENT AGREEMENT completely and strictly confidential. MATEEL shall neither disclose the terms or conditions of the SETTLEMENT AGREEMENT, nor shall MATEEL disclose the fact of its existence to any person or entity. In response to any inquiry concerning the matters released herein, MATEEL shall respond only by stating that the matter has been resolved.

6.2 The only exceptions to Paragraph 6.1 are as follows:  
CONFIDENTIAL SETTLEMENT AGREEMENT AND GENERAL RELEASE

6.2.1 If the terms or conditions of the SETTLEMENT AGREEMENT must be disclosed as required by law, or upon a lawfully issued subpoena or order of any court of competent jurisdiction, or in response to any lawfully issued process or order in connection with any administrative proceeding or government investigation, or if MATEEL is to testify before any official court or agency, including but not limited to state or federal employment or taxing entities; provided that MATEEL shall notify BIG O TIRES in writing of such process or order for disclosure within three (3) business days of such process or order.

6.2.2 If the terms or conditions of the SETTLEMENT AGREEMENT must be disclosed in order to remedy a breach of any term or condition herein.

6.2.3 MATEEL may disclose the terms and conditions of the SETTLEMENT AGREEMENT to any board member, accountant, tax and financial advisor and legal counsel if the person or entity receiving the information promises to be bound by this covenant of confidentiality. BIG O TIRES may disclose the terms and conditions of the SETTLEMENT AGREEMENT to its accountants, tax and financial advisors, legal counsel, insurers, insurance brokers, board of directors, shareholders, executives and employees with a business reason to know.

6.2.4 Other exceptions to the confidentiality are disclosure to (a) government agencies for tax purposes or for purposes of pursuing or opposing future claims for unemployment or state disability insurance benefits; or (b) as required by law.

6.2.5 Persons to whom a disclosure is made under the provisions above will keep the terms and conditions of the settlement confidential others than that they may make a disclosure to other persons to whom disclosure is allowed under these provisions.

6.2.6 The terms and conditions of the SETTLEMENT AGREEMENT may also be disclosed by MATEEL and its attorneys as required to comply with the reporting provisions of California Health and Safety Code Section 25249.7, or as requested by the California Attorney General's office.

## **7. Attorneys' Fees.**

In any legal action solely and specifically for breach of the Parties' respective obligations under the SETTLEMENT AGREEMENT, the prevailing Party therein shall be entitled to have its costs and reasonable attorneys' fees paid by the losing Party. Unless otherwise ordered by the court, only the provisions of the SETTLEMENT AGREEMENT alleged to have been breached shall be disclosed in such action.

## **8. Severability.**

If any sentence, provision or clause of the SETTLEMENT AGREEMENT is declared illegal or unenforceable by any court of competent jurisdiction and cannot be modified to be enforceable, that sentence, provision and/or clause will immediately become null and void, and severed from this SETTLEMENT AGREEMENT, and the remainder of the SETTLEMENT AGREEMENT shall remain in full force and effect.

**9. Forum.**

The Parties agree that the San Francisco County Superior Court shall have jurisdiction over the Parties and this SETTLEMENT AGREEMENT in the event of a disagreement over the subject matter of this SETTLEMENT AGREEMENT. The Parties further agree that this SETTLEMENT AGREEMENT may be enforced by any Party by a motion under Section 664.6 of the California Code of Civil Procedure or by any other procedure permitted by law.

**10. Construction.**

Each Party has reviewed the SETTLEMENT AGREEMENT. Therefore, the normal rule of construction that any ambiguity or uncertainty in a writing shall be interpreted against the party drafting the writing shall not apply to any action on the SETTLEMENT AGREEMENT. The SETTLEMENT AGREEMENT is made in the State of California and shall be construed and interpreted in accordance with its laws without regard to its principles of conflicts of law.

**11. Integration.**

This SETTLEMENT AGREEMENT represents the complete understanding between the Parties regarding the subject matter herein. No other promises or agreements as to the subject matter herein shall be binding on the Parties or shall modify the SETTLEMENT AGREEMENT unless made in writing and signed by the Parties. The SETTLEMENT AGREEMENT supersedes any prior agreements between the Parties and shall be binding upon the Parties, their successors and assigns, as to the subject matter herein. The Parties represent that they have not relied upon any promise or representation not contained in the SETTLEMENT AGREEMENT in executing it.

**12. THE SIGNATORIES HAVE CAREFULLY READ THIS ENTIRE SETTLEMENT AGREEMENT. THE PARTIES HAVE HAD AN ADEQUATE AND REASONABLE OPPORTUNITY TO CONSIDER THE SETTLEMENT AGREEMENT, CONSULT WITH COUNSEL OF THEIR CHOICE, AND HAVE HAD THEIR ATTORNEYS FULLY EXPLAIN ITS CONTENTS TO THEM PRIOR TO EXECUTING THIS SETTLEMENT AGREEMENT. THE SIGNATORIES FULLY UNDERSTAND THE FINAL AND BINDING EFFECT OF THIS SETTLEMENT AGREEMENT. THE ONLY PROMISES OR REPRESENTATIONS MADE TO ANY SIGNATORY ABOUT THIS SETTLEMENT AGREEMENT ARE CONTAINED HEREIN. THE PARTIES HEREBY ACKNOWLEDGE THAT THEY ARE SIGNING THIS SETTLEMENT AGREEMENT VOLUNTARILY AND FREELY AND WITHOUT PRESSURE OR UNDUE INFLUENCE FROM ANY OTHER PARTY, AND KNOWINGLY AND WILLINGLY INTEND TO BE BOUND BY IT.**

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13. This SETTLEMENT AGREEMENT may be executed by the Parties in counterparts with each counterpart to be deemed an original as to the Party executing it. Facsimile signatures shall have the same effect as originals.

DATED: May 22, 2015

MATEEL ENVIRONMENTAL  
JUSTICE FOUNDATION

By:   
Name:

DATED: 5-26, 2015

BIG O TIRES, LLC

By:   
Name:  
Title: