

**CLASS ACTION  
SETTLEMENT AGREEMENT**

This CLASS ACTION SETTLEMENT AGREEMENT (the “**Agreement**” or “**Settlement**”), fully and finally resolves the lawsuit captioned *Brian Jeffery Fratilla a/k/a Jeff Fratilla and Bob Franchino, individually and on behalf of all others similarly situated, v. Big O Tires, LLC*, pending in the Superior Court of the State of California, County of San Diego, Case No. 37-2013-00028542-CU-BT-CTL (the “**Action**” or “**Lawsuit**”). This Settlement is entered into by and between plaintiffs BRIAN JEFFERY FRATILLA and BOB FRANCHINO, individually and on behalf of the Plaintiff Class (as defined below), on the one hand, and BIG O TIRES, LLC, a Nevada corporation, on the other hand. This Agreement is subject to the approval of the Court.

**FACTUAL BACKGROUND AND RECITALS**

1. On January 2, 2013, BRIAN JEFFERY FRATILLA a/k/a JEFF FRATILLA (“**Fratilla**”) filed the Lawsuit against BIG O TIRES, LLC, a Nevada Corporation (“**Big O**”) in the Superior Court of the State of California, County of San Diego (the “**Court**”), asserting claims under the unfair competition law, Cal. Bus. Prof. Code §§ 17200, *et seq.* (the “**UCL**”) and the Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.* (the “**CLRA**”). Plaintiff BOB FRANCHINO (“**Franchino**”) joined the Lawsuit as a named plaintiff on April 1, 2016. Fratilla, Franchino and Big O shall be collectively referred to herein as the “**Parties**” or “**Settling Parties**.”

2. Fratilla and Franchino (collectively, “**Plaintiffs**”) allege that Big O sold its “**TPP**” (defined to include Big O’s “Tire Protection Package”, “King Royal Tire Service”, “Service Central Road Hazard” and equivalent vehicle service contracts providing for road hazard protection) without being entitled to do so under the Insurance Code, without the disclosures and formatting required under the Insurance Code and Song-Beverly Consumer Warranty Act, including, but not limited to, a sixty (60) day right to cancel, and without adequately disclosing to consumers that they were already entitled to numerous “benefits” of the TPP (including free flat repair, lifetime tire rotations, lifetime tire rebalancing and a warranty against defects in workmanship or materials) without being required to purchase the TPP.

3. Big O denies Plaintiffs’ allegations, and denies that it violated any law. Big O contends that it has provided its customers with the TPP warranty coverage they intended to purchase, and clearly and accurately disclosed all of the benefits and limitations of the TPP. Big O further asserts that it is covered by the distributor’s exemption, which exempts distributors from the Insurance Code. Big O asserts that it was not obligated to provide any cancellation rights to its

customers, that it did agree to cancel TPP's when requested and that it has complied or substantially complied with all relevant statutory obligations. Big O denies that it has any liability to anyone in relation to the allegations in the Lawsuit.

4. On January 31, 2017, the Court certified this matter as a class action on behalf of the following class: **All persons who are citizens of the State of California and who at any time after January 2, 2009, purchased a TPP from Big O (the "Plaintiff Class")**. The Court also approved plaintiffs Fratilla and Franchino as class representatives. Big O opposed class certification and contends that the Plaintiff Class should not have been certified.

5. The Plaintiff Class is divided into two subclasses, "Subclass A" and "Subclass B".

"Subclass A" is defined as:

**All persons who are citizens of the State of California and who, at any time after January 2, 2009, purchased a "Tire Protection Package" from Big O and, during the same transaction, also purchased a tire installation package from Big O that included lifetime balancing.**

"Subclass B" is defined as:

**All persons who are citizens of the State of California and who, at any time after January 2, 2009, purchased a "Tire Protection Package" from Big O and, during the same transaction, did not also purchase a tire installation package from Big O that included lifetime balancing.**

6. On November 3, 2017, the Court issued an Order requiring notice of the Lawsuit to the Plaintiff Class on the Internet and via publication, and providing class members with a full thirty (30) days after notice is completed to "opt out" of the Lawsuit. Notice was provided as ordered, with notice commencing on November 7, 2017 and the "opt out" period expiring on December 28, 2017. Zero (0) members of the Plaintiff Class exercised their option to "opt out" of the Litigation.

7. Prior to entering into this Settlement, Plaintiffs conducted extensive discovery. This discovery includes, but is not limited to:

- Taking fourteen (14) depositions, including numerous current and former officers and employees of Big O and three (3) expert witnesses designated by Big O;
- Retaining expert witnesses and conducting a consumer survey;
- Obtaining and reviewing approximately eighty-eight thousand (88,000) pages of documents, including, but not limited to, Big O's sales data, consumer data, advertising and promotional materials, training materials, internal memoranda, point of sale materials, and survey questionnaires and data for the two (2)



consumer surveys commissioned by Big O.

8. Prior to entering into this Settlement, the Parties engaged in extensive motion practice, including, but not limited to, two motions for class certification filed by Plaintiffs, two motions for leave to amend filed by Plaintiffs, a motion for summary judgment filed by Plaintiffs, a motion to strike filed by Plaintiffs, a motion for punitive damages discovery filed by Plaintiffs, a motion to allow class notice filed by Plaintiffs, two demurrers filed by Big O, a motion for summary judgment filed by Big O, a motion for judgment on the pleadings filed by Big O, a motion to bifurcate filed by Big O, and a motion to decertify filed by Big O.

9. Prior to entering into this Settlement, the Parties twice attended mediation in an attempt to settle this matter. The first mediation was with Hon. Stephen J. Sundvold (Ret.), and occurred on December 1, 2015. The second mediation was with Hon. Howard B. Weiner (Ret.), and occurred on July 13, 2017. This matter did not settle at either mediation.

10. Based upon Big O's representations, and documents produced in discovery, there are approximately 25,345 members of Subclass A and 43,270 members of Subclass B. Big O is in possession of the contact information provided by class members to Big O. Big O further represents and warrants that a complete list of all members of Subclass A and Subclass B, along with Big O's best contact information for them, has been provided to Plaintiffs in documents BATES numbered BIG O 87933-88439 (Subclass A) and 88440-89360 (Subclass B).

11. Plaintiffs retained Prof. Michael Willoughby as an expert economist to calculate the amount of restitution due to the members of the Plaintiff Class if the Plaintiff Class were to prevail at trial. Per Professor Willoughby's opinion and calculations, as of the date of his deposition, if the Plaintiff Class were to prevail at trial, it would be entitled to recover (exclusive of punitive damages) \$1,443,884.00, as follows:

- The members of Subclass A would be entitled to recover approximately \$28.74 per member of Subclass A;
- The member of Subclass B would be entitled to recover approximately \$17.18 per member of Subclass B;
- Prof. Willoughby's calculation of the per capita recovery for Subclass A and Subclass B was based upon the documents produced by Big O in discovery as of that date;
- The per capita recovery for Subclass A is greater than Subclass B because Plaintiffs allege that Big O "double charged" the members of Subclass A, but

not Subclass B, for lifetime rebalancing services.

- Big O has contested the nature and amount of the alleged damages.

12. The Parties agree that counsel for Plaintiffs have conducted a comprehensive investigation and evaluation of the facts and law relating to the claims asserted in the Lawsuit. In light of the costs, risks, and delay of continued litigation, balanced against the benefits of settlement to the Plaintiff Class, Plaintiffs and their counsel believe that the settlement as provided in this Agreement is in their best interests and represents a fair, reasonable, and adequate resolution of the claims in the Lawsuit.

13. NOW, THEREFORE, without any admission or concession on the part of Plaintiffs of any lack of merit of the Action whatsoever, and without any admission or concession of any liability or wrongdoing or lack of merit in the defenses whatsoever by Big O and other Released Parties, it is hereby AGREED, by and among the Settling Parties to this Agreement, through their respective undersigned attorneys, subject to approval of the Court, in consideration of the benefits flowing to the Parties hereto from the Settlement, that all Settled Claims against the Released Parties shall be compromised, settled, released and dismissed with prejudice, upon and subject to the following terms and conditions.

### **TERMS OF THE SETTLEMENT**

The above factual background and recitals are true and correct and are incorporated herein by this reference. In consideration of the mutual promises contained herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Court Approval**

A. **Requirement of Court Approval.** This Settlement is conditioned upon court approval, and shall be null and void in the event court approval is denied.

B. **Cooperation Pending Preliminary and Final Approval.** Notwithstanding the requirement for court approval, the Parties shall cooperate in seeking preliminary approval of this Settlement, and, if preliminary approval is granted, shall cooperate in providing notice to the Plaintiff Class and seeking final approval of this Settlement, and further agree that this duty to cooperate shall be immediately effective upon the execution hereof. Big O further agrees to not move to decertify while approval of this Settlement is pending, and agrees that this obligation shall be effective upon the execution hereof. The Parties agree that neither this Settlement, nor Big O's cooperation in



providing notice or seeking court approval, shall be deemed an admission on the part of Big O regarding either the merits of the Action or whether a class should have been certified.

C. **Effect of Non-Approval.** If the Court does not enter an Order approving this Settlement, or decides to do so only with material modifications to the terms of this Settlement (including, but not limited to, changing any amount to be paid hereunder by Big O), or if the Order approving this Settlement is reversed or vacated by an appellate court, unless the Parties agree in writing to modify this Agreement and the Court approves the modified Settlement, then this Settlement shall become null and void, without prejudice; none of its terms shall be effective or enforceable; the fact of the Agreement and the Settlement embodied in it shall not be admissible in any trial of the Action; the Settling Parties shall be deemed to have reverted to their respective status in this Action immediately prior to the date the notice of settlement was filed; and, except as otherwise expressly provided, such Parties shall proceed in all respects as if this Agreement and any related orders had not been entered. This provision does not affect any order or action of the Court, and specifically has no impact upon the Stipulation to Toll Time to Bring Action to Trial and order thereon, which will remain in full force and effect.

2. **Effective Date.** The “Effective Date” of this Settlement shall be as follows:

A. If no objection has been asserted, or if an objection has been asserted but withdrawn, then the Effective Date will be the date on which an order is entered granting final approval of this Settlement.

B. If an objection is asserted and not withdrawn, and if no appeal is timely filed in relation to an order granting final approval of this Settlement, then the Effective Date will be the date which is sixty (60) days after Plaintiffs serve, by mail, notice of the entry of such order on all objectors.

C. If an objection is asserted and not withdrawn, and if an appeal is timely filed in relation to an order granting final approval of this Settlement, then the Effective Date will be the date which is thirty (30) days after the matter is remanded to the Superior Court, and the Superior Court completes any actions required by the remand.

3. **Consideration to Plaintiff Class**

A. **Election to Receive Cash or Coupon.** Following preliminary approval of this Settlement, each member of the Plaintiff Class shall have until ninety (90) days after the Mail Notice is first mailed to the class member by the Settlement Administrator, as provided for in Section 8.B., below, to elect either a cash settlement or a coupon settlement (the “Response Period”, as also defined in Section 8.C., below). If a member of the Plaintiff Class fails to return his or her election

during the Response Period, the member shall not be entitled to either a cash settlement or a coupon settlement. Big O shall provide the requested consideration to each member of the Plaintiff Class who submits an election within the Response Period as follows:

- (i) Each member of Subclass A who timely elects a cash payment shall be provided with a check for \$20.54 (the “**Subclass A Check**”). The Subclass A Check shall be payable for ninety (90) days following the date the Settlement Administrator mails the Checks / Coupons (as defined in Section 8.G, below) under this Agreement (the “**Final Mailing Date**”);
- (ii) Each member of Subclass A who timely elects a coupon shall be provided with a coupon for \$25.51 towards the purchase of goods or services at any Big O location, whether operated by Big O or its franchisees (the “**Subclass A Coupon**”). The Subclass A Coupon shall be redeemable for no less than one (1) year following the Final Mailing Date, subject to a minimum purchase not to exceed \$50.00, and can be combined with any and all other offers. The Subclass A Coupon shall be approved by the Court in connection with the motion to approve this Settlement;
- (iii) Each member of Subclass B who timely elects a cash payment shall be provided with a check for \$12.46 (the “**Subclass B Check**”). The Subclass B Check shall be payable for ninety (90) days following the Final Mailing Date; and
- (iv) Each member of Subclass B who timely elects a coupon shall be provided with a coupon for \$15.47 towards the purchase of goods or services at any Big O location, whether operated by Big O or its franchisees (the “**Subclass B Coupon**”). The Subclass B Coupon shall be redeemable for no less than one (1) year following the Final Mailing Date, subject to a minimum purchase not to exceed \$30.00, and can be combined with any and all other offers. The Subclass B Coupon shall be approved by the Court in connection with the motion to approve this Settlement.

B. Maximum Cash Fund. Big O shall not be required to pay more than \$1,000,000.00 (the “**Maximum Cash Fund**”) to satisfy its obligation to provide monetary consideration to the members of the Plaintiff Class under this Settlement. Only the amounts of Subclass A Checks and Subclass B Checks requested, as well as the Service Payments set forth in Section 4, below, shall be credited against the Maximum Cash Fund. In the event members of the



Plaintiff Class elect Subclass A Checks and Subclass B Checks in an amount that would exceed the Maximum Cash Fund, taking into account the Service Payments, the amount paid to each member shall be reduced by an equal percentage to set the total paid as equal to the Maximum Cash Fund. For the sake of clarity, other than the Subclass A Checks, Subclass B Checks and Service Payments, no other amount to be paid by Big O under this Settlement shall be part of, subject to or limited by the Maximum Cash Fund.

C. Minimum Fund. Regardless of the number and nature of claims submitted by members of the Plaintiff Class, Big O shall pay a minimum of \$100,000.00 (the “**Minimum Fund**”). Only the following shall be credited against the Minimum Fund: (i) Subclass A Checks; (ii) Subclass B Checks; (iii) thirty-three percent (33%) of the face value of the Subclass A Coupons; (iv) thirty-three percent (33%) of the face value of the Subclass B Coupons; and (iv) class representative Service Payments pursuant to Section 4, below. If the total of the foregoing payments to be made under this Settlement are less than the Minimum Fund, Big O shall donate funds to a legitimate charity of Big O’s choice sufficient, when taken together with the amounts paid under the Settlement credited against the Minimum Fund, to pay at least the Minimum Fund.

D. Extension of TPP Benefits. Big O shall extend all benefits of the TPP by one (1) year to each member of the Plaintiff Class who purchased a TPP on or after January 1, 2014.

E. Vehicle Inspection. Each member of the Plaintiff Class shall be entitled to a free vehicle inspection, which shall include, at a minimum, tires, brakes, shocks, struts and oil.

F. Revision of the TPP. Big O agrees, within one hundred twenty (120) days from the Effective Date, to implement a revised TPP invoice backer at its California locations, in a manner that the Plaintiffs and the Court agree, as part of the settlement approval process, conforms with California law.

4. Service Payments to Class Representatives. In addition to all other amounts to be paid by Big O under this Settlement, Big O shall pay “service payments” to the class representatives in this matter, subject to Court approval, of \$7,500.00 to Plaintiff FRANCHINO and \$12,500.00 to Plaintiff FRATILLA (the “**Service Payments**”). The Parties agree that the class representatives Named Plaintiffs are entitled to this Service Payment, and the amount thereof, in recognition of the their efforts to pursue the claims raised in this Lawsuit on behalf of the Plaintiff Class, including, but not limited to, providing factual information and otherwise assisting with the prosecution of the litigation, as well as his risks taken on behalf of the Plaintiff Class. The amount of the Service Payments shall be credited against the Maximum Cash Fund and Minimum Fund. The Parties

represent and warrant that the amount of Service Payments to be paid under this Settlement was not negotiated until after an agreement had been reached as to the consideration to be provided to the members of the Plaintiff Class. The Parties further represent and warrant that the Service Payments are independent of any consideration to be provided to the Plaintiff Class, and did not reduce the consideration to be paid to the Plaintiff Class.

**5. Attorneys' Fees and Costs.** In addition to all other amounts to be paid by Big O under this Settlement, Big O shall pay, subject to Court approval, an additional sum of \$1,850,000.00 as attorney fees and costs (the "**Agreed Upon Fees**"), pursuant to Cal. Civ. Code § 1780(e), Cal. Code Civ. Proc. § 2021.5 and this Settlement, to compensate Class Counsel for their services rendered for the benefit of the Plaintiff Class. As used herein, "**Class Counsel**" shall mean, collectively, the following law firms and their predecessors: (1) Sanford Heisler Sharp, LLP; (2) Teeple Hall, LLP; (3) Papaefthimiou APC / Law Office of Alexander E. Papaefthimiou; and (4) Megan A. Richmond APC. The Parties agree that the Agreed Upon Fees are reasonable in light of, among other things, the time reasonably required, the complexity of the case, the amount and quality of work performed, the skill, reputation and experience of Class Counsel, the contingent nature of the fee, the results obtained, the importance of the claims asserted, the non-monetary benefits of the Settlement, and the length of the litigation. The Parties represent and warrant that the amount of attorney fees and costs to be paid under this Settlement was not negotiated until after an agreement had been reached as to the consideration to be provided to the members of the Plaintiff Class. The Parties further represent and warrant that payment of the Agreed Upon Fees is independent of any consideration to be provided to the Plaintiff Class, and did not reduce the consideration to be paid to the Plaintiff Class. Big O shall bear its own attorney fees and costs.

**6. Release.** Upon the Effective Date, all members of the Plaintiff Class, on behalf of themselves and any other person claiming through them or on behalf of them, who do not opt-out of the Settlement, shall be deemed to have released Big O, its employees, officers, directors, managers, parents and subsidiaries, and all other persons or entities that could have been liable for Big O's conduct ("**Released Parties**") from any and all known or unknown claims arising out of the offer or sale of the TPP at Big O company-owned locations only, and only to the Plaintiff Class by Big O, including the alleged failure of the TPP sold by Big O to the Plaintiff Class at Big O company-owned locations to comply with the California Insurance Code or the Song-Beverly Consumer Warranty Act, Big O's alleged ineligibility to sell the TPP under the California Insurance Code or the Song-Beverly Consumer Warranty Act, Big O's alleged misrepresentations and failures to disclose the benefits of



the TPP sold by Big O to the Plaintiff Class at Big O company-owned locations, and any other claims that were, or that could have been, alleged in the Complaint, First Amended Complaint, Second Amended Complaint and/or Third Amended Complaint against Big O arising out of the offer or sale of the TPP at Big O company-owned locations to the Plaintiff Class, from January 2, 2009 to the Effective Date only (the “**Settled Claims**”). Notwithstanding the foregoing, this Settlement does not affect any release on behalf of any Class Member who opts out by signing and timely returning the opt-out notice. Nor does this Settlement Agreement affect any release of any obligation Big O has, or may have, under any TPP previously sold, or under any warranty which may have previously been made by Big O. This release does not apply to any claims for bodily injury or property damage. This release also does not apply to actions to enforce this Settlement.

7. **Dismissal of Action.** Within fourteen (14) days after the Effective Date, Plaintiffs shall request the Court, pursuant to Rule 3.679(h), to enter judgment on the Settlement maintaining continuing jurisdiction for purposes of enforcing this Agreement.

8. **Notice and Settlement Administration.**

A. **Settlement Administrator.** As used herein, the “**Settlement Administrator**” shall mean KCC LLC, who the Parties jointly recommend be appointed by the Court to take all actions reasonably necessary to administer the terms of the Settlement. Big O shall be solely responsible for all costs, fees and expenses of any sort or nature related to the Settlement Administrator and provision of notice, and shall promptly pay the Settlement Administrator for all fees and costs upon demand. The failure of the Settlement Administrator to perform any obligations under this Settlement due to non-payment by Big O shall be considered a breach by Big O, if not cured by Big O within five (5) business days of receipt of notice by the Settlement Administrator or any other Party of such non-payment.

B. **Notice of Settlement and Related Rights.** The form for class members to use in order to opt-out or make their election between cash or coupon consideration (the “**Election Form**”) shall be approved by the Court in connection with the motion to approve this Settlement. Notice of the proposed Settlement, of the Election Form, of the right to make a claim, to opt-out or to object, to elect cash or coupon consideration, and of the date of the hearing of the motion for final approval of this Settlement shall be given to members of the Plaintiff Class as set forth below.

- (i) The full-text notice of proposed settlement (the “**Long Notice of Settlement**”) shall be approved by the Court in connection with the motion to approve this Settlement, and posted at [www.tireprotectionplanclassaction.wordpress.com](http://www.tireprotectionplanclassaction.wordpress.com)

within three (3) days after the preliminary approval of this Settlement. Plaintiffs shall be responsible for posting the Long Notice of Settlement. Class Counsel shall also be responsible for removing this post no later than ten (10) business days following the end of the Response Period as defined in Section 8.C., below

- (ii) A summary notice of proposed settlement (the “**Summary Notice of Settlement**”) shall be approved by the Court in connection with the motion to approve this Settlement, and shall be published in the *San Diego Daily Transcript* in the manner authorized by subdivision (d) of Civil Code Section 1781, and prescribed in Government Code Section 6064. Plaintiffs shall arrange for the publication of the Summary Notice of Settlement within three (3) business days of preliminary approval of this Settlement to commence as soon thereafter as reasonably possible. The Summary Notice of Settlement shall be posted for a period of four (4) consecutive weeks, per Government Code Section 6064. Big O shall pay all costs of publication within five (5) business days of demand by Plaintiffs.
- (iii) A notice of this Settlement, the rights of class members to object, opt out and/or appear at the final approval hearing, and of the Election Form and the rights of the members of the Plaintiff Class thereunder (the “**Mail Notice**”) shall be approved by the Court in connection with the motion to approve this Settlement. The Mail Notice will provide instructions to members of the class how to complete the Election Form online, although class members shall have the right to request a hard copy of the Election Form from the Settlement Administrator, which they can complete and submit by mail. The Mail Notice shall also inform members of the Plaintiff Class who purchased a TPP on or after January 1, 2014 that their TPP contracts have been extended by one (1) year, and shall also serve as the document members of the Plaintiff Class shall bring to Big O in order to receive the free vehicle inspection provided for by this Settlement.
  - (a) Big O shall provide the Settlement Administrator with the contact information that it has in its corporate records (including full name, last known address and last known email address) for all members of the



Plaintiff Class within three (3) business days after preliminary approval of this Settlement. Big O shall use its best efforts to promptly comply with any request from the Settlement Administrator for information or assistance in discharging its duty to provide notice.

- (b) Thirty (30) days after the deadline for Big O to provide the Settlement Administrator with the contact information for members of the Plaintiff Class, as set forth in Section 8.B(iii)(a), above, or such later time as deemed reasonably necessary by the Settlement Administrator, the Settlement Administrator shall mail the Mail Notice to each member of the Plaintiff Class for whom Big O has a mailing address. The Settlement Administrator shall also send the Mail Notice, via electronic mail, to each member of the Plaintiff Class for whom Big O has an email address. If a Mail Notice is returned to the Settlement Administrator with a forwarding address/email address, the Settlement Administrator shall forward the Mail Notice to the forwarding address/email address.
- (c) Big O shall post a link to the Mail Notice on its website ([www.bigotires.com](http://www.bigotires.com)), commencing within three (3) business days of preliminary approval. This link must remain on the Big O website for thirty (30) days from the date first posted. The applicable link on Big O's website shall be on the home page, in at least 12-point font and not on the footer of the page, and state: "Information for customers who purchased a TPP from 2009-2017 at a California corporate store."

C. Response / Election Period. Members of the Plaintiff Class shall have until ninety (90) days after the date the Mail Notice is first mailed to the class member by the Settlement Administrator to submit an Election Form to the Settlement Administrator (the "**Response Period**") and thereby exercise their right to opt-out of the Settlement or choose the consideration to be paid to them thereunder. During the Response Period, the Settlement Administrator shall make the Election Form and Election Notice available to members of the Plaintiff Class upon their request.

D. Objection Period. Class Members shall have until sixty (60) days after the date the Mail Notice is first mailed to the class member by the Settlement Administrator to assert objections (the "**Objection Period**"). Plaintiffs stipulate and agree that they shall not object to the Settlement or any provision of this Agreement. Unless the Court orders otherwise, the dates set forth in the Class

Notice shall govern the rights of the Class Members. Class Counsel shall notify Big O and the Settlement Administrator of any objections, within five (5) business days following the close of the Objection Period, including providing copies of any such objections. Furthermore, the Parties agree to move for the following procedures regarding the right of members of the Plaintiff Class to object to the Settlement, with the understanding that the following provisions are subject to the approval and modification of the Court, and that **modification by the Court shall not impact the validity or binding nature of this Settlement:**

- (i) All objections must be set forth in writing and mailed to Class Counsel on or before the last day of the Objection Period;
- (ii) Each objection must (a) set forth the Class Member's full name, current address, and telephone number; (b) contain the Class Member's original signature (conformed, reproduced, facsimile, or other non-original signatures will not be valid); (c) state that the Class Member objects to the Settlement, in whole or in part; (d) set forth a statement of the legal and factual basis for the objection; (e) provide copies of any documents that the Class Member wishes to submit in support of his/her position; and (f) identify by name and address any attorney that represents the Class Member with respect to the objection or assisted or advised the Class Member in any way with respect to the objection;
- (iii) Objections may be filed by counsel for a Class Member or by a Class Member *pro se*;
- (iv) Any Class Member who does not submit a timely objection in complete accordance with this Agreement and Class Notice, and otherwise as ordered by the Court, shall not be treated as having filed a valid objection to the Settlement;
- (v) Any Class Member who wishes to appear at the hearing on the motion for final approval of this Settlement (the "**Settlement Hearing**"), whether *pro se* or through counsel, must, within the time set by the Court, and, in any event, no less than five (5) court days prior to the Settlement Hearing, file a notice of appearance in the Action, take all other actions or make any additional submissions as may be required in the Class Notice, or as otherwise ordered by the Court, and mail the notice and other pleadings to Class Counsel and Defendant's Counsel as provided in the Class Notice; and



(vi) No Class Member shall be permitted to raise matters at the Settlement Hearing that the Class Member could have raised in an objection, but failed to do so.

E. Payment of Service Payments. Within three (3) business days of the Effective Date, Plaintiffs FRATILLA and FRANCHINO shall each provide Big O with a properly completed IRS Form W-9 (on the most current version of the form). Plaintiffs FRATILLA and FRANCHINO acknowledge, understand and agree that Big O cannot make the Service Payments without the completed Form W-9s referenced above. Within fourteen (14) days of the Effective Date, Big O shall mail the Service Payments, \$12,500.00 to Plaintiff FRATILLA and \$7,500.00 Plaintiff FRANCHINO, at addresses to be provided by Class Counsel.

F. Payment of Agreed Upon Fees. Payment of Agreed Upon Fees. Within three (3) business days of the Effective Date, Class Counsel shall provide Big O with a properly completed IRS Form W-9 (on the most current version of the form) for TEEPLE HALL LLP. Class Counsel acknowledge, understand and agree that Big O cannot make payment of the Agreed Upon Fees without the completed Form W-9 referenced above. Within fourteen (14) days of the Effective Date, Big O shall wire to the trust account of TEEPLE HALL LLP the sum of \$1,850,000.00 to satisfy its obligation to pay the Agreed Upon Fees.

G. Administration of Consideration to Plaintiff Class. Within five (5) business days of the Effective Date, the Settlement Administrator shall: (i) inform the Parties of the amount to be paid by Big O to the members of the Plaintiff Class who timely opted to receive cash consideration (the “**Cash Fund**”), provide the number of requested Subclass A Checks and Subclass B Checks to the Parties; and (ii) inform the Parties of the number of requested Subclass A Coupons and Subclass B Coupons to the Parties. Big O shall wire the entire amount of the Cash Fund to the Settlement Administrator within ten (10) business days of the foregoing notice from the Settlement Administrator. The Settlement Administrator shall mail the Subclass A Checks, Subclass B Checks, Subclass A Coupons and Subclass B Coupons (the “**Checks / Coupons**”) to members of the Plaintiff Class within five (5) business days of the receipt of the Cash Fund from Big O, or as soon thereafter as reasonably possible. The date on which the Checks / Coupons are mailed by the Settlement Administrator is referred to as the “**Final Mailing Date**”. If any of the Checks / Coupons are returned to the Settlement Administrator with a forwarding address, the Settlement Administrator shall forward the Check / Coupon to the forwarding address. Such subsequent mailings shall not extend the date of the Final Mailing Date.

H. Final Report and Accounting. One hundred (100) days after the Final Mailing Date, the Settlement Administrator shall issue a final report and accounting of the Cash Fund to the Parties, and shall return the balance of the Cash Fund, if any, to Big O.

9. Enforcement. The Parties request that the Superior Court of the State of California, County of San Diego (the “Court”) retain jurisdiction with respect to the implementation and enforcement of the terms of the Agreement to the full extent permitted by law, and hereby submit to the jurisdiction of the Court for such purpose. The Parties agree that any action to enforce this Agreement shall be commenced and maintained only in this Court, and that the prevailing party in any action to enforce this Settlement shall be entitled to recover its reasonable attorney fees and costs. The Parties agree that this Settlement is made and is enforceable in accordance with the provisions of Section 664.6 of the California Code of Civil Procedure, and the Court shall retain jurisdiction for that purpose after dismissal of the Lawsuit. This Agreement shall be admissible in any proceeding for its enforcement in accordance with Sections 1118 and 1123 of the California Evidence Code.

10. No Waiver. The failure to enforce at any time, or for any period of time, any one or more of the terms or conditions of this Settlement shall not be a waiver of such terms or conditions. Furthermore, it shall not be a waiver of such party’s right thereafter to enforce any of the terms or conditions of this Settlement.

11. Authority. All counsel and any other person executing this Agreement, including without limitation on behalf of Big O, represents and warrants that he or she has full authority and power to enter into this agreement on their own behalf and on behalf of any Party he or she purports to represent, and that all necessary internal approvals, whether or not from within Big O (including, but not limited to, approval from a corporate parent), have been obtained. All Parties further represent and warrant that no further approval or signatures are necessary in order for this Settlement to be fully binding and enforceable.

12. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same Agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or other electronic means, will constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or other electronic means will be deemed to have the same force and effect as their original signatures.



13. **Amendment.** This Agreement may be amended or modified only by a written instrument signed by all Parties. Any such modified Agreement must be approved by the Court.

14. **Complete Agreement.** This Agreement sets forth the entire agreement between the Parties regarding the subject matter hereof, and supersede all prior written and oral negotiations or agreements regarding the subject matter hereof. There are no representations or inducements between the Parties relating to this Agreement except as set forth herein.

15. **Governing Law.** This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of California, without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

16. **Headings for Convenience Only.** Paragraph and other headings contained in this Agreement are for convenience and reference only, and are not intended to affect, in any way, the meaning or interpretation of this Agreement.

17. **Disputed Claims.** This Agreement is a settlement of disputed claims. Nothing contained herein shall be, or shall be construed to be, an admission of liability or an admission of any issue of law or fact related to the Lawsuit. This Agreement shall not be offered or received against the Parties or any Released Party for any reason, other than in connection with either a motion to approve the settlement or a motion to enforce the settlement in the event of an alleged breach.

18. **Tax Consequences.** No opinion or advice concerning the tax consequences of the Settlement to Plaintiffs, the Plaintiff Class, members of the Plaintiff Class or any of the Settling Parties or any of the Released Parties is being given or will be given by Class Counsel and/or Defendant's Counsel; nor is any representation or warranty in this regard made by virtue of this Agreement. Plaintiffs, the Plaintiff Class, and members of the Plaintiff Class will be directed to consult their own tax advisors regarding the tax consequences of the proposed settlement and any tax reporting obligations they might have with respect to it. Each member of the Plaintiff Class' tax obligations, and the determination thereof, are the sole responsibility of the members of the Plaintiff Class, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual.

19. **Confidentiality/Non-Disparagement.** Except for the notice provisions set forth in the Preliminary Approval Order, or as otherwise provided in any part or subpart of this Section 19, or as required in accordance with applicable law, rule or regulation (e.g., tax law, securities laws, rules or regulations), the Parties agree as follows:

A. The Class Representative, Class Counsel, Defendant and Defendant's Counsel agree that there will be no campaigning (including on the Internet) regarding the Settlement or this Agreement. There will be no press releases regarding the Settlement, and neither side will initiate contact with the media. However, any Settling Party, Class Counsel and Defendant's Counsel can respond to inquiries initiated by the media, but in doing so, regarding the Settlement, shall restrict his or her statements to a factual description of the terms of the Settlement (which may include reference to the Settlement Website), and otherwise shall not make assertions or statements regarding the Settlement, Lawsuit or the Settling Parties insofar as the substance of such statements is not, as of the final dismissal of the Action (including any proceeding to enforce this Settlement), already set forth in the pleadings and briefings filed with the Court or Court of Appeal in the Action.

B. The Class Representative, Class Counsel, Defendant and Defendant's Counsel agree to not, directly or indirectly, make, publish, distribute or solicit any negative, derogatory, harmful, or disparaging remarks or untruthful statements about the opposing Parties, including any of their subsidiaries, affiliated entities, parent entities or any of their respective officers, directors, employees, or agents, maligning, ridiculing, defaming, criticizing, asserting blame, casting aspersions or otherwise speaking ill of them or their business affairs, operations, personnel, practices, policies, standards, reputation, or anything that would be considered harmful to their business interests, reputation, or good will, in any form (including but not limited to orally, in writing, on social media, on the Internet, to the media, persons and entities engaged in radio, television or Internet broadcasting, or to persons and entities that gather or report information on trade and business practices or reliability) related to the Settled Claims only.

C. It is expressly acknowledged and agreed that nothing in this Section 19 or Settlement is intended to or shall prevent or interfere in any way with:

- (i) Any person from answering or testifying fully and truthfully pursuant to or in connection with any legal, governmental or administrative inquiry, claim, proceeding or action where such statement or testimony is required;
- (ii) Counsel's ability to represent other clients in future litigation against Big O or related parties, where effective representation of those clients would necessarily involve the use of such statements;
- (iii) Counsel's ability to mention on their resume, website or advertising materials that he or she worked on a consumer class action against an automotive retailer, provided that the resume, website or advertising materials shall not



mention the name Big O or any of the Released Parties; and,

- (iv) The Parties intend their obligations hereunder to be consistent with Rule 1–500 (A) of the California Rules of Professional Conduct, which shall govern over any contrary provision in this Agreement.

**20. Construction.** The Parties believe the terms of the settlement as set forth in this Agreement are a fair, adequate and reasonable settlement of the Lawsuit, and have arrived at this Settlement in arms-length negotiations, taking into account all relevant factors, present and potential. This Settlement has been drafted jointly by counsel for the Parties. Hence, in any construction or interpretation of this Settlement, the same shall not be construed against any of the Parties.

**21. Notice.** If any Settling Party or its counsel is required to give notice to the other Settling Party or to the Settlement Administrator under this Agreement, such notice shall be in writing and shall, except to the extent the method of notice is otherwise explicitly set forth in a separate section of this Agreement, be deemed to have been duly given upon (a) receipt of hand delivery; (b) sending by overnight courier, next business day delivery; or (c) sending of electronic mail, provided that no rejection notice occurs and that identical notice is sent by first class mail, postage pre-paid. Notice shall, consistent with the method for giving such notice, be provided as follows:

**Plaintiffs:**

Gregory Garrison, Esq.  
TEEPLE HALL, LLP  
9255 Towne Centre Drive, Suite 500  
San Diego, California 92122  
Tel: (858) 622-7878  
Fax: (858) 622-0411  
greg@teeplehall.com

**Defendant:**

Jonathan Solish, Esq.  
Glenn Plattner, Esq.  
BRYAN CAVE LLP  
120 Broadway, Suite 300  
Santa Monica, California 90401  
Tel: (310) 576-2100  
Fax: (310) 576-2200  
jonathan.solish@bryancave.com  
glenn.plattner@bryancave.com

Brian Maciak  
TBC CORPORATION  
4300 TBC Way  
Palm Beach Gardens, Florida 33410  
bmaciak@tbccorp.com


**Settlement Administrator:**

Patrick J. Ivie  
KCC LLC  
3301 Kerner Boulevard  
San Rafael, California 94901  
Tel: (415) 798-5900  
Fax: (415) 892-7354  
pivie@kccllc.com

Notwithstanding anything to the contrary herein, any Settling Party may, upon notice to all other Settling Parties and their counsel, unilaterally change the name and/or address to which notice under this section should be sent for such Settling Party and/or its counsel. Notice of any such changes shall be given pursuant to the notice provisions set forth in this section.

**ON BEHALF OF DEFENDANT**

Dated: 2.21, 2018

By:   
Printed Name: Day Sergeant

Title: VP + Assistant General Counsel

Dated: 2.21, 2018

By:   
Printed Name: Brian Maciak

Title: SUPRA

**ON BEHALF OF THE PLAINTIFF CLASS**

Dated: \_\_\_\_\_, 2018

By: \_\_\_\_\_  
Brian Jeffery Fratilla



Brian Maciak  
TBC CORPORATION  
4300 TBC Way  
Palm Beach Gardens, Florida 33410  
bmaciak@tbccorp.com

**Settlement Administrator:**

Patrick J. Ivie  
KCC LLC  
3301 Kerner Boulevard  
San Rafael, California 94901  
Tel: (415) 798-5900  
Fax: (415) 892-7354  
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**ON BEHALF OF DEFENDANT**

Dated: \_\_\_\_\_, 2018

By: \_\_\_\_\_  
Printed Name:

Title: \_\_\_\_\_

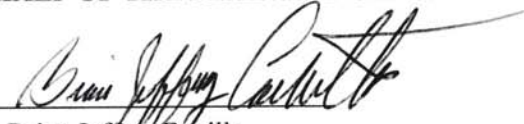
Dated: \_\_\_\_\_, 2018

By: \_\_\_\_\_  
Printed Name:

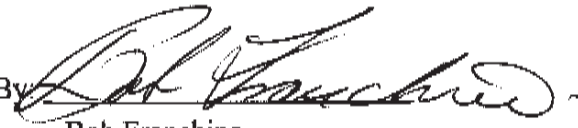
Title: \_\_\_\_\_

**ON BEHALF OF THE PLAINTIFF CLASS**

Dated: FEB 21, 2018

By:   
Brian Jeffery Fratilla

Dated: 2-21, 2018

By:   
Bob Franchino

**COUNSEL FOR DEFENDANT**

Dated: \_\_\_\_\_, 2018

**BRYAN CAVE LLP**

By: \_\_\_\_\_  
Jonathan Solish, Esq.  
Glenn J. Plattner, Esq.  
Kristy A. Murphy, Esq.

120 Broadway, Suite 300  
Santa Monica, California 90401  
Telephone: (310) 576-2100  
Facsimile: (310) 260-4158

**COUNSEL FOR PLAINTIFF**

Dated: \_\_\_\_\_, 2018

**SANFORD HEISLER SHARP, LLP**

By: \_\_\_\_\_  
Edward D. Chapin, Esq.

655 West Broadway, Suite 1700  
San Diego, California 92101  
Telephone: (619) 577-4253

Dated: \_\_\_\_\_, 2018

**TEEPLE HALL, LLP**

By: \_\_\_\_\_  
Gregory M. Garrison, Esq.

9255 Towne Centre Drive, Suite 500  
San Diego, California 92121  
Telephone: (858) 622-7878



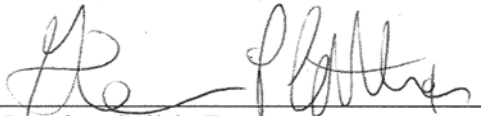
Dated: \_\_\_\_\_, 2018

By: \_\_\_\_\_  
Bob Franchino

Dated: 2/21, 2018

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Jonathan Solish, Esq.  
Glenn J. Plattner, Esq.  
Kristy A. Murphy, Esq.

120 Broadway, Suite 300  
Santa Monica, California 90401  
Telephone: (310) 576-2100  
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SANFORD HEISLER SHARP, LLP

By: \_\_\_\_\_  
Edward D. Chapin, Esq.

655 West Broadway, Suite 1700  
San Diego, California 92101  
Telephone: (619) 577-4253

Dated: \_\_\_\_\_, 2018

TEEPLE HALL, LLP

By: \_\_\_\_\_  
Gregory M. Garrison, Esq.

9255 Towne Centre Drive, Suite 500  
San Diego, California 92121  
Telephone: (858) 622-7878

Dated: 2-21, 2018

By:   
Bob Franchino

**COUNSEL FOR DEFENDANT**

Dated: \_\_\_\_\_, 2018

**BRYAN CAVE LLP**

By: \_\_\_\_\_  
Jonathan Solish, Esq.  
Glenn J. Plattner, Esq.  
Kristy A. Murphy, Esq.

120 Broadway, Suite 300  
Santa Monica, California 90401  
Telephone: (310) 576-2100  
Facsimile: (310) 260-4158

**COUNSEL FOR PLAINTIFF**

Dated: February 21, 2018

**SANFORD HEISLER SHARP, LLP**

By:   
Edward D. Chapin, Esq.

655 West Broadway, Suite 1700  
San Diego, California 92101  
Telephone: (619) 577-4253

Dated: FEB. 21, 2018

**TEEPLE HALL, LLP**  
By:   
Gregory M. Garrison, Esq.

9255 Towne Centre Drive, Suite 500  
San Diego, California 92121  
Telephone: (858) 622-7878



Dated: 2/20, 2018

~~MEGAN A. RICHMOND, APC~~

By: 

Megan A. Richmond, Esq.

655 West Broadway, Suite 1700  
San Diego, California 92101  
Telephone: (619) 577-4253

Dated: \_\_\_\_\_, 2018

PAPAEFTHIMIOU APC

By: \_\_\_\_\_

Alexander E. Papaefthimiou, Esq.

215 E. Daily Drive, Suite 28  
Camarillo, California 93010  
Telephone: (805) 366-3909

Dated: \_\_\_\_\_, 2018

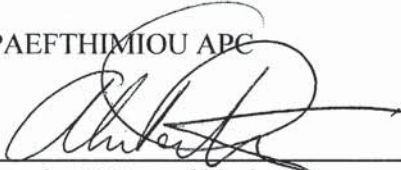
MEGAN A. RICHMOND, APC

By: \_\_\_\_\_  
Megan A. Richmond, Esq.

655 West Broadway, Suite 1700  
San Diego, California 92101  
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By:  \_\_\_\_\_  
Alexander E. Papaefthimiou, Esq.

215 E. Daily Drive, Suite 28  
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