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10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN DIEGO

13
14 JASON CARMODY, individually and on
behalf of those similarly situated,

15 Plaintiff,

16 v.

17 BIG 5 SPORTING GOODS CORP.;
18 ROMEO & JULIETTE, INC., doing
business as BEARPAW; and DOES 1
19 through 20, inclusive,

20 Defendants.

Case No. 37-2016-00002469-CU-BT-CTL

Assigned For All Purposes To The
Honorable Richard E. L. Strauss, Dept. C-
75

**INDEX OF REVISED CLASS
SETTLEMENT NOTICES AND
FORMS**

Judge: Hon. Richard L. Strauss
Dept.: C-75

Complaint Filed: January 25, 2016
Trial Date: Not Set

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge and belief.

Dated: December 19, 2017

Law Offices of Mark Potter

By:  _____
Christina Carson (nee Sosa), Esq.
Attorneys for Plaintiff

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This Settlement Agreement is made and entered into this 6th day of September, 2017 by and between Plaintiff Jason Carmody, individually and in his representative capacity as a plaintiff on behalf of the Class (“Plaintiff”), on the one hand, and Big 5 Corp., dba Big 5 Sporting Goods, erroneously sued as Big 5 Sporting Goods Corp. (“Big 5 or “Defendant”), on the other hand (collectively “the Parties”).

1. **INTRODUCTION AND RECITALS**

1.1 On or about January 25, 2016, Plaintiff filed a complaint (“the Complaint”) in the Superior Court of the State of California, San Diego County (“the Court”) entitled *Jason Carmody, individually and on behalf of those similarly situated v. Big 5 Sporting Goods Corp; Romeo & Juliette, Inc., doing business as Bearpaw; and Does 1 through 20, inclusive*, Case No. 37-2016-0002469-CU-BT-CTL.

1.2 On or about March 3, 2016, Plaintiff filed a first amended complaint, and on or about July 29, 2016, Plaintiff filed a second amended complaint (“the SAC”). On or about September 16, 2016, the Court granted Defendants Big 5 Corp. and Romeo & Juliette, Inc.’s (collectively “Defendants”) motion to strike the allegations and claims for punitive damages from the SAC.

1.3 The SAC asserts a claim for violation of the California’s Unfair Competition Law, pursuant to Business and Professions Code section 17200, violation of California’s False Advertising Law, pursuant to Business and Professions Code section 17500, and the Consumer Legal Remedies Act, pursuant to Civil Code section 1770. Plaintiff brought these causes of action in his individual capacity and in his capacity as a representative of a class of similarly situated persons.

1.4 On or about April 11, 2016, Defendants filed an Answer to Plaintiff’s Complaint. The Answer generally and specifically denies the Complaint’s allegations and raises several affirmative defenses.

1.5 The Parties have conducted an investigation of the facts and have analyzed the relevant legal issues in regard to the claims and defenses asserted in the Action (as defined below). The Parties have engaged in written discovery, including an exchange of information and

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documentation. Plaintiff believes that the claims asserted in the SAC have merit. Defendant believes that the causes of action asserted in the Complaint are without merit and that Defendant has a complete defenses thereto. Class Counsel (as defined below) and Defendant’s Counsel (as defined below) have engaged in extensive arm’s length negotiations in reaching this Settlement Agreement. All Parties and their counsel believe the settlement terms are fair and reasonable to the Class (as defined below). Plaintiff and Class Counsel believe that the proposed settlement set forth in this Settlement Agreement confers substantial benefits upon the Class and each of its members. Based on their evaluation, the Plaintiff and Class Counsel have determined that the proposed settlement set forth in the Settlement Agreement is in the best interests of the Class.

1.6 The parties enter into this Settlement Agreement for the purpose of avoiding prolonged litigation and as a full settlement of all claims that were or could have been raised in the SAC arising out of the facts alleged therein. This Settlement Agreement is a compromise of disputed claims, and none of the provisions herein shall be construed as an admission by any Party of any fact, finding, issue of law, or violation of law.

2. **DEFINITIONS**

2.1 The term “Action” means the pending civil action filed in the Superior Court of the State of California for the County of San Diego captioned *Jason Carmody, individually and on behalf of those similarly situated v. Big 5 Sporting Goods Corp.; Romeo & Juliette, Inc., doing business as Bearpaw; and Does 1 through 20*, Case No. 37-2016-00002469-CU-BT-CTL.

2.2 The term “Cash Award” shall mean a cash payment in the amount of \$5.00.

2.3 The term “Service Award” shall mean the sum to be paid to Plaintiff Jason Carmody for his services in his role as the Class Representative and for the risks and work attendant to that role, which shall not exceed \$2,500.00.

2.4 The term “Claim Form” means a form substantially in the form of the Claim Form attached hereto as Attachment A.

2.5 The terms “Class,” “Class Member,” and “Class Members” mean all persons who purchased Bearpaw Lassen WP men’s or women’s hiking boots from a Big 5 Sporting Goods store

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in California between January 25, 2012 through the date of Preliminary Approval (the “Class Period”). Excluded from the Class are current and former employees, officers, and directors of Defendants, or any related or affiliated entity, the Court and its personnel, Class Counsel, and Defendants’ Counsel.

2.6 The term “Full Class Notice” means a notice substantially in the form of the Class Notice attached hereto as Attachment B.

2.7 The term “Defendants’ Counsel” shall mean Jeffrey B. Margulies, Norton Rose Fulbright US LLP, 555 South Flower Street, 41st Floor, Los Angeles, California 90071.

2.8 The term “Final Fairness Hearing” shall mean the hearing for Final Approval of this Settlement Agreement.

2.9 The terms “Final Approval” and “Final Approval Order” mean the order finally certifying the Class for settlement purposes only and approving the Settlement and this Agreement.

2.10 The terms “Final Judgment and Order Approving Settlement” shall mean the final judgment entered by the court pursuant to Section 12.1.

2.11 The term “Internet Notice” shall mean the notice substantially in the form attached hereto as Attachment C.

2.12 The term “Merchandise Voucher” means a certificate for \$7.50 toward any purchase of goods or services at a Big 5 Sporting Goods store in California. The Merchandise Voucher is for one time use only. The Merchandise Voucher cannot be used for online purchases. The Merchandise Voucher is not valid for previous purchases. The Merchandise Voucher cannot be used in combination with any other merchandise voucher. The Merchandise Voucher has no cash value and cannot be redeemed for cash or for any gift card. The Merchandise Voucher may not be resold or traded and may not be copied or reproduced. Limit one Merchandise Voucher per person. The Merchandise Voucher cannot be used by any employee of Defendants or their family members. The Merchandise Voucher will expire one year after the date of issuance.

The Parties and Plaintiff’s Counsel each acknowledges and agrees that the Merchandise Vouchers are not gift cards, gift certificates or similar instruments and should not be treated as the

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same under applicable laws, including, without limitation, California Civil Code Section 1749.45, et seq. Plaintiff and Class Counsel each agrees not to take any position contrary to the preceding sentence.

2.13 The terms “Plaintiff” and “Named Plaintiff” mean plaintiff Jason Carmody, in his individual capacity and in his capacity as a representative of the Class.

2.14 The terms “Plaintiff’s Counsel” and “Class Counsel” mean Mark Potter, Law Offices of Mark Potter, 9824 Erma Road, Suite 300, San Diego, CA 92131 and Will Lemkul, Morris, Sullivan & Lemkul, LLP, 9915 Mira Mesa Blvd., Suite 300, San Diego, CA 92131.

2.15 The terms “Preliminary Approval” and “Preliminary Approval Order” mean the order concerning notice and setting a date for the Final Fairness Hearing, as contemplated in Section 3.1 of this Agreement, and provisionally certifying the Class for the purposes of this Settlement Agreement, pursuant to Rule 3.769(d) of the California Rules of Court.

2.16 The term “Publication Notice” means the notice substantially in the form attached hereto as Attachment D.

2.17 The term “Remaining Stock” shall mean any remaining Bearpaw Lassen WP men’s or women’s hiking boots available for sale at Big 5 Sporting Goods stores in California after the date of Preliminary Approval of Class Settlement.

2.18 The term “Request for Exclusion” means a request by a Class Member to be excluded from the Settlement.

2.19 The term “SAC” means the Second Amended Complaint.

2.20 The terms “Settlement,” “Settlement Agreement,” and “Agreement” mean the settlement of this Action and related claims effectuated by this Settlement Agreement.

2.21 The term “Settlement Administrator” shall mean KCC, LLC.

2.22 The term “Settlement Website” means an internet website that provides access to the Full Class Notice, Settlement Agreement, Claim Form and other important settlement related documents established by the Settlement Administrator.

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2.23 The term “Settlement Effective Date” shall mean the following: (1) if no timely written or oral objections to the Settlement are made, the date of entry of the Final Judgment and Order Approving Settlement plus sixty (60) days, or (2) if timely written or oral objections to the Settlement are made, the date the Final Judgment and Order Approving Settlement becomes “Final” plus sixty (60) days. For purposes of this Section, “Final” means the occurrence of any of the following: (i) final affirmance on an appeal of the Final Judgment and Order Approving Settlement, the expiration of the time for a petition for review of the Final Judgment and Order Approving Settlement and, if the petition is granted, final affirmance of the Final Judgment and Order Approving Settlement following review pursuant to that grant, or (ii) final dismissal of any appeal from the Final Judgment and Order Approving Settlement or the final dismissal of any proceeding to review the Final Judgment, or (iii) if no appeal is filed, the expiration of the time for the filing or noticing of any appeal from the Court’s Final Judgment and Order Approving Settlement.

2.24 The term “Summary Notice” means the notice substantially in the form attached hereto as Attachment E.

3. **CLASS CERTIFICATION**

3.1 **Provisional Certification for Settlement Purposes.** The Parties stipulate and agree that the Class shall be provisionally certified for the purposes of this Settlement Agreement, pursuant to Rule 3.769(d) of the California Rules of Court, in accordance with the definition contained in Section 2.4, that Plaintiff shall represent the Class for settlement purposes, and that Plaintiff’s Counsel shall be appointed as Class Counsel.

4. **CLASS NOTICE**

4.1 Within 30 days after entry of the order granting Preliminary Approval, notice shall be provided to the Class as follows and as administered by the Settlement Administrator:

4.1.1 **In-store notice:** Big 5 shall post at each customer service counter in each of its California stores an 8 ½ by 11 inch copy of the Summary Notice for 30 days.

4.1.2 **Direct notice:** The Settlement Administrator shall email the Summary Notice to each Class Member for whom Big 5 has an email address in its records.

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4.1.3 **Publication notice:** The Settlement Administrator shall commence the running of the Publication Notice in the Los Angeles and San Francisco editions of *USA Today*. The Publication Notice shall be a quarter page advertisement (3-date ad, 3-section flexibility requirement).

4.1.4 **Internet notice:** The Settlement Administrator shall commence the running of the Internet Notice by way of Google display advertisement targeting California Adults 18 years of age and older; Topic: Hiking & Camping; Interest: Outdoor Enthusiast—achieving 8,400,000 impressions.

4.2 **Settlement Website:** the Settlement Administrator shall establish and maintain the Settlement Website and post the Full Class Notice and other important documents on the Settlement Website through the distribution of the Class Award to Class Members.

4.3 **Date of Class Notice:** The Settlement Administrator shall certify the date notice was provided (“date of Class Notice”).

5. **CLASS AND SERVICE AWARD**

5.1 Each Class Member who submits a valid, timely Claim Form shall have the option of receiving a Cash Award or a Merchandise Voucher. To obtain a Cash Award, Class Members must also submit a valid proof of purchase showing purchase of Bearpaw Lassen WP men’s or women’s hiking boots at a Big 5 Sporting Goods store in California along with the Claim Form for each pair of boots purchased. To receive a Merchandise Voucher, Class Members must attest that they purchased Bearpaw Lassen WP men’s or women’s hiking boots in California on the Claim Form.

5.2 The total number of Class Merchandise Vouchers and Cash Awards distributed to Class Members shall not exceed the number of Bearpaw Lassen WP men’s and women’s hiking boots sold in California during the Class Period.

5.3 All Remaining Stock shall be sold at a discount of at least \$7.50 below the full retail price of \$59.99. Nothing in this agreement shall prevent Big 5 Sporting Goods stores from selling the Remaining Stock at a greater discount.

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5.4 Class Counsel and Defense Counsel have met and conferred through arm’s length negotiations, and the Parties have agreed that Plaintiff shall request a Service Award in an amount equal to or less than \$2,500 to be paid by Defendant, and that Defendant shall not oppose any application by Plaintiff and/or Class Counsel for a Service Award in an amount equal to or less than \$2,500. The Parties will ultimately accept the determination of the Court with respect to the amount of the Service Award to be paid to Plaintiff.

6. **ATTORNEY’S FEES AND COSTS AND ADMINISTRATIVE EXPENSES**

6.1 Defendant will not oppose an application made by Class Counsel for an award of attorney’s fees and expenses in an amount not to exceed \$122,500. Class Counsel will not submit an application for an award of attorney’s fees and expenses for more than \$122,500. The amount of the attorneys’ fees and costs to be requested by Class Counsel was negotiated at arm’s length, and only after agreement was reached on all substantive terms of the Settlement. The Parties will ultimately accept the determination of the Court with respect to the amount of attorney’s fees and expenses awarded, as long as the combined amount of attorney’s fees and expenses awarded does not exceed \$122,500.

6.2 Class Counsel shall file any papers supporting its request for attorneys’ fees and costs with the Court at least 14 days prior to the deadline for Class Members to object in writing to the Settlement.

6.3 Defendant shall pay any attorney’s fees and expenses and the Service Award ordered by the Court pursuant to Section 6.1 to Class Counsel within fifteen days of the Settlement Effective Date. If, subsequent to making a payment of attorney’s fees pursuant to this Section, Defendant receives notice of any appeal having been filed, they shall provide notice to Plaintiff’s Counsel of such appeal. Within five business days of receiving such notice, Plaintiff’s Counsel shall deposit the payment of attorney’s fees in an interest-bearing escrow account, pending resolution of such appeal and, if the Final Approval Order is reversed on appeal, such payment shall be returned to Defendant, with interest.

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6.4 **Settlement Implementation Costs.** Defendant shall be responsible for all costs associated with providing notice to the Class and of administering this Settlement Agreement.

7. **CLASS SETTLEMENT PROCEDURE**

7.1 **Settlement Approval.** As soon as practicable after the signing of this Agreement, the Parties shall jointly file an application for a Preliminary Approval Order, preliminarily approving this Agreement as fair, reasonable and adequate; approving the form, manner, and content of the Class Notice as described in Section 4; provisionally certifying the class for the purposes of this Settlement Agreement pursuant to Section 3.1; and setting the date and time of the Final Fairness Hearing.

7.2 **Proof of Notice.** No later than 20 court days before the Final Fairness Hearing, Defendant shall serve upon Class Counsel and file with the Court a declaration confirming that the notice has been provided to the Class in accordance with Section 4 of this Settlement Agreement and that the Settlement Website has been established.

7.3 **Claim Form.** To be entitled to receive a Cash Award or a Merchandise Voucher under this Settlement Agreement, each Class Member must accurately complete the Claim Form and submit it to the Settlement Administrator online through the settlement website or by U.S. Mail no later than 45 days following the Date of Class Notice in accordance with Section 4 of this Settlement Agreement. Class Members requesting the Cash Award must submit a valid proof of purchase along with the Claim Form.

7.4 **Objections.** Any Class Member who wishes to object to the Settlement may file a written objection with the Court, and serve copies on Class Counsel and Defendants’ Counsel, no later than 30 calendar days following the Date of Class Notice as described in Section 4. The delivery date is deemed to be the date the objection is deposited in the U.S. Mail as evidenced by the postmark. The written objection must include: (a) the name and case number of the Action, “*Carmody v. Big 5 Sporting Goods Corp et al.*, Case No. 37-2016-0002469-CU-BT-CTL.”; (b) the full name, address, email address, and telephone number of the person objecting; (c) the words “Notice of Objection” or “Formal Objection;” and (d) in clear and concise terms, the legal and

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factual arguments supporting the objection, including an attestation under the penalty of perjury of facts demonstrating that the person objecting is a Class Member. Class Members may also orally object to the Settlement at the Final Fairness Hearing without first providing a written objection. Any Class Member has the option to appear at the Final Fairness Hearing, either in person or through personal counsel hired at the Class Member’s expense, to object to the Settlement Agreement. Class Members who fail to make objections in this manner will be deemed to have waived any objections and will be foreclosed from making any objections (whether by a subsequent objection, intervention, appeal, or any other process) to the Agreement.

7.5 Exclusions. The Class Notice shall permit any Class Member to elect not to be part of the Class and not to be bound by this Agreement; provided, within 30 calendar days following the date of Class Notice, the affected person mails a valid Request for Exclusion directly to the Settlement Administrator. To make this election, Class Members must send a letter stating: (a) the name and case number of the Action, “*Carmody v. Big 5 Sporting Goods Corp et al.*, Case No. 37-2016-0002469-CU-BT-CTL.”; (b) the full name, address, email address, and telephone number of the person requesting exclusion; and (c) a statement that he/she does not wish to participate in the Settlement, postmarked no later than 30 calendar days following the date on which Settlement Administrator provides notice to the Class as described in Section 4.

7.6 Preparation of Excluded Persons List. No later than 20 days prior to the Final Fairness Hearing, the Settlement Administrator shall prepare a list of the persons who, pursuant to the Class Notice, have excluded themselves from the Class in a valid and timely manner, and Defendant shall serve that list upon Class Counsel.

7.7 Sole Mechanism for Exclusion. Any Class Member that does not comply with the procedures set forth in this Section, will lose any opportunity to exclude himself or herself from the Class and his or her rights will be determined by the Settlement Agreement, if approved by the Court. Any Class Member opting out may not be allowed to rescind or revoke such decision, without the approval of the Parties and the Court. Any Class member who does not properly and timely submit a Request for Exclusion as required herein shall be deemed to have waived all rights

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to opt out and shall be deemed a member of the Class for all purposes under this Settlement Agreement.

7.8 **Blow-up Clause.** Notwithstanding anything else contained in this Settlement Agreement, if more than a certain number to be kept confidential and filed under seal (“blow up number”) of the prospective Class Members request exclusion, then Defendant may, in its sole discretion, elect to terminate this Agreement. Prior to termination of the agreement and within five business days from the day they determine that the number of members of the Class who have requested exclusion exceeds the blow-up number, and in any event, at least 15 days prior to the Final Fairness Hearing, Defendant will notify Plaintiff’s Counsel, in writing, that they have received the blow up number of Requests for Exclusion. Class Counsel will then have 10 days to attempt to cause retraction of any election of exclusion by Class Members or any group thereof. To retract a prior Request for Exclusion, the Class Member must provide to the Parties, at least three days prior to the Final Fairness Hearing, or any adjournment thereof, a written notice stating his or her desire to retract the Request for Exclusion from the Class. If Class Counsel cannot cause sufficient retractions three days prior to the Final Fairness Hearing, Defendant may terminate this Agreement. In that event, (a) this Agreement shall terminate and become null and void, the Preliminary Approval Order and all of its provisions shall be vacated by its own terms, and the Action shall revert to the status that existed prior to the execution date of this Settlement Agreement, including no certification of a class; and (b) no term of this Settlement Agreement or any draft thereof, or of the negotiation, documentation, or other part or aspect of the Parties’ settlement discussions, shall have any effect, nor shall any such matter be admissible in evidence for any purpose in the Action, or in any other proceeding. Any dispute among the parties concerning the interpretation or application of this blow-up provision may be presented to the Court for resolution upon the application of any party hereto.

7.9 **Disputed Claims.** In the event of any dispute over the timeliness or validity of any Claim Form submitted under this Section, the Parties shall meet and confer in good faith for the purpose of resolving the dispute and, if the dispute cannot be resolved, shall submit the dispute to

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the Court for resolution. The Settlement Administrator will contact the Class Member to notify the Class Member of the specific deficiency or deficiencies and provide the Class Member twenty (20) calendar days to resolve any stated deficiency. If the Settlement Administrator receives more than one Claim Form per Class Member, the Settlement Administrator will deem the first received Claim Form valid, and any subsequently received Claim Forms invalid.

7.10 **Distribution of Class Award.** Within 30 days following the Settlement Effective Date, the Settlement Administrator shall distribute the Cash Awards and Merchandise Vouchers to all Class Members that have submitted a valid, timely Claim Form.

7.11 **Change Of Time Periods.** The time periods and/or dates described in this Agreement with respect to the giving of notices and hearings are subject to approval and change by the Court or by the written agreement of counsel for the Parties, without further notice to the Class.

8. **RELEASE AND COVENANT NOT TO SUE**

8.1 **Class Release of Defendants.** Upon the Settlement Effective Date, the Plaintiff and the Class Members who do not validly and timely request to be excluded from the proposed Settlement, and each of their respective successors, assigns, legatees, heirs, and personal representatives shall release and forever discharge Big 5 Corp., Romeo & Juliette, Inc., and ACI International, and each of their parent corporations, subsidiary corporations, affiliated entities, predecessors, successors and assigns, partners, privies, and any of their present and former directors, officers, employees, shareholders, agents, representatives, attorneys, accountants, and all persons acting by, through, under or in concert with them, or any of them, from any and all manner of action, causes of action, claims, demands, rights, suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, which they have arising out of or relating to any of the acts, omissions or other conduct that have or could have been alleged in the Action. (hereafter “Released Claims”).

In addition, with respect to the Released Claims, Plaintiff, and the Class Members, and each of their respective successors, assigns, legatees, heirs, and personal representatives, expressly waive

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and relinquish, to the fullest extent permitted by law, the provisions, rights and benefits of section 1542 of the California Civil Code, and any other similar provision under federal or state law, 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.

Plaintiff and the Class Members fully understand that the facts upon which this Agreement is executed may hereafter be other than or different from the facts now believed by Plaintiff and Plaintiff’s Counsel to be true, and expressly accept and assume the risk of such possible difference in facts and agree that this Agreement shall remain effective notwithstanding any such difference in facts.

8.2 This Release shall not constitute a release of any other lawsuit, claims, obligations, debts and liabilities regarding the Parties not expressly released in this Settlement Agreement.

9. **LEGAL COUNSEL**

9.1 The Parties acknowledge that they have been represented by counsel of their own choice throughout all negotiations which preceded the execution of this Settlement Agreement and that this Settlement Agreement was executed with the consent and on the advice of such legal counsel.

10. **ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Settlement Agreement have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or

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otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation, modification, waiver, or termination of this Settlement Agreement shall be binding unless executed in writing by the Party (including the Party’s undersigned counsel) to be bound thereby. No waiver of any of the provisions of this Settlement Agreement shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

11. **BEST EFFORTS OF THE PARTIES**

11.1 The Parties and their respective counsel agree to use their best efforts and to cooperate fully with one another (a) in seeking Preliminary and Final Approval of the Settlement; and (b) effectuating the full consummation of the Settlement.

12. **FINAL JUDGMENT**

12.1 Upon Final Approval of this Settlement Agreement, the Court shall enter a Final Judgment in the Action which will (a) grant approval of the Settlement of the parties, (b) declare that Plaintiff and all members of the Class who have not opted-out are bound by the release set forth in Section 8 of this Settlement Agreement, and (c) enjoin Plaintiff and all members of the Class who have not opted-out from prosecuting any settled claims against Big 5 Corp., Romeo & Juliette, Inc., and ACI International.

12.2 Upon Final Approval of this Settlement Agreement, Plaintiff shall dismiss the SAC as to Defendants Big 5 Corp. and Romeo & Juliette, Inc.

13. **NO ADMISSION OF LIABILITY**

13.1 Neither this Settlement Agreement nor any document referred to herein, nor any document prepared in connection herewith, nor any action taken to effect this Settlement Agreement is, or may be construed or used as, an admission or concession by or against Defendant. This settlement was reached as a result of compromise and accord following arm’s length negotiations, and the execution and delivery of the Settlement Agreement by the Parties does not and did not constitute and cannot be construed as an admission of liability, or wrongdoing on the part of Defendant. This Settlement Agreement is without precedential value except as provided

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herein. Defendant has denied and continue to deny each of the claims and contentions alleged by Plaintiff.

14. **EFFECT OF DISAPPROVAL**

14.1 In that event of disapproval of the class, this Settlement Agreement, or the terms herein, the Preliminary Approval Order and all of the Settlement Agreement provisions shall be vacated by its own terms, and the Action shall revert to the status that existed prior to the execution date of this Agreement, including no certification of a class, no term of this Agreement or any draft thereof, or of the negotiation, documentation, or other part or aspect of the Parties’ settlement discussions, shall have any effect, nor shall any such matter be admissible in evidence for any purpose in the Action, or in any other proceeding.

15. **Governing Law and Construction**

15.1 **California Law.** This Settlement Agreement and the interpretation of its terms and provisions shall be governed by the procedural and substantive law of the State of California. Any suit to interpret or enforce the terms of this Settlement Agreement shall be commenced in the Superior Court of the State of California, County of San Diego.

15.2 **Participation by Parties in Drafting.** The Parties, including their counsel, have participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. This Settlement Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Settlement Agreement. Each Party to this Settlement Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Settlement Agreement and, in this regard, the Parties hereby waive California Civil Code section 1654.

15.3 **Headings.** The various headings used in this Settlement Agreement are solely for the convenience of the Parties and shall not be used to interpret this Settlement Agreement.

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15.4 **Exhibits.** The exhibits to this Settlement Agreement are integral parts of the Settlement Agreement and are hereby incorporated and made a part of this Agreement.

16. **Execution in Counterparts**

16.1 To facilitate execution, this Settlement Agreement may be executed in several counterparts by one or more of the undersigned parties and all such counterparts when so executed shall together be deemed to constitute a single agreement, as if one document has been signed by all parties hereto. Photocopies and PDFs of executed copies of this Agreement may be treated as originals.

16.2 This Agreement is deemed executed on the date indicated in the first paragraph above.

17. **Additional Provisions**

17.1 **Time for Compliance.** If the date for performance of any act required by or under this Agreement falls on a Saturday, Sunday or court holiday, that act may be performed on the next business day with the same effect as if it had been performed on the day or within the period of time specified by or under this Agreement.

17.2 **Binding on Successors.** This Agreement binds and benefits the Parties' respective successors, assigns, legatees, heirs, and personal representatives. Each Party warrants and represents that there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the claims or causes of action released herein and, further, that each Party is fully entitled and duly authorized to give this complete and final general release and discharge.

17.3 **Further Assurances.** The Parties must execute and deliver any additional papers, documents and other assurances, and must do any other acts reasonably necessary, to perform their obligations under this Agreement and to carry out this Agreement's expressed intent.

17.4 **No Investigations.** The Parties agree not to initiate or seek to initiate any claim or investigation against the other party or any Released Claim with any governmental agency or professional association.

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17.5 **Return and/or Destruction of Documents Obtained During Discovery.** Each of the Parties agrees to destroy or return all documents obtained from any of the other Parties in discovery during the course of the Action, with the exception that counsel may maintain in their files all materials filed with the Court, deposition and trial transcripts and attorney work product. Notwithstanding the foregoing, the Parties acknowledge and agree that the entirety of each and every document and other material produced by or on behalf of Defendant in the Lawsuit is designated as “Confidential” pursuant to the Stipulated Protective Order entered on August 3, 2016 in connection with the Action and may be used solely for the purpose of litigating the Action. Each of the Parties agree to treat documents designated as “Confidential” pursuant to Paragraph 1(a) of the Stipulated Protective Order. Further, each of the Parties agrees to confirm in writing the destruction of any of the documents referenced in this paragraph within (30) thirty days of the Effective Date of this Settlement Agreement.

IN WITNESS HEREOF, the undersigned have duly executed this Settlement Agreement, or have caused this Settlement Agreement to be duly executed on their behalf, to be effective as of the date first set forth in this Settlement Agreement

Dated: 12/18/2017, 2017

DocuSigned by:

A252DDB6AFEB4BF...
JASON CARMODY, Plaintiff

Dated: December 18, 2017

LAW OFFICES OF MARK POTTER


CHRIS CARSON
Attorneys for Plaintiff, *et al.*

Dated: _____, 2017

MORRIS, SULLIVAN & LEMKUL LLP

Will Lemkul
Chase Stern

Attorneys for Plaintiff, *et al.*

Dated: _____, 2017

BIG 5 CORP

[Signatory]

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Dated: _____, 2017

NORTON ROSE FULBRIGHT US LLP

JEFFREY B. MARGULIES
Attorneys for Defendants
BIG 5 CORP., DBA BIG 5 SPORTING GOODS,
ERRONEOUSLY SUED AS BIG 5 SPORTING
GOODS CORP. AND ROMEO & JULIETTE, INC.

1 17.5 **Return and/or Destruction of Documents Obtained During Discovery.** Each of
2 the Parties agrees to destroy or return all documents obtained from any of the other Parties in
3 discovery during the course of the Action, with the exception that counsel may maintain in their
4 files all materials filed with the Court, deposition and trial transcripts and attorney work product.
5 Notwithstanding the foregoing, the Parties acknowledge and agree that the entirety of each and
6 every document and other material produced by or on behalf of Defendant in the Lawsuit is
7 designated as “Confidential” pursuant to the Stipulated Protective Order entered on August 3, 2016
8 in connection with the Action and may be used solely for the purpose of litigating the Action. Each
9 of the Parties agree to treat documents designated as “Confidential” pursuant to Paragraph 1(a) of
10 the Stipulated Protective Order. Further, each of the Parties agrees to confirm in writing the
11 destruction of any of the documents referenced in this paragraph within (30) thirty days of the
12 Effective Date of this Settlement Agreement.

13 IN WITNESS HEREOF, the undersigned have duly executed this Settlement Agreement,
14 or have caused this Settlement Agreement to be duly executed on their behalf, to be effective as
15 of the date first set forth in this Settlement Agreement.

16 Dated: _____, 2017

17 _____
18 JASON CARMODY, Plaintiff

19 Dated: _____, 2017

20 **LAW OFFICES OF MARK POTTER**

21 _____
22 CHRIS CARSON
23 Attorneys for Plaintiff, *et al.*

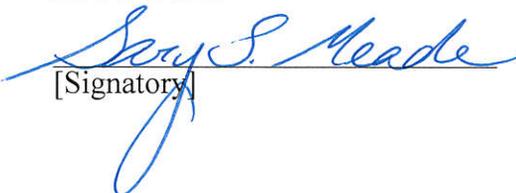
24 Dated: _____, 2017

25 **MORRIS, SULLIVAN & LEMKUL LLP**

26 _____
27 Will Lemkul
28 Sammie Shine McPherson
Attorneys for Plaintiff, *et al.*

Dated: December 18, 2017

BIG 5 CORP


[Signatory]

1 Dated: December 18, 2017

NORTON ROSE FULBRIGHT US LLP



JEFFREY B. MARGULIES
Attorneys for Defendants
BIG 5 CORP., DBA BIG 5 SPORTING GOODS,
ERRONEOUSLY SUED AS BIG 5 SPORTING
GOODS CORP. AND ROMEO & JULIETTE, INC.

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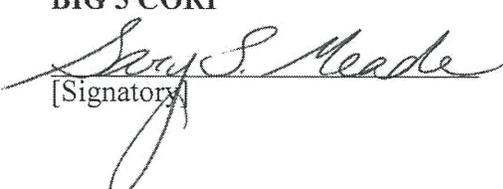
17.5 **Return and/or Destruction of Documents Obtained During Discovery.** Each of the Parties agrees to destroy or return all documents obtained from any of the other Parties in discovery during the course of the Action, with the exception that counsel may maintain in their files all materials filed with the Court, deposition and trial transcripts and attorney work product. Notwithstanding the foregoing, the Parties acknowledge and agree that the entirety of each and every document and other material produced by or on behalf of Defendant in the Lawsuit is designated as "Confidential" pursuant to the Stipulated Protective Order entered on August 3, 2016 in connection with the Action and may be used solely for the purpose of litigating the Action. Each of the Parties agree to treat documents designated as "Confidential" pursuant to Paragraph 1(a) of the Stipulated Protective Order. Further, each of the Parties agrees to confirm in writing the destruction of any of the documents referenced in this paragraph within (30) thirty days of the Effective Date of this Settlement Agreement.

IN WITNESS HEREOF, the undersigned have duly executed this Settlement Agreement, or have caused this Settlement Agreement to be duly executed on their behalf, to be effective as of the date first set forth in this Settlement Agreement.

Dated: _____, 2017
JASON CARMODY, Plaintiff

Dated: _____, 2017
LAW OFFICES OF MARK POTTER
CHRIS CARSON
Attorneys for Plaintiff, *et al.*

Dated: December 19, 2017, 2017
MORRIS, SULLIVAN & LEMKUL LLP
Will Lemkul
Sammie Shine McPherson
Attorneys for Plaintiff, *et al.*

Dated: December 18, 2017
BIG 5 CORP

[Signatory]

[REVISED] INSTRUCTIONS AND CLAIM FORM

This form is to be used to claim a Cash Award or Merchandise Voucher for customers who purchased Bearpaw Lassen WP men's and women' hiking boots from a Big 5 Sporting Goods store in California between January 25, 2012 through October 20, 2017, in connection with the class action settlement reached in the case entitled *Jason Carmody, v. Big 5 Sporting Goods Corp; Romeo & Juliette, Inc., doing business as Bearpaw*, San Diego Superior Court, Case No. 37-2016-0002469-CU-BT-CTL.

If you meet the settlement's eligibility requirements and wish to make a claim for a Cash Award or Merchandise Voucher, you must:

1. Completely and truthfully fill out this Claim Form; and
2. Return the Claim Form either
 - By United States Mail, postmarked no later than **[45 DAYS FOLLOWING DATE OF CLASS NOTICE]**, to the following address:

PO Box 404041
Louisville, KY 40233-4041
 - Through the Settlement Website by no later than **[45 DAYS FOLLOWING DATE OF CLASS NOTICE]**: **blassensettlement.com**

Before completing this Claim Form, please read the Settlement Notice, dated **[NO MORE THAN 30 DAYS AFTER PRELIMINARY APPROVAL]** for more information on your legal rights and options in this settlement and to determine whether you are eligible for a Cash Award or Merchandise Voucher.

Once the Settlement becomes final in the Courts, the validity of all claims will be determined. If your claim is deemed valid, the Cash Award or Merchandise Voucher will be distributed automatically if the Court approves the Settlement and after all appeals are finished. If your claim is deemed invalid, you will be notified by e-mail, U.S. Mail, or fax, and will be afforded an opportunity to correct any deficiencies. If any dispute remains, the parties will attempt to resolve any and all disputes in good faith. If the claim is accepted as a result of the appeal process, you will be provided with a check payment or Merchandise Voucher.

Please note: the Claim Form must be personally submitted by an eligible Class Member on his or her own behalf. Claim Form(s) submitted by anyone else will not be valid. Please keep copies for your records.

If you have questions or would like a copy of the full Settlement Notice, please visit **blassensettlement.com**

INSTRUCTIONS FOR MAKING A CLAIM FOR CASH AWARD

You are eligible for a Cash Award or Merchandise Voucher as follows and as further set forth in the Settlement Notice:

If you purchased Bearpaw Lassen WP men's and women' hiking boots from a Big 5 Sporting Goods store in California between January 25, 2012 through October 20, 2017, you are eligible for either (1) a Cash Award of \$5.00 **or** (2) a Merchandise Voucher entitling you to a \$7.50 toward any purchase of goods or services at a Big 5 Sporting Goods store in California, as further described in the Settlement Notice.

The Merchandise Voucher cannot be used for online purchases; is not valid for previous purchases; cannot be used in combination with any other merchandise voucher; has no cash value and cannot be redeemed for cash or for any gift card. The Merchandise Voucher may not be resold or traded and may not be copied or reproduced. Limit one Merchandise Voucher per person. The Merchandise Voucher cannot be used by any employee of Defendants or their family members. The Merchandise Voucher will expire one year after the date of issuance.

You may elect to receive either a Cash Award or a Merchandise Voucher. To do so, you **MUST** submit a completed proof of Claim Form under penalty of perjury. Additionally, if you elect to receive the Cash Award, you must also submit a valid proof of purchase showing you purchased the Bearpaw Lassen WP men's or women's hiking boots at a Big 5 Sporting Goods store in California between January 25, 2012 through October 20, 2017 along with the Claim Form.

You are not eligible for either a Cash Award or a Merchandise Voucher if you are current and former employees, officers, and directors of Big 5 Corp. or Romeo & Juliette, Inc., or any related or affiliated entity, the Court and its personnel, Class Counsel, and Defendants' Counsel.

CLAIM FORM

This Claim Form must be postmarked no later than **[45 DAYS FOLLOWING DATE OF CLASS NOTICE]**.

I. PERSONAL INFORMATION

Please provide your full and correct name and contact information.

First Name _____ Middle Initial ____

Last Name _____

Street Address _____

City _____ State __ ZIP _____

Daytime telephone number: (____) _____ - _____

Evening telephone number: (____) _____ - _____

Fax number (if available): (____) _____ - _____

E-mail address: _____

Please note: This information will be used for all communication relevant to this Claim (including check or Merchandise Voucher disbursement, if eligible. Failure to submit a valid address will result in a loss of benefits. If this information changes, you MUST notify the Settlement Administrator in writing at the address listed on page one.

II. PROOF OF MEMBERSHIP IN THE CLASS

Please check *only* if the following statement applies to you.

I purchased Bearpaw Lassen WP men's and women' hiking boots from a Big 5 Sporting Goods store in California between January 25, 2012 and October 20, 2017.

III. SELECTION OF CLASS AWARD

Please select *one* Class Award:

Merchandise Voucher (\$7.50 toward any purchase of goods or services at a Big 5 Sporting Goods store in California)

Cash Award (\$5.00)

To receive a Cash Award you MUST include with this Claim Form a valid proof of purchase showing you purchased the Bearpaw Lassen WP men's or women' hiking boots at a Big 5 Sporting Goods store in California between January 25, 2012 and October 20, 2017.

All persons submitting this Claim Form must also sign the following statement (**Please note that you will not be eligible for any compensation unless you sign and date this statement**).

I declare under penalty of perjury under the laws of the State of California that all information I have provided on or with this Claim Form is true and correct.

Date: _____ Signature: _____

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

**If you bought Bearpaw Lassen WP hiking boots at
a Big 5 Sporting Goods store in the State of
California between January 25, 2012 and October
20, 2017, your rights may be affected by a class
action settlement.**

For customers who purchased Bearpaw Lassen WP men’s or women’s hiking boots from Big 5 stores in California between January 25, 2012 and October 20, 2017, the settlement provides a Cash Payment of \$5.00 or a Merchandise Voucher for \$7.50 toward any purchase of goods at a Big 5 Sporting Goods store in California. These amounts are subject to potential adjustment by the Court and Merchandise Vouchers are subject to the terms and limitations contained in the Merchandise Voucher.

Please read this Notice carefully and in its entirety. Your rights, whether you act, or don’t act, will be affected by the settlement of this case.

| | YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT |
|----------------------------|--|
| SUBMIT A CLAIM FORM | The only way to get a Cash Award or Merchandise Voucher |
| DO NOTHING | If you do nothing you will be bound by the Settlement, and you will release any claims you might have against Big 5 Corp. for the claims that this Settlement resolves. You will not receive a Cash Award or Merchandise Voucher. |
| EXCLUDE YOURSELF | You will not receive a Cash Award or Merchandise Voucher and will not release any claims that you may have against Big 5 Corp. related to the claims that this Settlement resolves. |
| OBJECT | File a written objection with the Court explaining the legal and factual arguments supporting the objection, including an attestation under the penalty of perjury of facts demonstrating that You are a Class Member. |
| GO TO A HEARING | Speak in Court about the fairness of the Settlement. |

These rights and options – **and the deadlines to exercise them** – are explained in more detail in this Notice.

The Court in charge of this case still has to decide whether to approve the Settlement. The relief provided to Class Members will be provided only after the Court approves the Settlement and after any appeals are resolved.

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BASIC INFORMATION

1. Why did you receive this notice?

You received this Notice because a settlement has been reached in this Action. You may have purchased Bearpaw Lassen WP men's or women's hiking boots at a Big 5 store in California. You are being provided this notice because you have a right to know about a proposed settlement of a class action lawsuit, and about your options, before the Court decides whether to approve the settlement. If the Court approves it, and after objections and appeals are resolved, Class Members who submit a valid claim form will receive one of the following benefits under the settlement, subject to potential adjustment by the Court:

- (1) If you request and submit a valid, timely claim form, you may request to receive a Cash Award of \$5.00. Only one claim form may be submitted per customer. To receive a Cash Award, Class Members must also submit proof of purchase showing purchase during the class period of the Bearpaw Lassen WP men's or women's hiking boots at a Big 5 Sporting Goods store in California along with the Claim Form. Each Class Member may receive only one cash award and each receipt may only be used once; **or**
- (2) If you request and submit a valid, timely claim form, you may request to receive a Merchandise Voucher for \$7.50 toward any purchase of goods or services at a Big 5 Sporting Goods store. The Merchandise Voucher cannot be used for online purchases; is not valid for previous purchases; cannot be used in combination with any other merchandise voucher; has no cash value and cannot be redeemed for cash or for any gift card. The Merchandise Voucher may not be resold or traded and may not be copied or reproduced. The Merchandise Voucher cannot be used by any employee of Defendants or their family members. The Merchandise Voucher will expire one year after the date of issuance. Each Class Member may receive only one Merchandise Voucher. You do not need to submit a proof of purchase to receive a Merchandise Voucher.

This Notice explains the lawsuit, the settlement, your legal rights, and what benefits will be made available to you, who is eligible for them and how you get them. The Court in charge of the case is the Superior Court of the State of California, County of San Diego, and the case is known as entitled *Jason Carmody, individually and on behalf of those similarly situated v. Big 5 Sporting Goods Corp; Romeo & Juliette, Inc., doing business as Bearpaw; and Does 1 through 20, inclusive, Case No. 37-2016-0002469-CU-BT-CTL (the "Action")*. The person who filed this lawsuit is called the Plaintiff, and the companies he sued, Big 5 Corp. and Romeo & Juliette, Inc., are called the Defendants.

2. What is this lawsuit about?

The Action claims that Defendants misrepresented the waterproof nature of the Bearpaw Lassen WP hiking boots. The Plaintiff claimed that in doing so, Defendants violated laws that protects consumers: the California Unfair Competition Law (Business and Professions Code § 17200), the California False Advertising Law (Business and Professions Code § 17500), and the

Consumer Legal Remedies Act (Civil Code § 1770). Defendants deny and continue to deny each of the Action's and Plaintiff's allegations. However, to avoid the expense, inconvenience and risk created by the Action, Plaintiff and Big 5 (the "Parties") have concluded that it is in their best interests to settle the Action on the terms summarized in this notice. The settlement was reached through extensive, arms-length negotiations between the Parties

3. What is a class action?

In a class action, one or more people called Class Representatives (in this case Jason Carmody), sue on behalf of people who have similar claims. All of these people are called a Class or Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. The Honorable Richard E.L. Strauss, Judge of the California Superior Court, has determined that the case should proceed as a class action, for settlement purposes only.

4. Why is there a settlement?

The Court did not decide in favor of Plaintiff or Defendants. Instead, Plaintiff and Big 5 agreed to a settlement. That way, they avoid the uncertainty and cost of a trial and can provide benefits now to Class Members. The Class Representative and the attorneys think the settlement is in the best interests of the people in the Class. To see if you are affected by the settlement, you first have to decide if you are a Class Member.

WHO IS INCLUDED IN THE SETTLEMENT?

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

For purposes of the settlement, the Court has certified a Class of all persons who purchased Bearpaw Lassen WP men's and women's hiking boots from a Big 5 Sporting Goods store in California between January 25, 2012 through October 20, 2017. Excluded from the Class are current and former employees, officers, and directors of Defendants, or any related or affiliated entity, the Court and its personnel, Class Counsel, and Defendants' Counsel.

THE SETTLEMENT BENEFITS – WHAT DO YOU GET

6. What does the Settlement Provide?

The settlement provides for benefits for each Class Member. Class Members may elect to receive either a Cash Award or a Merchandise Voucher.

With respect to the Cash Award option: Big 5 has agreed to pay \$5.00 to each Class Member who timely submits a valid Claim Form and requests a Cash Award. To obtain a Cash Award, Class Members must also submit a valid proof of purchase showing purchase during the class period of Bearpaw Lassen WP men's or women's hiking boots at a Big 5 Sporting Goods store in California along with the Claim Form. **If you request a Cash Award, you are not entitled to receive a Merchandise Voucher**

With respect to the Merchandise Voucher option: Big 5 has agreed to provide each

Class Member who timely submits a valid Claim Form and does not request a Cash Award, a Merchandise Voucher for \$7.50 toward any purchase of goods or services at a Big 5 Sporting Goods store in California. The Merchandise Voucher cannot be used for online purchases; is not valid for previous purchases; cannot be used in combination with any other merchandise voucher; has no cash value and cannot be redeemed for cash or for any gift card. The Merchandise Voucher may not be resold or traded and may not be copied or reproduced. Limit one Merchandise Voucher per person. The Merchandise Voucher cannot be used by any employee of Defendants or their family members. The Merchandise Voucher will expire one year after the date of issuance. You do not need to submit a proof of purchase to receive a Merchandise Voucher. **If you receive a Merchandise Voucher, you are not entitled to receive a Cash Award.**

7. How can I get a Merchandise Voucher or Cash Award?

To receive a Merchandise Voucher or a Cash Award, you must submit a valid, timely Claim Form. To obtain a Cash Award, you must also submit a valid proof of purchase showing you purchased the Bearpaw Lassen WP men’s or women’s hiking boots during the class period at a Big 5 Sporting Goods store in California along with the Claim Form. You must sign the claim form under penalty of perjury and return the claim form by first-class United States Mail or through the Settlement Website postmarked no later than **[45 DAYS FOLLOWING DATE OF NOTICE]**, to the Settlement Administrator at the following address:

| |
|--|
| Settlement Administrator |
| PO Box 404041 Louisville, KY 40233-4041 |

#

It is your responsibility to inform the Settlement Administrator if your address or other information changed or changes after you submit a Claim Form.

8. What do I have to give up in order to stay in the class?

Unless you exclude yourself, you are staying in the Class, and releasing your claims against Defendants. This generally means that you cannot sue, continue to sue, or be part of any other lawsuit against Defendants regarding your purchase of the Bearpaw Lassen WP hiking boots, under California law. It also means that all of the Court’s orders will apply to you and legally bind you. The Settlement Agreement, available on the Settlement website located at: bplassensettlement.com contains the full terms of the release.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you want to keep the right to sue or continue to sue Defendants on your own regarding the legal issues in this Action, then you must take steps to exclude yourself from this settlement. This is sometimes referred to as “opting out” of the settlement.

9. How do I get out of the settlement?

To exclude yourself from the settlement, you must send a letter by mail stating that you want to be excluded from the lawsuit, “*Carmody v. Big 5 Sporting Goods Corp et al., San Diego Superior Court Case No. 37-2016-0002469-CU-BT-CTL.*” Be sure to include: (a) your full name, address, telephone number, and email address, (b) your signature with information demonstrating and swearing that you are a Class Member. You must mail your exclusion request postmarked no later than **[30 DAYS FOLLOWING DATE OF NOTICE]**, to the Settlement Administrator:

| |
|--|
| Settlement Administrator |
| PO Box 404041 Louisville, KY 40233-4041 |

You cannot exclude yourself on the phone or by e-mail. If you ask to be excluded, you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) Defendants in the future.

10. If I do not exclude myself, can I sue Defendants for the same thing later?

No. Unless you exclude yourself, you give up the right to sue Defendants for the claims that this settlement resolves. You must exclude yourself from this Class to continue your own lawsuit. Remember, the exclusion deadline is **[30 DAYS FOLLOWING DATE OF NOTICE]**.

THE LAWYERS REPRESENTING YOU

11. Do I have a lawyer in this case?

The Court appointed the Law Offices of Mark Potter, 9824 Erma Road, Suite 300, San Diego, CA 92131 and Will Lemkul, Morris, Sullivan & Lemkul, LLP, 9915 Mira Mesa Blvd., Suite 300, San Diego, CA 92131 to represent you and other Class Members in this settlement. The lawyers are called “Class Counsel.” You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

12. How will the lawyers and Class Representative be paid?

Class Counsel will ask the Court for attorney’s fees and expenses up to \$122,500 for investigating the facts, litigating the case, negotiating the settlement, and following through to make sure that its terms are carried out. Class Counsel will also ask the Court to approve a service payment of up to \$2,500 to the Class Representative, Jason Carmody, to compensate him for prosecuting this case. These amounts will not come out of the payments to the Class. Big 5 has agreed not to oppose these fees and expenses. Class Counsel will file with the Court their motion for award of attorneys’ fees and litigation costs and Class Representatives’ service payment no later than **[14 DAYS PRIOR TO DEADLINE TO OBJECT]**. After that date, you may view the motion on the Settlement Website.

13. Who will pay for the costs to administer the settlement?

Big 5 will pay all of the costs to administer the settlement.

OBJECTING TO THE SETTLEMENT

14. How can I Object to the Settlement?

If you do not wish to exclude yourself from the Settlement, and are still a Class Member, you may object to the settlement, stating the facts and legal reasoning for your objection. To object, you may send a letter stating that you object to *Carmody v. Big 5 Sporting Goods Corp et al.*, San Diego Superior Court Case No. 37-2016-0002469-CU-BT-CTL. Be sure to include: (a) your name, address, telephone number, and email address; (b) the words “Notice of Objection” or “Formal Objection;” (c) in clear and concise terms, the legal and factual arguments supporting the objection; and (d) your signature and an attestation under the penalty of perjury of facts demonstrating that you are a Class Member. You may mail the objection to these addresses, postmarked no later than **[30 AFTER DATE OF CLASS NOTICE]**:

| COURT | CLASS COUNSEL | DEFENSE COUNSEL |
|--|---|--|
| Clerk of the Court Superior Court of the State of California, County of San Diego Hall of Justice 330 W. Broadway Department C-75 San Diego, CA 92101 | Mark Potter Law Offices of Mark Potter 9824 Erma Road, Suite 300 San Diego, CA 92131 (858) 375-7385 Will Lemkul Morris, Sullivan & Lemkul, LLP, 9915 Mira Mesa Blvd., Suite 300 San Diego, CA 92131 | Jeffrey B. Margulies Norton Rose Fulbright US LLP 555 South Flower Street, 41st Floor Los Angeles, CA 90071 (213) 892-9200 |

You may also orally object to the settlement at the hearing Final Fairness Hearing.

If you file and serve a written objection, you may appear at the Final Fairness Hearing, either in person or through personal counsel hired at your expense, to object to the Settlement Agreement. You may also orally object at the Final Fairness Hearing without first providing a written objection. You are not required, however, to appear.

15. What’s the difference between objecting and excluding?

Excluding yourself is telling the Court that you don’t want to be a part of the Class. Objecting is simply providing the factual and legal reasoning for changing or rejecting some or all of the Settlement. You can object only if you stay in the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT’S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement. You do not

have to attend the Hearing. However, you are welcome to attend if you choose to, but you don't have to.

16. When and where will the Fairness Hearing take place?

The Court will hold a Final Fairness Hearing at 9:00 a.m. on February 16, 2018, at the San Diego County Superior Court of the State of California, Hall of Justice 330 W. Broadway, Department 75, San Diego, CA 92101. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate, and in the best interests of the Class; and to consider the award of attorneys' fees and expenses to Class Counsel. If there are valid objections, the Court will consider them. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

The hearing may be postponed to a different date or time or location without notice. Please check bpllassensettlement.com for any updates about the Settlement generally or the Final Fairness Hearing specifically. If the date or time of the Final Fairness Hearing changes, an update to the Settlement Website will be the only way you will be informed of the change.

17. Do I have to come to the Hearing?

You do not need to come to the Hearing. Class Counsel will answer questions Judge Strauss may have. You are, however, welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection as required above, the Court will consider it. You may also orally object at the hearing without first providing a written objection. You may also pay your own lawyer to attend, but it's not necessary.

18. May I speak at the Hearing?

You may speak at the Final Fairness Hearing if you have not excluded yourself, but you don't have to.

IF YOU DO NOTHING

19. What happens if I do nothing at all?

If you do nothing, you will not receive a Cash Award or a Merchandise Voucher, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants about the legal issues in this case, ever again.

GETTING MORE INFORMATION

20. Are there more details about the settlement?

This notice summarizes the proposed settlement. More details are in a Settlement Agreement. You can get a copy of the Settlement Agreement, the Court's Preliminary Approval Order, Class Counsel's application for attorneys' fees and costs, and the operative Complaint filed in the Action, by visiting the Settlement website located at: bpllassensettlement.com.

21. How do I get more information?

All of the documents in the litigation are available for your inspection at the Office of the Clerk of San Diego County Superior Court of the State of California, 330 W. Broadway, San Diego, CA 92101 (under Case Number 37-2016-0002469-CU-BT-CTL) during regular business hours. The Clerk will tell you how to obtain the file for inspection and copying at your own expense.

ANY QUESTIONS YOU HAVE REGARDING THIS NOTICE SHOULD BE MADE TO THE SETTLEMENT ADMINISTRATOR. PLEASE DO NOT CONTACT THE JUDGE OR THE CLERK OF THE COURT WITH SUCH QUESTIONS.

| CLASS COUNSEL | ADMINISTRATOR |
|---|--|
| Mark Potter Law Offices of Mark Potter 9824 Erma Road, Suite 300 San Diego, CA 92131 (858) 375-7385 | PO Box 404041 Louisville, KY 40233-4041 |
| Will Lemkul Morris, Sullivan & Lemkul, LLP, 9915 Mira Mesa Blvd., Suite 300 San Diego, CA 92131 | |

[REVISED] ATTACHMENT C – INTERNET NOTICE

If you purchased Bearpaw Lassen WP hiking boots from a Big 5 Sporting Goods store in California between January 25, 2012 and October 20, 2017, you may be eligible for a benefit from a class action settlement. Please see **bplassensettlement.com** for more information.

[REVISED] NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

If you bought Bearpaw Lassen WP hiking boots at a Big 5 Sporting Goods store in the State of California between January 25, 2012 and October 20, 2017, your rights may be affected by a class action settlement.

A settlement (“Settlement”) has been proposed in a class action lawsuit titled *Jason Carmody, individually and on behalf of those similarly situated v. Big 5 Sporting Goods Corp; Romeo & Juliette, Inc., doing business as Bearpaw; and Does 1 through 20, inclusive, San Diego Superior Court Case No. 37-2016-0002469-CU-BT-CTL* (“Action”). The lawsuit claims that Big 5 and Bearpaw misrepresented the waterproof nature of the Bearpaw Lassen WP hiking boots. Big 5 and Bearpaw deny and continue to deny all of the lawsuit’s and plaintiff’s allegations. The Court has not decided who is right. The parties have settled to avoid the uncertainties, costs, and risk of litigation.

Additional information regarding this Action and the Settlement, including the Full Notice of Class Action and Proposed Settlement, is available at bpllassensettlement.com

Who Is Included in the Settlement?

You are a Class Member if you purchased Bearpaw Lassen WP men’s or women’s hiking boots from a Big 5 Sporting Goods store in California between January 25, 2012 through October 20, 2017. Excluded from the Class are current and former employees, officers, and directors of Defendants, or any related or affiliated entity, the Court and its personnel, Class Counsel, and Defendants’ Counsel.

What Does the Settlement Provide?

Class Members who submit a valid and timely Claim Form may request either:

- A Cash Award in the amount of \$ 5.00, **or**
- A Merchandise Voucher for \$7.50 toward any purchase of goods or services at a Big 5 Sporting Goods store in California.

Class Members must submit a complete, valid, and timely Claim Form in order to receive a settlement award. Class Members requesting a Cash Award must also submit valid proof of purchase showing purchase during the class period of Bearpaw Lassen WP men’s or women’ hiking boots at a Big 5 Sporting Goods store in California along with the Claim Form.

The Claim Form is available at bpllassensettlement.com. Your claim must be submitted either by mail or online through the Claims Administrator’s website at bpllassensettlement.com no later than **[45 DAYS FOLLOWING DATE OF CLASS NOTICE]**.

Your Other Options.

If you do nothing, your rights will be affected and you will not get a Class Award. If you don’t want to be legally bound by the settlement, you must exclude yourself by **[30 DAYS FOLLOWING DATE OF CLASS NOTICE]**, or you won’t be able to sue Defendants about the legal claims in this case. If you stay in the settlement, you may object to it in writing by **[30 DAYS FOLLOWING DATE OF CLASS NOTICE]**. You may also object orally at the Final

Fairness Hearing without first providing a written objection. The detailed notice explains how to exclude yourself or object.

The Superior Court of the State of California, County of San Diego will hold a hearing in this case at 9:00 a.m. on February 16, 2018 to consider whether to approve the settlement and a request by the lawyers representing all Class Members for up to \$122,500 in attorneys' fees and costs, for investigating the facts, litigating the case, and negotiating the settlement, and for a request to pay the Class Representative a Service Award of up to \$2,500. These amounts will not affect the benefits provided to the Class. You may appear at the hearing, but you don't have to.

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

If you bought Bearpaw Lassen WP hiking boots at a Big 5 Sporting Goods store in the State of California between January 25, 2012 and October 20, 2017, your rights may be affected by a class action settlement.

A settlement (“Settlement”) has been proposed in a class action lawsuit titled *Jason Carmody v. Big 5 Sporting Goods Corp, San Diego Superior Court Case No. 37-2016-0002469-CU-BT-CTL* (“Action”). The lawsuit claims that Big 5 misrepresented the waterproof nature of the Bearpaw Lassen WP hiking boots. Big 5 denies all of the lawsuit’s and plaintiff’s allegations. The Court has not decided who is right. The parties have settled to avoid the uncertainties, costs, and risk of litigation.

Additional information regarding this Action and the Settlement, including the Full Notice of Class Action, Proposed Settlement, and Claim Form is available at bpllassensettlement.com.

Who Is Included in the Settlement?

You are a Class Member if you purchased Bearpaw Lassen WP men’s or women’s hiking boots from a Big 5 Sporting Goods store in California between January 25, 2012 through October 20, 2017. Excluded from the Class are current and former employees, officers, and directors of Defendants, or any related or affiliated entity, the Court and its personnel, Class Counsel, and Defendants’ Counsel.

What Does the Settlement Provide?

Class Members who submit a valid and timely Claim Form may request either:

- A Cash Award in the amount of \$ 5.00, **or**
- A merchandise voucher for \$7.50 toward any purchase of goods or services at a Big 5 Sporting Goods store in California.

Class Members requesting a cash award must submit valid proof of purchase showing purchase during the class period of Bearpaw Lassen WP men’s or women’s hiking boots at a Big 5 Sporting Goods store in California. Your claim must be submitted either by mail or online through the Claims Administrator’s website at bpllassensettlement.com no later than **[45 DAYS FOLLOWING DATE OF CLASS NOTICE]**.

Your Other Options.

If you do nothing, your rights will be affected and you will not get a cash award or merchandise voucher. If you don’t want to be legally bound by the settlement, you must exclude yourself by **[30 DAYS FOLLOWING DATE OF CLASS NOTICE]**, or you won’t be able to sue Defendants about the legal claims in this case. If you stay in the settlement, you may object to it in writing by **[30 DAYS FOLLOWING DATE OF CLASS NOTICE]**. You may also orally object at the Final Fairness Hearing without first providing a written objection. The detailed notice explains how to exclude yourself or object.

The Court will hold a hearing in this case at 9:00 a.m. on February 16, 2018 to consider whether to approve the settlement and a request by the lawyers representing all Class Members for up to \$122,500 in attorneys’ fees and costs, for investigating the facts, litigating the case, and negotiating the settlement, and for a request to pay the Class Representative a Service Award of up to \$2,500. These amounts will not affect the benefits provided to the Class. You may appear at the hearing, but you don’t have to.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

JASON CARMODY, individually and on behalf of those similarly situated,

Plaintiff,

v.

BIG 5 SPORTING GOODS CORP.;
ROMEO & JULIETTE, INC., doing
business as BEARPAW; and DOES 1
through 20, inclusive,

Defendants.

Case No. 37-2016-00002469-CU-BT-CTL

Assigned For All Purposes To The
Honorable Richard E. L. Strauss, Dept. C-75

**[PROPOSED] ORDER APPROVING
REVISED NOTICES**

Judge: Hon. Richard L. Strauss
Dept.: C-75

Complaint Filed: January 25, 2016
Trial Date: Not Set

WHEREAS, this action is pending before this Court as a class action (the "Action");
WHEREAS, on October 20, 2017, all parties submitted to the tentative ruling of the Court on the approval the settlement of the Action in accordance with the Class Action Settlement Agreement (the "Agreement"), with the requirement that the Agreement and notices shall be amended to provide that a class member "may" provide a written objection. Class members may also orally object at the hearing without having first provided a written objection;

WHEREAS, all parties have reviewed and stipulate to the revised Agreement and notices submitted herein.

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

The Court approves, as to form and content, the Notices of Pendency of Class Action Settlement attached to the Settlement Agreement as Revised Attachments “B” through “E,” and the Revised Claim Form attached to the Settlement Agreement as Attachment “A”. The Court find that the distribution of the Notices of Pendency of Class Action Settlement (the “Notices”) and the Claim Form substantially in the manner and form as set forth in the Agreement and this Order meets the requirements of due process and complies with Rule 3.766 of the California Rules of Court.

Dated: _____

BY ORDER OF THE COURT
THE HONORABLE RICHARD STRAUSS
SUPERIOR COURT OF CALIFORNIA