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1 Reuben Yeroushalmi (SBN 193981)
2 Daniel D. Cho (SBN 105409)
3 Ben Yeroushalmi (SBN 232540)
4 **YEROUSHALMI & ASSOCIATES**
5 9100 Wilshire Boulevard, Suite 610E
6 Beverly Hills, California 90212
7 Telephone: 310.623.1926
8 Facsimile: 310.623.1930

9 Attorneys for Plaintiff,
10 Consumer Advocacy Group, Inc.

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

FEB 16 2012

John A. Clarke, Executive Officer/Clerk
BY Mary Flores Deputy

13 CONSUMER ADVOCACY GROUP, INC.,
14 in the public interest,

15 Plaintiff,

16 v.

17 WAXMAN INDUSTRIES, INC., an Ohio
18 Corporation, BIG LOTS STORES, INC., an
19 Ohio Corporation, and DOES 1-20;

20 Defendants.

CASE NO.

BC 479180

COMPLAINT FOR PENALTY,
INJUNCTION, AND RESTITUTION

Violation of Proposition 65, the Safe
Drinking Water and Toxic Enforcement
Act of 1986 (*Cal. Health & Safety Code*, §
25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL
CASE (exceeds \$25,000)

21 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against defendants as
22 follows:

THE PARTIES

- 23 1. Plaintiff, CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" OR "CAG") is an
24 organization qualified to do business in the State of California. CAG is a person within
25 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
26 as a private attorney general, brings this action in the public interest as defined under
27 Health and Safety Code section 25249.7, subdivision (d).

- 1 2. Defendant, WAXMAN INDUSTRIES, INC. is a corporation duly organized and existing
2 under the laws of the state of Ohio
- 3 3. Defendant, BIG LOTS STORES, INC. is a corporation duly organized and existing under
4 the laws of the state of Ohio.
- 5 4. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-20,
6 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
7 Complaint to allege their true names and capacities when ascertained. Plaintiff is
8 informed, believes, and thereon alleges that each fictitiously named defendant is
9 responsible in some manner for the occurrences herein alleged and the damages caused
10 thereby.
- 11 5. As to the first cause of action only, the term "Defendants" includes WAXMAN
12 INDUSTRIES, INC., Inc. As to all causes of action, the term "Defendants" includes BIG
13 LOTS STORES, INC. and DOES 1-20.
- 14 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
15 times mentioned herein has conducted business within the State of California.
- 16 7. At all times relevant to this action, each of the Defendants, including Does 1-20, was an
17 agent, servant, or employee of each of the other Defendants. In conducting the activities
18 alleged in this Complaint, each of the Defendants was acting within the course and scope
19 of this agency, service, or employment, and was acting with the consent, permission, and
20 authorization of each of the other Defendants. All actions of each of the Defendants
21 alleged in this Complaint were ratified and approved by every other Defendant or their
22 officers or managing agents. Alternatively, each of the Defendants aided, conspired with
23 and/or facilitated the alleged wrongful conduct of each of the other Defendants.
- 24 8. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
25 Defendants was a person doing business within the meaning of Health and Safety Code
26 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
27 employees at all relevant times.
- 28

1 **JURISDICTION**

- 2 9. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
3 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
4 those given by statute to other trial courts. This Court has jurisdiction over this action
5 pursuant to Health and Safety Code section 25249.7, which allows enforcement of
6 violations of Proposition 65 in any Court of competent jurisdiction.
- 7 10. This Court has jurisdiction over Defendants named herein because Defendants either
8 reside or are located in this State or are foreign corporations authorized to do business in
9 California, are registered with the California Secretary of State, or who do sufficient
10 business in California, have sufficient minimum contacts with California, or otherwise
11 intentionally avail themselves of the markets within California through their manufacture,
12 distribution, promotion, marketing, or sale of their products within California to render
13 the exercise of jurisdiction by the California courts permissible under traditional notions
14 of fair play and substantial justice.
- 15 11. Venue is proper in the County of Los Angeles because one or more of the instances of
16 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
17 because Defendants conducted, and continue to conduct, business in the County of Los
18 Angeles with respect to the consumer product that is the subject of this action.

19
20 **BACKGROUND AND PRELIMINARY FACTS**

- 21 12. In 1986, California voters approved an initiative to address growing concerns about
22 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
23 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
24 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
25 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
26 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
27 from contamination, to allow consumers to make informed choices about the products
28

1 they buy, and to enable persons to protect themselves from toxic chemicals as they see
2 fit.

3 13. Proposition 65 requires the Governor of California to publish a list of chemicals known to
4 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
5 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
6 chemicals and chemical families. Proposition 65 imposes warning requirements and
7 other controls that apply to Proposition 65-listed chemicals.

8 14. All businesses with ten (10) or more employees that operate or sell products in California
9 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
10 from knowingly discharging Proposition 65-listed chemicals into sources of drinking
11 water (*Health & Safety Code* § 25249.5), and (2) required to provide "clear and
12 reasonable" warnings before exposing a person, knowingly and intentionally, to a
13 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

14 15. Proposition 65 provides that any person "violating or threatening to violate" the statute
15 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.
16 "Threaten to violate" means "to create a condition in which there is a substantial
17 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

18 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
19 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

20 16. Through research and investigation, Plaintiff identified certain practices of Defendants of
21 exposing, knowingly and intentionally, persons in California to the Proposition 65-listed
22 chemicals of the consumer products discussed below without first providing clear and
23 reasonable warnings of such to the exposed persons prior to the time of exposure.

24 SATISFACTION OF PRIOR NOTICE

25 17. On or about March 6, 2011, Plaintiff gave notice of alleged violations of Health and
26 Safety Code section 25249.6, concerning consumer products exposures, subject to a
27 private action to Waxman Industries, Inc., Big Lots Stores, Inc., and to the California
28 Attorney General, County District Attorneys, and City Attorneys for each city containing

1 a population of at least 750,000 people in whose jurisdictions the violations allegedly
2 occurred concerning the consumer product Valve Handles.

3 18. On or about December 31, 2010, Plaintiff gave notice of alleged violations of Health and
4 Safety Code Section 25249.6, concerning consumer products exposures, subject to a
5 private action to Big Lots Stores, Inc., and to the California Attorney General, County
6 District Attorneys, and City Attorneys for each city containing a population of at least
7 750,000 people in whose jurisdictions the violations allegedly occurred concerning the
8 consumer product Seat Cushions.

9 19. On or about June 7, 2011, Plaintiff gave notice of alleged violations of Health and Safety
10 Code Section 25249.6, concerning consumer products exposures, subject to a private
11 action to Big Lots Stores, Inc., and to the California Attorney General, County District
12 Attorneys, and City Attorneys for each city containing a population of at least 750,000
13 people in whose jurisdictions the violations allegedly occurred concerning the consumer
14 product Electrical Tape and Booster Cable.

15 20. On or about April 14, 2011, Plaintiff gave notice of alleged violations of Health and
16 Safety Code Section 25249.6, concerning consumer products exposures, subject to a
17 private action to Big Lots Stores, Inc., and to the California Attorney General, County
18 District Attorneys, and City Attorneys for each city containing a population of at least
19 750,000 people in whose jurisdictions the violations allegedly occurred concerning the
20 consumer product Black Steering Wheel Cover.

21 21. Before sending the notice of alleged violations, Plaintiff investigated the consumer
22 product involved, and the likelihood that such product would cause users to suffer
23 significant exposures to the relevant Proposition 65-listed chemical at issue.

24 22. Plaintiff's notice of alleged violations included a Certificate of Merit executed by the
25 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
26 Plaintiff who executed the certificate had consulted with at least one person with relevant
27 and appropriate expertise who reviewed data regarding the exposures to lead, lead
28 compounds, and Diethyl Hexyl Phthalate ("DEHP"), which are the subject Proposition

1 65-listed chemicals of this action. Based on that information, the attorney for Plaintiff
2 who executed the Certificate of Merit believed there was a reasonable and meritorious
3 case for this private action. The attorney for Plaintiff attached to the Certificate of Merit
4 served on the Attorney General the confidential factual information sufficient to establish
5 the bases of the Certificate of Merit.

6 23. Plaintiff's notice of alleged violation also included a Certificate of Service and a
7 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
8 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

9 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
10 gave notice of the alleged violations to Waxman Industries, Inc., Big Lots Stores, Inc.,
11 and the public prosecutors referenced in Paragraphs 17-20.

12 25. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
13 any applicable district attorney or city attorney has commenced and is diligently
14 prosecuting an action against the Defendants.

15 FIRST CAUSE OF ACTION

16 **(Against Waxman Industries, Inc., Big Lots Stores, Inc., and Does 1-20 for Violations of**
17 **Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health &***
18 ***Safety Code*, §§ 25249.5, *et seq.*))**

19 Valve Handles

20 26. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
21 distributor, promoter, or retailer of Valve Handles, including but not limited to Waxman
22 Universal Valve Handle (Item 76-25700W) (hereinafter "Handle"), a consumer product
23 designed for use as a household product.

24 27. Plaintiff is informed, believes, and thereon alleges that the Handle contain lead and lead
25 compounds.

26 28. On February 27, 1987, the Governor of California added lead and lead compounds to the
27 list of chemicals known to the State to cause reproductive toxicity (*Cal. Code Regs.* tit.
28 27, § 27001(c)).

1 29. On October 1, 1992 the Governor added lead and lead components to the list of
2 chemicals known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)).
3 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
4 after addition of lead to the list of chemicals known to the State to cause cancer, lead and
5 lead compounds became fully subject to Proposition 65 warning requirements and
6 discharge prohibitions.

7 30. Defendants knew or should have known that lead and lead compounds have been
8 identified by the State of California as a chemical known to cause cancer and therefore
9 were subject to Proposition 65 warning requirements. Defendants were also informed of
10 the presence of lead and lead compounds in the Handle within Plaintiff's notice of alleged
11 violation further discussed above at Paragraph 17.

12 31. Plaintiff's allegations regarding Handle concern "[c]onsumer products exposure[s],"
13 which "is an exposure that results from a person's acquisition, purchase, storage,
14 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
15 that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, § 25602(b).
16 Handle is a consumer product, and, as mentioned in herein, exposures to lead and lead
17 compounds took place as a result of such normal and foreseeable consumption and use.

18 32. Plaintiff is informed, believes, and thereon alleges that between March 6, 2008 and the
19 present, each of the Defendants knowingly and intentionally exposed California
20 consumers and users of Handle, which Defendants manufactured, distributed, or sold as
21 mentioned above, to lead and lead compounds, without first providing any type of clear
22 and reasonable warning of such to the exposed persons before the time of exposure.
23 Defendants have distributed and sold Handle in California. Defendants know and intend
24 that California consumers will use and consume Handle thereby exposing them to lead
25 and lead compounds. Defendants thereby violated Proposition 65.

26 33. The principal routes of exposure are through dermal contact, ingestion, and inhalation.
27 Persons sustain exposures by handling the Handle without wearing gloves or by touching
28 bare skin or mucous membranes with gloves after handling Handle, as well as hand to

1 mouth contact, hand to mucous membrane, or breathing in particulate matter emanating
2 from the Handle during application and installation, as well as through environmental
3 mediums that carry the lead and lead compounds once contained within the Handle.

4 34. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
5 Proposition 65 as to Handle have been ongoing and continuous to the date of the signing
6 of this Complaint, as Defendants engaged and continue to engage in conduct which
7 violates Health and Safety Code section 25249.6, including the manufacture, distribution,
8 promotion, and sale of Handle, so that a separate and distinct violation of Proposition 65
9 occurred each and every time a person was exposed to lead by Handle as mentioned
10 herein.

11 35. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
12 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
13 violations alleged herein will continue to occur into the future.

14 36. Based on the allegations herein, Defendants are liable for civil penalties of up to
15 \$2,500.00 per day per individual exposure to lead and lead compounds from Handle,
16 pursuant to Health and Safety Code section 25249.7(b).

17 37. In the absence of equitable relief, California consumers, the general public, and others
18 will continue to be involuntarily exposed to lead and lead compounds that are contained
19 in Handle, creating a substantial risk of irreparable harm. Thus, by committing the acts
20 alleged herein, Defendants have caused irreparable harm for which there is no plain,
21 speedy, or adequate remedy at law.

22 38. Plaintiff has engaged in good faith efforts to resolve the claim alleged herein prior to
23 filing this Complaint.

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1 44. Plaintiff is informed, believes, and thereon alleges that between December 31, 2007 and
2 the present, each of the Defendants knowingly and intentionally exposed California
3 consumers and users of Cushion, which Defendants manufactured, distributed, or sold as
4 mentioned above, to DEHP, without first providing any type of clear and reasonable
5 warning of such to the exposed persons before the time of exposure. Defendants have
6 distributed and sold Cushion in California. Defendants know and intend that California
7 consumers will use and consume Cushion thereby exposing them to DEHP. Defendants
8 thereby violated Proposition 65.

9 45. The principal routes of exposure are through dermal contact, ingestion, and inhalation.
10 Persons sustain exposures by handling the Cushion without wearing gloves, by touching
11 bare skin or mucous membranes with gloves after handling Cushion, or by touching bare
12 skin to the Cushion, as well as hand to mouth contact, hand to mucous membrane, or
13 breathing in particulate matter emanating from the Cushion during application and
14 installation, as well as through environmental mediums that carry the DEHP once
15 contained within the Cushion.

16 46. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
17 Proposition 65 as to Cushion have been ongoing and continuous to the date of the signing
18 of this Complaint, as Defendants engaged and continue to engage in conduct which
19 violates Health and Safety Code section 25249.6, including the manufacture, distribution,
20 promotion, and sale of Cushion, so that a separate and distinct violation of Proposition 65
21 occurred each and every time a person was exposed to DEHP by Cushion as mentioned
22 herein.

23 47. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
24 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
25 violations alleged herein will continue to occur into the future.

26 48. Based on the allegations herein, Defendants are liable for civil penalties of up to
27 \$2,500.00 per day per individual exposure to DEHP from Cushion, pursuant to Health
28 and Safety Code section 25249.7(b).

1 49. In the absence of equitable relief, California consumers, the general public, and others
2 will continue to be involuntarily exposed to DEHP that are contained in Cushion, creating
3 a substantial risk of irreparable harm. Thus, by committing the acts alleged herein,
4 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate
5 remedy at law.

6 50. Plaintiff has engaged in good faith efforts to resolve the claim alleged herein prior to
7 filing this Complaint.

8 **THIRD CAUSE OF ACTION**

9 **(Against Big Lots Stores, Inc., and Does 1-20 for Violations of Proposition 65, The Safe**
10 **Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code, §§ 25249.5, et**
11 **seq.))**

12 **Electrical Tape and Booster Cable**

13 51. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
14 distributor, promoter, or retailer of Electrical Tape and Booster Cable, including but not
15 limited to AUTOMATICSTTM Emergency Repair Kit 31 Pc (Item #79283) (“hereinafter
16 Tape and Cable”), a consumer product designed for use as a repair kit for automobiles.

17 52. Plaintiff is informed, believes, and thereon alleges that the Tape and Cable contain lead
18 and lead compounds.

19 53. On February 27, 1987, the Governor of California added lead and lead compounds to the
20 list of chemicals known to the State to cause reproductive toxicity (*Cal. Code Regs. tit.*
21 *27, § 27001(c)*).

22 54. On October 1, 1992 the Governor added lead and lead components to the list of
23 chemicals known to the State to cause cancer (*Cal. Code Regs. tit. 27, § 27001(b)*).
24 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
25 after addition of lead to the list of chemicals known to the State to cause cancer, lead and
26 lead compounds became fully subject to Proposition 65 warning requirements and
27 discharge prohibitions.

1 55. Defendants knew or should have known that lead and lead compounds have been
2 identified by the State of California as a chemical known to cause cancer and therefore
3 were subject to Proposition 65 warning requirements. Defendants were also informed of
4 the presence of lead and lead compounds in the Tape and Cable within Plaintiff's notice
5 of alleged violation further discussed above at Paragraph 19.

6 56. Plaintiff's allegations regarding Tape and Cable concern "[c]onsumer products
7 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
8 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
9 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
10 *25602(b)*. Tape and Cable is a consumer product, and, as mentioned in herein, exposures
11 to lead and lead compounds took place as a result of such normal and foreseeable
12 consumption and use.

13 57. Plaintiff is informed, believes, and thereon alleges that between June 7, 2008 and the
14 present, each of the Defendants knowingly and intentionally exposed California
15 consumers and users of Tape and Cable, which Defendants manufactured, distributed, or
16 sold as mentioned above, to lead and lead compounds, without first providing any type of
17 clear and reasonable warning of such to the exposed persons before the time of exposure.
18 Defendants have distributed and sold Tape and Cable in California. Defendants know
19 and intend that California consumers will use and consume Tape and Cable, thereby
20 exposing them to lead and lead compounds. Defendants thereby violated Proposition 65.

21 58. The principal routes of exposure are through dermal contact, ingestion, and inhalation.
22 Persons sustain exposures by handling the Tape and Cable without wearing gloves or by
23 touching bare skin or mucous membranes with gloves after handling Tape and Cable, as
24 well as hand to mouth contact, hand to mucous membrane, or breathing in particulate
25 matter emanating from the Tape and Cable during application and installation, as well as
26 through environmental mediums that carry the lead and lead compounds once contained
27 within the Tape and Cable.
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1 59. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
2 Proposition 65 as to Tape and Cable have been ongoing and continuous to the date of the
3 signing of this Complaint, as Defendants engaged and continue to engage in conduct
4 which violates Health and Safety Code section 25249.6, including the manufacture,
5 distribution, promotion, and sale of Tape and Cable, so that a separate and distinct
6 violation of Proposition 65 occurred each and every time a person was exposed to lead by
7 Tape and Cable as mentioned herein.

8 60. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
9 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
10 violations alleged herein will continue to occur into the future.

11 61. Based on the allegations herein, Defendants are liable for civil penalties of up to
12 \$2,500.00 per day per individual exposure to lead and lead compounds from Tape and
13 Cable, pursuant to Health and Safety Code section 25249.7(b).

14 62. In the absence of equitable relief, California consumers, the general public, and others
15 will continue to be involuntarily exposed to lead and lead compounds that are contained
16 in Tape and Cable, creating a substantial risk of irreparable harm. Thus, by committing
17 the acts alleged herein, Defendants have caused irreparable harm for which there is no
18 plain, speedy, or adequate remedy at law.

19 63. Plaintiff has engaged in good faith efforts to resolve the claim alleged herein prior to
20 filing this Complaint.

21 **FOURTH CAUSE OF ACTION**

22 **(Against Big Lots Stores, Inc., and Does 1-20 for Violations of Proposition 65, The Safe**
23 **Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et***
24 ***seq.*))**

25 **Steering Wheel Cover**

26 64. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
27 distributor, promoter, or retailer of Steering Wheel Cover, including but not limited to
28

1 Black Steering Wheel Cover (hereinafter Cover), a consumer product designed for use as
2 a cover for an automobile's steering wheel.

3 65. Plaintiff is informed, believes, and thereon alleges that the Cover contains lead and lead
4 compounds.

5 66. On February 27, 1987, the Governor of California added lead and lead compounds to the
6 list of chemicals known to the State to cause reproductive toxicity (*Cal. Code Regs. tit.*
7 *27, § 27001(c)*).

8 67. On October 1, 1992 the Governor added lead and lead components to the list of
9 chemicals known to the State to cause cancer (*Cal. Code Regs. tit. 27, § 27001(b)*).
10 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
11 after addition of lead to the list of chemicals known to the State to cause cancer, lead and
12 lead compounds became fully subject to Proposition 65 warning requirements and
13 discharge prohibitions.

14 68. Defendants knew or should have known that lead and lead compounds have been
15 identified by the State of California as a chemical known to cause cancer and therefore
16 were subject to Proposition 65 warning requirements. Defendants were also informed of
17 the presence of lead and lead compounds in the Cover within Plaintiff's notice of alleged
18 violation further discussed above at Paragraph 20.

19 69. Plaintiff's allegations regarding Cover concern "[c]onsumer products exposure[s],"
20 which "is an exposure that results from a person's acquisition, purchase, storage,
21 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
22 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.
23 Cover is a consumer product, and, as mentioned in herein, exposures to lead and lead
24 compounds took place as a result of such normal and foreseeable consumption and use.

25 70. Plaintiff is informed, believes, and thereon alleges that between April 14, 2008 and the
26 present, each of the Defendants knowingly and intentionally exposed California
27 consumers and users of Cover, which Defendants manufactured, distributed, or sold as
28 mentioned above, to lead and lead compounds, without first providing any type of clear

1 and reasonable warning of such to the exposed persons before the time of exposure.
2 Defendants have distributed and sold Cover in California. Defendants know and intend
3 that California consumers will use and consume Cover, thereby exposing them to lead
4 and lead compounds. Defendants thereby violated Proposition 65.

5 71. The principal routes of exposure are through dermal contact, ingestion, and inhalation.
6 Persons sustain exposures by handling the Cover without wearing gloves or by touching
7 bare skin or mucous membranes with gloves after handling Cover, as well as hand to
8 mouth contact, hand to mucous membrane, or breathing in particulate matter emanating
9 from the Cover during application and installation, as well as through environmental
10 mediums that carry the lead and lead compounds once contained within the Cover.

11 72. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
12 Proposition 65 as to Cover have been ongoing and continuous to the date of the signing
13 of this Complaint, as Defendants engaged and continue to engage in conduct which
14 violates Health and Safety Code section 25249.6, including the manufacture, distribution,
15 promotion, and sale of Cover, so that a separate and distinct violation of Proposition 65
16 occurred each and every time a person was exposed to lead by Cover as mentioned
17 herein.

18 73. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
19 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
20 violations alleged herein will continue to occur into the future.

21 74. Based on the allegations herein, Defendants are liable for civil penalties of up to
22 \$2,500.00 per day per individual exposure to lead and lead compounds from Cover,
23 pursuant to Health and Safety Code section 25249.7(b).

24 75. In the absence of equitable relief, California consumers, the general public, and others
25 will continue to be involuntarily exposed to lead and lead compounds that are contained
26 in Cover, creating a substantial risk of irreparable harm. Thus, by committing the acts
27 alleged herein, Defendants have caused irreparable harm for which there is no plain,
28 speedy, or adequate remedy at law.

1 76. Plaintiff has engaged in good faith efforts to resolve the claim alleged herein prior to
2 filing this Complaint.

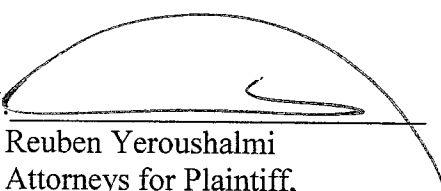
3 **PRAYER FOR RELIEF**

4 Plaintiff demands against each of the Defendants, including Waxman Industries, Inc., Big
5 Lots Stores, Inc., and Does 1-20, as follows:

- 6 1. A permanent injunction mandating Proposition 65-compliant warnings as to the product
7 at issue;
- 8 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
- 9 3. Costs of suit;
- 10 4. Reasonable attorney fees and costs; and
- 11 5. Any further relief that the court may deem just and equitable.

12
13
14 Dated: 2/15/12

YEROUSHALMI & ASSOCIATES

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16
17 BY: 
18 Reuben Yeroushalmi
19 Attorneys for Plaintiff,
20 Consumer Advocacy Group, Inc.