

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Patricia Nieto

1 Lucas Novak (SBN 257484)
2 LAW OFFICES OF LUCAS T. NOVAK
3 8335 W Sunset Blvd., Suite 217
4 Los Angeles, CA 90069
5 Telephone: (323) 337-9015
6 Email: lucas.nvk@gmail.com

7 Attorney for Plaintiff, APS&EE, LLC

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10 APS&EE, LLC, a limited liability company,)
11 Plaintiff,)
12 v.)
13 BIG LOTS STORES, INC., a corporation,)
14 SIMPLY GIRLS ACCYS, LLC, a limited)
15 liability company, and DOES 1 through 100,)
16 inclusive,)
17 Defendants.)

CASE NO. 21STCV13679

**PLAINTIFF'S COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

(Health & Safety Code § 25249.6 et seq.)

Judge:
Dept.:
Compl. Filed:

Unlimited Jurisdiction

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1 requirements of Proposition 65.

2 **PARTIES**

3 9. Plaintiff is an organization based in California acting in the public interest.
4 Plaintiff brings this action in the public interest pursuant to California Health and Safety Code
5 section 25249.7(d).

6 10. Defendant, BIG LOTS STORES, INC. is a person in the course of doing business
7 within the meaning of California Health and Safety Code section 25249.11. BIG LOTS
8 STORES, INC. manufactures, distributes, and/or sells the Products for sale and use in California.

9 11. Defendant, SIMPLY GIRLS ACCYS, LLC is a person in the course of doing
10 business within the meaning of California Health and Safety Code section 25249.11. SIMPLY
11 GIRLS ACCYS, LLC manufactures, distributes, and/or sells the Products for sale and use in
12 California.

13 12. DOES 1 through 100 are each a person in the course of doing business within the
14 meaning of California Health and Safety Code section 25249.11. DOES 1 through 100
15 manufacture, distribute, and/or sell the Products for sale and use in California. The true names of
16 DOES 1 through 100 are unknown to Plaintiff at this time. When their identities are discovered,
17 Plaintiff's Complaint shall be amended to reflect their true names.

18 13. The defendants identified in paragraphs 10-12 shall collectively be referred to
19 herein as "Defendants".

20 **JURISDICTION AND VENUE**

21 14. This Court has jurisdiction over this action pursuant to California Health and
22 Safety Code section 25249.7, which allows enforcement in any court of competent jurisdiction,
23 and pursuant to California Constitution Article VI, Section 10, because this lawsuit is based on a
24 cause not given by statute to other trial courts. Moreover, this action belongs in unlimited
25 jurisdiction since the amount in controversy exceeds \$25,000 and Plaintiff seeks permanent
26 injunctive relief.

27 15. This Court has jurisdiction over Defendants because each is a person, firm,
28 corporation, or association with sufficient minimum contacts in the State of California, or

1 otherwise purposefully avails itself to the California market as to render jurisdiction by the
2 California courts consistent with traditional notions of fair play and substantial justice.

3 16. Venue is proper in Los Angeles County Superior Court because one or more
4 occurrences of the wrongful conduct occurred, and continues to occur, in Los Angeles County,
5 and/or because Defendants conducted, and continue to conduct, business in this County with
6 respect to the Products.

7 **FIRST CAUSE OF ACTION**

8 **(Violations of Health & Safety Code Section 25249.6 et seq.)**

9 17. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
10 Paragraphs 1 through 16, inclusive.

11 18. On September 21, 2020, Plaintiff served a sixty-day notice of violation, along
12 with a Certificate of Merit, to BIG LOTS STORES, INC., and the various public enforcement
13 agencies with respect to the Proposition 65 violations related to Lead in the Products. In addition,
14 on said date, in compliance with Health & Safety Code section 25249.7(d), confidential factual
15 information sufficient to establish the basis for the Certificate of Merit was provided to the
16 California Attorney General. On January 29, 2021, Plaintiff served a supplemental sixty-day
17 notice of violation, along with a Certificate of Merit, to BIG LOTS STORES, INC., SIMPLY
18 GIRLS ACCYS, LLC, and the various public enforcement agencies with respect to the
19 Proposition 65 violations related to Lead in the Products. In addition, on said date, in compliance
20 with Health & Safety Code section 25249.7(d), confidential factual information sufficient to
21 establish the basis for the Certificate of Merit was provided to the California Attorney General.
22 The notice dated September 21, 2020, and the notice dated January 29, 2021, shall hereinafter
23 collectively be referred to as the “Notices”.

24 19. None of the public prosecutors with the authority to prosecute Proposition 65
25 violations has commenced and/or is diligently prosecuting the causes of action against
26 Defendants based on the claims asserted in Plaintiff’s Notices.

27 20. By placing the Products into the stream of commerce, each Defendant is a person
28 in the course of doing business within the meaning of Health & Safety Code section 25249.11.

1 21. Defendants knew and intended that consumers, including children, will use,
2 touch, handle, play with, repair, maintain, install, eat and/or drink from, the Products.

3 22. Defendants knew that the Products contain Lead. Defendants, who are in the
4 business of marketing home goods such as ceramicware, also should have known or have
5 constructive knowledge that the Products contain Lead from widespread media coverage and/or
6 other channels of information concerning the presence of Lead in ceramicware.

7 23. Lead is a chemical listed by the State of California as known to cause cancer and
8 birth defects or other reproductive harm.

9 24. Defendants' Products contain sufficient quantities of the Lead such that
10 consumers, including children, who use, touch, handle, play with, repair, maintain, install, eat
11 and/or drink from the Products are exposed to unsafe levels of Lead. Lead is present in the
12 Products in such a way as to expose individuals to Lead, as exposure is defined by 27 CCR
13 section 25600.1(e): "...that results from a person's acquisition, purchase, storage, consumption,
14 or any reasonably foreseeable use..." Direct and indirect exposure occurs through inhalation,
15 ingestion and/or dermal contact during the reasonably foreseeable use of the Products.

16 25. Defendants knew or should have known that the reasonably foreseeable use of the
17 Products exposes individuals to Lead through inhalation, ingestion and/or dermal contact.

18 26. Defendants failed to provide a "clear and reasonable warning" to individuals in
19 the State of California who were or could become exposed to Lead during the reasonably
20 foreseeable use of the Products.

21 27. By committing the acts alleged in this Complaint, Defendants have violated
22 California Health & Safety Code section 25249.6 et seq. by knowingly and intentionally
23 exposing individuals to Lead without first giving clear and reasonable warnings to such
24 individuals regarding the toxicity of Lead.

25 28. As a result of Defendants' wrongful conduct, individuals in the State of California
26 have been exposed to Lead through the inhalation, ingestion and/or dermal contact during the
27 reasonably foreseeable use of the Products without a "clear and reasonable warning", and have
28 suffered and continue to suffer harm, each and every day since at least September 21, 2017.

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff prays for judgment against Defendants as follows:

3 1. That the Court, pursuant to California Health & Safety Code section 25249.7(b),
4 assess civil penalties against Defendants in the amount of \$2,500 per day for each violation
5 alleged herein;

6 2. That the Court, pursuant to California Health & Safety Code section 25249.7(a),
7 preliminarily and permanently enjoin Defendants from manufacturing, distributing, or offering
8 the Products for sale in California without providing “clear and reasonable warnings” as defined
9 by 27 CCR section 25601;


10 3. That the Court, pursuant to California Health & Safety Code section 25249.7(a),
11 order Defendants to take action to stop ongoing unwarned exposures to Lead resulting from use
12 of Products sold by Defendants;

13 4. That the Court, pursuant to California Code of Civil Procedure section 1021.5, or
14 any other applicable theory, grant Plaintiff’s reasonable attorneys’ fees and costs of suit; and

15 5. Such other and further relief as may be just and proper.
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17 Dated: April 12, 2021

LAW OFFICES OF LUCAS T. NOVAK

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19 By: 
20 LUCAS T. NOVAK
21 Attorney for Plaintiff, APS&EE, LLC
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