

DEC 03 2011

John A. Clarke, Executive Officer/Clerk
BY Nancy Sandoval, Deputy

1 Reuben Yeroushalmi (SBN 193981)
2 Daniel D. Cho (SBN 105409)
3 Ben Yeroushalmi (SBN 232540)
4 YEROUSHALMI & ASSOCIATES
5 9100 Wilshire Blvd., Suite 610E
6 Beverly Hills, CA 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
13 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

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

16 Plaintiff,

17 v.

18 BIG LOTS STORES, INC., an Ohio
19 Corporation, MIDWESTERN HOME
20 PRODUCTS, INC., a Delaware Corporation,
21 and DOES 1 through 50;

22 Defendants.

CASE NO. BC449679

~~[PROPOSED]~~ STIPULATED CONSENT
JUDGMENT AND ~~[PROPOSED]~~ ORDER

Health & Safety Code § 25249.5 *et seq.*

Complaint filed: November 19, 2010

Dept.: 64

Judge: Hon. Kenneth R. Freeman

Trial: November 2, 2011

23 1. INTRODUCTION

24 1.1 On November 19, 2010, Plaintiff, Consumer Advocacy Group, Inc. ("CAG"), filed
25 a complaint in the Los Angeles Superior Court entitled *Consumer Advocacy Group, Inc. v. Big*
26 *Lots Stores, Inc., et al*, Case No. BC449679 (the "Action"), for civil penalties and injunctive relief
27 pursuant to the provisions of California Health & Safety Code § 25249.5, *et seq.* ("Proposition
28 65") against Big Lots Stores, Inc. ("Defendant") and Midwestern Home Products, Inc. CAG and
Defendant are collectively referred to hereinafter as "Parties."

1.2 Defendant is a corporation that employs 10 or more persons. In the Action, CAG
alleges that Defendant made available for distribution in the State of California the following

1 products: (1) Citrus Autoworks Steering Wheel Cover ("Citrus SWC"); and (2) Santa's Boutique
2 Indoor/Outdoor 80 Foot Garland ("Garland") (Citrus SWC and Garland hereinafter collectively
3 referred to as the "Covered Products"). The Covered Products allegedly contain Lead, a chemical
4 known to the State of California to cause cancer and birth defects or other reproductive harm.
5 (Lead is hereinafter referred to as the "Noticed Chemical.")

6 1.3 On or about December 3, 2009, CAG served Defendant and the appropriate public
7 enforcement agencies with a notice claiming that Defendant was in violation of Proposition 65 in
8 regard to Garland. CAG's notice and the Complaint in this Action allege that Defendant exposed
9 people who handle the Garland to the Noticed Chemical, without first providing clear and
10 reasonable warnings, in violation of California Health & Safety Code § 25249.6.

11 1.4 On or about July 9, 2010, CAG served Defendant and the appropriate public
12 enforcement agencies with a notice claiming that Defendant was in violation of Proposition 65 in
13 regard to Citrus SWC. CAG's notice and the Complaint in this Action allege that Defendant
14 exposed people who handle the Citrus SWC to the Noticed Chemical, without first providing clear
15 and reasonable warnings, in violation of California Health & Safety Code § 25249.6.

16 1.5 Defendant denies all of CAG's the material allegations, including allegations
17 averred in the notices and the Complaint, and denies liability for the cause of action alleged in the
18 Complaint and in connection with the Action. By executing this Stipulated Consent Judgment and
19 agreeing to provide the relief and remedies specified herein, Defendant does not admit that it has
20 committed any violations of Proposition 65, or any other law or legal duty and specifically denies
21 that it has committed any such violations and no such admission shall be deemed to have occurred
22 as a result of Defendant's agreement to settle and compromise the Action. Defendant maintains
23 that all Covered Products distributed, marketed and/or sold by Defendant in California have at all
24 times been in compliance with Proposition 65.

25 1.6 For purposes of this Stipulated Consent Judgment only, the Parties stipulate that
26 this Court has jurisdiction over the allegations of violations contained in CAG's Complaint and
27 personal jurisdiction over Defendant with respect to the matters set forth in the Stipulated Consent
28 judgment, that venue is proper in the County of Los Angeles, and that this Court has jurisdiction to

1 enter this Stipulated Consent Judgment as a full and final resolution of all claims which were or
2 could have been raised in the Complaint based on the facts alleged therein.

3 1.7 The parties enter into this Stipulated Consent Judgment pursuant to a settlement of
4 certain disputed claims as alleged in the Complaint for the purpose of avoiding prolonged and
5 costly litigation.

6 1.8 Neither this Stipulated Consent Judgment nor any of its provisions shall be
7 construed as an admission by the Parties of any fact, conclusion of law, issue of law or violation of
8 law, including without limitation, any admission concerning any violation of Proposition 65 or any
9 other statutory, regulatory, common law, or equitable doctrine, or the meaning of the terms
10 "knowingly and intentionally expose" or "clear and reasonable warning" as used in Health and
11 Safety Code section 25249.6. Nothing in this Stipulated Consent Judgment, nor compliance with
12 its terms, shall constitute or be construed as an admission by the Parties of any fact, conclusion of
13 law, issue of law, or violation of law, or of fault, wrongdoing, or liability by Defendant, its
14 officers, directors, employees, or parent, subsidiary or affiliated corporations, or be offered or
15 admitted as evidence in any administrative or judicial proceeding or litigation in any court,
16 agency, or forum.

17 1.9 Nothing in this Stipulated Consent Judgment shall prejudice, waive or impair any
18 right, remedy, argument, or defense the Parties may have in any other or future legal proceeding,
19 except as expressly provided in this Stipulated Consent Judgment. By executing this Consent
20 Judgment and agreeing to provide the relief and remedies specified herein, Defendant does not
21 admit that this Action or any other action that may be filed against it in the future under
22 Proposition 65 or any other cause of action is not preempted by Federal law. Defendant reserves
23 all of their rights and defenses with regard to any claim by any person under Proposition 65 or
24 otherwise, including the defense of federal preemption.

25 1.10 This Stipulated Consent Judgment is the product of negotiations during the
26 litigation and is accepted by the Parties, for purposes of settling, compromising, and resolving
27 issues disputed in this action, including future compliance by Defendant with Section 2 of this
28 Stipulated Consent Judgment, and shall not be used for any other purpose, or in any other matter.

1 2. **COMPLIANCE – INJUNCTIVE RELIEF**

2 2.1 Within 30 days of approval of this Consent Judgment by the Court, Defendant shall
3 not engage in any California sale of the Covered Products without providing the following or
4 something substantially similar to the following warning language; printed conspicuously on the
5 Covered Products, or their packaging:

6 **WARNING: This product contains lead, a chemical known to the State of
7 California to cause cancer and birth defects or other reproductive harm.**

8 3. **SETTLEMENT PAYMENT**

9 3.1 Within twenty (20) days of approval of this Consent Judgment by the Court,
10 Defendant shall pay a total of fifty-five thousand dollars (\$55,000.00) to Consumer Advocacy
11 Group, Inc. and Yeroushalmi & Associates. The payment shall be made by separate checks
12 apportioned as follows:

13 3.1.1 Monetary Payment in Lieu of Civil Penalty: Two thousand dollars (\$2,000)
14 shall be paid to CAG in lieu of any civil penalty pursuant to California Health and Safety Code
15 § 25249.7(b). CAG will use the payment for such projects and purposes related to
16 environmental protection, worker health and safety, or reduction of human exposure to
17 hazardous substances (including administrative and product testing costs arising from such
18 projects), as CAG may choose. The check shall be made payable to Consumer Advocacy
19 Group, Inc. and delivered to Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire
20 Boulevard, Suite 610E, Beverly Hills, California 90212. A separate Form 1099 shall be
21 issued by Defendant to CAG for this amount.

22 3.1.2 Attorneys' Fees and Costs: Fifty-two thousand dollars (\$52,000) of such
23 payment shall be paid to Yeroushalmi & Associates, as CAG's attorneys, for reasonable
24 investigation fees and costs, attorneys' fees, and any other costs incurred as a result of
25 investigating, bringing this matter to Defendant's attention, litigating, and negotiating a
26 settlement in the public interest. The check shall be made payable to Yeroushalmi &
27 Associates and delivered to Reuben Yeroushalmi, Yeroushalmi & Associates, 9100
28

1 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212. A separate Form 1099
2 shall be issued to Yeroushalmi & Associates for this amount.

3 3.1.3 Civil Penalty: Defendant shall issue two separate checks for a total amount
4 of one thousand dollars (\$1000) as penalties pursuant to Health & Safety Code § 25249.12:
5 (a) one check made payable to the State of California's Office of Environmental Health
6 Hazard Assessment (OEHHA) in the amount of \$750, representing 75% of the total
7 penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of \$250,
8 representing 25% of the total penalty. Two separate 1099s shall be issued for the above
9 payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA
10 95184 (EIN: 68-0284486) in the amount of \$750. The second 1099 shall be issued in the
11 amount of \$250 to CAG and delivered to: Yeroushalmi & Associates, 9100 Wilshire
12 Boulevard, Suite 610E, Beverly Hills, California 90212.

13 **4. DISMISSAL OF DEFENDANT**

14 4.1 Within 30 days of receiving the payments detailed in Section 3 above, CAG shall
15 execute a dismissal with prejudice of the entire Action to be filed with the Court.

16 **5. MODIFICATION OF STIPULATED CONSENT JUDGMENT**

17 5.1 This written Stipulated Consent Judgment may only be modified by written
18 agreement of CAG and Defendant upon stipulation and Order of the Court, or after noticed
19 motion, and upon entry of a Stipulated Consent Judgment by the Court thereon, or upon motion of
20 CAG or Defendant as provided by law and upon entry of a modified Stipulated Consent Judgment
21 by the Court.

22 5.2 The Attorney General shall be served with notice of any proposed modification to
23 this Consent Judgment at least 15 days in advance of its consideration by the Court.

24 **6. ENFORCEMENT OF STIPULATED CONSENT JUDGMENT**

25 6.1 Either party may, by motion or application for an order to show cause before the
26 Superior Court of the County of Los Angeles, consistent with the terms and conditions set forth in
27 paragraphs 9.1 and 9.2 of this Stipulated Consent Judgment, enforce the terms and conditions
28 contained in this Stipulated Consent Judgment. The prevailing party shall be entitled to its

1 reasonable attorneys' fees and costs associated with such motion or application.

2 6.2 The Parties may enforce the terms and conditions of this Consent Judgment
3 pursuant to paragraph 6.1 only after the party seeking to enforce the Stipulated Consent Judgment
4 has first given 30 days notice to the Party allegedly failing to comply with the terms and
5 conditions of the Stipulated Consent Judgment (the Notice of Non-Compliance) and has
6 attempted, in an open and good faith manner, to resolve such Party's alleged failure to comply.
7 The Notice of Non-Compliance shall identify the specific provision that the party seeking
8 enforcement alleges was violated as well as sufficient information to put the party accused of the
9 violation on notice of the scope, nature, timing and substance of the alleged violation.

10 **7. APPLICATION OF STIPULATED CONSENT JUDGMENT**

11 7.1 This Stipulated Consent Judgment shall apply to and be binding upon the
12 Parties hereto, their divisions, subdivisions and subsidiaries, officers, directors, employees, agents
13 and their successors or assigns, and to the extent allowed by law, on the general public.

14 **8. CLAIMS COVERED AND RELEASED**

15 8.1 CAG, on behalf of itself and in the public interest, hereby releases and discharges
16 Defendant, its related parent, subsidiaries, affiliates, predecessors, successors, assigns, vendors,
17 and manufacturers, including but not limited to Advance International, Inc. and Citrus
18 International, Inc., and all officers, directors, employees, and shareholders of them (collectively,
19 "Released Parties") from any and all claims asserted, or that could have been asserted, in this
20 litigation arising from the alleged failure to provide Proposition 65 warnings only for the Covered
21 Products regarding the exposure of individuals to the Noticed Chemical in the Covered Products.
22 CAG, on behalf of itself only, hereby releases and discharges the Released Parties from any and
23 all known and unknown past, present, and future rights, claims, causes of action, damages, suits,
24 penalties, liabilities, injunctive relief, declaratory relief, and attorney fees, costs, and expenses
25 only related to or arising out of the facts and claims asserted, or that could have been asserted,
26 under state or federal law or the facts alleged in Plaintiff's Proposition 65 Notices or the
27 Complaint relating only to any and all claims concerning exposure of any person to the Noticed
28 Chemical in the Covered Products. Compliance with the terms of this Stipulated Consent

1 Judgment shall constitute compliance by the Released Parties with Proposition 65 with respect to
2 exposures to the Noticed Chemical contained in the Covered Products. This release does not limit
3 or affect the obligations of any party created under this Stipulated Consent Judgment.

4 8.2 Unknown Claims. It is possible that other injuries, damages, liability, or claims not
5 now known to the Parties arising out of the facts alleged in the Complaint and relating to the
6 exposure of individuals to the Noticed Chemical in the Covered Products will develop or be
7 discovered, and this Stipulated Consent Judgment is expressly intended to cover, include and
8 release the Released Parties from all such injuries, damages, liability, and claims, including all
9 rights of action therefor. CAG has full knowledge of the contents of Section 1542 of the Civil
10 Code. CAG, on behalf of itself only, acknowledges that the claims released in paragraph 8.1 above
11 may include unknown claims and waives Section 1542 as to any such unknown claims. Section
12 1542 reads as follows:

13 **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
14 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
15 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"**

16 CAG acknowledges and understands the significance and consequences of this specific waiver of
17 Civil Code Section 1542.

18 **9. NOTICE AND CURE**

19 9.1 No action to enforce this Stipulated Consent Judgment may be commenced, and no
20 notice of violation related to the Covered Products may be served or filed against Defendant by
21 CAG, unless the party seeking enforcement or alleging violation notifies the other party of the
22 specific acts alleged to breach this Stipulated Consent Judgment at least 90 days before serving or
23 filing any motion, action, or Notice of Violation. Any notice to Defendant must contain (a) the
24 name of the product, (b) specific dates when the product was sold in California, (c) the store or
25 other place at which the product was available for sale to consumers, and (d) any other evidence or
26 other support for the allegations in the notice.

27 9.2 Within 30 days of receiving the notice described in paragraph 9.1, Defendant shall
28 either (1) take all steps necessary to bring the sale of the product into compliance under the terms

1 of this Stipulate Consent Judgment, (2) withdraw the product, or (3) refute the information
2 provided under paragraph 9.1. Should the parties be unable to resolve the dispute, either party may
3 seek relief under Section 6.

4 **10. GOVERNING LAW**

5 10.1 The terms of this Stipulated Consent Judgment shall be governed by the laws of the
6 State of California.

7 **11. PROVISION OF NOTICE**

8 11.1 All notices required pursuant to this Stipulated Consent Judgment and
9 correspondence shall be sent to the following:

10 For Consumer Advocacy Group, Inc.	For Big Lots Stores, Inc.
11 Reuben Yeroushalmi	Michael E. Delehunt
12 YEROUSHALMI & ASSOCIATES	FOLEY & LARDNER LLP
13 9100 Wilshire Boulevard, Suite 610E	555 California Street, Suite 1700
14 Beverly Hills, CA 90212	San Francisco, CA 94104-1520
T: 310-623-1926	T: 415.434.4484
F: 310-623-1930	F: 415.434.4507

15 The contacts and/or addresses above may be amended by giving notice to all Parties to this
16 Consent Judgment.

17 **12. ENTIRE AGREEMENT**

18 12.1 This Stipulated Consent Judgment constitutes the sole and entire agreement and
19 understanding between the Parties with respect to the subject matter hereof, and any prior
20 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
21 merged herein and therein. There are no warranties, representations or other agreements between
22 the Parties, except as expressly set forth herein. No representations, oral or otherwise, express or
23 implied, other than those specifically referred to herein, shall be deemed to exist or bind any of the
24 Parties hereto. No supplementation, modification, waiver, or termination of this Stipulated
25 Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby.

26 **13. ATTORNEY GENERAL REVIEW AND COURT APPROVAL**

27 13.1 The Court shall either approve or disapprove of this Stipulated Consent Judgment
28 in its entirety, without alteration, deletion or amendment, unless otherwise so stipulated by the

1 Parties and their counsel. If this Stipulated Consent Judgment is not approved by the Court, it
2 shall be of no further force or effect.

3 13.2 CAG shall comply with Health and Safety Code section 25249.7(f) and
4 with Title 11 California Code of Regulations section 3003.

5 **14. EXECUTION AND COUNTERPARTS**

6 14.1 This Stipulated Consent Judgment may be executed in counterparts and by means
7 of facsimile, which taken together shall be deemed to constitute one document. Facsimile or pdf
8 signatures shall be construed as valid as the original.

9 **15. AUTHORIZATION**

10 15.1 Each signer of this Stipulated Consent Judgment certifies that he or she is fully
11 authorized by the party he or she represents to stipulate to the terms and conditions of this
12 Stipulated Consent Judgment and to enter into and execute the Stipulated Consent Judgment on
13 behalf of the party represented and legally bind that party. The undersigned have read, understand
14 and agree to all of the terms and conditions of this Stipulated Consent Judgment. Except as
15 explicitly provided herein, each party is to bear its own fees and costs.

16

17 Dated: 10/07/11

CONSUMER ADVOCACY GROUP, INC.

18

19

Lyn H. Marcus

20

Name and Title: Lyn H. Marcus, Pres.

21

22 Dated: 10/6/2011

BIG LOTS STORES, INC.

23

24

Charles P. Reynolds

25

Name and Title: Charles P. Reynolds
Vice President, Deputy General Counsel
and Assistant Corporate Secretary

26

27

28



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER AND JUDGMENT

Based upon the Stipulated Consent Judgment between Consumer Advocacy Group, Inc. and Big Lots Stores, Inc., the Consent Judgment is approved and judgment is hereby entered according to the terms herein.

Dated: DEC 05 2011

KENNETH R. FREEMAN
Judge, Superior Court of the State of California