

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 Plaintiffs,
10 Consumer Advocacy Group, Inc.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

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

Plaintiff,

v.

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

Defendants.

CASE NO. BC 479180

CONSENT JUDGMENT [PROPOSED]

Health & Safety Code § 25249.5 *et seq.*

Dept. 58

Judge: Hon. Rolf M. Treu

Complaint filed: February 16, 2012

1. INTRODUCTION

1.1 This Consent Judgment is entered into by and between plaintiff, Consumer Advocacy Group, Inc. (referred to as "CAG") acting on behalf of itself and in the interest of the public and defendants, Waxman Industries, Inc and Big Lots Stores, Inc. (referred to as "Waxman" and "Big Lots" respectively and "Defendants" collectively) with each a Party to the action and collectively referred to as "Parties."

1.2 Defendants and Products

1.2.1 Waxman is a Delaware corporation which employs ten or more persons. Waxman sells the Waxman Universal Valve Handle (Item 76-25700W) (hereinafter "Handles"). For purposes of this Consent Judgment, Waxman is deemed a person in the course of doing

FILED
Superior Court of California
County of Los Angeles

NOV 22 2013

Sherri R. Carter, Executive Officer/Clerk
By Irene Ayala Deputy

Received

MAY 16 2013

Filing Window

1 business in California and is subject to the provisions of the Safe Drinking Water and Toxic
2 Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq. ("Proposition
3 65").

4 1.2.2 Big Lots is an Ohio corporation which employs ten or more persons. Big
5 Lots has sold a product referred to as the Relaxation Seat Cushion (RGSC100) (Black with
6 Yellow Label) (hereinafter "Cushions"). For purposes of this Consent Judgment Big Lots is
7 deemed a person in the course of doing business in California and is subject to the provisions of
8 the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code
9 §§ 25249.6 et seq. ("Proposition 65").

10 1.3 Chemicals Of Concern

11 1.3.1 Lead and Lead Compounds are known to the State of California to cause
12 cancer and/or birth defects or other reproductive harm.

13 1.3.2 Diethyl hexyl phthalate ("DEHP") is known to the State of California to
14 cause cancer and/or birth defects or other reproductive harm.

15 1.4 Notices of Violation.

16 1.4.1 On March 7, 2011, CAG served Waxman, and various public enforcement
17 agencies with a document entitled "60-Day Notice of Violation" ("Waxman Notice") that
18 provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for
19 failing to warn individuals in California of exposures to lead contained in Handles sold by
20 Waxman. No public enforcer has commenced or diligently prosecuted the allegations set forth in
21 the March 7, 2011 Notice.

22 1.4.2 On December 31, 2010, CAG served Big Lots, and various public
23 enforcement agencies with a document entitled "60-Day Notice of Violation" ("Big Lots
24 Notice") that provided the recipients with notice of alleged violations of Health & Safety Code §
25 25249.6 for failing to warn individuals in California of exposures to DEHP contained in
26 Relaxation Seat Cushion sold by Big Lots. No public enforcer has commenced or diligently
27 prosecuted the allegations set forth in the December 21, 2010 Notice.
28

1 **1.5 Complaint.**

2 On February 16, 2012, CAG filed a Complaint for civil penalties and injunctive relief
3 ("Complaint") in Los Angeles Superior Court, Case No. BC479180, against Defendants. CAG
4 filed a First Amended Complaint ("FAC") against Defendants on or about October 3, 2012. The
5 Complaint and FAC allege, among other things, that Defendants violated Proposition 65 by
6 failing to give clear and reasonable warnings of exposure to lead, from the Handles, and DEHP,
7 from the Relaxation Seat Cushion.

8 **1.6 Consent to Jurisdiction**

9 For purposes of this Consent Judgment, the Parties stipulate that this Court has
10 jurisdiction over the allegations of violations contained in the Complaint and FAC and personal
11 jurisdiction over Defendants as to the acts alleged in the Complaint and FAC, that venue is
12 proper in the County of Los Angeles and that this Court has jurisdiction to enter this Consent
13 Judgment as a full settlement and resolution of the allegations contained in the Complaint and
14 FAC and of all claims which were or could have been raised by any person or entity based in
15 whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or related
16 thereto.

17 **1.7 No Admission**

18 This Consent Judgment resolves claims that are denied and disputed. The Parties enter
19 into this Consent Judgment pursuant to a full and final settlement of any and all claims between
20 the Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment
21 shall be construed as an admission by the Parties of any material allegation of the Complaint
22 (each and every allegation of which Defendants deny), any fact, conclusion of law, issue of law
23 or violation of law, including without limitation, any admission concerning any violation of
24 Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine, or the
25 meaning of the terms "knowingly and intentionally expose" or "clear and reasonable warning" as
26 used in Health and Safety Code section 25249.6. Nothing in this Consent Judgment, nor
27 compliance with its terms, shall constitute or be construed as an admission by the Parties of any
28

1 fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by
2 any Defendant, its officers, directors, employees, or parent, subsidiary or affiliated corporations,
3 or be offered or admitted as evidence in any administrative or judicial proceeding or litigation in
4 any court, agency, or forum. Furthermore, nothing in this Consent Judgment shall prejudice,
5 waive or impair any right, remedy, argument, or defense the Parties may have in any other or
6 future legal proceeding, except as expressly provided in this Consent Judgment.

7 2. DEFINITIONS

8 2.1 "Covered Products" sold by Defendants means Waxman Universal Valve Handle
9 (Item 76-25700W) and Relaxation Seat Cushion (RGSC100)(Black with Yellow Label).

10 2.2 "Effective Date" means the date that this Consent Judgment is approved by the
11 Court.

12 2.3 "Lead" means lead and lead compounds.

13 2.4 "DEHP" means Diethyl hexyl phthalate.

14 2.4 "Notices" means the March 6, 2011 60 Day Notice of Violation sent by CAG to
15 Waxman and the December 31, 2010 60 Day Notice of Violation sent by CAG to Big Lots.

16 3. INJUNCTIVE RELIEF / REFORMULATION / CLEAR AND REASONABLE 17 WARNINGS.

18 3.1 Defendants shall not sell the Covered Products in California unless they either
19 contain a Proposition 65 compliant warning label or are reformulated as follows:
20

21 (a) Handles to contain less than 100 parts per million of lead; and

22 (b) Seat Cushions to contain less than 0.01% DEHP.

23 3.2 Reformulation is required for all Covered Products manufactured by, delivered to,
24 or received by Defendants for sale in California after the Effective Date. For all Covered
25 Products to be sold or distributed in California and existing in Defendants inventory as of the
26 Effective Date, Defendants will provide Proposition 65 compliant warnings on said products.
27 Defendants shall not engage in any California sale of the Covered Products without providing the
28 following or something substantially similar to the following warning language, printed

1 conspicuously on the labels of the Covered Products:

2 (a) For Handles –

3 ~~WARNING: This product contains lead, a chemical known to the~~
4 ~~State of California to cause cancer and birth defects or other~~
5 ~~reproductive harm. Wash hands after handling.~~

6 (b) For Seat Cushions –

7 WARNING: This product contains Diethyl hexyl phthalate
8 (“DEHP”), a chemical known to the State of California to cause
9 cancer and birth defects or other reproductive harm. Wash hands
10 after handling.

11 4. SETTLEMENT PAYMENT

12 4.1 Payment and Due Date: Within 10 business days of the approval of the Consent
13 Judgment, Defendants shall pay a total of sixty thousand dollars and zero cents (\$60,000) in full
14 and complete settlement of all monetary claims by CAG related to the Notices. Waxman shall
15 pay the sum of forty thousand dollars and zero cents (\$40,000) and Big Lots shall pay the sum of
16 twenty thousand dollars and zero cents (\$20,000), as follows:

17 4.1.1 Civil Penalty: Defendants shall issue separate checks totaling four
18 thousand dollars (\$4,000) as penalties pursuant to Health & Safety Code § 25249.12:

19 (a) Waxman will issue a check made payable to the State of California’s Office of
20 Environmental Health Hazard Assessment (OEHHA) in the amount of two thousand dollars
21 (\$2,000) and Big Lots will issue a check made payable to OEHHA in the amount of one
22 thousand dollars (\$1,000), the total amount of these two checks (\$3,000) representing 75% of the
23 total penalty;

24 (b) Waxman will issue a check to CAG in the amount of six hundred sixty seven
25 dollars (\$667) and Big Lots will issue a check to CAG in the amount of three hundred thirty
26 three dollars (\$333), the total amount of these two checks (\$1,000) representing 25% of the total
27 penalty; and

28 (c) Separate 1099s shall be issued for each of the above payments: Waxman and
Big Lots will each issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-

1 0284486) in the amounts of \$2,000 and \$1,000, respectively. Waxman and Big Lots will also
2 each issue a 1099 to CAG c/o Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E,
3 Beverly Hills, California 90212 in the amounts of \$667 and \$333, respectively.

4 **4.1.2 Payment In Lieu of Civil Penalties:** Defendants shall pay \$1,000 in lieu
5 of civil penalties to "Consumer Advocacy Group, Inc." as follows: Waxman will issue a check to
6 CAG in the amount of six hundred sixty seven dollars (\$667) and Big Lots will issue a check to
7 CAG in the amount of three hundred thirty three dollars (\$333). CAG will use this payment for
8 investigation of the public's exposure to Proposition 65 listed chemicals through various means,
9 laboratory fees for testing for Proposition 65 listed chemicals, expert fees for evaluating
10 exposures through various mediums, including but not limited to consumer product,
11 occupational, and environmental exposures to Proposition 65 listed chemicals, and the cost of
12 hiring consulting and retained experts who assist with the extensive scientific analysis necessary
13 for those files in litigation, in order to reduce the public's exposure to Proposition 65 listed
14 chemicals by notifying those persons and/or entities believed to be responsible for such
15 exposures and attempting to persuade those persons and/or entities to reformulate their products
16 or the source of exposure to completely eliminate or lower the level of Proposition 65 listed
17 chemicals, thereby addressing the same public harm as allegedly in the instant Action. Further,
18 should the court require it, CAG will submit under seal, an accounting of these funds as
19 described above as to how the funds were used. The check shall be made payable to "Consumer
20 Advocacy Group, Inc." and delivered to Reuben Yeroushalmi, Yeroushalmi & Associates, 9100
21 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212.

22 **4.1.3 Reimbursement of Attorneys Fees and Costs:** Waxman shall pay thirty
23 six thousand six hundred sixty six dollars (\$36,666) and Big Lots shall pay eighteen thousand
24 three hundred thirty four dollars (\$18,334) to "Yeroushalmi & Associates" as reimbursement for
25 reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of
26 investigating, bringing this matter to Defendant's attention, litigating, and negotiating a
27 settlement in the public interest. The check shall be made payable to "Yeroushalmi &
28

1 Associates" and delivered to Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire
2 Boulevard, Suite 610E, Beverly Hills, California 90212.

3 4.2 Payments shall be delivered to: Reuben Yeroushalmi, Yeroushalmi &
4 Associates, 9100 Wilshire Blvd., Suite 610E, Beverly Hills, CA 90212.

5 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT**

6 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
7 behalf of itself and in the public interest and Defendants, and their officers, directors, insurers,
8 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
9 companies and their successors and assigns ("Defendant Releasees"), for all claims for violations
10 of Proposition 65 up through the Effective Date based on exposure to Lead and DEHP from the
11 Covered Products as set forth in the Notices. Defendants and Defendant Releasees' compliance
12 with this Consent Judgment shall constitute compliance with Proposition 65 with respect to Lead
13 and DEHP from the Covered Products as set forth in the Notices.

14 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
15 successors, and/or assignees, and in the public interest, hereby waives all rights to institute or
16 participate in, directly or indirectly, any form of legal action and releases all claims, including,
17 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
18 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not
19 limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether
20 known or unknown, fixed or contingent (collectively "Claims"), against Defendants, and
21 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
22 common law regarding the failure to warn about exposure to Lead and DEHP in the Covered
23 Products. In furtherance of the foregoing, as to alleged exposures to Covered Products, CAG, on
24 behalf of itself only, hereby waives any and all rights and benefits which it now has, or in the
25 future may have, conferred upon it with respect to the Claims by virtue of the provisions of
26 section 1542 of the California Civil Code, which provides as follows:
27

28 **A general release does not extend to claims which the creditor does**

CONSENT JUDGMENT [PROPOSED]

1 not know or suspect to exist in his or her favor at the time of
2 executing the release, which if known by him or her, must have
3 materially affected his or her settlement with the debtor.

4 CAG understands and acknowledges that the significance and consequence of this waiver
5 of California Civil Code section 1542 is that even if CAG suffers future damages arising out of
6 or resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,
7 including but not limited to any exposure to, or failure to warn with respect to exposure to, lead
8 or lead compounds and DEHP from Covered Products, CAG will not be able to make any claim
9 for those damages against Defendants or the Defendant Releasees. Furthermore, CAG
10 acknowledges that it intends these consequences for any such Claims as may exist as of the date
11 of this release but which CAG does not know exist, and which, if known, would materially affect
12 their decision to enter into this Consent Judgment, regardless of whether their lack of knowledge
13 is the result of ignorance, oversight, error, negligence, or any other cause.

14 6. ENFORCEMENT OF JUDGMENT

15 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
16 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
17 California, Los Angeles County, giving the notice required by law, enforce the terms and
18 conditions contained herein. A Party may enforce any of the terms and conditions of this
19 Consent Judgment only after that Party first provides 90 days notice to the Party allegedly failing
20 to comply with the terms and conditions of this Consent Judgment and attempts to resolve such
21 Party's failure to comply in an open and good faith manner.

22 6.2 Notice of Violation. Prior to bringing any motion, order to show cause, or other
23 proceeding to enforce the terms of this Consent Judgment, CAG shall provide a Notice of
24 Violation ("NOV") to Defendants. The NOV shall include for each of the Covered Products: the
25 date(s) the alleged violation(s) was observed and the location at which the Covered Products
26 were offered for sale, and shall be accompanied by all test data obtained by CAG regarding the
27 Covered Products, including an identification of the component(s) of the Covered Products that
28 were tested.

1 6.2.1 Non-Contested NOV. CAG shall take no further action regarding the
2 alleged violation if, within 60 days of receiving such NOV, Defendants serves a Notice of
3 Election ("NOE") that meets one of the following conditions:

4 (a) The Covered Products were shipped by Defendants for sale in
5 California before the Effective Date, or

6 (b) Since receiving the NOV Defendants have taken corrective action
7 by either (i) requesting that its customers or stores in California, as applicable, remove
8 the Covered Products identified in the NOV from sale in California and destroy or return
9 the Covered Products to Defendants or vendor, as applicable, or (ii) providing a clear and
10 reasonable warning for the Covered Products identified in the NOV pursuant to 27 Cal.
11 Code Regs. § 25603.

12 6.2.2 Contested NOV. Defendants may serve an NOE informing CAG of its
13 election to contest the NOV within 30 days of receiving the NOV.

14 (a) In its election, Defendants may request that the sample(s) Covered
15 Products tested by CAG be subject to confirmatory testing at an EPA-accredited
16 laboratory.

17 (b) If the confirmatory testing establishes that the Covered Products do
18 not contain lead or DEHP in excess of the levels allowed in Section 3.1, above, CAG
19 shall take no further action regarding the alleged violation. If the testing does not
20 establish compliance with Section 3.1, above, Defendants may withdraw its NOE to
21 contest the violation and may serve a new NOE pursuant to Section 6.2.1.

22 (c) If Defendants do not withdraw an NOE to contest the NOV, the
23 Parties shall meet and confer for a period of no less than 30 days before CAG may seek
24 an order enforcing the terms of this Consent Judgment.

25 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, such
26 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
27 violation of Proposition 65 or this Consent Judgment.
28

1 **7. ENTRY OF CONSENT JUDGMENT**

2 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
3 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG,
4 Defendants waive their respective rights to a hearing or trial on the allegations of the Complaint
5 and FAC.

6 7.2 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
7 and any and all prior agreements between the parties merged herein shall terminate and become
8 null and void, and the actions shall revert to the status that existed prior to the execution date of
9 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
10 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
11 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
12 Action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine
13 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

14 **8. MODIFICATION OF JUDGMENT**

15 8.1 This Consent Judgment may be modified only upon written agreement of the
16 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
17 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

18 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
19 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.
20

21 **9. RETENTION OF JURISDICTION**

22 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
23 terms of this Consent Judgment.

24 **10. DUTIES LIMITED TO CALIFORNIA**

25 10.1 This Consent Judgment shall have no effect on Covered Products sold by
26 Defendants outside the State of California.

27 **11. SERVICE ON THE ATTORNEY GENERAL**

28 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the

1 California Attorney General so that the Attorney General may review this Consent Judgment
2 prior to its submittal to the Court for approval. No sooner than forty five (45) days after the
3 Attorney General has received the aforementioned copy of this Consent Judgment, and in the
4 absence of any written objection by the Attorney General to the terms of this Consent Judgment,
5 the parties may then submit it to the Court for approval.

6 **12. ATTORNEY FEES**

7 12.1 Except as specifically provided in Section 4.1.3, each Party shall bear its own
8 costs and attorney fees in connection with this action.

9 **13. ENTIRE AGREEMENT**

10 13.1 This Consent Judgment contains the sole and entire agreement and understanding
11 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
12 negotiations, commitments and understandings related hereto. No representations, oral or
13 otherwise, express or implied, other than those contained herein have been made by any party
14 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
15 deemed to exist or to bind any of the Parties.

16 **14. GOVERNING LAW**

17 14.1 The validity, construction and performance of this Consent Judgment shall be
18 governed by the laws of the State of California, without reference to any conflicts of law
19 provisions of California law.

20 14.2 The Parties, including their counsel, have participated in the preparation of this
21 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
22 Consent Judgment was subject to revision and modification by the Parties and has been accepted
23 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
24 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
25 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
26 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
27 resolved against the drafting Party should not be employed in the interpretation of this Consent
28

Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

15. EXECUTION AND COUNTERPARTS

15.1 This Consent Judgment may be executed in counterparts and by means of facsimile or portable document format (pdf), which taken together shall be deemed to constitute one document and have the same force and effect as original signatures.

16. NOTICES

16.1 Any notices under this Consent Judgment shall be by personal delivery of First Class Mail.

If to CAG: Reuben Yeroushalmi
9100 Wilshire Boulevard, Suite 610E
Beverly Hills, CA 90212
(310) 623-1926

If to Waxman: Waxman Industries, Inc.
24460 Aurora Road
Bedford Heights, OH 44146-1794

With a copy to: Eric L. Zalud
Benesch, Friedlander, Coplan & Aronoff LLP
200 Public Square, Suite 2300
Cleveland, OH 44114-2309

If to Big Lots: Big Lots Stores, Inc.
300 Phillipi Road
Columbus, OH 43228

With a copy to: Michael E. Delehunt
Foley & Lardner LLP
555 California Street, Suite 1700
San Francisco, CA 94104

17. AUTHORITY TO STIPULATE

17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of the party represented and legally to bind that party.

1 AGREED TO:

2 Date: _____, 2013

AGREED TO:

Date: _____, 2013

3
4 Name: _____

Name: _____

5 Title: _____

Title: _____

6 CONSUMER ADVOCACY GROUP,
7 INC.

WAXMAN INDUSTRIES, INC.

8 AGREED TO:

9 Date: May 9, 2013

10 *Chadwick P. Reynolds*

11 Name Chadwick P. Reynolds
12 Title: Vice President, Deputy General
13 Counsel and Assistant Corporate Secretary
14 as REPRESENTATIVE OF BIG LOTS
15 STORES, INC.



16 IT IS SO ORDERED.

17 Date: _____

JUDGE OF THE SUPERIOR COURT

1 AGREED TO:

2 Date: 5-8-13, 2013

3 

4 Name: Michel Sastoon

5 Title: Executive director
6 CONSUMER ADVOCACY GROUP,
7 INC.

AGREED TO:

Date: _____, 2013

Name: _____

Title: _____
WAXMAN INDUSTRIES, INC.

8 AGREED TO:

9 Date: _____, 2013

10
11 Name: _____

12
13 Title: _____

14 BIG LOTS STORES, INC.

15
16 IT IS SO ORDERED.

17 Date: _____

18
19 JUDGE OF THE SUPERIOR COURT

1 AGREED TO:

2 Date: _____, 2013

3
4 Name: _____

5 Title: _____

6 CONSUMER ADVOCACY GROUP,
INC.

7 AGREED TO:

8 Date: _____, 2013

9
10
11 Name: _____

12
13 Title: _____

14 BIG LOTS STORES, INC.

15
16 IT IS SO ORDERED.

17 Date: 11-22-13

AGREED TO:

Date: 5/13, 2013

Name: Michael A. Pendry

Title: Vice President Finance

WAXMAN INDUSTRIES, INC.


JUDGE OF THE SUPERIOR COURT

PROOF OF SERVICE

At the time of service, I was 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, CA 90212.

On October 16, 2013 I served the following document(s):

1. NOTICE OF MOTION AND MOTION TO APPROVE AND ENTER CONSENT JUDGMENT BETWEEN CONSUMER ADVOCACY GROUP, INC., WAXMAN INDUSTRIES, INC. AND BIG LOTS STORES, INC.; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF REUBEN YEROUSHALMI; DECLARATION OF MICHAEL PENDRY; DECLARATION OF JERRY VETTER
2. SUPPLEMENTAL DECLARATION OF REUBEN YEROUSHALMI IN SUPPORT THEREOF
3. [PROPOSED] CONSENT JUDGMENT; and
4. [PROPOSED] ORDER
5. DECLARATION OF MICHAEL MARCUS IN SUPPORT OF MOTION TO APPROVE AND ENTER CONSENT JUDGMENT BETWEEN CONSUMER ADVOCACY GROUP, INC., WAXMAN INDUSTRIES, INC., AND BIG LOTS STORES, INC.;

on the interested parties by placing () the original (☒) a true and correct copy thereof in a sealed envelope(s) addressed as follows:

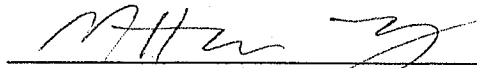
Paul Desrochers Lewis Brisbois Bisgaard & Smith LLP 333 Bush Street, Suite 1100 San Francisco, CA 94104 <i>Attorneys for Defendant, Waxman Industries, Inc.</i>	Attn: Proposition 65 Coordinator OFFICE OF THE ATTORNEY GENERAL 1515 Clay Street, Suite 2000 Oakland, CA 94612-0550
Michael Delehunt Megan O'Sullivan Foley Lardner LLP 555 California St., Suite 1700 San Francisco, CA 94104 <i>Attorneys for Defendant Big Lots Stores, Inc.</i>	

X BY MAIL: I enclosed the documents(s) in a sealed envelope addressed to the person(s) at the address(es) listed above and placed the envelope for collection and mailing, following our ordinary business practices. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, the envelope was deposited in the

1 ordinary course of business with the United States Postal Service, in a sealed envelope with
2 postage fully prepaid. I am aware that on motion of the party served, service is presumed invalid
3 if postal cancellation date or postage meter date is more than one day after date of deposit for
4 mailing in affidavit.

5 I declare under penalty of perjury under the laws of the State of California that the
6 foregoing is true and correct.

7 Executed this 16 th day of October, 2013, at Beverly Hills, California.

8 
9 Matthew K. Tom