SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986

(Cal. Health & Safety Code § 25249.5, et seq.) ("Proposition 65")

February (6, 2012)

Steven S. Fishman, CEO/President, or Current President/CEO
Big Lots Stores, Inc.
300 Phillipi Road
Columbus, OH 43228

Steven S. Fishman, CEO/President, or Current President/CEO
Big Lots, Inc.
300 Phillipi Road
Columbus, OH 43228

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING THE ATTACHED CERTIFICATE OF SERVICE

Re: Violations of Proposition 65 concerning Sandals containing Di (2-ethylhexyl) phthalate (DEHP)

To whom this may concern:

Consumer Advocacy Group, Inc. ("CAG"), the noticing entity located at 9903 Santa Monica Boulevard #225, Beverly Hills, California 90212, serves this Notice of Violation ("Notice") on Big Lots, Inc. and Big Lots Stores, Inc. ("Violators") pursuant to and in compliance with Proposition 65. Violators may contact CAG concerning this Notice through its designated person within the entity, its attorney, Reuben Yeroushalmi, Esq., 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, CA 90212, telephone no. (310) 623-1926, facsimile no. (310) 623-1930. This Notice satisfies a prerequisite for CAG to commence an action against Violators in any Superior Court of California to enforce Proposition 65. The violations addressed by this Notice occurred at numerous locations in each county in California as reflected in the district attorney addresses listed in the attached distribution list. CAG is serving this Notice upon each person or entity responsible for the alleged violations, the California Attorney General, the district attorney for each county where alleged violations occurred, and the City Attorney for each city with a population (according to the most recent decennial census) of over 750,000 located within counties where the alleged violations occurred.

- CAG is an organization based in California. CAG is an entity dedicated to protecting the environment, improving human health, and supporting environmentally sound practices. By sending this Notice, CAG is acting "in the public interest" pursuant to Proposition 65.
- This Notice concerns violations of the warning prong of Proposition 65, which states that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual . . ." Cal. Health & Safety Code § 25249.6.
- Sandals ("Sandals") contain Di (2-ethylhexyl) phthalate (DEHP), also known as Diethyl Hexyl Phthalate and Bis (2-ethylhexyl) phthalate, which is known to the State of California to cause both cancer and reproductive toxicity, developmental, male. On January 1, 1988, the Governor of California added Di (2-ethylhexyl) phthalate (DEHP) to the list of chemicals known to the State to cause cancer, and on October 24, 2003, the Governor added Di (2-ethylhexyl) phthalate (DEHP) to the list of

chemicals known to the State to cause developmental male reproductive toxicity. Both additions took place more than twenty (20) months before CAG served this Notice.

- o An exemplar of the violations caused by **Sandals** includes but is not limited to:
 - HOTSHOT® Boys Sport Slides RN# 105561
- This Notice addresses consumer products exposures. A "[c]onsumer products exposure' is an exposure which results from a person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, § 25602(b).

Violators caused consumer product exposures in violation of Proposition 65 by producing or making available for distribution or sale in California to consumers **Sandals**. The packaging for the **Sandals** (meaning any label or other written, printed or graphic matter affixed to or accompanying the product or its container or wrapper) contains no Proposition 65-compliant warning. Nor did Violators, with regard to the **Sandals**, provide a system of signs, public advertising identifying the system and toll-free information services, or any other system, which provided clear and reasonable warnings. Nor did Violators, with regard to the **Sandals**, provide identification of the product at retail outlets in a manner that provided a warning through shelf labeling, signs, menus, or a combination thereof.

• This Notice also concerns occupational exposures. An "[o]ccupational exposure' means an exposure to any employee in his or her employer's workplace." *Cal. Code Regs.* tit. 27, § 25602(f).

Violators caused occupational exposures, to their respective products, in violation of Proposition 65 by allowing employees to handle the **Sandals** in the course of packaging, shipping, distributing, promoting, and selling the **Sandals** without having first given clear and reasonable warnings to such employees that, by handling the **Sandals**, such employees would suffer exposures to **DEHP**. Violators' employees were exposed to **DEHP** by touching the **Sandals** with their bare skin at Violators' premises located at 2900 Rosecrans Ave., Gardena, CA 90249, among other locations where these activities take place including but not limited to other distributing, shipping, warehousing, packaging and retail centers. Violators did not provide any Proposition 65-compliant warnings on any of the products or any substance present or any sign or system of signs within the workplace.

This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997.

This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to (a) the conduct of manufacturers occurring outside the State of California; and (b) employers with less than ten (10) employees. The approval also provides that an employer may use any means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement be subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the California Attorney General.

These violations occurred each day between February 15, 2009, and February 15, 2012, and are ever continuing thereafter.

The principal routes of exposure were through dermal contact, ingestion, and inhalation. Persons sustain exposures by handling the **Sandals** without wearing gloves or by touching bare skin or mucous membranes with gloves after handling **Sandals**, as well as hand to mouth contact, hand to mucous membrane, or breathing in particulate matter emanating from the **Sandals** during installation and use, as well as through environmental mediums that carry the **Di** (2-ethylhexyl) phthalate (DEHP) once contained within the **Sandals**.

Proposition 65 requires that notice of intent to sue be given to the violator(s) sixty (60) days before the suit is filed. Cal. Health & Safety Code § 25249.7(d)(1). With this letter, CAG gives notice of the alleged violations to Violators and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within sixty (60) calendar days of the sending of this notice (plus ten (10) calendar days because the place of address is within the United States but beyond the State of California), CAG may file suit. See Cal. Code Civ. Proc. § 1013; Cal. Health & Safety Code § 25249.7(d)(1); and Cal. Code Regs. tit. 27, § 25903(d)(1). CAG is ready and willing to discuss the possibility of resolving its grievances in the public interest short of formal litigation.

Dated: 2/16/12

Reuben Yeroushalmi Yeroushalmi & Associates

Attorneys for Consumer Advocacy Group, Inc.

Sandals containing Di (2-ethylhexyl) phthalate (DEHP)

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Reuben Yeroushalmi, hereby declare:

- 1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notice(s) has violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
- 2. I am the attorney for the noticing party.
- 3. I have consulted with at least one person with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action.
- 4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
- 5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: 2/15/12

By: Reuben Yeroushalmi

CERTIFICATE OF SERVICE

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, CA 90212.

ON THE DATE SHOWN BELOW, I SERVED THE FOLLOWING:

- 1) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Certificate of Merit (Attorney General Copy): Factual information sufficient to establish the basis of the certificate of merit (only sent to Attorney General)
- 4) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary

by enclosing copies of the same in a sealed envelope, along with an unsigned copy of this declaration, addressed to each person shown below and depositing the envelope in the U.S. mail with the postage fully prepaid. Place of Mailing: Beverly Hills, CA

Name and address of each party to whom documents were mailed:

Steven S. Fishman, CEO/President, or Current President/CEO
Big Lots Stores, Inc.
300 Phillipi Road
Columbus, OH 43228

Steven S. Fishman, CEO/President, or Current President/CEO Big Lots, Inc. 300 Phillipi Road Columbus, OH 43228

Name and address of each public prosecutor to whom documents were mailed:

See Distribution List

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

Date of Mailing: 2_/12/12

By:
Fereshteh Shakib

Distribution List

1225 Fallon St, Room 900	Alameda County District Attorney	Los Angeles County District Attorney	Mana Causta District Attangen
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