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6 Attorneys for Plaintiffs,
Consumer Advocacy Group, Inc.
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES
11

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

14 Plaintiff,

15 v.
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17 CONSOLIDATED PROPERTY
HOLDINGS, INC., a Nevada Corporation,
18 BIG LOTS STORES, INC., an Ohio
Corporation, and DOES 1-50;
19

20 Defendants.

CASE NO. BC485960

CONSENT JUDGMENT [PROPOSED]

Dept: 20

Judge: Kevin Brazile

Complaint filed: June 5, 2012

21
22 **1. INTRODUCTION**

23 1.1 This Consent Judgment is entered into by and between plaintiff Consumer
24 Advocacy Group, Inc. ("CAG") acting on behalf of itself and in the interest of the public and
25 defendant Big Lots Stores, Inc. hereinafter "Defendant"), with each a Party and collectively
26 referred to as "Parties."

27 1.2 Defendant is a person in the course of doing business, with more than 10
28 employees, for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,

1 California Health & Safety Code §§ 25249.6 et seq. (“Proposition 65”), and has sold Claw and
2 Magnet Pick Up Tools, Crimping Tools, and Inspection Tools (“Covered Products”).

3 **1.3 Notices of Violation.**

4 1.3.1 On or about June 15, 2011, CAG served Defendant and various public
5 enforcement agencies with a document entitled “60-Day Notice of Violation” (the “June
6 15, 2011 Notice”) that provided the recipients with notice of alleged violations of Health
7 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to
8 di(2-ethylhexyl)phthalate (DEHP) contained in Claw and Magnet Pick Up Tools.

9 1.3.2 On or about August 5, 2011, CAG served Defendant and various public
10 enforcement agencies with a document entitled “60-Day Notice of Violation” (the “June
11 15, 2011 Notice”) that provided the recipients with notice of alleged violations of Health
12 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to
13 di(2-ethylhexyl)phthalate (DEHP) contained in Crimping Tools.

14 1.3.3 On or about March 6, 2012, CAG served Defendant and various public
15 enforcement agencies with a document entitled “60-Day Notice of Violation” (the
16 “March 6, 2012 Notice”) that provided the recipients with notice of alleged violations of
17 Health & Safety Code § 25249.6 for failing to warn individuals in California of
18 exposures to di(2-ethylhexyl)phthalate (DEHP) contained in Inspection Tools.

19 1.3.2 No public enforcer has commenced or diligently prosecuted the
20 allegations set forth in the June 15, 2011, August 5, 2011, and March 6, 2012 Notices.

21 **1.4 Complaint.**

22 On June 5, 2012, CAG filed a Complaint for civil penalties and injunctive relief
23 (“Complaint”) in Los Angeles Superior Court, Case No. BC485960. The Complaint alleges,
24 among other things, that Defendant violated Proposition 65 by failing to give clear and
25 reasonable warnings of exposure to DEHP from the Covered Products. Upon the Court’s
26 approval of this Consent Judgment, the Complaint will be amended to include the Proposition 65
27 violations alleged in the March 6, 2012 Notice in the Complaint and CAG will dismiss the
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1 Complaint as to Consolidated Property Holdings, Inc., with prejudice.

2 **1.5 Consent to Jurisdiction**

3 For purposes of this Consent Judgment, the parties stipulate that this Court has
4 jurisdiction over the allegations of violations contained in the Complaint and personal
5 jurisdiction over Defendants as to the acts alleged in the Complaint, that venue is proper in the
6 City and County of Los Angeles and that this Court has jurisdiction to enter this Consent
7 Judgment as a full settlement and resolution of the allegations contained in the Complaint and of
8 all claims which were or could have been raised by any person or entity based in whole or in
9 part, directly or indirectly, on the facts alleged therein or arising therefrom or related to.

10 **1.6 No Admission**

11 This Consent Judgment resolves claims that are denied and disputed. The parties enter
12 into this Consent Judgment pursuant to a full and final settlement of any and all claims between
13 the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not
14 constitute an admission with respect to any material allegation of the Complaint, each and every
15 allegation of which Defendants denies, nor may this Consent Judgment or compliance with it be
16 used as evidence of any wrongdoing, misconduct, culpability or liability on the part of
17 Defendants.
18

19 **2. DEFINITIONS**

20 2.1 "Covered Products" means Claw and Magnet Pick Up Tools, Crimping Tools,
21 and Inspection Tools sold by Hardline Solutions, Inc. to Big Lots Stores, Inc. for sale to
22 consumers.

23 2.2 "Effective Date" means the date that this Consent Judgment is entered by the
24 Court.

25 **3. INJUNCTIVE RELIEF/REFORMULATION**

26 3.1 Within 30 days of the Effective Date Defendant shall not sell or offer for sale in
27 California Covered Products that contain DEHP with more than 0.1% DEHP by weight.
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1 Defendant may sell any Covered Products in existing inventory purchased before January 1,
2 2013 with warnings.

3 **4. SETTLEMENT PAYMENT**

4 Within twenty (20) days of the Effective Date, or receipt of W-9 forms from CAG,
5 whichever is later, Defendant shall pay a total of \$75,000 in full and complete settlement of all
6 monetary claims by CAG related to the notices, as follows.

7 **4.1 Reimbursement of Attorneys' Fees and Costs:** Within twenty (20) business
8 days of the Effective Date, Defendant shall pay \$74,000 to "Yeroushalmi & Associates" as
9 reimbursement for the investigation fees and costs, testing costs, expert fees, attorney fees, and
10 other litigation costs and expenses for all work performed through the approval of this Consent
11 Judgment.

12 **4.2 Civil Penalties.** Defendant shall issue two separate checks for a total amount of
13 \$500 as penalties pursuant to Health & Safety Code § 25249.12: (a) one check made payable to
14 the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the
15 amount of \$375, representing 75% of the total penalty; and (b) one check to Consumer Advocacy
16 Group, Inc. in the amount of \$125, representing 25% of the total penalty. Two separate 1099s
17 shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box
18 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$375. The second 1099 shall
19 be issued in the amount of \$125 to CAG and delivered to: Yeroushalmi & Associates, 9100
20 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212.

21 **4.3 Payment In Lieu of Civil Penalties:** Defendant shall pay \$500 in lieu of civil
22 penalties to "Consumer Advocacy Group, Inc." CAG will use this payment for investigation of
23 the public's exposure to Proposition 65 listed chemicals through various means, laboratory fees
24 for testing for Proposition 65 listed chemicals, expert fees for evaluating exposures through
25 various mediums, including but not limited to consumer product, occupational, and
26 environmental exposures to Proposition 65 listed chemicals, and the cost of hiring consulting
27 and retained experts who assist with the extensive scientific analysis necessary for those files in
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1 litigation, in order to reduce the public's exposure to Proposition 65 listed chemicals by notifying
2 those persons and/or entities believed to be responsible for such exposures and attempting to
3 persuade those persons and/or entities to reformulate their products or the source of exposure to
4 completely eliminate or lower the level of Proposition 65 listed chemicals, thereby addressing
5 the same public harm as allegedly in the instant Action. Further, should the court require it,
6 CAG will submit under seal, an accounting of these funds as described above as to how the funds
7 were used. The check shall be made payable to "Consumer Advocacy Group, Inc." and delivered
8 to Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E,
9 Beverly Hills, California 90212.

10 4.4 Payments shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates,
11 9100 Wilshire Blvd., Suite 610E, Beverly Hills, CA 90212.

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

13 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
14 behalf of itself and in the public interest and Defendant and its officers, directors, insurers,
15 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
16 companies and their successors and assigns ("Defendant Releasees"), and also includes, but is
17 not limited to each of its suppliers including but not limited to, Hardline Solutions, Inc.,
18 customers, distributors, wholesalers, retailers, or any other person in the course of doing
19 business, and the successors and assigns of any of them, who may use, maintain, distribute or sell
20 Covered Products ("Downstream Defendant Releasees"), for all claims for violations of
21 Proposition 65 up through the Effective Date based on exposure to DEHP from Covered
22 Products as set forth in the Notice. Defendant and Defendant Releasees' compliance with this
23 Consent Judgment shall constitute compliance with Proposition 65 with respect to DEHP from
24 Covered Products as set forth in the Notice.

25 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
26 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
27 indirectly, any form of legal action and releases all claims, including, without limitation, all
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1 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
2 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
3 fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown,
4 fixed or contingent (collectively "Claims"), against Defendant, Defendant Releasees, and
5 Downstream Defendant Releasees arising from any violation of Proposition 65 or any other
6 statutory or common law regarding the failure to warn about exposure to DEHP from Covered
7 Products manufactured, distributed, or sold by Defendant and Defendant Releasees. In
8 furtherance of the foregoing, as to alleged exposures to DEHP from Covered Products, CAG
9 hereby waives any and all rights and benefits which it now has, or in the future may have,
10 conferred upon it with respect to the Claims arising from any violation of Proposition 65 or any
11 other statutory or common law regarding the failure to warn about exposure to DEHP from
12 Covered Products by virtue of the provisions of section 1542 of the California Civil Code, which
13 provides as follows:

14
15 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
16 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
17 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF**
18 **KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS**
19 **OR HER SETTLEMENT WITH THE DEBTOR.**

20 CAG understands and acknowledges that the significance and consequence of this waiver of
21 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
22 resulting from, or related directly or indirectly to, in whole or in part, the Claims arising from
23 any violation of Proposition 65 or any other statutory or common law regarding the failure to
24 warn about exposure to DEHP from Covered Products, including but not limited to any exposure
25 to, or failure to warn with respect to exposure to DEHP from the Covered Products, CAG will
26 not be able to make any claim for those damages against Defendant or the Defendant Releasees
27 or Downstream Defendant Releasees. Furthermore, CAG acknowledges that it intends these
28 consequences for any such Claims arising from any violation of Proposition 65 or any other
statutory or common law regarding the failure to warn about exposure to DEHP from Covered
Products as may exist as of the date of this release but which CAG does not know exists, and

1 which, if known, would materially affect its decision to enter into this Consent Judgment,
2 regardless of whether their lack of knowledge is the result of ignorance, oversight, error,
3 negligence, or any other cause.

4 **6. ENFORCEMENT OF JUDGMENT**

5 6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
6 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
7 California, City and County of Los Angeles, giving the notice required by law, enforce the terms
8 and conditions contained herein. A Party may enforce any of the terms and conditions of this
9 Consent Judgment only after that Party first provides 30 days' notice to the Party allegedly
10 failing to comply with the terms and conditions of this Consent Judgment and attempts to resolve
11 such Party's failure to comply in an open and good faith manner.

12 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
13 proceeding to enforce Section 3.1 of this Consent Judgment, CAG shall provide a Notice of
14 Violation ("NOV") to Defendant. The NOV shall include for each of the Covered Products: the
15 date(s) the alleged violation(s) was observed and the location at which the Covered Products
16 were offered for sale, and shall be accompanied by all test data obtained by CAG regarding the
17 Covered Products, including an identification of the component(s) of the Covered Products that
18 were tested.

19 6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the
20 alleged violation if, within 30 days of receiving such NOV, Defendant serves a Notice of
21 Election ("NOE") that meets one of the following conditions:

22 (a) The Covered Products were shipped by Defendant for sale in
23 California before the Effective Date, or
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25 (b) Since receiving the NOV Defendant has taken corrective action by
26 either (i) removing the Covered Products identified in the NOV from sale in California
27 and destroying or returning the Covered Products to Defendant, or (ii) providing a clear
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1 and reasonable warning for the Covered Products identified in the NOV pursuant to 27
2 Cal. Code Regs. § 25603.

3 6.2.2 **Contested NOV.** Defendant may serve an NOE informing CAG of its
4 election to contest the NOV within 30 days of receiving the NOV.

5 (a) In its election, Defendant may request that the sample(s) Covered
6 Products tested by CAG be subject to confirmatory testing at an EPA-accredited
7 laboratory.

8 (b) If the confirmatory testing establishes that the Covered Products do
9 not contain DEHP in excess of the level allowed in Section 3.1 CAG shall take no further
10 action regarding the alleged violation. If the testing does not establish compliance with
11 Section 3.1, Defendants may withdraw its NOE to contest the violation and may serve a
12 new NOE pursuant to Section 6.2.1.

13 (c) If Defendant does not withdraw an NOE to contest the NOV, the
14 Parties shall meet and confer for a period of no less than 30 days before CAG may seek
15 an order enforcing the terms of this Consent Judgment.

16 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, such
17 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
18 violation of Proposition 65 or this Consent Judgment, including attorney fees.

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20 **7. ENTRY OF CONSENT JUDGMENT**

21 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
22 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
23 Defendant waive their respective rights to a hearing or trial on the allegations of the Complaint.

24 7.2 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
25 and any and all prior agreements between the parties merged herein shall terminate and become
26 null and void, and the actions shall revert to the status that existed prior to the execution date of
27 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
28 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall

1 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
2 Action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine
3 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

4 **8. MODIFICATION OF JUDGMENT**

5 8.1 This Consent Judgment may be modified only upon written agreement of the
6 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
7 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

8 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
9 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

10 **9. RETENTION OF JURISDICTION**

11 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
12 terms of this Consent Judgment.

13 **10. DUTIES LIMITED TO CALIFORNIA**

14 This Consent Judgment shall have no effect on Covered Products sold outside the State of
15 California.

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

17 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
18 California Attorney General so that the Attorney General may review this Consent Judgment
19 prior to its submittal to the Court for approval. No sooner than forty five (45) days after the
20 Attorney General has received the aforementioned copy of this Consent Judgment, and in the
21 absence of any written objection by the Attorney General to the terms of this Consent Judgment,
22 the parties may then submit it to the Court for approval.

23 **12. ATTORNEY FEES**

24 12.1 Except as specifically provided in Section 4, each Party shall bear its own costs
25 and attorney's fees in connection with this action.
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1 **13. ENTIRE AGREEMENT**

2 13.1 This Consent Judgment contains the sole and entire agreement and understanding
3 of the parties with respect to the entire subject matter hereof and any and all prior discussions,
4 negotiations, commitments and understandings related hereto. No representations, oral or
5 otherwise, express or implied, other than those contained herein have been made by any party
6 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
7 deemed to exist or to bind any of the parties.

8 **14. GOVERNING LAW**

9 14.1 The validity, construction and performance of this Consent Judgment shall be
10 governed by the laws of the State of California, without reference to any conflicts of law
11 provisions of California law.

12 14.2 The Parties, including their counsel, have participated in the preparation of this
13 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
14 Consent Judgment was subject to revision and modification by the Parties and has been accepted
15 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
16 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
17 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
18 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
19 resolved against the drafting Party should not be employed in the interpretation of this Consent
20 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

21 **15. EXECUTION AND COUNTERPARTS**

22 15.1 This Consent Judgment may be executed in counterparts and by means of
23 facsimile or portable document format (PDF), which taken together shall be deemed to constitute
24 one document.
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26 **16. NOTICES**

27 16.1 Any notices under this Consent Judgment shall be by personal delivery or First
28 Class Mail.

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If to CAG:

Reuben Yeroushalmi, Esq.
9100 Wilshire Boulevard, Suite 610E
Beverly Hills, CA 90212
(310) 623-1926

If To Big Lots Stores, Inc.

David Campisi CEO, or
Current President/CEO
Big Lots Stores, Inc.
300 Phillipi Road
Columbus, OH 43228

With a Copy to:

Michael E. Delehunt
Foley & Lardner LLP
555 California Street, Ste. 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.

AGREED TO:

Date: _____, 2013

AGREED TO:

Date: Nov. 1, 2013

By: _____
Plaintiff, CONSUMER ADVOCACY
GROUP, INC.

By: Chadwick P. Reynolds
Chadwick P. Reynolds, Vice President, Deputy
General Counsel and Assistant Corporate
Secretary on behalf of Defendant, BIG LOTS
STORES, INC.



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2 If to CAG:

3 Reuben Yeroushalmi, Esq.
4 9100 Wilshire Boulevard, Suite 610E
5 Beverly Hills, CA 90212
6 (310) 623-1926

7 If To Big Lots Stores, Inc.

8 David Campisi CEO, or
9 Current President/CEO
10 Big Lots Stores, Inc.
11 300 Phillipi Road
12 Columbus, OH 43228

13 With a Copy to:

14 Michael E. Delehunt
15 Foley & Lardner LLP
16 555 California Street, Ste. 1700
17 San Francisco, CA 94104

18 **17. AUTHORITY TO STIPULATE**

19 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
20 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf
21 of the party represented and legally to bind that party.
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24 AGREED TO:

25 Date: 9-23-13, 2013

23
24 AGREED TO:

25 Date: _____, 2013

26 By: 
27 Plaintiff, CONSUMER ADVOCACY
28 GROUP, INC.

26 By: _____
27 Defendant, BIG LOTS STORES, INC.

1 **IT IS SO ORDERED.**

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Date: _____

_____ **JUDGE OF THE SUPERIOR COURT**

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