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Attorney for Plaintiff, APS&EE, LLC

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

APS&EE, LLC, a limited liability company,

Plaintiff,

v.

BIG LOTS STORES, INC., a corporation,  
SIMPLY GIRLS ACCYS, LLC, a limited  
liability company, and DOES 1 through 100,  
inclusive,

Defendants.

CASE NO. 21STCV13679

**[PROPOSED] CONSENT JUDGMENT**

Judge: Hon. Patricia D. Nieto

Dept.: 24

Compl. Filed: April 12, 2021

Unlimited Jurisdiction

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1 **1. RECITALS**

2 **1.1 The Parties**

3 **1.1.1** This Consent Judgment is entered into by and between APS&EE, LLC  
4 (“APS&EE”) and Big Lots Stores, Inc. (“Big Lots”). APS&EE and Big Lots shall hereinafter  
5 collectively be referred to as the “Parties”.

6 **1.1.2** APS&EE is an organization based in California with an interest in  
7 protecting the environment, improving human health and the health of ecosystems, and  
8 supporting environmentally sound practices, which includes promoting awareness of exposure to  
9 toxic chemicals and reducing exposure to hazardous substances found in consumer products.

10 **1.1.3** APS&EE alleges that Big Lots is a company in the course of doing  
11 business as the term is defined in California *Health & Safety Code* section 25249.6 et seq.  
12 (“Proposition 65”).

13 **1.2 Allegations**

14 **1.2.1** APS&EE alleges that Big Lots distributed and sold Farmhouse Treasures  
15 18oz Mug, V#5005297, Item#SG-A2521MU (hereinafter the “Products”) in the State of  
16 California causing users in California to be exposed to unsafe levels of Lead without providing  
17 “clear and reasonable warnings”, in violation of Proposition 65. Lead is potentially subject to  
18 Proposition 65 warning requirements because it is listed by the State of California as known to  
19 cause cancer and birth defects or other reproductive harm. Big Lots alleges that the Products  
20 were manufactured, imported and distributed by Simply Girls Accys, LLC.

21 **1.2.2** On September 21, 2020, APS&EE provided a Sixty-Day Notice of  
22 Violation (the “Notice”), along with a Certificate of Merit, to Big Lots and the various public  
23 enforcement agencies regarding the alleged violation of Proposition 65 with respect to the  
24 Products. On January 29, 2021, APS&EE provided a Supplemental Sixty-Day Notice of  
25 Violation (the “Supplemental Notice”), along with a Certificate of Merit, to Big Lots, Simply  
26 Girls Accys, LLC, and the various public enforcement agencies regarding the alleged violation  
27 of Proposition 65 with respect to the Products. The Notice and Supplemental Notice shall  
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hereinafter collectively be referred to as the “Notices”. On April 12, 2021, APS&EE, acting in the public interest, filed the instant action (the “Complaint”) in the Superior Court for the County of Los Angeles, alleging violations of Proposition 65.

### **1.3 No Admissions**

Big Lots denies all allegations in APS&EE’s Notices and Complaint and maintains that the Products have been, and are, in compliance with all laws, that Big Lots has not violated Proposition 65, and that Big Lots has timely cured any alleged violation pursuant to the terms of the Consent Judgment in *Whitney Leeman v Arc International North America, et. al.*, San Francisco Super Ct, Consolidated Case No. CGC-003-418025 which APS&EE disputes. This Consent Judgment shall not be construed as an admission of liability by Big Lots but to the contrary as a compromise of claims that are expressly contested and denied. However, nothing in this section shall affect the Parties’ obligations, duties, and responsibilities under this Consent Judgment.

### **1.4 Compromise**

The Parties enter into this Consent Judgment in order to resolve the controversy described above in a manner consistent with prior Proposition 65 settlements and consent judgments that were entered in the public interest and to avoid prolonged and costly litigation between them.

### **1.5 Jurisdiction and Venue**

For purposes of this Consent Judgment only, the Parties stipulate that the above-entitled Court has jurisdiction over Big Lots as to the allegations in the Complaint, that venue is proper in Los Angeles County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment pursuant to California Code of Civil Procedure Section 664.6 and Proposition 65.

### **1.6 Effective Date**

The “Effective Date” shall be the date this Consent Judgment is approved and entered by the Court.

## **2. INJUNCTIVE RELIEF AND REFORMULATION**


## 2.1 Reformulation

As of the Effective Date, Big Lots shall not sell or cause to have the Products sold in California unless (a) the Product contains no more than 1.0 microgram of lead per 100 square centimeter area (1.0 µg/100 cm<sup>2</sup>) based on a wipe sample collected using NIOSH Method 9100 from the part of the Product that contains the Exterior Decorations, or (b) the Product is accompanied by a clear and reasonable warning as described below in Section 2.2. “Exterior Decorations” is defined as all colored artwork, designs and/or markings on the exterior surface of the Products.

## 2.2 Clear And Reasonable Warnings


For any Products that are not Reformulated Products, such Products shall be accompanied by a clear and reasonable warning. Big Lots shall provide a warning using one of the following:

(Long-Form warning):

 **WARNING:** This product can expose you to Lead which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

OR

(Short-Form warning):

 **WARNING:** Cancer and Reproductive Harm -[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

Each warning method shall be accompanied by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label or display for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING”.

The Products shall carry said warning directly on each unit, label, or package, with such conspicuousness as compared with other words, statements or designs as to render it likely to be read and understood by an ordinary consumer prior to sale.

1 In addition to the warning requirements set forth in Section 2.2 above, Big Lots may  
2 comply with this Consent Judgment by using other warning text and transmission methods set  
3 forth in 27 Cal. Code Regs. § 25601, et seq., and amended subsequently thereafter, or other text  
4 or methods authorized or mandated by those regulations, or other State of California regulations  
5 or legislation pertaining to Proposition 65 warnings related to such Products.

6 **3. PAYMENTS**

7 **3.1 Civil Penalty Pursuant To Proposition 65**

8 In settlement of all claims referred to in this Consent Judgment, Big Lots shall pay a total  
9 civil penalty of two thousand five hundred dollars (\$2,500.00) to be apportioned in accordance  
10 with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,875.00) for State of  
11 California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining  
12 25% (\$625.00) for APS&EE.

13 Big Lots shall issue two (2) checks for the civil penalty: (1) a check or money order made  
14 payable to “OEHHA” in the amount of \$1,875.00; and (2) a check or money order made payable  
15 to “Law Offices of Lucas T. Novak” in the amount of \$625.00. Big Lots shall remit the  
16 payments within five (5) business days of the Effective Date, to:

17 Lucas T. Novak, Esq.  
18 LAW OFFICES OF LUCAS T. NOVAK  
19 8335 W Sunset Blvd., Suite 217  
20 Los Angeles, CA 90069

21 **3.2 Reimbursement Of APS&EE’s Fees And Costs**

22 Big Lots shall reimburse APS&EE’s reasonable experts’ and attorney’s fees and costs  
23 incurred in prosecuting the instant action, for all work performed through execution and approval  
24 of this Consent Judgment. Accordingly, Big Lots shall issue a check or money order made  
25 payable to “Law Offices of Lucas T. Novak” in the amount of twenty-five thousand dollars  
26 (\$25,000.00). Big Lots shall remit the payment within five (5) business days of the Effective  
27 Date, to:

28 Lucas T. Novak, Esq.  
LAW OFFICES OF LUCAS T. NOVAK

8335 W Sunset Blvd., Suite 217  
Los Angeles, CA 90069

**4. RELEASES**

**4.1 APS&EE's Release Of Big Lots**

APS&EE, acting in its individual capacity and in the public interest, in consideration of the promises and monetary payments contained herein, hereby releases Big Lots, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, including its downstream distributors, retailers, and franchisees, as well as Simply Girls Accys, LLC, from any alleged Proposition 65 violation claims asserted in APS&EE's Notices or Complaint regarding failure to warn about exposure to Lead from the Products that Big Lots has sold, caused to be sold, and/or offered for sale in California before and up to the Effective Date.

**4.2 Big Lots' Release Of APS&EE**

Big Lots, by this Consent Judgment, waives all rights to institute any form of legal action against APS&EE, its shareholders, directors, members, officers, employees, attorneys, experts, successors and assignees for actions or statements made or undertaken, whether in the course of investigating claims or seeking enforcement of Proposition 65 against Big Lots in this matter. If any Released Party should institute any such action, then APS&EE's release of said Released Party in this Consent Judgment shall be rendered void and unenforceable.

**4.3 Waiver of Unknown Claims**

Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil Code which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Each of the Parties waives and relinquishes any right or benefit it has or may have under Section 1542 of California Civil Code or any similar provision under the statutory or non-

1 statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights  
2 and benefits. The Parties acknowledge that each may subsequently discover facts in addition to,  
3 or different from, those that it believes to be true with respect to the claims released herein. The  
4 Parties agree that this Consent Judgment and the releases contained herein shall be and remain  
5 effective in all respects notwithstanding the discovery of such additional or different facts.

6 **5. COURT APPROVAL**

7 Upon execution of this Consent Judgment by all Parties, APS&EE shall file a noticed  
8 Motion for Approval and Entry of Consent Judgment in the above-entitled Court. This Consent  
9 Judgment is not effective until it is approved and entered by the Court. It is the intention of the  
10 Parties that the Court approve this Consent Judgment, and in furtherance of obtaining such  
11 approval, the Parties and their respective counsel agree to mutually employ their best efforts to  
12 support the entry of this agreement in a timely manner, including cooperating on drafting and  
13 filing any papers in support of the required motion for judicial approval.

14 **6. SEVERABILITY**

15 Should any part or provision of this Consent Judgment for any reason be declared by a  
16 Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue  
17 in full force and effect.

18 **7. GOVERNING LAW**

19 The terms of this Consent Judgment shall be governed by the laws of the State of  
20 California.

21 **8. NOTICE**

22 All correspondence and notice required to be provided under this Consent Judgment shall  
23 be in writing and delivered personally or sent by first class or certified mail addressed as follows:

24 TO BIG LOTS:

25 Remi Salter, Esq.  
26 Steptoe & Johnson LLP  
27 1 Market Street  
28 Spear Tower, Suite 3900  
San Francisco, CA 94105

TO APS&EE:

Lucas T. Novak, Esq.  
Law Offices of Lucas T. Novak  
8335 W Sunset Blvd., Suite 217  
Los Angeles, CA 90069

1 **9. COUNTERPARTS**

2 This Consent Judgment may be executed in counterparts, each of which shall be deemed  
3 an original, and all of which, when taken together, shall constitute the same document. Execution  
4 and delivery of this Consent Judgment by e-mail, facsimile, or other electronic means shall  
5 constitute legal and binding execution and delivery. Any photocopy of the executed Consent  
6 Judgment shall have the same force and effect as the originals.

7 **10. AUTHORIZATION**

8 The undersigned are authorized to execute this Consent Judgment on behalf of their  
9 respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions  
10 of this Consent Judgment. Each Party warrants to the other that it is free to enter into this  
11 Consent Judgment and is not subject to any conflicting obligation that will or might prevent or  
12 interfere with the execution or performance of this Consent Judgment by said Party.

13  
14 **AGREED TO:**

15 Date: 7/10/21  
16 By: [Signature]  
17 Authorized Representative of APS&EE, LLC  
18

19 **AGREED TO:**

20 Date: July 9, 2021  
21 By: [Signature]  
22 Authorized Representative of Big Lots Stores, Inc.  
23

24 **IT IS SO ORDERED.**

25 Dated: \_\_\_\_\_  
26 \_\_\_\_\_  
27 JUDGE OF THE SUPERIOR COURT  
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