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BIG LOTS, INC. and BIG LOTS STORES, INC.

14  
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 COUNTY OF ALAMEDA  
17 UNLIMITED CIVIL JURISDICTION  
18

19 PETER ENGLANDER ) Case No. RG14725352  
20 Plaintiff, )  
21 v. ) **[PROPOSED] CONSENT JUDGMENT AS**  
22 BIG LOTS, INC.; BIG LOTS STORES, ) **TO BIG LOTS, INC. AND BIG LOTS**  
INC.; *et al.*, ) **STORES, INC.**  
23 Defendants. )  
24 ) **(Health & Safety Code § 25249.6 et seq.**  
25 ) **Complaint Filed: May 14, 2014)**

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Peter Englander  
4 (“Englander”) and defendants Big Lots, Inc. and Big Lots Stores, Inc. (collectively “Big Lots”) with  
5 Englander and Big Lots collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

7 Englander is an individual residing in the State of California who seeks to promote  
8 awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating  
9 hazardous substances contained in consumer and commercial products.

10 **1.3 Big Lots**

11 Big Lots, Inc. and Big Lots Stores, Inc. each employ ten or more persons and are each a  
12 person in the course of doing business for purposes of the Safe Drinking Water and Toxic  
13 Enforcement Act of 1986, California Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).  
14 Big Lots is a Retailer, as this term is defined below, and does not manufacture or sell products to  
15 distributors or other retailers.

16 **1.4 General Allegations**

17 1.4.1 Englander alleges that Big Lots sold and/or distributed for sale in California,  
18 padded upholstered stools containing tris (1,3-dichloro-2-propyl) phosphate (“TDCPP”) without the  
19 requisite Proposition 65 health hazard warnings. Englander alleges that TDCPP escapes from foam  
20 padding, leading to human exposures.

21 1.4.2 Pursuant to Proposition 65, on October 28, 2011, California identified and  
22 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and  
23 reasonable warning” requirements of Proposition 65 one year later on October 28, 2012. Cal. Code  
24 Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

25 1.4.3 Englander also alleges that Big Lots sold and/or distributed for sale in  
26 California stools with vinyl/PVC upholstery containing di(2-ethylhexyl)phthalate (“DEHP”)  
27 without the requisite Proposition 65 health hazard warnings.  
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1 1.4.4 Pursuant to Proposition 65, on October 24, 2003, California identified and  
2 listed di(2-ethylhexyl)phthalate (“DEHP”) as a chemical known to cause birth defects and other  
3 reproductive harm. DEHP became subject to the “clear and reasonable warning” requirements of  
4 Proposition 65 one year later on October 24, 2004. Cal. Code Regs., tit. 27, § 27001(c); Health &  
5 Safety Code §§ 25249.8 and 25249.10(b).

6 TDCPP and DEHP shall hereinafter be collectively referred to as the “Listed  
7 Chemicals.”

### 8 1.5 Product Description

9 The categories of products that are covered by this Consent Judgment as to Big Lots are  
10 identified on Exhibit A (hereinafter “Products”). These Products are limited to: (a) *Metro S/2*  
11 *Barstools, Item# CBRA-653AB2-L, SKU# 612010106* and *Airlift Euro Barstool-Red, Item# WA-*  
12 *D020R, SKU# 0810077470* for TDCPP (“Tris Products”); and (b) *Airlift Euro Barstool-Red, Item#*  
13 *WA-D020R, SKU# 0810077470* for DEHP (“Phthalate Products”) (hereinafter, collectively the  
14 “Products”). Polyurethane foam that is supplied, shaped or manufactured for use as a component of  
15 another product, such as upholstered furniture, but which is not itself a finished product, is  
16 specifically excluded from the definition of Products and shall not be identified by Big Lots on  
17 Exhibit A as a Product.

### 18 1.6 Notices of Violation

19 On or about March 18, 2013, Englander served Big Lots and certain requisite public  
20 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) that provided the recipients  
21 with notice of alleged violations of Proposition 65 based on the alleged failure to warn customers,  
22 consumers, and workers in California that padded upholstered stools expose users to TDCPP (“Tris  
23 Products”).

24 On or about May 24, 2013, Englander issued a “Supplemental 60-Day Notice of Violation”  
25 to Big Lots and certain requisite public enforcement agencies (“Supplemental Notice”), alleging  
26 that the stools with vinyl/PVC upholstery expose users to DEHP (“Phthalate Products”). DEHP  
27 and other phthalates, including butyl benzyl phthalate (“BBP”) and Di-n-butyl phthalate (“DBP”)  
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1 are listed under Proposition 65 as chemicals known to cause birth defects and other reproductive  
2 harm.

3 The Notice and the Supplemental Notice shall hereinafter collectively be referred to as the  
4 “Notices.” To the best of the Parties’ knowledge, no public enforcer has commenced or is  
5 diligently prosecuting the allegations set forth in the Notices.

6 **1.7 Complaint**

7 On May 14, 2014, Plaintiff filed a Complaint in and for the County of Alameda against Big  
8 Lots and Does 1 through 150, *Peter Englander v. Big Lots, Inc., et al.*, Case No. RG14725352,  
9 alleging violations of Proposition 65, based on the alleged unwarned exposures to TDCPP  
10 contained in the Tris Products and unwarned exposures to DEHP contained in the Phthalate  
11 Products.

12 **1.8 No Admission**

13 Big Lots deny the material factual and legal allegations contained in Notices and Complaint  
14 and maintain that all products that they have manufactured, imported, distributed, and/or sold in  
15 California, including the Products, have been and are in compliance with all laws. Nothing in this  
16 Consent Judgment shall be construed as an admission by Big Lots of any fact, finding, conclusion,  
17 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be  
18 construed as an admission by Big Lots of any fact, finding, conclusion, issue of law, or violation of  
19 law. However, this section shall not diminish or otherwise affect Big Lots’ obligations,  
20 responsibilities, and duties under this Consent Judgment.

21 **1.9 Consent to Jurisdiction**

22 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
23 jurisdiction over Big Lots as to the allegations contained in the Notices and Complaint, that venue  
24 is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the  
25 provisions of this Consent Judgment pursuant to Proposition 65 and California Code of Civil  
26 Procedure § 664.6.

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1 **2. DEFINITIONS**

2 **2.1 California Customers**

3 “California Customer” shall mean any customer that Big Lots reasonably understand is  
4 located in California, has a California warehouse or distribution center, maintains a retail outlet in  
5 California, or has made internet sales into California on or after January 1, 2011 (“California  
6 Customer” does not include individuals who purchased the Products for their own use).

7 **2.2 Detectable**

8 “Detectable” shall mean containing more than 25 parts per million (“ppm”) (the equivalent  
9 of .0025%) of any one chemical in any material, component, or constituent of Tris Product, when  
10 analyzed pursuant to EPA testing methodologies 3545 and 8270C, or equivalent methodologies  
11 utilized by federal or state agencies to determine the presence, and measure the quantity, of TDCPP  
12 in a solid substance. As to the Phthalate Products, “Detectable” shall mean containing  
13 concentrations less than 0.1%, or 1000 ppm of DEHP in an accessible component of a Phthalate  
14 Product. For purposes of this Agreement “accessible component” means polyvinyl chloride or any  
15 soft plastic, vinyl or synthetic leather component of a Phthalate Product that could be touched by a  
16 person during reasonably foreseeable use.

17 **2.3 Effective Date**

18 “Effective Date” shall mean the date when the Court approves this Consent Judgment,  
19 including any tentative rulings not opposed by either of the Parties.

20 **2.4 Private Label Covered Products**

21 “Private Label Covered Products” means Products that bear a brand or trademark owned or  
22 licensed by a Retailer or affiliated entity that are sold or offered for sale by a Retailer in the State of  
23 California.

24 **2.5 Reformulated Products**

25 As to Tris Products, “Reformulated Products” shall mean those Products identified on  
26 Exhibit A that contain no Detectable amount of TDCPP. As to Phthalate Products, “Reformulated  
27 Products” shall mean those Phthalate Products identified on Exhibit A that contain concentrations  
28 less than 0.1%, or 1000 ppm each of, DEHP in accessible components.

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**2.6 Reformulation Standard**

As to Tris Products, the “Reformulation Standard” shall mean containing no more than 25 ppm for each of TDCPP. As to Phthalate Products, “Reformulation Standard” shall mean Phthalate Products containing concentrations less than 0.1%, or 1000 ppm of DEHP.

**2.7 Retailer**

“Retailer” means an individual or entity that offers a Product for retail sale to consumers in the State of California.

**3. INJUNCTIVE RELIEF: REFORMULATION**

**3.1 Reformulation Commitment**

Commencing on the Effective Date, Big Lots shall not distribute or sell to California Customers, or cause to be distributed or sold to California Customers, any Products that are not Reformulated Products, subject to Section 3.3 below. The Parties recognize that Big Lots does not manufacture nor control the manufacture of the Products.

**3.2 Vendor Notification/Certification**

On or before the June 1, 2015, Big Lots shall provide written notice to all of its then-current vendors of the Tris Products that will be sold or offered for sale in California, or to California Customers, instructing each such vendor to use reasonable efforts to provide only Reformulated Tris Products for potential sale in California. In addressing the obligation set forth in the preceding sentence, Big Lots shall not employ statements that will encourage a vendor to delay compliance with the Reformulation Standard applicable to Tris Products.

**3.3 Current Inventory**

Any Products in Big Lots’ inventory as of or after the Effective Date, that do not qualify as Reformulated Products and that Big Lots has reason to believe may be sold or distributed for sale in California, shall contain a clear and reasonable warning as set forth in Section 3.4 below.

1           3.4    **Product Warnings**

2                   3.4.1   **Product Labeling**

3           Any warning provided under Section 3.3 above shall be affixed to the packaging, labeling,  
4 or directly on each Product. Each warning shall be prominently placed with such conspicuousness  
5 as compared with other words, statements, designs, or devices as to render it likely to be read and  
6 understood by an ordinary individual under customary conditions before purchase. Each warning  
7 shall be provided in a manner such that the consumer or user understands to which specific Product  
8 the warning applies, so as to minimize the risk of consumer confusion.

9           For Tris Products, a warning provided pursuant to this Consent Judgment shall state:

10                           **WARNING:** This product contains TDCPP, a flame  
11   retardant chemical known to the State  
   of California to cause cancer.

12           Or, for Phthalate Products:

13                           **WARNING:** This product contains DEHP, a  
14   chemical known to the State of  
   California to cause birth defects and  
15   other reproductive harm.<sup>1</sup>

16           Attached as Exhibit B are template warnings developed by Plaintiff that are deemed to be  
17 clear and reasonable for purposes of this Consent Judgment.<sup>2</sup> Provided that the other requirements

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20           <sup>1</sup> The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be  
21 used if Big Lots had begun to use it, prior to the Effective Date. If Big Lots seek to use alternative  
22 warning language, other than the language specified above or the safe harbor warning specified in  
23 27 CCR § 25603.2, or seek to use an alternate method of transmission of the warning, they must  
24 obtain the Court’s approval of their proposed alternative and provide all Parties and the Office of  
the Attorney General with timely notice and the opportunity to comment or object before the Court  
acts on the request. The Parties agree that the following warning language shall not be deemed to  
meet the requirements of 27 CCR § 25601 *et seq.* and shall not be used pursuant to this Consent  
Judgment: (a) “cancer or birth defects or other reproductive harm”; and (b) “cancer, birth defects or  
other reproductive harm.”

25           <sup>2</sup> The characteristics of the template warnings are as follows: (a) a yellow hang tag  
26 measuring 3” x 5”, with no less than 12 point font, with the warning language printed on each side  
27 of the hang tag, which shall be affixed directly to the Product; (b) a yellow warning sign measuring  
28 8.5” x. 11”, with no less that 32 point font, with the warning language printed on each side, which  
shall be affixed directly to the Product; and (c) for Products sold at retail in a box or packaging, a  
yellow warning sticker measuring 3” x 3”, with no less than 12 point font, which shall be affixed  
directly to the Product packaging.

1 set forth in this Section are addressed, including as to the required warning statement and method of  
2 transmission as set forth above, Big Lots remains free not to utilize the template warnings.

3 **3.4.2 Internet Website Warning**

4 A warning shall be given in conjunction with the sale of the Products to California, or  
5 California Customers, via the internet, which warning shall appear on one or more web pages  
6 displayed to a purchaser during the checkout process. The following warning statement shall be  
7 used and shall: (a) appear adjacent to or immediately following the display, description, or price of  
8 the Product; (b) appear as a pop-up box; or (c) otherwise appear automatically to the customer. The  
9 warning text shall be the same type size or larger than the Product description text:<sup>3</sup>

10 For Tris Products:

11 **WARNING:** This product contains TDCPP, a flame  
12 retardant chemical known to the State  
of California to cause cancer.

13 Or, for Phthalate Products:

14  
15 **WARNING:** This product contains DEHP, a  
16 chemical known to the State of  
California to cause birth defects and  
17 other reproductive harm.

18 **3.5 Discontinuation of Sales**

19 Defendant represents that as of June 1, 2016, it will cease selling any remaining Products  
20 left in its inventory with warning labels, as described in Sections 3.3 and 3.4 above, in the State of  
21 California. In the event that the Defendant commences selling the Products in the future, Defendant  
22 shall only distribute or sell to California Customers, or cause to be distributed or sold to California  
23 Customers, Products that qualify as Reformulated Products.

24 **4. MONETARY PAYMENTS**

25 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

26 In settlement of all the claims referred to in this Consent Judgment, Big Lots shall  
27 pay the civil penalties shown for it on Exhibit A in accordance with this Section. Each penalty

28 <sup>3</sup> Footnote 2, *supra*, applies in this context as well.



1 payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1)  
2 and (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard  
3 Assessment (“OEHHA”), 25% of the penalty remitted in two equal payments to “Peter Englander,  
4 Client Trust Account.” Each penalty payment shall be made within two business days of the date it  
5 is due and be delivered to the addresses listed in Section 4.5 below. Big Lots shall be liable for  
6 payment of interest, at a rate of 10% simple interest, for all amounts due and owing under Section 4  
7 that are not received within two business days of the due date.

8           4.1.1 Initial Civil Penalty. Within 10 days of the Effective Date, Big Lots shall  
9 make an initial civil penalty payment in the amount identified on Big Lots’ Exhibit A, addressing  
10 the alleged Tris Products and Phthalate Products violations, to ”OEHHA” and “Peter Englander,  
11 Client Trust Account.”

#### 12           4.2     **Representations**

13           Big Lots represents that the sales data and other information concerning their size,  
14 knowledge of Listed Chemicals, and prior reformulation and/or warning efforts, they provided to  
15 Plaintiff were truthful to their knowledge and a material factor upon which Plaintiff has relied to  
16 determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this  
17 Consent Judgment. If, within nine months of the Effective Date, Plaintiff discovers and presents to  
18 Big Lots, evidence demonstrating that the preceding representation and warranty was materially  
19 inaccurate, then Big Lots shall have 30 days to meet and confer regarding the Plaintiff contention.  
20 Should this 30 day period pass without any such resolution between the Plaintiff and Big Lots,  
21 Plaintiff shall be entitled to file a formal legal claim including, but not limited to, a claim for  
22 damages for breach of contract.

#### 23           4.3     **Stipulated Penalties for Certain Violations of the Reformulation** 24           **Standard Applicable to Tris Products.**

25           If Plaintiff provides notice and appropriate supporting information to Big Lots that levels of  
26 TDCPP in excess of the respective Reformulation Standard have been detected in one or more  
27 Products labeled or otherwise marked in an identifiable manner as manufactured or imported after a  
28 deadline for meeting the Reformulation Standard has arisen for Big Lots under Section 3.1 above,

1 Big Lots may elect to pay a stipulated penalty to relieve any further potential liability under  
2 Proposition 65 or sanction under this Consent Judgment as to Tris Products. Supporting  
3 information to be provided to Big Lots shall include, but is not limited to, the following: a copy of  
4 the test report(s) identifying the laboratory undertaking the testing, the test method(s) used, and the  
5 test result(s); a statement of the material/component/constituent of the Product that was tested; a  
6 photo of the Product that was tested; and the receipt(s) demonstrating the place, date and amount of  
7 purchase of the Tris Product, although certain information related to the identity of the purchaser  
8 will be redacted. The stipulated penalty shall be \$1,500 if the violation level is below 100 ppm and  
9 \$3,000 if the violation level is between 100 ppm and 249 ppm, this being applicable for any amount  
10 in excess of the Reformulation Standards but under 250 ppm.<sup>4</sup> Plaintiff shall further be entitled to  
11 reimbursement of their associated expense in an amount not to exceed \$5,000 regardless of the  
12 stipulated penalty level. Big Lots under this Section must provide notice and appropriate  
13 supporting information, test results, and a letter from a company representative or counsel attesting  
14 to the information provided, to Plaintiff within 30 calendar days of receiving test results from  
15 Plaintiff's counsel. Any violation levels at or above 250 ppm shall be subject to the full remedies  
16 provided pursuant to this Consent Judgment and at law.

#### 17 4.4 Reimbursement of Fees and Costs

18 The Parties acknowledge that Plaintiff and his counsel offered to resolve this dispute  
19 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
20 this fee reimbursement issue to be resolved after the material terms of the agreement had been  
21 settled. Shortly after the other settlement terms had been finalized, Big Lots expressed a desire to  
22 resolve the fee and cost issue. Big Lots then agreed to pay Plaintiff and his counsel under general  
23 contract principles and the private attorney general doctrine codified at California Code of Civil  
24 Procedure section 1021.5 for all work performed through the mutual execution of this agreement,  
25 including the fees and costs incurred as a result of investigating, bringing this matter to Big Lots'  
26 attention, negotiating a settlement in the public interest, and seeking court approval of the same.

27 \_\_\_\_\_  
28 <sup>4</sup> Any stipulated penalty payments made pursuant to this Section should be allocated and  
remitted in the same manner as set forth in Sections 4.1 and 4.5, respectively.

1 In addition, the negotiated fee and cost figure expressly includes the anticipated significant amount  
2 of time Plaintiffs' counsel will incur to monitor various provisions in this agreement over the next  
3 two years. Big Lots more specifically agreed, upon the Court's approval and entry of this Consent  
4 Judgment, to pay Plaintiffs' counsel the amount of fees and costs indicated on Big Lots' Exhibit A.  
5 Within 10 days of the Effective Date, Big Lots shall issue a check payable to "The Chanler Group"  
6 to the address found in Section 8 below.

7 **4.5 Payment Procedures**

8 4.5.1 Issuance of Payments.

9 (a) All payments owed to Plaintiff and his counsel, pursuant to Sections  
10 4.1, 4.3 and 4.4 shall be delivered to the following payment address:

11 The Chanler Group  
12 Attn: Proposition 65 Controller  
13 2560 Ninth Street  
14 Parker Plaza, Suite 214  
15 Berkeley, CA 94710

16 (b) All payments owed to OEHHA, pursuant to Section 4.1, shall be  
17 delivered directly to OEHHA (Memo line "Prop 65 Penalties") at one of the following  
18 addresses, as appropriate:

19 For United States Postal Service Delivery:

20 Mike Gyurics  
21 Fiscal Operations Branch Chief  
22 Office of Environmental Health Hazard Assessment  
23 P.O. Box 4010  
24 Sacramento, CA 95812-4010

25 For Non-United States Postal Service Delivery:

26 Mike Gyurics  
27 Fiscal Operations Branch Chief  
28 Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

4.5.2 Proof of Payment to OEHHA. A copy of each check payable to OEHHA shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in Section 4.5.1(a) above, as proof of payment to OEHHA.

1 **5. CLAIMS COVERED AND RELEASED**

2 **5.1 Plaintiffs' Release of Proposition 65 Claims**

3 Plaintiff, acting on his own behalf and in the public interest, release Big Lots, their parents,  
4 subsidiaries, affiliated entities under common ownership, directors, officers, agents employees,  
5 attorneys, and each entity to whom Big Lots directly or indirectly distributes or sells Products,  
6 including, but not limited, to downstream distributors, wholesalers, customers, retailers,  
7 franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for  
8 violations of Proposition 65 through the Effective Date, based on unwarned exposures to TDCPP  
9 and/or DEHP in the Products, as set forth in the Notices. Compliance with the terms of this  
10 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to TDCPP  
11 and/or DEHP from the Products, as set forth in the Notices. The Parties further understand and  
12 agree that this Section 5.1 release shall not extend upstream to any entities, other than Big Lots, that  
13 manufactured the Products or any component parts thereof, or any distributors or suppliers who  
14 sold the Products or any component parts thereof to Big Lots. This Consent Judgment is a full,  
15 final and binding resolution of all claims that were or could have been asserted in this action against  
16 Big Lots.

17 **5.2 Plaintiffs' Individual Releases of Claims**

18 Plaintiff, in his individual capacity and not in his representative capacity, provides a release  
19 herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions,  
20 causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities,  
21 and demands of Plaintiff against Releasees of any nature, character, or kind, whether known or  
22 unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to  
23 TDCPP, TCEP, TDBPP, and/or DEHP in the Products manufactured, imported, distributed, or sold  
24 by Big Lots prior to the Effective Date.<sup>5</sup> The Parties further understand and agree that this Section  
25 5.2 release shall not extend upstream to any entities that manufactured the Products, or any  
26 component parts thereof, or any distributors or suppliers who sold the Products, any component

27 \_\_\_\_\_  
28 <sup>5</sup> The injunctive relief requirements of Section 3 shall apply to Additional Products as otherwise specified.

1 parts thereof to Big Lots. Nothing in this Section affects Plaintiffs' right to commence or prosecute  
2 an action under Proposition 65 against a Releasee that does not involve Big Lots' Products.

3 **5.3 Big Lots' Release of Englander**

4 Big Lots, on behalf of themselves, their past and current agents, representatives, attorneys,  
5 successors, and assignees, hereby waive any and all claims against Plaintiff and their attorneys and  
6 other representatives, for any and all actions taken or statements made (or those that could have  
7 been taken or made) by Plaintiff and his attorneys and other representatives, whether in the course  
8 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with  
9 respect to the Products.

10 **6. COURT APPROVAL**

11 This Consent Judgment is not effective until it is approved and entered by the Court and  
12 shall be null and void if, for any reason, it is not approved in its entirety and entered by the Court  
13 within one year after it has been fully executed by all Parties. If the Court does not approve the  
14 Consent Judgment, the Parties shall meet and confer as to whether to modify the language or appeal  
15 the ruling. If the Parties do not jointly agree on a course of action to take, then the case shall  
16 proceed in its normal course on the Court's trial calendar. If the Court's approval is ultimately  
17 overturned by an appellate court, the Parties shall meet and confer as to whether to modify the  
18 terms of this Consent Judgment. If the Parties do not jointly agree on a course of action to take,  
19 then the case shall proceed in its normal course on the Court's trial calendar. In the event that this  
20 Consent Judgment is entered by the Court and subsequently overturned by any appellate court, any  
21 monies that have been provided to OEHHA, Plaintiff or his counsel pursuant to Section 4, above,  
22 shall be refunded within 15 days of the appellate decision becoming final. If the Court does not  
23 approve and enter the Consent Judgment within one year of the Effective Date, any monies that  
24 have been provided to OEHHA or held in trust for Plaintiff or his counsel pursuant to Section 4,  
25 above, shall be refunded to Big Lots within 15 days.

26 **7. GOVERNING LAW**

27 The terms of this Consent Judgment shall be governed by the laws of the State of California.  
28 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by

1 reason of law generally, or if any of the provisions of this Consent Judgment are rendered  
2 inapplicable or are no longer required as a result of any such repeal or preemption, or rendered  
3 inapplicable by reason of law generally as to the Products, then Big Lots may provide written notice  
4 to Plaintiff of any asserted change in the law, and shall have no further obligations pursuant to this  
5 Consent Judgment with respect to, and to the extent that, the Products are so affected. Nothing in  
6 this Consent Judgment shall be interpreted to relieve Big Lots from any obligation to comply with  
7 any pertinent state or federal law or regulation.

8 **8. NOTICES**

9 Unless specified herein, all correspondence and notices required to be provided pursuant to  
10 this Consent Judgment shall be in writing and sent by: (i) personal delivery, (ii) first-class  
11 registered or certified mail, return receipt requested; or (iii) overnight courier to any party by the  
12 other party at the following addresses:

13 To Big Lots:	To Plaintiff:
14 At the address shown on Exhibit A	Proposition 65 Coordinator
	The Chanler Group
	2560 Ninth Street
	Parker Plaza, Suite 214
	Berkeley, CA 94710-2565

17 Any Party, from time to time, may specify in writing to the other Party a change of address to  
18 which all notices and other communications shall be sent.

19 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

20 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,  
21 each of which shall be deemed an original, and all of which, when taken together, shall constitute  
22 one and the same document. A facsimile or pdf signature shall be as valid as the original.

23 **10. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

24 Plaintiff and his attorneys agree to comply with the reporting form requirements referenced  
25 in California Health & Safety Code section 25249.7(f).  
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1 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

2 Plaintiff and Big Lots agree to support the entry of this agreement as a Consent Judgment  
3 and obtain approval of the Consent Judgment by the Court in a timely manner. The Parties  
4 acknowledge that, pursuant to California Health & Safety Code section 25249.7, a noticed motion  
5 is required to obtain judicial approval of this Consent Judgment, which Plaintiff shall draft and file.  
6 If any third party objection to the noticed motion is filed, Plaintiff and Big Lots shall work together  
7 to file a reply and appear at any hearing before the Court. This provision is a material component  
8 of the Consent Judgment and shall be treated as such in the event of a breach.

9 **12. MODIFICATION**

10 This Consent Judgment may be modified only: (1) by written agreement of the Parties and  
11 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion  
12 of any party and entry of a modified Consent Judgment by the Court.

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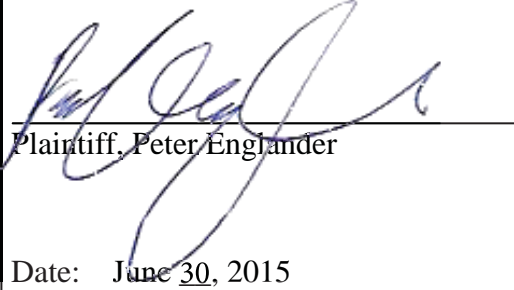
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1 **13. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their  
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this  
4 Consent Judgment.

5  
6 AGREED TO:

7   
8 \_\_\_\_\_  
9 Plaintiff, Peter Englander  
10  
11 Date: June 30, 2015

AGREED TO:

Defendant:  
Big Lots, Inc.

By: \_\_\_\_\_  
Name:  
Its:

Date: June \_\_, 2015

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AGREED TO:

Defendant:  
Big Lots Stores, Inc.

By: \_\_\_\_\_  
Name:  
Its:

Date: June \_\_, 2015



1 **13. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their  
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this  
4 Consent Judgment.

5  
6 **AGREED TO:**

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8 \_\_\_\_\_  
9 Plaintiff, Peter Englander

10 Date: June \_\_, 2015

**AGREED TO:**

Defendant:  
Big Lots, Inc.

11  
12  
13 By: \_\_\_\_\_  
14 Name: *J. Quinn Dorgan*  
15 Its: *Counsel - Litigation & Compliance*

16 Date: June 30, 2015

**AGREED TO:**

Defendant:  
Big Lots Stores, Inc.

17  
18 By: \_\_\_\_\_  
19 Name: *J. Quinn Dorgan*  
20 Its: *Counsel - Litigation & Compliance*

21 Date: June 30, 2015

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1 EXHIBIT A

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I. Name of Settling Defendants (Mandatory)

Big Lots, Inc. and Big Lots Stores, Inc.

II. Names of Releasees (Optional; May be Partial)

III. Types of Covered Products Applicable to Big Lots (Check All That Match 60-Day Notice or Supplemental Notice Received)

Foam-cushioned pads for children and infants to lie on, such as rest mats

Upholstered furniture:

a) Padded Upholstered Stools containing TDCPP, limited to *Metro S/2 Barstools, Item# CBRA-653AB2-L, SKU# 612010106* and *Airlift Euro Barstool-Red, Item# WA-D020R, SKU# 0810077470*.

b) Stools with vinyl/PVC upholstery containing DEHP, limited to, *Airlift Euro Barstool-Red, Item# WA-D020R, SKU# 0810077470*.

Foam-filled mattresses, mattress toppers, pillows, cushions, travel beds

Car seats, strollers

Other (specify):

IV. Settling Defendants' Required Settlement Payments

A. Penalties for Big Lots \$4,000 as follows:

\$4,000 initial payment due within 10 days of the Effective Date;

V. Payment to The Chanler Group for reimbursement of attorneys' fees and costs:

A. Fees and Costs for Big Lots: \$28,000, due within 10 days of the Effective Date.

VI. Person(s) to receive Notices pursuant to Section 8

Carol Brophy  
Name

Steven Fishman  
Name

Attorney  
Title

Chief Executive Officer, CEO  
Title

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Address

Sedgwick LLP  
333 Bush Street, 30th Floor  
San Francisco, CA 94104

Address

Big Lots, Inc.  
300 Phillipi Road  
Columbus, OH 432228