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")

March 27, 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

Current CEO/President
Big Lots!
3131 West Shaw Ave.
Fresno, CA 93711

Mike Vakili, Current President/CEO
Luna International, Inc.
123 Marcus Blvd.
Hauppauge, NY 11788

Mike Vakili, Current President/CEO
Luna International USA, Inc.
123 Marcus Blvd., Ste. 2
Hauppauge, NY 11788

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

Re: Violations of Proposition 65 concerning **Footwear containing Di (2-ethylhexyl) phthalate (DEHP) and Di-*n*-butyl Phthalate (DBP)**

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., Big Lots Stores, Inc., Big Lots!, Luna International, Inc., and Luna International USA, 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.

- **Footwear ("Sandals")** contains **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. **Footwear** also contains **Di-*n*-butyl Phthalate (DBP)**, also known as Dibutyl Phthalate, which is known to the State of California to cause reproductive toxicity, developmental, male, female. On December 2, 2005, the Governor of California added **Di-*n*-butyl Phthalate (DBP)** to the list of chemicals known to the State to cause developmental, female, and male reproductive toxicity. The addition took place more than twenty (20) months before CAG served this Notice.
    - An exemplar of the violations caused by **Footwear** includes but is not limited to:
        - **Fashion Sandals™ Sandals, Size ¾, Style #9306F, CA# 14124, RN# 82851**

- 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 **Footwear**. The packaging for the **Footwear** (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 **Footwear**, 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 **Footwear**, 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).

Violator, Big Lots!, caused occupational exposures, to their respective products, in violation of Proposition 65 by allowing employees to handle the **Footwear** in the course of packaging, shipping, distributing, promoting, and selling the **Footwear** without having first given clear and reasonable warnings to such employees that, by handling the **Footwear,** such employees would suffer exposures to **DEHP and DBP**. Violators' employees were exposed to **DEHP and DBP** by touching the **Footwear** with their bare skin at Violators' premises located at 3131 West Shaw Ave., Fresno, CA 93711, 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 March 27, 2009, and March 27, 2012, and are ever continuing thereafter.

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

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: 3/27/12

Reuben Yeroushalmi
Yeroushalmi & Associates
Attorneys for Consumer Advocacy Group, Inc.

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
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Hauppauge, NY 11788

Mike Vakili, Current
President/CEO
Luna International USA, Inc.
123 Marcus Blvd., Ste. 2
Hauppauge, NY 11788

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: 03/28/12

By: _____
Fereshteh Shakib

Distribution List

Alameda County District Attorney 1225 Fallon St, Room 900 Oakland, CA 94612	Los Angeles County District Attorney 210 W Temple St, 18th Floor Los Angeles, CA 90012	Mono County District Attorney PO Box 617 Bridgeport, CA 93517
Alpine County District Attorney PO Box 248 Markleeville, CA 96120	Madera County District Attorney 209 W Yosemite Ave Madera, CA 93637	San Joaquin County District Attorney PO Box 990 Stockton, CA 95201 -0990
Amador County District Attorney 708 Court, Suite 202 Jackson, CA 95642	Mariposa County District Attorney P.O. Box 730 Mariposa, CA 95338	San Francisco County District Attorney 850 Bryant St, Rm 322 San Francisco, CA 94103
Butte County District Attorney 25 County Center Dr. Oroville, CA 95965-3385	Marin County District Attorney 3501 Civic Center Drive, #130 San Rafael, CA 94903	San Diego County District Attorney 330 W. Broadway, Ste 1300 San Diego, CA 92101-3803
Calaveras County District Attorney 891 Mountain Ranch Road San Andreas, CA 95249	Mendocino County District Attorney P.O. Box 1000 Ukiah, CA 95482	San Bernardino County District Attorney 316 N Mountain View Ave San Bernardino, CA 92415-0004
Office of the Attorney General P.O. Box 70550 Oakland, CA 94612-0550	Los Angeles City Attorney 200 N Main St Ste 1800 Los Angeles CA 90012	San Francisco City Attorney # 1 Dr. Carlton B. Goodlett Place, Suite 234 San Francisco, CA 94102
Colusa County District Attorney Courthouse, 547 Market St. Colusa, CA 95932	Inyo County District Attorney P.O. Drawer D Independence, CA 93526	Placer County District Attorney 10810 Justice Center Drive Suite 240 Roseville, CA 95678-6231
Contra Costa County District Attorney 725 Court St., Room 402 Martinez, CA 94553	Orange County District Attorney PO Box 808 Santa Ana, CA 92702	Merced County District Attorney 650 W. 20th Street Merced, CA 95340
Del Norte County District Attorney 450 "H" St. Crescent City, CA 95531	Nevada County District Attorney 201 Church St, Suite 8 Nevada City, CA 95959-2504	Napa County District Attorney PO Box 720 Napa, CA 94559-0720
El Dorado County District Attorney 515 Main St. Placerville, CA 95667-5697	Plumas County District Attorney 520 Main Street, Rm 404 Quincy, CA 95971	Riverside County District Attorney 3960 Orange Street, Suite 6 Riverside, CA 92501
Fresno County District Attorney 2220 Tulare St, Ste. 1000 Fresno, CA 93721	Sacramento County District Attorney 901 G Street Sacramento, CA 95814	San Benito County District Attorney 419 4th St Hollister, CA 95023
Glenn County District Attorney PO Box 430 Willows, CA 95988	San Luis Obispo County District Attorney County Government Center, Rm 450 San Luis Obispo, CA 93408	Siskiyou County District Attorney PO Box 986 Yreka, CA 96097
Humboldt County District Attorney 825 5th St., 4th Floor Eureka, CA 95501	San Mateo County District Attorney 400 County Center Redwood City, CA 94063	Solano County District Attorney 600 Union Ave Fairfield, CA 94533
Imperial County District Attorney 939 W. Main St., 2nd Floor El Centro, CA 92243-2860	Santa Barbara County District Attorney 1112 Santa Barbara St. Santa Barbara, CA 93101	Sonoma County District Attorney 600 Administration Dr., Rm 212-J Santa Rosa, CA 95403
Kern County District Attorney 1215 Truxtun Ave. Bakersfield, CA 93301	Santa Clara County District Attorney 70 W Hedding St. San Jose, CA 95110	Shasta County District Attorney 1525 Court St, 3rd Floor Redding, CA 96001-1632
Kings County District Attorney Gov't Ctr, 1400 W Lacey Blvd Hanford, CA 93230	Santa Cruz County District Attorney PO Box 1159 Santa Cruz, CA 95061	Sierra County District Attorney PO Box 457 Downieville, CA 95936-0457
Lake County District Attorney 255 N Forbes St Lakeport, CA 95453-4790	Stanislaus County District Attorney PO Box 442 Modesto, CA 95353	Trinity County District Attorney PO Box 310 Weaverville, CA 96093
Modoc County District Attorney 204 S. Court Street Alturas, CA 96101-4020	Sutter County District Attorney 446 Second Street Yuba City, CA 95991	Yuba County District Attorney 215 5th St Marysville, CA 95901
San Diego City Attorney City Center Plaza 1200 3rd Ave # 1100 San Diego, CA 92101	Lassen County District Attorney 200 S Lassen St, Suite 8 Susanville, CA 96130	Monterey County District Attorney PO Box 1131 Salinas, CA 93902
Tuolumne County District Attorney 2 S Green St Sonora, CA 95370	Tulare County District Attorney County Civic Center, Rm 224 Visalia, CA 93291	Yolo County District Attorney 310 Second St Woodland, CA 95695
Ventura County District Attorney 800 S Victoria Ave Ventura, CA 93009	Tehama County District Attorney P.O. Box 519 Red Bluff, CA 96080	San Jose City Attorney 151 W. Mission St. San Jose, CA 95110