

UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION

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In the Matter of:	)	
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BJ'S WHOLESALE CLUB, INC.	)	CPSC Docket No.: 23- C0004
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	)	
	)	

**SETTLEMENT AGREEMENT**

1. In accordance with the Consumer Product Safety Act, 15 U.S.C. §§ 2051–2089 (“CPSA”), and 16 C.F.R. § 1118.20, BJ’s Wholesale Club, Inc. (“BJ’s” or the “Firm”), and the United States Consumer Product Safety Commission (“Commission” or “CPSC”), through its staff, hereby enter into this Settlement Agreement (“Agreement”). The Agreement and the incorporated attached Order resolve staff’s charges set forth below.

**THE PARTIES**

2. The Commission is an independent federal regulatory agency, established pursuant to, and responsible for, the enforcement of the CPSA, 15 U.S.C. §§ 2051–2089. By executing the Agreement, staff is acting on behalf of the Commission, pursuant to 16 C.F.R. § 1118.20(b). The Commission issues the Order under the provisions of the CPSA.

3. BJ’s is a corporation, organized and existing under the laws of the state of Delaware, with its principal place of business in Marlborough, Massachusetts.

## STAFF CHARGES

4. During 2011 and 2012, BJ's distributed in the United States approximately 1,778 portable air conditioners manufactured by Royal Sovereign International, Inc. ("Royal Sovereign"), model number PAC-3012 ("Subject Products").

5. The Subject Products are "consumer products" that were "import[ed]" and "distribut[ed] in commerce," as those terms are defined or used in sections 3(a)(5), (8), and (9) of the CPSA, 15 U.S.C. § 2052(a)(5), (8), and (9). BJ's is a "retailer" of the Subject Products, as such term is defined in section 3(a)(13) of the CPSA, 15 U.S.C. § 2052(a)(13).

### Violation of CPSA Section 19(a)(4)

6. The Subject Products contain a defect which could create a substantial product hazard or create an unreasonable risk of serious injury or death because the motor in the portable air conditioner can ignite the plastic enclosure of the unit, posing a fire and burn hazard.

7. Of the 1,778 units sold by BJ's during 2011 and 2012, a total of 509 units were returned to BJ's by consumers.

8. During the early morning hours of August 24, 2016, a Royal Sovereign Model PAC-3012 portable air conditioner purchased from BJ's was involved in a house fire in Smithtown, New York. A mother and her two young children were rescued from the fire; the mother died of her injuries in December 2016.

9. BJ's learned of the fire and pending investigation no later than March 2017. At that time, BJ's received a claim letter from plaintiffs' counsel and retained counsel for anticipated wrongful-death and personal-injury litigation arising out of the fire.

10. In March 2021, BJ's issued a notice to consumers who had purchased one of the Subject Products from BJ's advising that the product "does not meet our safety standards" and that "out of an abundance of caution [they should] stop using this product immediately."

11. Despite possessing information that reasonably supported the conclusion that the Subject Products contained a defect that could create a substantial product hazard or created an unreasonable risk of serious injury or death, BJ's never reported to the Commission.

12. The Commission and Royal Sovereign jointly announced a recall of the Subject Products on December 22, 2021.

#### Failure to Timely Report

13. Despite having information reasonably supporting the conclusion that the Subject Products contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, BJ's did not notify the Commission immediately of such defect or risk, as required by section 15(b)(3) and (4) of the CPSA, 15 U.S.C. § 2064(b)(3) and (4), in violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

14. Because the information in BJ's possession about the Subject Products constituted actual and presumed knowledge, BJ's knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4), as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

15. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, BJ's is subject to civil penalties for its knowing violation of section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4).

#### RESPONSE OF BJ'S

16. This Agreement does not constitute an admission by BJ's to the staff's charges as set forth in paragraphs 4 through 15 above, including without limitation that the Subject Products

contained a defect that could create a substantial product hazard or created an unreasonable risk of serious injury or death; that BJ's failed to notify the Commission in a timely matter in accordance with section 15(b) of the CPSA, 15 U.S.C. 2064(b); and that BJ's knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), as the term "knowingly" is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

17. BJ's enters into this Agreement to settle this matter and to avoid the cost, distraction, delay, uncertainty, and inconvenience of protracted litigation or other proceedings. BJ's does not admit that it violated the CPSA or any other law, and BJ's willingness to enter into this Agreement and Order does not constitute, nor is it evidence of, an admission by BJ's of liability or violation of any law.

18. At all relevant times, BJ's has had a product safety compliance program, both to help ensure the safety of the products it sells before they are marketed and to identify, monitor and evaluate potential product safety issues on an ongoing basis. BJ's maintains that upon learning of the issue regarding the Subject Products, it relied upon and understood that the manufacturer of the Subject Products, Royal Sovereign, would report to the CPSC.

#### AGREEMENT OF THE PARTIES

19. Under the CPSA, the Commission has jurisdiction over the matter involving the Subject Products and over BJ's.

20. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by BJ's or a determination by the Commission that BJ's violated the CPSA.

21. In settlement of staff's charges, BJ's shall pay a civil penalty in the amount of nine million dollars (\$9,000,000) ("Total Civil Penalty Amount"). The \$9,000,000 Payment

shall be paid within thirty (30) calendar days after receiving service of the Commission's final Order accepting the Agreement. All payments to be made under the Agreement shall constitute debts owing to the United States and shall be made by electronic wire transfer to the United States via <http://www.pay.gov>, for allocation to, and credit against, the payment obligations of BJ's under this Agreement. Failure to make such payment by the date specified in the Commission's final Order shall constitute Default.

22. The Commission or the United States may seek enforcement for any breach of, or any failure to comply with, any provision of this Agreement and Order in United States District Court, to seek relief including, but not limited to, collecting amounts due.

23. All unpaid amounts, if any, due and owing under the Agreement, shall constitute a debt due and immediately owing by BJ's to the United States, and interest shall accrue and be paid by BJ's at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b) from the date of Default, until all amounts due have been paid in full (hereinafter "Default Payment Amount" and "Default Interest Balance"). BJ's shall consent to a Consent Judgment in the amount of the Default Payment Amount and Default Interest Balance, and the United States, at its sole option, may collect the entire Default Payment Amount and Default Interest Balance, or exercise any other rights granted by law or in equity, including, but not limited to, referring such matters for private collection, and BJ's agrees not to contest, and hereby waives and discharges any defenses to, any collection action undertaken by the United States, or its agents or contractors, pursuant to this paragraph. BJ's shall pay the United States all reasonable costs of collection and enforcement under this paragraph, respectively, including reasonable attorney's fees and expenses.

24. After staff receives this Agreement executed on behalf of BJ's, staff shall promptly submit the Agreement to the Commission for provisional acceptance. Promptly following provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the *Federal Register*, in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16<sup>th</sup> calendar day after the date the Agreement is published in the *Federal Register*, in accordance with 16 C.F.R. § 1118.20(f).

25. This Agreement is conditioned upon, and subject to, the Commission's final acceptance, as set forth above, and it is subject to the provisions of 16 C.F.R. § 1118.20(h). Upon the later of: (i) the Commission's final acceptance of this Agreement and service of the accepted Agreement upon BJ's, and (ii) the date of issuance of the final Order, this Agreement shall be in full force and effect, and shall be binding upon the parties.

26. Effective upon the later of: (1) the Commission's final acceptance of the Agreement and service of the accepted Agreement upon BJ's and (2) and the date of issuance of the final Order, for good and valuable consideration, BJ's hereby expressly and irrevocably waives and agrees not to assert any past, present, or future rights to the following, in connection with the matter described in this Agreement as between the parties:

- (i) an administrative or judicial hearing;
- (ii) judicial review or other challenge or contest of the Commission's actions;
- (iii) a determination by the Commission of whether BJ's failed to comply with the CPSA and the underlying regulations;
- (iv) a statement of findings of fact and conclusions of law; and

- (v) any claims under the Equal Access to Justice Act.

27. BJ's shall maintain a compliance program ("Compliance Program") designed to ensure compliance with the CPSA with respect to any consumer product imported, manufactured, distributed or sold by BJ's, which shall contain the following elements:

- (i) written standards, policies, and procedures, including those designed to ensure that information that may relate to or impact CPSA compliance is conveyed effectively to personnel responsible for CPSA compliance, whether or not an injury has been reported;
- (ii) procedures and systems for tracking and reviewing claims, including warranty claims, and reports for safety concerns and for implementing corrective and preventive actions when compliance deficiencies or violations are identified;
- (iii) procedures requiring that information required to be disclosed by BJ's to the Commission is recorded, processed, and reported in accordance with applicable law;
- (iv) procedures requiring that all reporting made to the Commission is timely, truthful, complete, accurate, and in accordance with applicable law;
- (v) procedures requiring that prompt disclosure is made to BJ's management of any significant deficiencies or material weaknesses in the design or operation of such internal controls that are reasonably likely to affect adversely, in any material respect, BJ's ability to record, process and report to the Commission in accordance with applicable law;

- (vi) mechanisms to effectively communicate to all applicable BJ's employees, through training programs or other means, compliance-related company policies and procedures to prevent violations of the CPSA;
- (vii) a mechanism for confidential employee reporting of compliance-related questions or concerns to either a compliance officer or to another senior manager with authority to act as necessary;
- (viii) BJ's senior management responsibility for, and general board oversight of, CPSA compliance, including the implementation of steps to ensure that incident and injury data is reviewed and analyzed for purposes of CPSA Section 15(b) reporting;
- (ix) for at least three (3) years, an annual internal audit of the effectiveness of policies, procedures, systems, and training related to CPSA compliance that evaluates opportunities for improvement, deficiencies or weaknesses, and the Firm's overall culture of compliance; and
- (x) retention of all CPSA compliance-related records for at least five (5) years, and availability of such records to CPSC staff upon request.

28. BJ's shall submit a report, sworn to under penalty of perjury:

- (i) describing in detail its compliance program and internal controls and the actions BJ's has taken to comply with each subparagraph of paragraph 27;
- (ii) affirming that during the reporting period, BJ's has reviewed its compliance program and internal controls, including the actions referenced in subparagraph (i) of this paragraph, for effectiveness, and that



it complies with each subparagraph of paragraph 27, or describing in detail any non-compliance with any such subparagraph; and

- (iii) identifying the results of the annual internal audit referenced in paragraph 27(ix) and any changes or modifications made during the reporting period to BJ's compliance program or internal controls to ensure compliance with the terms of the CPSA and, in particular, the requirements of CPSA Section 15 related to timely reporting.

Such reports shall be submitted annually to the Director, Office of Compliance, Division of Enforcement and Litigation, for a period of three (3) years. The first report shall be submitted 30 days after the close of the first 12-month reporting period, which begins on the date of the Commission's Final Order of Acceptance of the Agreement, and successive reports shall be due annually on the same date thereafter.

29. Notwithstanding and in addition to the above, upon request of staff, BJ's shall promptly provide written documentation of any changes or modifications to its compliance program or internal controls and procedures, including the effective dates of the changes or modifications thereto. BJ's shall cooperate fully and truthfully with staff and shall make available all non-privileged information and materials and personnel deemed necessary by staff to evaluate BJ's compliance with the terms of the Agreement.

30. The parties acknowledge and agree that the Commission may publicize the terms of the Agreement and the Order.

31. BJ's represents that the Agreement:

- (i) is entered into freely and voluntarily, without any degree of duress or compulsion whatsoever;

- (ii) has been duly authorized; and
- (iii) constitutes the valid and binding obligation of BJ's, enforceable against BJ's in accordance with its terms. The individuals signing the Agreement on behalf of BJ's represent and warrant that they are duly authorized by BJ's to execute the Agreement.

32. The signatories represent that they are authorized to execute this Agreement.

33. The Agreement is governed by the laws of the United States.

34. The Agreement and the Order shall apply to, and be binding upon, BJ's and each of its parents, successors, transferees, and assigns; and a violation of the Agreement or Order may subject BJ's, and each of its parents, successors, transferees, and assigns, to appropriate legal action.

35. The Agreement, any attachments, and the Order constitute the complete agreement between the parties on the subject matter contained therein.

36. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. For purposes of construction, the Agreement shall be deemed to have been drafted by both of the parties and shall not, therefore, be construed against any party, for that reason, in any subsequent dispute.

37. The Agreement may not be waived, amended, modified, or otherwise altered, except as in accordance with the provisions of 16 C.F.R. § 1118.20(h). The Agreement may be executed in counterparts.

38. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the

Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and BJ's agree in writing that severing the provision materially affects the purpose of the Agreement and the Order.

(Signatures on next page)

BJ'S WHOLESALE CLUB, INC.

Dated: 9/7/2023

By: /s/  
Graham Luce  
BJ's Wholesale Club, Inc.  
EVP General Counsel

Dated: 9/7/2023

By: /s/  
Erik Swanholt  
*Foley & Lardner*  
Counsel to BJ's Wholesale Club, Inc.

U.S. CONSUMER PRODUCT SAFETY  
COMMISSION

Mary B. Murphy, Director  
Leah Ippolito, Supervisory Attorney  
Division of Enforcement and Litigation

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Mark S. Raffman  
Trial Attorney  
Division of Enforcement and Litigation  
Office of Compliance and Field Operations

UNITED STATES OF AMERICA  
 CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of:	)	
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BJ’S WHOLESALE CLUB, INC.	)	CPSC Docket No.: 23-C0004
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**ORDER**

Upon consideration of the Settlement Agreement entered into between BJ’s Wholesale Club, Inc. (“BJ’s”) and the U.S. Consumer Product Safety Commission (“Commission” or “CPSC”), and the Commission having jurisdiction over the subject matter and over BJ’s, and it appearing that the Settlement Agreement is in the public interest, the Settlement Agreement is incorporated by reference and it is:

Provisionally accepted and this Order issued on the 29<sup>th</sup> day of September, 2023.

**BY ORDER OF THE COMMISSION:**

/s/  
 \_\_\_\_\_  
 Alberta E. Mills, Secretary  
 U.S. Consumer Product Safety Commission