

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

SHIMS BARGAIN, INC., a California Corporation, and DOES 1-50

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

CONSUMER ADVOCACY GROUP, INC., in the public interest

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)  
**CONFORMED COPY  
OF ORIGINAL FILED**  
Los Angeles Superior Court  
DEC 02 2008  
John A. Clarke, Executive Officer/Clerk  
*M. Garcia*  
BY MARY GARCIA, Deputy

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

*Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.*

*Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.*

The name and address of the court is:  
(El nombre y dirección de la corte es):

Superior Court of California for the County of Los Angeles  
Stanley Mosk Courthouse  
111 North Hill Street, Los Angeles, CA 90012

CASE NUMBER:  
(Número del Caso):

BCA02965  
BCA02965

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Daniel D. Cho (SBN 105409), YEROUSHALMI & ASSOCIATES  
3700 Wilshire Boulevard, Suite 480, Los Angeles, CA 90010; Tel (213) 382-3183

DATE:  
(Fecha)

DEC 02 2008

**JOHN A. CLARKE, CLERK**

(Secretario)

**M. GARCIA**

Deputy  
(Adjunto)

(For proof of service of this summons use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of (specify):
3.  on behalf of (specify):
 

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4.  by personal delivery on (date):

COPY

1 REUBEN YEROUSHALMI (SBN 193981)  
2 DANIEL D. CHO (SBN 105409)  
3 BEN YEROUSHALMI (SBN 232540)  
4 YEROUSHALMI & ASSOCIATES  
5 3700 WILSHIRE BLVD., SUITE 480  
6 LOS ANGELES, CA 90010  
7 Telephone: 213-382-3183  
8 Facsimile: 213-382-3430

9 Attorneys for Plaintiffs,  
10 Consumer Advocacy Group, Inc

**CONFORMED COPY**  
OF ORIGINAL FILED  
Los Angeles Superior Court

DEC 02 2008

John A. Clarke, Executive Officer/Clerk

BY MARY GARCIA, Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA,  
12 COUNTY OF LOS ANGELES - UNLIMITED

BC402965

12 CONSUMER ADVOCACY GROUP, INC., ) CASE NO.  
13 in the public interest, )  
14 Plaintiff, ) COMPLAINT FOR PENALTY,  
15 v. ) INJUNCTION, AND RESTITUTION  
16 SHIMS BARGAIN, INC., a California ) Violation of Proposition 65, the Safe  
17 corporation, and DOES 1-50; ) Drinking Water and Toxic Enforcement  
18 Defendants. ) Act of 1986 (Health & Saf. Code., §§  
19 ) 25249.5, et seq.)  
20 ) ACTION IS AN UNLIMITED CIVIL  
21 ) CASE (exceeds \$25,000)  
22 )  
23 )  
24 )

25 Plaintiff, Consumer Advocacy Group, Inc., alleges a cause of action against defendants as  
26 follows:

27 ///

28 ///

## THE PARTIES

1. Plaintiff, Consumer Advocacy Group, Inc. ("Plaintiff"), is a non-profit corporation qualified to do business in the State of California. It brings this action in the public interest as defined under Health and Safety Code section 25249.7, subdivision (d).
2. Defendant Shims Bargain, Inc. is a California corporation.
3. Plaintiff is ignorant of the true names and capacities of defendants Does 1-50, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
4. Plaintiff is informed, believes, and thereon alleges that Shims Bargain, Inc. at all times mentioned herein has conducted business within the State of California.
5. At all times mentioned herein, "Defendants" include Shims Bargain, Inc. and Does 1-50.
6. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the Defendants was a person doing business within the meaning of Health and Safety Code section 25249.11, subdivision (b), and that each of the Defendants had ten or more employees.

## JURISDICTION

7. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those given by statute to other trial courts.

## BACKGROUND AND PRELIMINARY FACTS

8. In 1986, California voters approved an initiative to address growing concerns about exposure to toxic chemicals. The initiative, The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources from



- 1 13. Each of the Defendants is, and at all times mentioned herein, was a manufacturer or  
2 distributor Cal-Best™ Soldering Iron 110V / 120 V, 30W (Item: 21109) (hereinafter  
3 “Cal-Best”), a consumer product designed for use in soldering.
- 4 14. Plaintiff is informed, believes, and thereon alleges that Cal-Best contains Lead.
- 5 15. On October 1, 1992, the Governor of California added Lead and lead compounds to the  
6 list of chemicals known to the State to cause cancer (*Cal. Code Regs. 22 § 12000(b)*).  
7 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months  
8 after addition of Lead and lead compounds to the list of chemicals known to the State to  
9 cause cancer, Lead and lead compounds became fully subject to Proposition 65 warning  
10 requirements and discharge prohibitions.
- 11 16. On February 27, 1987, the Governor of California added Lead to the list of chemicals  
12 known to the State to cause reproductive toxicity (*Cal. Code Regs. 22 § 12000(c)*). Lead  
13 is known to the State to cause developmental, female, and male reproductive toxicity.  
14 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months  
15 after addition of Lead to the list of chemicals known to the State to cause reproductive  
16 toxicity, Lead became fully subject to Proposition 65 warning requirements and discharge  
17 prohibitions.
- 18 17. Plaintiff is informed, believes, and thereon alleges that between October 2, 2004 and the  
19 present each of the Defendants knowingly and intentionally exposed California  
20 consumers and users of Cal-Best, which it manufactured or distributed as mentioned  
21 above, to Lead, without first giving clear and reasonable warning of such to the exposed  
22 persons before the time of exposure. Defendants have distributed Cal-Best in California.  
23 Defendants thereby violated Proposition 65.
- 24 18. Cal-Best is a soldering kit that includes two lengths of lead soldering wire. The principal  
25 routes of exposure are through dermal contact, ingestion, and inhalation when persons  
26 handle Cal-Best without wearing gloves or by touching bare skin with gloves after  
27 handling the lead solder wire or by breathing in particulate matter emanating from the  
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1 lead soldering wire as they use the lead soldering wire or by inserting surfaces (e.g.,  
2 hands) that have encountered the lead soldering wire into their mouths.

3 19. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
4 Proposition 65 as to Cal-Best have been ongoing and continuous to the date of the  
5 signing of this complaint, so that a separate and distinct violation of Proposition 65  
6 occurred each and every time a consumer was exposed to Lead by using Cal-Best as  
7 mentioned herein.

8 20. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
9 mentioned herein is ever continuing.

10  
11 **SATISFACTION OF PRIOR NOTICE**

12 21. On or about October 2, 2007, Plaintiff gave notice of alleged violations of Health and  
13 Safety Code section 25249.6 subject to a private action to Shims Bargain, Inc., identified  
14 in the notice as Shims Bargain, Inc., and to the California Attorney General, County  
15 District Attorneys, and City Attorneys for each city containing a population of at least  
16 750,000 people in whose jurisdictions the violations allegedly occurred, concerning Cal-  
17 Best.

18 22. On or about June 11, 2008, Plaintiff gave notice of alleged violations of Health and  
19 Safety Code section 25249.6 subject to a private action to Shims Bargain, Inc., identified  
20 in the notice as Shims Bargain, Inc., and to the California Attorney General, County  
21 District Attorneys, and City Attorneys for each city containing a population of at least  
22 750,000 people in whose jurisdictions the violations allegedly occurred, concerning Cal-  
23 Best.

24 23. Before sending the notice of alleged violation, Plaintiff investigated the consumer  
25 products involved, the likelihood that such products would cause users to suffer  
26 significant exposures to Lead, the corporate structure of each of the Defendants, and  
27 other relevant matters.  
28

1 24. Plaintiff's notice of alleged violation included a certificate of merit executed by the  
2 attorney for the noticing party, Plaintiff. The certificates of merit stated that the attorney  
3 for Plaintiff who executed the certificate had consulted with at least one person with  
4 relevant and appropriate expertise who had reviewed data regarding the exposure to  
5 Lead, respectively, which are the subject Proposition 65-listed chemicals of this action.  
6 Based on that information, the attorney for Plaintiff who executed the certificates  
7 believed there was a reasonable and meritorious case for this private action. The attorney  
8 for Plaintiff attached to the certificates of merit served on the Attorney General  
9 information sufficient to establish the basis of the certificates of merit.

10 25. Plaintiff is commencing this action more than sixty days from the dates that Plaintiff gave  
11 notice of the alleged violations to Shims Bargain, Inc. and to the public prosecutors  
12 referenced in Paragraphs 21 and 22.

13 26. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
14 any applicable district attorney or city attorney has commenced and is diligently  
15 prosecuting an action against the Defendants.

16 27. Plaintiff's allegations concern a "consumer product exposure," which is an exposure that  
17 results from a person's acquisition, purchase, storage, consumption, or other reasonably  
18 foreseeable use of a consumer good. Cal-Best is a consumer product, and as mentioned  
19 in paragraphs 13-20, exposure to Lead took place as a result of such consumption and  
20 foreseeable use.

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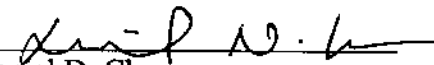
**PRAYER FOR RELIEF**

Plaintiff demands against each of the Defendants as follows:

1. A permanent injunction mandating Proposition 65 compliant warnings;
2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
3. Costs of suit;
4. Reasonable attorney fees and costs; and
5. Any further relief that the court may deem just and equitable.

Dated: November 26, 2008

YEROUSHALMI & ASSOCIATES

BY:   
Daniel D. Cho  
Attorneys for Plaintiff,  
Consumer Advocacy Group, Inc.