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1 Reuben Yeroushalmi (SBN 193981)  
2 Daniel D. Cho (SBN 105409)  
3 Ben Yeroushalmi (SBN 232540)  
4 **YEROUSHALMI & ASSOCIATES**  
5 9100 Wilshire Boulevard, Suite 610E  
6 Beverly Hills, California 90213  
7 Telephone: 310.623.1926  
8 Facsimile: 310.623.1930

9 Attorneys for Plaintiffs,  
10 Consumer Advocacy Group, Inc.

**CONFIRMED COPY**  
Superior Court of California  
County of Los Angeles  
NOV 1 8 2010  
John A. Loring, JUDGE  
By RUGENA BLOOM Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

**BC449678**

13 CONSUMER ADVOCACY GROUP, INC.,  
14 in the public interest,

15 Plaintiff,

16 v.

17 SHIMS MARKETING, INC., a California  
18 Corporation, SHIMS BARGAIN CENTERS,  
19 a California Corporation, and DOES 1-20;

20 Defendants.

CASE NO.

COMPLAINT FOR PENALTY,  
INJUNCTION, AND RESTITUTION

Violation of Proposition 65, the Safe  
Drinking Water and Toxic Enforcement  
Act of 1986 (*Health & Safety Code*, §  
25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL  
CASE (exceeds \$25,000)

21 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against Defendants as  
22 follows:

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**THE PARTIES**

- 1  
2 1. Plaintiff Consumer Advocacy Group, Inc. ("Plaintiff" OR "CAG") is a non-profit  
3 corporation qualified to do business in the State of California. CAG is a person within  
4 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting  
5 as a private attorney general, brings this action in the public interest as defined under  
6 Health and Safety Code section 25249.7, subdivision (d).
- 7 2. Defendant Shims Marketing, Inc. ("Shims Marketing") is a company incorporated in the  
8 State of California.
- 9 3. Defendant Shims Bargain Centers ("Shims Bargain") is a company incorporated in the  
10 State of California.
- 11 4. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-20,  
12 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
13 complaint to allege their true names and capacities when ascertained. Plaintiff is  
14 informed, believes, and thereon alleges that each fictitiously named defendant is  
15 responsible in some manner for the occurrences herein alleged and the damages caused  
16 thereby.
- 17 5. At all times mentioned herein, the term "Defendants" includes Shims Marketing, Inc.,  
18 Shims Bargain Centers and Does 1-20.
- 19 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
20 times mentioned herein have conducted business within the State of California.
- 21 7. At all times relevant to this action, each of the Defendants, including Does 1-20, was an  
22 agent, servant, or employee of each of the other Defendants. In conducting the activities  
23 alleged in this Complaint, each of the Defendants was acting within the course and scope  
24 of this agency, service, or employment, and was acting with the consent, permission, and  
25 authorization of each of the other Defendants. All actions of each of the Defendants  
26 alleged in this Complaint were ratified and approved by every other Defendant or their  
27 officers or managing agents. Alternatively, each of the Defendants aided, conspired with  
28 and/or facilitated the alleged wrongful conduct of each of the other Defendants.

- 1 8. Alternatively, at times relevant to this action, Defendant Shims Marketing so controlled  
2 Defendant Shims Bargain as to render Shims Bargain the mere instrumentality of Shims  
3 Marketing. Therefore, it is in furtherance of the ends of justice, that the Corporate form  
4 of Defendant Shims Bargain should be disregarded.
- 5 9. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
6 Defendants was a person doing business within the meaning of Health and Safety Code  
7 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
8 employees at all relevant times.

9 **JURISDICTION**

- 10 10. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
11 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
12 those given by statute to other trial courts. This Court has jurisdiction over this action  
13 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
14 violations of Proposition 65 in any Court of competent jurisdiction.
- 15 11. This Court has jurisdiction over Defendants named herein because Defendants either  
16 reside or are located in this State or are foreign corporations authorized to do business in  
17 California, are registered with the California Secretary of State, or who do sufficient  
18 business in California, have sufficient minimum contacts with California, or otherwise  
19 intentionally avail themselves of the markets within California through their manufacture,  
20 distribution, promotion, marketing, or sale of their products within California to render  
21 the exercise of jurisdiction by the California courts permissible under traditional notions  
22 of fair play and substantial justice.
- 23 12. Venue is proper in the County of Los Angeles because one or more of the instances of  
24 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or  
25 because Defendants conducted, and continue to conduct, business in the County of Los  
26 Angeles with respect to the consumer products that are the subject of this action.

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1 17. Plaintiff identified certain practices of manufacturers and distributors of lead-bearing  
2 products of exposing, knowingly and intentionally, persons in California to the  
3 Proposition 65-listed chemicals of such products without first providing clear and  
4 reasonable warnings of such to the exposed persons prior to the time of exposure.  
5 Plaintiff later discerned that Defendants engaged in such practice.

6 18. On October 1, 1992, the Governor of California added Lead and lead compounds to the  
7 list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)).  
8 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months  
9 after addition of Lead and lead compounds to the list of chemicals known to the State to  
10 cause cancer, Lead and lead compounds became fully subject to Proposition 65 warning  
11 requirements and discharge prohibitions.

12 19. On February 27, 1987, the Governor of California added Lead to the list of chemicals  
13 known to the State to cause reproductive toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)).  
14 Lead is known to the State to cause developmental, female, and male reproductive  
15 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)  
16 months after addition of Lead to the list of chemicals known to the State to cause  
17 reproductive toxicity, Lead became fully subject to Proposition 65 warning requirements  
18 and discharge prohibitions.

19 **SATISFACTION OF PRIOR NOTICE**

20 20. On or about July 9, 2010 Plaintiff gave notice of alleged violations of Health and Safety  
21 Code section 25249.6, concerning consumer products exposures, subject to a private  
22 action to Shims Marketing, identified in the notice as "Shim's Marketing, Inc.," Shims  
23 Bargain, identified in the notice as "Shim's Bargain Centers," and to the California  
24 Attorney General, County District Attorneys, and City Attorneys for each city containing  
25 a population of at least 750,000 people in whose jurisdictions the violations allegedly  
26 occurred, concerning the following consumer products:

27 (1) Torch Heavy Duty Rubber Flashlight (Item No: TL-0114);

1 (2) 4 PCS Black Plastic Clamps with orange tips attached to yellow, black & red  
2 cardboard backing; and

3 (3) P.I.T. 25ft Measuring Tape (Item No. T17).

4 21. On or about August 18, 2010, Plaintiff gave notice of alleged violations of Health and  
5 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
6 private action to Shims Marketing, identified in the notice as "Shim's Marketing, Inc.,"  
7 Shims Bargain, identified in the notice as "Shim's Bargain Centers", and to the California  
8 Attorney General, County District Attorneys, and City Attorneys for each city containing  
9 a population of at least 750,000 people in whose jurisdictions the violations allegedly  
10 occurred, concerning the following consumer products:

11 (1) "Sport" Black and Gold Print children's Sandals, Size 25, Product No. 555A,

12 (2) "D" "Sport" Red, Black, and Gold Print Children's Sandals, Size 32, Product  
13 No. 228A15, and

14 (3) "D" "Sport" Burgundy, Brown, and Black Children's Sandals, Size 33, Product  
15 No. 338

16 22. Before sending the notice of alleged violation, Plaintiff investigated the consumer  
17 products involved, the likelihood that such products would cause users to suffer  
18 significant exposures to lead, and the corporate structure of each of the Defendants.

19 23. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
20 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
21 Plaintiff who executed the certificate had consulted with at least one person with relevant  
22 and appropriate expertise who reviewed data regarding the exposures to lead,  
23 respectively, which are the subject Proposition 65-listed chemicals of this action. Based  
24 on that information, the attorney for Plaintiff who executed the Certificate of Merit  
25 believed there was a reasonable and meritorious case for this private action. The attorney  
26 for Plaintiff attached to the Certificate of Merit served on the Attorney General the  
27 confidential factual information sufficient to establish the basis of the Certificate of  
28 Merit.

1 24. Plaintiff's notice of alleged violations also included a Certificate of Service and a  
2 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
3 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

4 25. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
5 gave notice of the alleged violations to Shims Marketing and Shims Bargain and the  
6 public prosecutors referenced in Paragraphs 20 and 21.

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

10 27. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
11 filing this Complaint.

#### 12 13 FIRST CAUSE OF ACTION

14 (By Consumer Advocacy Group, Inc. and against Shims Marketing and Shims Bargain for  
15 Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986  
16 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

#### 17 **Torch Heavy Duty Rubber Flashlight (Item No: TL-0114)**

18 28. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
19 paragraphs 1 through 27 of this complaint as though fully set forth herein.

20 29. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
21 distributor, promoter, or retailer of Torch Heavy Duty Rubber Flashlight  
22 (Item No: TL-0114) ("Flashlight"), a consumer product designed for personal use.

23 30. Plaintiff is informed, believes, and thereon alleges that Flashlight contains Lead.

24 31. Defendants knew or should have known that Lead has been identified by the State of  
25 California as a chemical known to cause cancer and reproductive toxicity and therefore  
26 was subject to Proposition 65 warning requirements. Defendants were also informed of  
27 the presence of Lead in the Flashlight within Plaintiff's notice of alleged violations  
28 further discussed above at Paragraphs 20.

1 32. Plaintiff's allegations regarding Flashlight concern "[c]onsumer products exposure[s],"  
2 which "is an exposure that results from a person's acquisition, purchase, storage,  
3 consumption, or other reasonably foreseeable use of a consumer good, or any exposure  
4 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.  
5 Flashlight is a consumer product, and, as mentioned in herein, exposures to Lead took  
6 place as a result of such normal and foreseeable consumption and use.

7 33. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
8 Persons sustain exposures by handling Flashlight without wearing gloves or by touching  
9 bare skin or mucous membranes with gloves after handling Flashlight as well as hand to  
10 mouth contact (*e.g.*, by inserting surfaces, such as hands, that have contacted Flashlight  
11 into their mouths), hand to mucous membrane, or breathing in particulate matter released  
12 or emanating from Flashlight during application and installation, as well as through  
13 environmental mediums that carry the Lead and Lead Compounds once contained within  
14 the Flashlight.

15 34. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
16 Proposition 65 as to Flashlight have been ongoing and continuous to the date of the  
17 signing of this complaint, as Defendants engaged and continue to engage in conduct  
18 which violates Health and Safety Code section 25249.6, including the manufacture,  
19 distribution, promotion, and sale of Flashlight, so that a separate and distinct violation of  
20 Proposition 65 occurred each and every time a person was exposed to Lead by Flashlight  
21 as mentioned herein.

22 35. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
23 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
24 violations alleged herein will continue to occur into the future.

25 36. Based on the allegations herein, Defendants are liable for civil penalties of up to  
26 \$2,500.00 per day per individual exposure to Lead from Flashlight, pursuant to Health  
27 and Safety Code section 25249.7(b).

1 37. In the absence of equitable relief, the general public and Defendants' employees will  
2 continue to be involuntarily exposed to Lead that is contained in Flashlight, creating a  
3 substantial risk of irreparable harm. Thus, by committing the acts alleged herein,  
4 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate  
5 remedy at law.

6 **SECOND CAUSE OF ACTION**

7 (By Consumer Advocacy Group, Inc. and against Shims Marketing and Shims Bargain for  
8 Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986  
9 (*Health & Safety Code, §§ 25249.5, et seq.*))

10 **4 PCS Black Plastic Clamps with orange tips attached to yellow, black & red cardboard  
11 backing.**

12 38. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
13 paragraphs 1 through 27 of this complaint as though fully set forth herein.

14 39. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
15 distributor, promoter, or retailer of 4 PCS Black Plastic Clamps with orange tips attached  
16 to yellow, black & red cardboard backing ("Clamps"), a consumer product designed for  
17 personal use.

18 40. Plaintiff is informed, believes, and thereon alleges that Clamps contains Lead.

19 41. Defendants knew or should have known that Lead has been identified by the State of  
20 California as a chemical known to cause cancer and reproductive toxicity and therefore  
21 was subject to Proposition 65 warning requirements. Defendants were also informed of  
22 the presence of Lead in the Clamps within Plaintiff's notice of alleged violations further  
23 discussed above at Paragraphs 20.

24 42. Plaintiff's allegations regarding Clamps concern "[c]onsumer products exposure[s],"  
25 which "is an exposure that results from a person's acquisition, purchase, storage,  
26 consumption, or other reasonably foreseeable use of a consumer good, or any exposure  
27 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.

1 Clamps is a consumer product, and, as mentioned in herein, exposures to Lead took place  
2 as a result of such normal and foreseeable consumption and use.

3 43. The principal routes of exposure are through dermal contact, ingestion and inhalation.

4 Persons sustain exposures by handling Clamps without wearing gloves or by touching  
5 bare skin or mucous membranes with gloves after handling Clamps as well as hand to  
6 mouth contact (e.g., by inserting surfaces, such as hands, that have contacted Clamps into  
7 their mouths), hand to mucous membrane, or breathing in particulate matter released or  
8 emanating from Clamps during application and installation, as well as through  
9 environmental mediums that carry the Lead and Lead Compounds once contained within  
10 the Clamps.

11 44. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
12 Proposition 65 as to Clamps have been ongoing and continuous to the date of the signing  
13 of this complaint, as Defendants engaged and continue to engage in conduct which  
14 violates Health and Safety Code section 25249.6, including the manufacture, distribution,  
15 promotion, and sale of Clamps. so that a separate and distinct violation of Proposition 65  
16 occurred each and every time a person was exposed to Lead by Clamps as mentioned  
17 herein.

18 45. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
19 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
20 violations alleged herein will continue to occur into the future.

21 46. Based on the allegations herein, Defendants are liable for civil penalties of up to  
22 \$2,500.00 per day per individual exposure to Lead from Clamps, pursuant to Health and  
23 Safety Code section 25249.7(b).

24 47. In the absence of equitable relief, the general public and Defendants' employees will  
25 continue to be involuntarily exposed to Lead that is contained in Clamps, creating a  
26 substantial risk of irreparable harm. Thus, by committing the acts alleged herein,  
27 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate  
28 remedy at law.

1 **THIRD CAUSE OF ACTION**

2 **(By Consumer Advocacy Group, Inc. and against Shims Marketing and Shims Bargain for**  
3 **Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**  
4 **(Health & Safety Code, §§ 25249.5, et seq.))**

5 **P.I.T. 25 FT Measuring Tape (Item No. T17)**

- 6 48. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
7 paragraphs 1 through 27 of this complaint as though fully set forth herein.
- 8 49. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
9 distributor, promoter, or retailer of P.I.T. 25 Ft. Measuring Tape (Item No. T17)  
10 (“Measuring Tape”), a consumer product designed for personal use.
- 11 50. Plaintiff is informed, believes, and thereon alleges that Measuring Tape contains Lead.
- 12 51. Defendants knew or should have known that Lead has been identified by the State of  
13 California as a chemical known to cause cancer and reproductive toxicity and therefore  
14 was subject to Proposition 65 warning requirements. Defendants were also informed of  
15 the presence of Lead in the Measuring Tape within Plaintiff’s notice of alleged violations  
16 further discussed above at Paragraphs 20.
- 17 52. Plaintiff’s allegations regarding Measuring Tape concern “[c]onsumer products  
18 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,  
19 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
20 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*  
21 *25602(b)*. Measuring Tape is a consumer product, and, as mentioned in herein,  
22 exposures to Lead took place as a result of such normal and foreseeable consumption and  
23 use.
- 24 53. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
25 Persons sustain exposures by handling Measuring Tape without wearing gloves or by  
26 touching bare skin or mucous membranes with gloves after handling Measuring Tape as  
27 well as hand to mouth contact (e.g., by inserting surfaces, such as hands, that have  
28 contacted Measuring Tape into their mouths), hand to mucous membrane, or breathing in  
particulate matter released or emanating from Measuring Tape during application and

1 installation, as well as through environmental mediums that carry the Lead and Lead  
2 Compounds once contained within the Measuring Tape.

3 54. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
4 Proposition 65 as to Measuring Tape have been ongoing and continuous to the date of the  
5 signing of this complaint, as Defendants engaged and continue to engage in conduct  
6 which violates Health and Safety Code section 25249.6, including the manufacture,  
7 distribution, promotion, and sale of Measuring Tape, so that a separate and distinct  
8 violation of Proposition 65 occurred each and every time a person was exposed to Lead  
9 by Measuring Tape as mentioned herein.

10 55. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
11 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
12 violations alleged herein will continue to occur into the future.

13 56. Based on the allegations herein, Defendants are liable for civil penalties of up to  
14 \$2,500.00 per day per individual exposure to Lead from Measuring Tape, pursuant to  
15 Health and Safety Code section 25249.7(b).

16 57. In the absence of equitable relief, the general public and Defendants' employees will  
17 continue to be involuntarily exposed to Lead that is contained in Measuring Tape,  
18 creating a substantial risk of irreparable harm. Thus, by committing the acts alleged  
19 herein, Defendants have caused irreparable harm for which there is no plain, speedy, or  
20 adequate remedy at law.

1 **FOURTH CAUSE OF ACTION**

2 **(By Consumer Advocacy Group, Inc. and against Shims Marketing and Shims Bargain for**  
3 **Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**  
4 **(Health & Safety Code, §§ 25249.5, et seq.))**

5 **“Sport” Black and Gold Print Children’s Sandals, Size 25, Product No. 555A**

6 58. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
7 paragraphs 1 through 27 of this complaint as though fully set forth herein.

8 59. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
9 distributor, promoter, or retailer of “Sport” Black and Gold Print Children’s Sandals, Size  
10 25, Product No. 55A (“Sandals Size 25) a consumer product designed for personal use.

11 60. Plaintiff is informed, believes, and thereon alleges that Sandals Size 25 contains Lead.

12 61. Defendants knew or should have known that Lead has been identified by the State of  
13 California as a chemical known to cause cancer and reproductive toxicity and therefore  
14 was subject to Proposition 65 warning requirements. Defendants were also informed of  
15 the presence of Lead in the Sandals Size 25 within Plaintiff’s notice of alleged violations  
16 further discussed above at Paragraphs 21.

17 62. Plaintiff’s allegations regarding Sandals Size 25 concern “[c]onsumer products  
18 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,  
19 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
20 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*  
21 *25602(b)*. Sandals Size 25 is a consumer product, and, as mentioned in herein, exposures  
22 to Lead took place as a result of such normal and foreseeable consumption and use.

23 63. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
24 Persons sustain exposures by handling Sandals Size 25 without wearing gloves or by  
25 touching bare skin or mucous membranes with gloves after handling Sandals Size 25 as  
26 well as hand to mouth contact (*e.g.*, by inserting surfaces, such as hands, that have  
27 contacted Sandals Size 25 into their mouths), hand to mucous membrane, or breathing in  
28 particulate matter released or emanating from Sandals Size 25 during application as well

1 as through environmental mediums that carry the Lead and Lead Compounds once  
2 contained within the Sandals Size 25.

3 64. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
4 Proposition 65 as to Sandals Size 25 have been ongoing and continuous to the date of the  
5 signing of this complaint, as Defendants engaged and continue to engage in conduct  
6 which violates Health and Safety Code section 25249.6, including the manufacture,  
7 distribution, promotion, and sale of Sandals Size 25, so that a separate and distinct  
8 violation of Proposition 65 occurred each and every time a person was exposed to Lead  
9 by Sandals Size 25 as mentioned herein.

10 65. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
11 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
12 violations alleged herein will continue to occur into the future.

13 66. Based on the allegations herein, Defendants are liable for civil penalties of up to  
14 \$2,500.00 per day per individual exposure to Lead from Sandals Size 25, pursuant to  
15 Health and Safety Code section 25249.7(b).

16 67. In the absence of equitable relief, the general public and Defendants' employees will  
17 continue to be involuntarily exposed to Lead that is contained in Sandals Size 25,  
18 creating a substantial risk of irreparable harm. Thus, by committing the acts alleged  
19 herein, Defendants have caused irreparable harm for which there is no plain, speedy, or  
20 adequate remedy at law.

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1 **FIFTH CAUSE OF ACTION**

2 **(By Consumer Advocacy Group, Inc. and against Shims Marketing and Shims Bargain for**  
3 **Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**  
4 **(Health & Safety Code, §§ 25249.5, et seq.))**

4 **“D” “Sport” Red, Black and Gold Print Children’s Sandals, Size 32, Product No. 228A15**

5 68. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
6 paragraphs 1 through 27 of this complaint as though fully set forth herein.

7 69. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
8 distributor, promoter, or retailer of “D” “Sport” Red, Black and Gold Print Children’s  
9 Sandals, Size 32, Product No. 228A15 (“Sandals Size 32) a consumer product designed  
10 for personal use.

11 70. Plaintiff is informed, believes, and thereon alleges that Sandals Size 32 contains Lead.

12 71. Defendants knew or should have known that Lead has been identified by the State of  
13 California as a chemical known to cause cancer and reproductive toxicity and therefore  
14 was subject to Proposition 65 warning requirements. Defendants were also informed of  
15 the presence of Lead in the Sandals Size 32 within Plaintiff’s notice of alleged violations  
16 further discussed above at Paragraphs 21.

17 72. Plaintiff’s allegations regarding Sandals Size 32 concern “[c]onsumer products  
18 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,  
19 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
20 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*  
21 *25602(b)*. Sandals Size 32 is a consumer product, and, as mentioned in herein, exposures  
22 to Lead took place as a result of such normal and foreseeable consumption and use.

23 73. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
24 Persons sustain exposures by handling Sandals Size 32 without wearing gloves or by  
25 touching bare skin or mucous membranes with gloves after handling Sandals Size 32 as  
26 well as hand to mouth contact (e.g., by inserting surfaces, such as hands, that have  
27 contacted Sandals Size 32 into their mouths), hand to mucous membrane, or breathing in  
28 particulate matter released or emanating from Sandals Size 32 during application as well

1 as through environmental mediums that carry the Lead and Lead Compounds once  
2 contained within the Sandals Size 32.

3 74. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
4 Proposition 65 as to Sandals Size 32 have been ongoing and continuous to the date of the  
5 signing of this complaint, as Defendants engaged and continue to engage in conduct  
6 which violates Health and Safety Code section 25249.6, including the manufacture,  
7 distribution, promotion, and sale of Sandals Size 32, so that a separate and distinct  
8 violation of Proposition 65 occurred each and every time a person was exposed to Lead  
9 by Sandals Size 32 as mentioned herein.

10 75. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
11 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
12 violations alleged herein will continue to occur into the future.

13 76. Based on the allegations herein, Defendants are liable for civil penalties of up to  
14 \$2,500.00 per day per individual exposure to Lead from Sandals Size 32, pursuant to  
15 Health and Safety Code section 25249.7(b).

16 77. In the absence of equitable relief, the general public and Defendants' employees will  
17 continue to be involuntarily exposed to Lead that is contained in Sandals Size 32,  
18 creating a substantial risk of irreparable harm. Thus, by committing the acts alleged  
19 herein, Defendants have caused irreparable harm for which there is no plain, speedy, or  
20 adequate remedy at law.



1 particulate matter released or emanating from Sandals Size 33 during application as well  
2 as through environmental mediums that carry the Lead and Lead Compounds once  
3 contained within the Sandals Size 33.

4 84. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
5 Proposition 65 as to Sandals Size 33 have been ongoing and continuous to the date of the  
6 signing of this complaint, as Defendants engaged and continue to engage in conduct  
7 which violates Health and Safety Code section 25249.6, including the manufacture,  
8 distribution, promotion, and sale of Sandals Size 33, so that a separate and distinct  
9 violation of Proposition 65 occurred each and every time a person was exposed to Lead  
10 by Sandals Size 33 as mentioned herein.

11 85. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
12 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
13 violations alleged herein will continue to occur into the future.

14 86. Based on the allegations herein, Defendants are liable for civil penalties of up to  
15 \$2,500.00 per day per individual exposure to Lead from Sandals Size 33, pursuant to  
16 Health and Safety Code section 25249.7(b).

17 87. In the absence of equitable relief, the general public and Defendants' employees will  
18 continue to be involuntarily exposed to Lead that is contained in Sandals Size 33,  
19 creating a substantial risk of irreparable harm. Thus, by committing the acts alleged  
20 herein, Defendants have caused irreparable harm for which there is no plain, speedy, or  
21 adequate remedy at law.

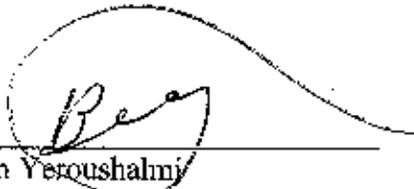
1 PRAYER FOR RELIEF

2 Plaintiff demands against each of the Defendants as follows:

- 3 1. A permanent injunction mandating Proposition 65-compliant warnings;  
4 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);  
5 3. Costs of suit;  
6 4. Reasonable attorney fees and costs; and  
7 5. Any further relief that the court may deem just and equitable.  
8 6. .

9 Dated: 11/19/2010

YEROUSHALMI & ASSOCIATES

10  
11  
12 BY: 

13 Ben Yeroushalmi  
14 Attorneys for Plaintiff,  
15 Consumer Advocacy Group, Inc.  
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1 Reuben Yeroushalmi (SBN 193981)  
2 Daniel D. Cho (SBN 105409)  
3 Ben Yeroushalmi (SBN 232540)  
4 **YEROUSHALMI & ASSOCIATES**  
5 9100 Wilshire Boulevard, Suite 610E  
6 Beverly Hills, California 90213  
7 Telephone: 310.623.1926  
8 Facsimile: 310.623.1930

9 Attorneys for Plaintiffs,  
10 Consumer Advocacy Group, Inc.

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13  
14 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

**COVERED COPY**  
Superior Court of California  
County of Los Angeles  
NOV 1 1988  
John A. Lyles, Associate Judge, etc.  
By RUCENA LOBBY Deputy

**BC 449678**

15 CONSUMER ADVOCACY GROUP, INC.,  
16 in the public interest,

17 Plaintiff,

18 v.

19 SHIMS MARKETING, INC., a California  
20 Corporation, SHIMS BARGAIN CENTERS,  
21 a California Corporation, and DOES 1-20;

22 Defendants.

CASE NO.

COMPLAINT FOR PENALTY,  
INJUNCTION, AND RESTITUTION

Violation of Proposition 65, the Safe  
Drinking Water and Toxic Enforcement  
Act of 1986 (*Health & Safety Code*, §  
25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL  
CASE (exceeds \$25,000)

23 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against Defendants as  
24 follows:

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- 1 8. Alternatively, at times relevant to this action, Defendant Shims Marketing so controlled  
2 Defendant Shims Bargain as to render Shims Bargain the mere instrumentality of Shims  
3 Marketing. Therefore, it is in furtherance of the ends of justice, that the Corporate form  
4 of Defendant Shims Bargain should be disregarded.
- 5 9. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
6 Defendants was a person doing business within the meaning of Health and Safety Code  
7 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
8 employees at all relevant times.

9 **JURISDICTION**

- 10 10. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
11 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
12 those given by statute to other trial courts. This Court has jurisdiction over this action  
13 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
14 violations of Proposition 65 in any Court of competent jurisdiction.
- 15 11. This Court has jurisdiction over Defendants named herein because Defendants either  
16 reside or are located in this State or are foreign corporations authorized to do business in  
17 California, are registered with the California Secretary of State, or who do sufficient  
18 business in California, have sufficient minimum contacts with California, or otherwise  
19 intentionally avail themselves of the markets within California through their manufacture,  
20 distribution, promotion, marketing, or sale of their products within California to render  
21 the exercise of jurisdiction by the California courts permissible under traditional notions  
22 of fair play and substantial justice.
- 23 12. Venue is proper in the County of Los Angeles because one or more of the instances of  
24 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or  
25 because Defendants conducted, and continue to conduct, business in the County of Los  
26 Angeles with respect to the consumer products that are the subject of this action.

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BACKGROUND AND PRELIMINARY FACTS

1  
2 13. In 1986, California voters approved an initiative to address growing concerns about  
3 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to  
4 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,  
5 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
6 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections  
7 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources  
8 from contamination, to allow consumers to make informed choices about the products  
9 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
10 fit.

11 14. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
12 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*  
13 § 25249.8. The list, which the Governor updates at least once a year, contains over 700  
14 chemicals and chemical families. Proposition 65 imposes warning requirements and  
15 other controls that apply to Proposition 65-listed chemicals.

16 15. All businesses with ten (10) or more employees that operate or sell products in California  
17 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited  
18 from knowingly discharging Proposition 65-listed chemicals into sources of drinking  
19 water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and  
20 reasonable” warnings before exposing a person, knowingly and intentionally, to a  
21 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

22 16. Proposition 65 provides that any person “violating or threatening to violate” the statute  
23 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.  
24 “Threaten to violate” means “to create a condition in which there is a substantial  
25 probability that a violation will occur.” *Health & Safety Code* § 25249.11(e).  
26 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
27 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

1 17. Plaintiff identified certain practices of manufacturers and distributors of lead-bearing  
2 products of exposing, knowingly and intentionally, persons in California to the  
3 Proposition 65-listed chemicals of such products without first providing clear and  
4 reasonable warnings of such to the exposed persons prior to the time of exposure.  
5 Plaintiff later discerned that Defendants engaged in such practice.

6 18. On October 1, 1992, the Governor of California added Lead and lead compounds to the  
7 list of chemicals known to the State to cause cancer (*Cal. Code Regs. tit. 27, § 27001(b)*).  
8 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months  
9 after addition of Lead and lead compounds to the list of chemicals known to the State to  
10 cause cancer, Lead and lead compounds became fully subject to Proposition 65 warning  
11 requirements and discharge prohibitions.

12 19. On February 27, 1987, the Governor of California added Lead to the list of chemicals  
13 known to the State to cause reproductive toxicity (*Cal. Code Regs. tit. 27, § 27001(c)*).  
14 Lead is known to the State to cause developmental, female, and male reproductive  
15 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)  
16 months after addition of Lead to the list of chemicals known to the State to cause  
17 reproductive toxicity, Lead became fully subject to Proposition 65 warning requirements  
18 and discharge prohibitions.

#### 19 SATISFACTION OF PRIOR NOTICE

20 20. On or about July 9, 2010 Plaintiff gave notice of alleged violations of Health and Safety  
21 Code section 25249.6, concerning consumer products exposures, subject to a private  
22 action to Shims Marketing, identified in the notice as "Shim's Marketing, Inc.," Shims  
23 Bargain, identified in the notice as "Shim's Bargain Centers," and to the California  
24 Attorney General, County District Attorneys, and City Attorneys for each city containing  
25 a population of at least 750,000 people in whose jurisdictions the violations allegedly  
26 occurred, concerning the following consumer products:

27 (1) Torch Heavy Duty Rubber Flashlight (Item No: TL-0114);

1 (2) 4 PCS Black Plastic Clamps with orange tips attached to yellow, black & red  
2 cardboard backing; and

3 (3) P.I.T. 25ft Measuring Tape (Item No. T17).

4 21. On or about August 18, 2010, Plaintiff gave notice of alleged violations of Health and  
5 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
6 private action to Shims Marketing, identified in the notice as "Shim's Marketing, Inc.,"  
7 Shims Bargain, identified in the notice as "Shim's Bargain Centers", and to the California  
8 Attorney General, County District Attorneys, and City Attorneys for each city containing  
9 a population of at least 750,000 people in whose jurisdictions the violations allegedly  
10 occurred, concerning the following consumer products:

11 (1) "Sport" Black and Gold Print children's Sandals, Size 25, Product No. 555A,

12 (2) "D" "Sport" Red, Black, and Gold Print Children's Sandals, Size 32, Product  
13 No. 228A15, and

14 (3) "D" "Sport" Burgundy, Brown, and Black Children's Sandals, Size 33, Product  
15 No. 338

16 22. Before sending the notice of alleged violation, Plaintiff investigated the consumer  
17 products involved, the likelihood that such products would cause users to suffer  
18 significant exposures to lead, and the corporate structure of each of the Defendants.

19 23. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
20 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
21 Plaintiff who executed the certificate had consulted with at least one person with relevant  
22 and appropriate expertise who reviewed data regarding the exposures to lead,  
23 respectively, which are the subject Proposition 65-listed chemicals of this action. Based  
24 on that information, the attorney for Plaintiff who executed the Certificate of Merit  
25 believed there was a reasonable and meritorious case for this private action. The attorney  
26 for Plaintiff attached to the Certificate of Merit served on the Attorney General the  
27 confidential factual information sufficient to establish the basis of the Certificate of  
28 Merit.

1 24. Plaintiff's notice of alleged violations also included a Certificate of Service and a  
2 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
3 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

4 25. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
5 gave notice of the alleged violations to Shims Marketing and Shims Bargain and the  
6 public prosecutors referenced in Paragraphs 20 and 21.

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

10 27. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
11 filing this Complaint.

12  
13 **FIRST CAUSE OF ACTION**

14 **(By Consumer Advocacy Group, Inc. and against Shims Marketing and Shims Bargain for**  
15 **Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**  
16 **(*Health & Safety Code*, §§ 25249.5, *et seq.*))**

17 **Torch Heavy Duty Rubber Flashlight (Item No: TL-0114)**

18 28. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
19 paragraphs 1 through 27 of this complaint as though fully set forth herein.

20 29. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
21 distributor, promoter, or retailer of Torch Heavy Duty Rubber Flashlight  
22 (Item No: TL-0114) ("Flashlight"), a consumer product designed for personal use.

23 30. Plaintiff is informed, believes, and thereon alleges that Flashlight contains Lead.

24 31. Defendants knew or should have known that Lead has been identified by the State of  
25 California as a chemical known to cause cancer and reproductive toxicity and therefore  
26 was subject to Proposition 65 warning requirements. Defendants were also informed of  
27 the presence of Lead in the Flashlight within Plaintiff's notice of alleged violations  
28 further discussed above at Paragraphs 20.

1 32. Plaintiff's allegations regarding Flashlight concern "[c]onsumer products exposure[s],"  
2 which "is an exposure that results from a person's acquisition, purchase, storage,  
3 consumption, or other reasonably foreseeable use of a consumer good, or any exposure  
4 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.  
5 Flashlight is a consumer product, and, as mentioned in herein, exposures to Lead took  
6 place as a result of such normal and foreseeable consumption and use.

7 33. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
8 Persons sustain exposures by handling Flashlight without wearing gloves or by touching  
9 bare skin or mucous membranes with gloves after handling Flashlight as well as hand to  
10 mouth contact (*e.g.*, by inserting surfaces, such as hands, that have contacted Flashlight  
11 into their mouths), hand to mucous membrane, or breathing in particulate matter released  
12 or emanating from Flashlight during application and installation, as well as through  
13 environmental mediums that carry the Lead and Lead Compounds once contained within  
14 the Flashlight.

15 34. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
16 Proposition 65 as to Flashlight have been ongoing and continuous to the date of the  
17 signing of this complaint, as Defendants engaged and continue to engage in conduct  
18 which violates Health and Safety Code section 25249.6, including the manufacture,  
19 distribution, promotion, and sale of Flashlight, so that a separate and distinct violation of  
20 Proposition 65 occurred each and every time a person was exposed to Lead by Flashlight  
21 as mentioned herein.

22 35. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
23 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
24 violations alleged herein will continue to occur into the future.

25 36. Based on the allegations herein, Defendants are liable for civil penalties of up to  
26 \$2,500.00 per day per individual exposure to Lead from Flashlight, pursuant to Health  
27 and Safety Code section 25249.7(b).

1 37. In the absence of equitable relief, the general public and Defendants' employees will  
2 continue to be involuntarily exposed to Lead that is contained in Flashlight, creating a  
3 substantial risk of irreparable harm. Thus, by committing the acts alleged herein,  
4 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate  
5 remedy at law.

## 6 SECOND CAUSE OF ACTION

7 (By Consumer Advocacy Group, Inc. and against Shims Marketing and Shims Bargain for  
8 Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986  
9 (*Health & Safety Code, §§ 25249.5, et seq.*))

10 **4 PCS Black Plastic Clamps with orange tips attached to yellow, black & red cardboard**  
11 **backing.**

12 38. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
13 paragraphs 1 through 27 of this complaint as though fully set forth herein.

14 39. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
15 distributor, promoter, or retailer of 4 PCS Black Plastic Clamps with orange tips attached  
16 to yellow, black & red cardboard backing ("Clamps"), a consumer product designed for  
17 personal use.

18 40. Plaintiff is informed, believes, and thereon alleges that Clamps contains Lead.

19 41. Defendants knew or should have known that Lead has been identified by the State of  
20 California as a chemical known to cause cancer and reproductive toxicity and therefore  
21 was subject to Proposition 65 warning requirements. Defendants were also informed of  
22 the presence of Lead in the Clamps within Plaintiff's notice of alleged violations further  
23 discussed above at Paragraphs 20.

24 42. Plaintiff's allegations regarding Clamps concern "[c]onsumer products exposure[s],"  
25 which "is an exposure that results from a person's acquisition, purchase, storage,  
26 consumption, or other reasonably foreseeable use of a consumer good, or any exposure  
27 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b).*  
28

1 Clamps is a consumer product, and, as mentioned in herein, exposures to Lead took place  
2 as a result of such normal and foreseeable consumption and use.

3 43. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
4 Persons sustain exposures by handling Clamps without wearing gloves or by touching  
5 bare skin or mucous membranes with gloves after handling Clamps as well as hand to  
6 mouth contact (e.g., by inserting surfaces, such as hands, that have contacted Clamps into  
7 their mouths), hand to mucous membrane, or breathing in particulate matter released or  
8 emanating from Clamps during application and installation, as well as through  
9 environmental mediums that carry the Lead and Lead Compounds once contained within  
10 the Clamps.

11 44. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
12 Proposition 65 as to Clamps have been ongoing and continuous to the date of the signing  
13 of this complaint, as Defendants engaged and continue to engage in conduct which  
14 violates Health and Safety Code section 25249.6, including the manufacture, distribution,  
15 promotion, and sale of Clamps, so that a separate and distinct violation of Proposition 65  
16 occurred each and every time a person was exposed to Lead by Clamps as mentioned  
17 herein.

18 45. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
19 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
20 violations alleged herein will continue to occur into the future.

21 46. Based on the allegations herein, Defendants are liable for civil penalties of up to  
22 \$2,500.00 per day per individual exposure to Lead from Clamps, pursuant to Health and  
23 Safety Code section 25249.7(b).

24 47. In the absence of equitable relief, the general public and Defendants' employees will  
25 continue to be involuntarily exposed to Lead that is contained in Clamps, creating a  
26 substantial risk of irreparable harm. Thus, by committing the acts alleged herein,  
27 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate  
28 remedy at law.

1 **THIRD CAUSE OF ACTION**

2 **(By Consumer Advocacy Group, Inc. and against Shims Marketing and Shims Bargain for**  
3 **Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**  
4 **(Health & Safety Code, §§ 25249.5, et seq.))**

5 **P.I.T. 25 FT Measuring Tape (Item No. T17)**

6 48. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
7 paragraphs 1 through 27 of this complaint as though fully set forth herein.

8 49. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
9 distributor, promoter, or retailer of P.I.T. 25 Ft. Measuring Tape (Item No. T17)  
10 ("Measuring Tape"), a consumer product designed for personal use.

11 50. Plaintiff is informed, believes, and thereon alleges that Measuring Tape contains Lead.

12 51. Defendants knew or should have known that Lead has been identified by the State of  
13 California as a chemical known to cause cancer and reproductive toxicity and therefore  
14 was subject to Proposition 65 warning requirements. Defendants were also informed of  
15 the presence of Lead in the Measuring Tape within Plaintiff's notice of alleged violations  
16 further discussed above at Paragraphs 20.

17 52. Plaintiff's allegations regarding Measuring Tape concern "[c]onsumer products  
18 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,  
19 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
20 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*  
21 *25602(b)*. Measuring Tape is a consumer product, and, as mentioned in herein,  
22 exposures to Lead took place as a result of such normal and foreseeable consumption and  
23 use.

24 53. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
25 Persons sustain exposures by handling Measuring Tape without wearing gloves or by  
26 touching bare skin or mucous membranes with gloves after handling Measuring Tape as  
27 well as hand to mouth contact (e.g., by inserting surfaces, such as hands, that have  
28 contacted Measuring Tape into their mouths), hand to mucous membrane, or breathing in  
particulate matter released or emanating from Measuring Tape during application and

1 installation, as well as through environmental mediums that carry the Lead and Lead  
2 Compounds once contained within the Measuring Tape.

3 54. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
4 Proposition 65 as to Measuring Tape have been ongoing and continuous to the date of the  
5 signing of this complaint, as Defendants engaged and continue to engage in conduct  
6 which violates Health and Safety Code section 25249.6, including the manufacture,  
7 distribution, promotion, and sale of Measuring Tape, so that a separate and distinct  
8 violation of Proposition 65 occurred each and every time a person was exposed to Lead  
9 by Measuring Tape as mentioned herein.

10 55. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
11 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
12 violations alleged herein will continue to occur into the future.

13 56. Based on the allegations herein, Defendants are liable for civil penalties of up to  
14 \$2,500.00 per day per individual exposure to Lead from Measuring Tape, pursuant to  
15 Health and Safety Code section 25249.7(b).

16 57. In the absence of equitable relief, the general public and Defendants' employees will  
17 continue to be involuntarily exposed to Lead that is contained in Measuring Tape,  
18 creating a substantial risk of irreparable harm. Thus, by committing the acts alleged  
19 herein, Defendants have caused irreparable harm for which there is no plain, speedy, or  
20 adequate remedy at law.

1 **FOURTH CAUSE OF ACTION**

2 (By Consumer Advocacy Group, Inc. and against Shims Marketing and Shims Bargain for  
3 Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986  
4 (Health & Safety Code, §§ 25249.5, et seq.))

5 **"Sport" Black and Gold Print Children's Sandals, Size 25, Product No. 555A**

6 58. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
7 paragraphs 1 through 27 of this complaint as though fully set forth herein.

8 59. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
9 distributor, promoter, or retailer of "Sport" Black and Gold Print Children's Sandals, Size  
10 25, Product No. 55A ("Sandals Size 25) a consumer product designed for personal use.

11 60. Plaintiff is informed, believes, and thereon alleges that Sandals Size 25 contains Lead.

12 61. Defendants knew or should have known that Lead has been identified by the State of  
13 California as a chemical known to cause cancer and reproductive toxicity and therefore  
14 was subject to Proposition 65 warning requirements. Defendants were also informed of  
15 the presence of Lead in the Sandals Size 25 within Plaintiff's notice of alleged violations  
16 further discussed above at Paragraphs 21.

17 62. Plaintiff's allegations regarding Sandals Size 25 concern "[c]onsumer products  
18 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,  
19 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
20 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*  
21 *25602(b)*. Sandals Size 25 is a consumer product, and, as mentioned in herein, exposures  
22 to Lead took place as a result of such normal and foreseeable consumption and use.

23 63. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
24 Persons sustain exposures by handling Sandals Size 25 without wearing gloves or by  
25 touching bare skin or mucous membranes with gloves after handling Sandals Size 25 as  
26 well as hand to mouth contact (e.g., by inserting surfaces, such as hands, that have  
27 contacted Sandals Size 25 into their mouths), hand to mucous membrane, or breathing in  
28 particulate matter released or emanating from Sandals Size 25 during application as well

1 as through environmental mediums that carry the Lead and Lead Compounds once  
2 contained within the Sandals Size 25.

3 64. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
4 Proposition 65 as to Sandals Size 25 have been ongoing and continuous to the date of the  
5 signing of this complaint, as Defendants engaged and continue to engage in conduct  
6 which violates Health and Safety Code section 25249.6, including the manufacture,  
7 distribution, promotion, and sale of Sandals Size 25, so that a separate and distinct  
8 violation of Proposition 65 occurred each and every time a person was exposed to Lead  
9 by Sandals Size 25 as mentioned herein.

10 65. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
11 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
12 violations alleged herein will continue to occur into the future.

13 66. Based on the allegations herein, Defendants are liable for civil penalties of up to  
14 \$2,500.00 per day per individual exposure to Lead from Sandals Size 25, pursuant to  
15 Health and Safety Code section 25249.7(b).

16 67. In the absence of equitable relief, the general public and Defendants' employees will  
17 continue to be involuntarily exposed to Lead that is contained in Sandals Size 25,  
18 creating a substantial risk of irreparable harm. Thus, by committing the acts alleged  
19 herein, Defendants have caused irreparable harm for which there is no plain, speedy, or  
20 adequate remedy at law.

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1 **FIFTH CAUSE OF ACTION**

2 **(By Consumer Advocacy Group, Inc. and against Shims Marketing and Shims Bargain for**  
3 **Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**  
4 **(Health & Safety Code, §§ 25249.5, et seq.))**

4 **“D” “Sport” Red, Black and Gold Print Children’s Sandals, Size 32, Product No. 228A15**

5 68. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
6 paragraphs 1 through 27 of this complaint as though fully set forth herein.

7 69. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
8 distributor, promoter, or retailer of “D” “Sport” Red, Black and Gold Print Children’s  
9 Sandals, Size 32, Product No. 228A15 (“Sandals Size 32) a consumer product designed  
10 for personal use.

11 70. Plaintiff is informed, believes, and thereon alleges that Sandals Size 32 contains Lead.

12 71. Defendants knew or should have known that Lead has been identified by the State of  
13 California as a chemical known to cause cancer and reproductive toxicity and therefore  
14 was subject to Proposition 65 warning requirements. Defendants were also informed of  
15 the presence of Lead in the Sandals Size 32 within Plaintiff’s notice of alleged violations  
16 further discussed above at Paragraphs 21.

17 72. Plaintiff’s allegations regarding Sandals Size 32 concern “[c]onsumer products  
18 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,  
19 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
20 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*  
21 *25602(b)*. Sandals Size 32 is a consumer product, and, as mentioned in herein, exposures  
22 to Lead took place as a result of such normal and foreseeable consumption and use.

23 73. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
24 Persons sustain exposures by handling Sandals Size 32 without wearing gloves or by  
25 touching bare skin or mucous membranes with gloves after handling Sandals Size 32 as  
26 well as hand to mouth contact (*e.g.*, by inserting surfaces, such as hands, that have  
27 contacted Sandals Size 32 into their mouths), hand to mucous membrane, or breathing in  
28 particulate matter released or emanating from Sandals Size 32 during application as well

1 as through environmental mediums that carry the Lead and Lead Compounds once  
2 contained within the Sandals Size 32.

3 74. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
4 Proposition 65 as to Sandals Size 32 have been ongoing and continuous to the date of the  
5 signing of this complaint, as Defendants engaged and continue to engage in conduct  
6 which violates Health and Safety Code section 25249.6, including the manufacture,  
7 distribution, promotion, and sale of Sandals Size 32, so that a separate and distinct  
8 violation of Proposition 65 occurred each and every time a person was exposed to Lead  
9 by Sandals Size 32 as mentioned herein.

10 75. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
11 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
12 violations alleged herein will continue to occur into the future.

13 76. Based on the allegations herein, Defendants are liable for civil penalties of up to  
14 \$2,500.00 per day per individual exposure to Lead from Sandals Size 32, pursuant to  
15 Health and Safety Code section 25249.7(b).

16 77. In the absence of equitable relief, the general public and Defendants' employees will  
17 continue to be involuntarily exposed to Lead that is contained in Sandals Size 32,  
18 creating a substantial risk of irreparable harm. Thus, by committing the acts alleged  
19 herein, Defendants have caused irreparable harm for which there is no plain, speedy, or  
20 adequate remedy at law.

1 SIXTH CAUSE OF ACTION

2 (By Consumer Advocacy Group, Inc. and against Shims Marketing and Shims Bargain for  
3 Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986  
4 (Health & Safety Code, §§ 25249.5, et seq.))

5 "D" "Sport" Burgundy, Brown and Black Print Children's Sandals, Size 33,  
6 Product No. 338

7 78. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
8 paragraphs 1 through 27 of this complaint as though fully set forth herein.

9 79. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
10 distributor, promoter, or retailer of "D" "Sport" Burgundy, Brown and Black Print  
11 Children's Sandals, Size 33, Product No. 338 ("Sandals Size 33") a consumer product  
12 designed for personal use.

13 80. Plaintiff is informed, believes, and thereon alleges that Sandals Size 33 contains Lead.

14 81. Defendants knew or should have known that Lead has been identified by the State of  
15 California as a chemical known to cause cancer and reproductive toxicity and therefore  
16 was subject to Proposition 65 warning requirements. Defendants were also informed of  
17 the presence of Lead in the Sandals Size 33 within Plaintiff's notice of alleged violations  
18 further discussed above at Paragraphs 21.

19 82. Plaintiff's allegations regarding Sandals Size 33 concern "[c]onsumer products  
20 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,  
21 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
22 exposure that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, §  
23 25602(b). Sandals Size 33 is a consumer product, and, as mentioned in herein, exposures  
24 to Lead took place as a result of such normal and foreseeable consumption and use.

25 83. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
26 Persons sustain exposures by handling Sandals Size 33 without wearing gloves or by  
27 touching bare skin or mucous membranes with gloves after handling Sandals Size 33 as  
28 well as hand to mouth contact (e.g., by inserting surfaces, such as hands, that have  
contacted Sandals Size 33 into their mouths), hand to mucous membrane, or breathing in

1 particulate matter released or emanating from Sandals Size 33 during application as well  
2 as through environmental mediums that carry the Lead and Lead Compounds once  
3 contained within the Sandals Size 33.

4 84. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
5 Proposition 65 as to Sandals Size 33 have been ongoing and continuous to the date of the  
6 signing of this complaint, as Defendants engaged and continue to engage in conduct  
7 which violates Health and Safety Code section 25249.6, including the manufacture,  
8 distribution, promotion, and sale of Sandals Size 33, so that a separate and distinct  
9 violation of Proposition 65 occurred each and every time a person was exposed to Lead  
10 by Sandals Size 33 as mentioned herein.

11 85. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
12 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
13 violations alleged herein will continue to occur into the future.

14 86. Based on the allegations herein, Defendants are liable for civil penalties of up to  
15 \$2,500.00 per day per individual exposure to Lead from Sandals Size 33, pursuant to  
16 Health and Safety Code section 25249.7(b).

17 87. In the absence of equitable relief, the general public and Defendants' employees will  
18 continue to be involuntarily exposed to Lead that is contained in Sandals Size 33,  
19 creating a substantial risk of irreparable harm. Thus, by committing the acts alleged  
20 herein, Defendants have caused irreparable harm for which there is no plain, speedy, or  
21 adequate remedy at law.

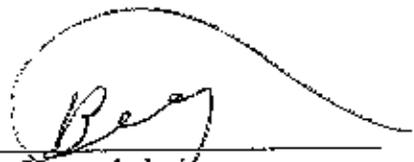
**PRAYER FOR RELIEF**

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.
- 6.

Dated: 11/19/2010

YERUSHALMI & ASSOCIATES

BY: 

Ben Yeroushalmi  
Attorneys for Plaintiff,  
Consumer Advocacy Group, Inc.

COPY

1 Reuben Yeroushalmi (SBN 193981)  
2 Daniel D. Cho (SBN 105409)  
3 Ben Yeroushalmi (SBN 232540)  
4 **YEROUSHALMI & ASSOCIATES**  
5 9100 Wilshire Boulevard, Suite 610E  
6 Beverly Hills, California 90213  
7 Telephone: 310.623.1926  
8 Facsimile: 310.623.1930

9 Attorneys for Plaintiffs,  
10 Consumer Advocacy Group, Inc.

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13  
14 COUNTY OF LOS ANGELES - CENTRAL DISTRICT

**CONSUMER COPY**  
Superior Court of California  
County of Los Angeles  
NOV 7 1988  
John A. Ladd, Associate Justice  
By RUGENA FOESZ, Deputy

**BC449678**

15 CONSUMER ADVOCACY GROUP, INC.,  
16 in the public interest,

17 Plaintiff,

18 v.

19 SHIMS MARKETING, INC., a California  
20 Corporation, SHIMS BARGAIN CENTERS,  
21 a California Corporation, and DOES 1-20;

22 Defendants.

CASE NO.

COMPLAINT FOR PENALTY,  
INJUNCTION, AND RESTITUTION

Violation of Proposition 65, the Safe  
Drinking Water and Toxic Enforcement  
Act of 1986 (*Health & Safety Code*, §  
25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL  
CASE (exceeds \$25,000)

23 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against Defendants as  
24 follows:

25 ///

26 ///

27 ///

28 ///

**THE PARTIES**

- 1  
2 1. Plaintiff Consumer Advocacy Group, Inc. ("Plaintiff" OR "CAG") is a non-profit  
3 corporation qualified to do business in the State of California. CAG is a person within  
4 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting  
5 as a private attorney general, brings this action in the public interest as defined under  
6 Health and Safety Code section 25249.7, subdivision (d).
- 7 2. Defendant Shims Marketing, Inc. ("Shims Marketing") is a company incorporated in the  
8 State of California.
- 9 3. Defendant Shims Bargain Centers ("Shims Bargain") is a company incorporated in the  
10 State of California.
- 11 4. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-20,  
12 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
13 complaint to allege their true names and capacities when ascertained. Plaintiff is  
14 informed, believes, and thereon alleges that each fictitiously named defendant is  
15 responsible in some manner for the occurrences herein alleged and the damages caused  
16 thereby.
- 17 5. At all times mentioned herein, the term "Defendants" includes Shims Marketing, Inc.,  
18 Shims Bargain Centers and Does 1-20.
- 19 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
20 times mentioned herein have conducted business within the State of California.
- 21 7. At all times relevant to this action, each of the Defendants, including Does 1-20, was an  
22 agent, servant, or employee of each of the other Defendants. In conducting the activities  
23 alleged in this Complaint, each of the Defendants was acting within the course and scope  
24 of this agency, service, or employment, and was acting with the consent, permission, and  
25 authorization of each of the other Defendants. All actions of each of the Defendants  
26 alleged in this Complaint were ratified and approved by every other Defendant or their  
27 officers or managing agents. Alternatively, each of the Defendants aided, conspired with  
28 and/or facilitated the alleged wrongful conduct of each of the other Defendants.

- 1 8. Alternatively, at times relevant to this action, Defendant Shims Marketing so controlled  
2 Defendant Shims Bargain as to render Shims Bargain the mere instrumentality of Shims  
3 Marketing. Therefore, it is in furtherance of the ends of justice, that the Corporate form  
4 of Defendant Shims Bargain should be disregarded.
- 5 9. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
6 Defendants was a person doing business within the meaning of Health and Safety Code  
7 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
8 employees at all relevant times.

9 **JURISDICTION**

- 10 10. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
11 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
12 those given by statute to other trial courts. This Court has jurisdiction over this action  
13 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
14 violations of Proposition 65 in any Court of competent jurisdiction.
- 15 11. This Court has jurisdiction over Defendants named herein because Defendants either  
16 reside or are located in this State or are foreign corporations authorized to do business in  
17 California, are registered with the California Secretary of State, or who do sufficient  
18 business in California, have sufficient minimum contacts with California, or otherwise  
19 intentionally avail themselves of the markets within California through their manufacture,  
20 distribution, promotion, marketing, or sale of their products within California to render  
21 the exercise of jurisdiction by the California courts permissible under traditional notions  
22 of fair play and substantial justice.
- 23 12. Venue is proper in the County of Los Angeles because one or more of the instances of  
24 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or  
25 because Defendants conducted, and continue to conduct, business in the County of Los  
26 Angeles with respect to the consumer products that are the subject of this action.

27 \

28 \



1 17. Plaintiff identified certain practices of manufacturers and distributors of lead-bearing  
2 products of exposing, knowingly and intentionally, persons in California to the  
3 Proposition 65-listed chemicals of such products without first providing clear and  
4 reasonable warnings of such to the exposed persons prior to the time of exposure.  
5 Plaintiff later discerned that Defendants engaged in such practice.

6 18. On October 1, 1992, the Governor of California added Lead and lead compounds to the  
7 list of chemicals known to the State to cause cancer (*Cal. Code Regs. tit. 27, § 27001(b)*).  
8 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months  
9 after addition of Lead and lead compounds to the list of chemicals known to the State to  
10 cause cancer, Lead and lead compounds became fully subject to Proposition 65 warning  
11 requirements and discharge prohibitions.

12 19. On February 27, 1987, the Governor of California added Lead to the list of chemicals  
13 known to the State to cause reproductive toxicity (*Cal. Code Regs. tit. 27, § 27001(c)*).  
14 Lead is known to the State to cause developmental, female, and male reproductive  
15 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)  
16 months after addition of Lead to the list of chemicals known to the State to cause  
17 reproductive toxicity, Lead became fully subject to Proposition 65 warning requirements  
18 and discharge prohibitions.

19 **SATISFACTION OF PRIOR NOTICE**

20 20. On or about July 9, 2010 Plaintiff gave notice of alleged violations of Health and Safety  
21 Code section 25249.6, concerning consumer products exposures, subject to a private  
22 action to Shims Marketing, identified in the notice as "Shim's Marketing, Inc.," Shims  
23 Bargain, identified in the notice as "Shim's Bargain Centers," and to the California  
24 Attorney General, County District Attorneys, and City Attorneys for each city containing  
25 a population of at least 750,000 people in whose jurisdictions the violations allegedly  
26 occurred, concerning the following consumer products:

27 (1) Torch Heavy Duty Rubber Flashlight (Item No: TL-0114);

1 (2) 4 PCS Black Plastic Clamps with orange tips attached to yellow, black & red  
2 cardboard backing; and

3 (3) P.I.T. 25ft Measuring Tape (Item No. T17).

4 21. On or about August 18, 2010, Plaintiff gave notice of alleged violations of Health and  
5 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
6 private action to Shims Marketing, identified in the notice as "Shim's Marketing, Inc.,"  
7 Shims Bargain, identified in the notice as "Shim's Bargain Centers", and to the California  
8 Attorney General, County District Attorneys, and City Attorneys for each city containing  
9 a population of at least 750,000 people in whose jurisdictions the violations allegedly  
10 occurred, concerning the following consumer products:

11 (1) "Sport" Black and Gold Print children's Sandals, Size 25, Product No. 555A,

12 (2) "D" "Sport" Red, Black, and Gold Print Children's Sandals, Size 32, Product  
13 No. 228A15, and

14 (3) "D" "Sport" Burgundy, Brown, and Black Children's Sandals, Size 33, Product  
15 No. 338

16 22. Before sending the notice of alleged violation, Plaintiff investigated the consumer  
17 products involved, the likelihood that such products would cause users to suffer  
18 significant exposures to lead, and the corporate structure of each of the Defendants.

19 23. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
20 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
21 Plaintiff who executed the certificate had consulted with at least one person with relevant  
22 and appropriate expertise who reviewed data regarding the exposures to lead,  
23 respectively, which are the subject Proposition 65-listed chemicals of this action. Based  
24 on that information, the attorney for Plaintiff who executed the Certificate of Merit  
25 believed there was a reasonable and meritorious case for this private action. The attorney  
26 for Plaintiff attached to the Certificate of Merit served on the Attorney General the  
27 confidential factual information sufficient to establish the basis of the Certificate of  
28 Merit.

1 24. Plaintiff's notice of alleged violations also included a Certificate of Service and a  
2 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
3 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

4 25. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
5 gave notice of the alleged violations to Shims Marketing and Shims Bargain and the  
6 public prosecutors referenced in Paragraphs 20 and 21.

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

10 27. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
11 filing this Complaint.

12  
13 **FIRST CAUSE OF ACTION**

14 **(By Consumer Advocacy Group, Inc. and against Shims Marketing and Shims Bargain for**  
15 **Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**  
16 **(*Health & Safety Code*, §§ 25249.5, *et seq.*))**

17 **Torch Heavy Duty Rubber Flashlight (Item No: TL-0114)**

18 28. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
19 paragraphs 1 through 27 of this complaint as though fully set forth herein.

20 29. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
21 distributor, promoter, or retailer of Torch Heavy Duty Rubber Flashlight  
22 (Item No: TL-0114) ("Flashlight"), a consumer product designed for personal use.

23 30. Plaintiff is informed, believes, and thereon alleges that Flashlight contains Lead.

24 31. Defendants knew or should have known that Lead has been identified by the State of  
25 California as a chemical known to cause cancer and reproductive toxicity and therefore  
26 was subject to Proposition 65 warning requirements. Defendants were also informed of  
27 the presence of Lead in the Flashlight within Plaintiff's notice of alleged violations  
28 further discussed above at Paragraphs 20.

1 32. Plaintiff's allegations regarding Flashlight concern "[c]onsumer products exposure[s],"  
2 which "is an exposure that results from a person's acquisition, purchase, storage,  
3 consumption, or other reasonably foreseeable use of a consumer good, or any exposure  
4 that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, § 25602(b).  
5 Flashlight is a consumer product, and, as mentioned in herein, exposures to Lead took  
6 place as a result of such normal and foreseeable consumption and use.

7 33. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
8 Persons sustain exposures by handling Flashlight without wearing gloves or by touching  
9 bare skin or mucous membranes with gloves after handling Flashlight as well as hand to  
10 mouth contact (*e.g.*, by inserting surfaces, such as hands, that have contacted Flashlight  
11 into their mouths), hand to mucous membrane, or breathing in particulate matter released  
12 or emanating from Flashlight during application and installation, as well as through  
13 environmental mediums that carry the Lead and Lead Compounds once contained within  
14 the Flashlight.

15 34. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
16 Proposition 65 as to Flashlight have been ongoing and continuous to the date of the  
17 signing of this complaint, as Defendants engaged and continue to engage in conduct  
18 which violates Health and Safety Code section 25249.6, including the manufacture,  
19 distribution, promotion, and sale of Flashlight, so that a separate and distinct violation of  
20 Proposition 65 occurred each and every time a person was exposed to Lead by Flashlight  
21 as mentioned herein.

22 35. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
23 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
24 violations alleged herein will continue to occur into the future.

25 36. Based on the allegations herein, Defendants are liable for civil penalties of up to  
26 \$2,500.00 per day per individual exposure to Lead from Flashlight, pursuant to Health  
27 and Safety Code section 25249.7(b).  
28

1 37. In the absence of equitable relief, the general public and Defendants' employees will  
2 continue to be involuntarily exposed to Lead that is contained in Flashlight, creating a  
3 substantial risk of irreparable harm. Thus, by committing the acts alleged herein,  
4 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate  
5 remedy at law.

6 **SECOND CAUSE OF ACTION**

7 **(By Consumer Advocacy Group, Inc. and against Shims Marketing and Shims Bargain for**  
8 **Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**  
9 **(Health & Safety Code, §§ 25249.5, et seq.))**

10 **4 PCS Black Plastic Clamps with orange tips attached to yellow, black & red cardboard**  
11 **backing.**

12 38. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
13 paragraphs 1 through 27 of this complaint as though fully set forth herein.

14 39. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
15 distributor, promoter, or retailer of 4 PCS Black Plastic Clamps with orange tips attached  
16 to yellow, black & red cardboard backing ("Clamps"), a consumer product designed for  
17 personal use.

18 40. Plaintiff is informed, believes, and thereon alleges that Clamps contains Lead.

19 41. Defendants knew or should have known that Lead has been identified by the State of  
20 California as a chemical known to cause cancer and reproductive toxicity and therefore  
21 was subject to Proposition 65 warning requirements. Defendants were also informed of  
22 the presence of Lead in the Clamps within Plaintiff's notice of alleged violations further  
23 discussed above at Paragraphs 20.

24 42. Plaintiff's allegations regarding Clamps concern "[c]onsumer products exposure[s],"  
25 which "is an exposure that results from a person's acquisition, purchase, storage,  
26 consumption, or other reasonably foreseeable use of a consumer good, or any exposure  
27 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.

1 Clamps is a consumer product, and, as mentioned in herein, exposures to Lead took place  
2 as a result of such normal and foreseeable consumption and use.

3 43. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
4 Persons sustain exposures by handling Clamps without wearing gloves or by touching  
5 bare skin or mucous membranes with gloves after handling Clamps as well as hand to  
6 mouth contact (*e.g.*, by inserting surfaces, such as hands, that have contacted Clamps into  
7 their mouths), hand to mucous membrane, or breathing in particulate matter released or  
8 emanating from Clamps during application and installation, as well as through  
9 environmental mediums that carry the Lead and Lead Compounds once contained within  
10 the Clamps.

11 44. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
12 Proposition 65 as to Clamps have been ongoing and continuous to the date of the signing  
13 of this complaint, as Defendants engaged and continue to engage in conduct which  
14 violates Health and Safety Code section 25249.6, including the manufacture, distribution,  
15 promotion, and sale of Clamps, so that a separate and distinct violation of Proposition 65  
16 occurred each and every time a person was exposed to Lead by Clamps as mentioned  
17 herein.

18 45. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
19 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
20 violations alleged herein will continue to occur into the future.

21 46. Based on the allegations herein, Defendants are liable for civil penalties of up to  
22 \$2,500.00 per day per individual exposure to Lead from Clamps, pursuant to Health and  
23 Safety Code section 25249.7(b).

24 47. In the absence of equitable relief, the general public and Defendants' employees will  
25 continue to be involuntarily exposed to Lead that is contained in Clamps, creating a  
26 substantial risk of irreparable harm. Thus, by committing the acts alleged herein,  
27 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate  
28 remedy at law.

1 THIRD CAUSE OF ACTION

2 (By Consumer Advocacy Group, Inc. and against Shims Marketing and Shims Bargain for  
3 Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986  
4 (Health & Safety Code, §§ 25249.5, et seq.))

5 P.I.T. 25 FT Measuring Tape (Item No. T17)

- 6 48. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
7 paragraphs 1 through 27 of this complaint as though fully set forth herein.
- 8 49. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
9 distributor, promoter, or retailer of P.I.T. 25 Ft. Measuring Tape (Item No. T17)  
10 (“Measuring Tape”), a consumer product designed for personal use.
- 11 50. Plaintiff is informed, believes, and thereon alleges that Measuring Tape contains Lead.
- 12 51. Defendants knew or should have known that Lead has been identified by the State of  
13 California as a chemical known to cause cancer and reproductive toxicity and therefore  
14 was subject to Proposition 65 warning requirements. Defendants were also informed of  
15 the presence of Lead in the Measuring Tape within Plaintiff's notice of alleged violations  
16 further discussed above at Paragraphs 20.
- 17 52. Plaintiff's allegations regarding Measuring Tape concern “[c]onsumer products  
18 exposure[s],” which “is an exposure that results from a person's acquisition, purchase,  
19 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
20 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*  
21 *25602(b)*. Measuring Tape is a consumer product, and, as mentioned in herein,  
22 exposures to Lead took place as a result of such normal and foreseeable consumption and  
23 use.
- 24 53. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
25 Persons sustain exposures by handling Measuring Tape without wearing gloves or by  
26 touching bare skin or mucous membranes with gloves after handling Measuring Tape as  
27 well as hand to mouth contact (e.g., by inserting surfaces, such as hands, that have  
28 contacted Measuring Tape into their mouths), hand to mucous membrane, or breathing in  
particulate matter released or emanating from Measuring Tape during application and

1 installation, as well as through environmental mediums that carry the Lead and Lead  
2 Compounds once contained within the Measuring Tape.

3 54. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
4 Proposition 65 as to Measuring Tape have been ongoing and continuous to the date of the  
5 signing of this complaint, as Defendants engaged and continue to engage in conduct  
6 which violates Health and Safety Code section 25249.6, including the manufacture,  
7 distribution, promotion, and sale of Measuring Tape, so that a separate and distinct  
8 violation of Proposition 65 occurred each and every time a person was exposed to Lead  
9 by Measuring Tape as mentioned herein.

10 55. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
11 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
12 violations alleged herein will continue to occur into the future.

13 56. Based on the allegations herein, Defendants are liable for civil penalties of up to  
14 \$2,500.00 per day per individual exposure to Lead from Measuring Tape, pursuant to  
15 Health and Safety Code section 25249.7(b).

16 57. In the absence of equitable relief, the general public and Defendants' employees will  
17 continue to be involuntarily exposed to Lead that is contained in Measuring Tape,  
18 creating a substantial risk of irreparable harm. Thus, by committing the acts alleged  
19 herein, Defendants have caused irreparable harm for which there is no plain, speedy, or  
20 adequate remedy at law.

1 **FOURTH CAUSE OF ACTION**

2 **(By Consumer Advocacy Group, Inc. and against Shims Marketing and Shims Bargain for**  
3 **Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**  
4 **(Health & Safety Code, §§ 25249.5, et seq.))**

5 **“Sport” Black and Gold Print Children’s Sandals, Size 25, Product No. 555A**

6 58. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
7 paragraphs 1 through 27 of this complaint as though fully set forth herein.

8 59. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
9 distributor, promoter, or retailer of “Sport” Black and Gold Print Children’s Sandals, Size  
10 25, Product No. 55A (“Sandals Size 25) a consumer product designed for personal use.

11 60. Plaintiff is informed, believes, and thereon alleges that Sandals Size 25 contains Lead.

12 61. Defendants knew or should have known that Lead has been identified by the State of  
13 California as a chemical known to cause cancer and reproductive toxicity and therefore  
14 was subject to Proposition 65 warning requirements. Defendants were also informed of  
15 the presence of Lead in the Sandals Size 25 within Plaintiff’s notice of alleged violations  
16 further discussed above at Paragraphs 21.

17 62. Plaintiff’s allegations regarding Sandals Size 25 concern “[c]onsumer products  
18 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,  
19 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
20 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*  
21 *25602(b)*. Sandals Size 25 is a consumer product, and, as mentioned in herein, exposures  
22 to Lead took place as a result of such normal and foreseeable consumption and use.

23 63. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
24 Persons sustain exposures by handling Sandals Size 25 without wearing gloves or by  
25 touching bare skin or mucous membranes with gloves after handling Sandals Size 25 as  
26 well as hand to mouth contact (e.g., by inserting surfaces, such as hands, that have  
27 contacted Sandals Size 25 into their mouths), hand to mucous membranc, or breathing in  
28 particulate matter released or emanating from Sandals Size 25 during application as well

1 as through environmental mediums that carry the Lead and Lead Compounds once  
2 contained within the Sandals Size 25.

3 64. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
4 Proposition 65 as to Sandals Size 25 have been ongoing and continuous to the date of the  
5 signing of this complaint, as Defendants engaged and continue to engage in conduct  
6 which violates Health and Safety Code section 25249.6, including the manufacture,  
7 distribution, promotion, and sale of Sandals Size 25, so that a separate and distinct  
8 violation of Proposition 65 occurred each and every time a person was exposed to Lead  
9 by Sandals Size 25 as mentioned herein.

10 65. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
11 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
12 violations alleged herein will continue to occur into the future.

13 66. Based on the allegations herein, Defendants are liable for civil penalties of up to  
14 \$2,500.00 per day per individual exposure to Lead from Sandals Size 25, pursuant to  
15 Health and Safety Code section 25249.7(b).

16 67. In the absence of equitable relief, the general public and Defendants' employees will  
17 continue to be involuntarily exposed to Lead that is contained in Sandals Size 25,  
18 creating a substantial risk of irreparable harm. Thus, by committing the acts alleged  
19 herein, Defendants have caused irreparable harm for which there is no plain, speedy, or  
20 adequate remedy at law.

21  
22 //

23  
24 //

1 FIFTH CAUSE OF ACTION

2 (By Consumer Advocacy Group, Inc. and against Shims Marketing and Shims Bargain for  
3 Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986  
4 (Health & Safety Code, §§ 25249.5, et seq.))

4 **“D” “Sport” Red, Black and Gold Print Children’s Sandals, Size 32, Product No. 228A15**

5 68. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
6 paragraphs 1 through 27 of this complaint as though fully set forth herein.

7 69. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
8 distributor, promoter, or retailer of “D” “Sport” Red, Black and Gold Print Children’s  
9 Sandals, Size 32, Product No. 228A15 (“Sandals Size 32) a consumer product designed  
10 for personal use.

11 70. Plaintiff is informed, believes, and thereon alleges that Sandals Size 32 contains Lead.

12 71. Defendants knew or should have known that Lead has been identified by the State of  
13 California as a chemical known to cause cancer and reproductive toxicity and therefore  
14 was subject to Proposition 65 warning requirements. Defendants were also informed of  
15 the presence of Lead in the Sandals Size 32 within Plaintiff’s notice of alleged violations  
16 further discussed above at Paragraphs 21.

17 72. Plaintiff’s allegations regarding Sandals Size 32 concern “[c]onsumer products  
18 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,  
19 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
20 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*  
21 *25602(b)*. Sandals Size 32 is a consumer product, and, as mentioned in herein, exposures  
22 to Lead took place as a result of such normal and foreseeable consumption and use.

23 73. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
24 Persons sustain exposures by handling Sandals Size 32 without wearing gloves or by  
25 touching bare skin or mucous membranes with gloves after handling Sandals Size 32 as  
26 well as hand to mouth contact (*e.g.*, by inserting surfaces, such as hands, that have  
27 contacted Sandals Size 32 into their mouths), hand to mucous membrane, or breathing in  
28 particulate matter released or emanating from Sandals Size 32 during application as well

1 as through environmental mediums that carry the Lead and Lead Compounds once  
2 contained within the Sandals Size 32.

3 74. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
4 Proposition 65 as to Sandals Size 32 have been ongoing and continuous to the date of the  
5 signing of this complaint, as Defendants engaged and continue to engage in conduct  
6 which violates Health and Safety Code section 25249.6, including the manufacture,  
7 distribution, promotion, and sale of Sandals Size 32, so that a separate and distinct  
8 violation of Proposition 65 occurred each and every time a person was exposed to Lead  
9 by Sandals Size 32 as mentioned herein.

10 75. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
11 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
12 violations alleged herein will continue to occur into the future.

13 76. Based on the allegations herein, Defendants are liable for civil penalties of up to  
14 \$2,500.00 per day per individual exposure to Lead from Sandals Size 32, pursuant to  
15 Health and Safety Code section 25249.7(b).

16 77. In the absence of equitable relief, the general public and Defendants' employees will  
17 continue to be involuntarily exposed to Lead that is contained in Sandals Size 32,  
18 creating a substantial risk of irreparable harm. Thus, by committing the acts alleged  
19 herein, Defendants have caused irreparable harm for which there is no plain, speedy, or  
20 adequate remedy at law.



1 particulate matter released or emanating from Sandals Size 33 during application as well  
2 as through environmental mediums that carry the Lead and Lead Compounds once  
3 contained within the Sandals Size 33.

4 84. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
5 Proposition 65 as to Sandals Size 33 have been ongoing and continuous to the date of the  
6 signing of this complaint, as Defendants engaged and continue to engage in conduct  
7 which violates Health and Safety Code section 25249.6, including the manufacture,  
8 distribution, promotion, and sale of Sandals Size 33, so that a separate and distinct  
9 violation of Proposition 65 occurred each and every time a person was exposed to Lead  
10 by Sandals Size 33 as mentioned herein.

11 85. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
12 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
13 violations alleged herein will continue to occur into the future.

14 86. Based on the allegations herein, Defendants are liable for civil penalties of up to  
15 \$2,500.00 per day per individual exposure to Lead from Sandals Size 33, pursuant to  
16 Health and Safety Code section 25249.7(b).

17 87. In the absence of equitable relief, the general public and Defendants' employees will  
18 continue to be involuntarily exposed to Lead that is contained in Sandals Size 33,  
19 creating a substantial risk of irreparable harm. Thus, by committing the acts alleged  
20 herein, Defendants have caused irreparable harm for which there is no plain, speedy, or  
21 adequate remedy at law.

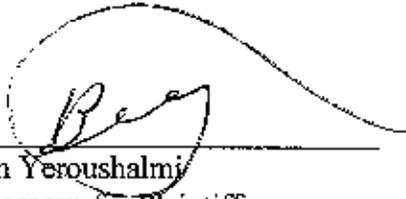
1 **PRAYER FOR RELIEF**

2 Plaintiff demands against each of the Defendants as follows:

- 3 1. A permanent injunction mandating Proposition 65-compliant warnings;
- 4 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
- 5 3. Costs of suit;
- 6 4. Reasonable attorney fees and costs; and
- 7 5. Any further relief that the court may deem just and equitable.
- 8 6.

9 Dated: 11/19/2010

YEROUSHALMI & ASSOCIATES

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11  
12 BY: 

13 Ben Yeroushalmi  
14 Attorneys for Plaintiff,  
15 Consumer Advocacy Group, Inc.  
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