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9 ANTHONY E. HELD, Ph.D., P.E.
10 RUSSELL BRIMER

ENDORSED FILED
Clerk of the Superior Court

JAN 15 2010

J. KALAMARAS

By _____
DEPUTY CLERK

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SOLANO
13 UNLIMITED CIVIL JURISDICTION

14 ANTHONY E. HELD, Ph.D., P.E., ET AL.,

15 Plaintiffs,

16 v.

17 SHIMS BARGAIN, INC., ET AL.,

18 Defendants.

Case No. FCS033234

[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF STIPULATION AND
ORDER RE: CONSENT JUDGMENT

Date: May 5, 2010

Time: 9:00 a.m.

Dept.: 2

Judge: Hon. William C. Harrison

1 In the above-entitled action, Plaintiffs ANTHONY E. HELD, Ph.D., P.E., and RUSSELL
2 BRIMER and Defendant SHIMS BARGAIN, INC., having agreed through their respective counsel
3 that judgment be entered pursuant to the terms of the Proposition 65 settlement agreement in the
4 form of a Stipulation and [Proposed] Order Re: Consent Judgment (“Consent Judgment”) entered
5 into by the parties, and following the Court’s execution of the Consent Judgment thereby issuing
6 an order approving this Proposition 65 settlement agreement and entry of the Consent Judgment on
7 May 5, 2010,

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Code of Civil
9 Procedure § 664.6, judgment is entered in accordance with the terms of the Consent Judgment
10 attached hereto as **Exhibit 1**.

11 **IT IS SO ORDERED.**

12 JAN 11 2010

13 **WILLIAM C. THARISON**

14 Dated: _____

15 JUDGE OF THE SUPERIOR COURT

Exhibit 1

1 Clifford A. Chanler, State Bar No. 135534
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RUSSELL BRIMER
6 ANTHONY E. HELD, Ph.D., P.E.

7 John P. Lee, State Bar No. 144062
8 LAW OFFICES OF JOHN P. LEE PC
3435 Wilshire Boulevard, Suite 2050
9 Los Angeles, California 90010
Telephone: (213) 487-1167
10 Facsimile: (213) 487-1168

11 Attorney for Defendant
SHIMS BARGAINS, INC.
12

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF SOLANO
15 UNLIMITED CIVIL JURISDICTION
16

17 ANTHONY E. HELD, Ph.D., P.E., *et al.*,

18 Plaintiff,

19 v.

20 SHIMS BARGAIN, INC.; and DOES 1-150,
21 inclusive,

22 Defendants.
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Case No. FCS033234

STIPULATION AND [PROPOSED]
ORDER RE: CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Anthony Held, Russell Brimer and Shims Bargain, Inc.**

3 This Stipulation and [Proposed] Order Re: Consent Judgment ("Consent Judgment") is
4 entered into by and between Anthony E. Held, Ph.D., P.E. (hereinafter "Held"), Russell Brimer
5 (hereinafter "Brimer") and Shims Bargain, Inc. (hereinafter "Shims"), with Held, Brimer
6 collectively referred to herein as "Plaintiffs" and Held, Brimer and Shims collectively referred to as
7 the "Parties." Held and Brimer are individuals residing in California who seek to promote
8 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating
9 hazardous substances contained in consumer products. Shims employs ten or more persons and is a
10 person in the course of doing business for purposes of Proposition 65.

11 **1.2 General Allegations**

12 Held alleges that Shims has manufactured, distributed and/or sold in the State of California
13 the following products: children's soft vinyl balls containing di(2-ethylhexyl)phthalate ("DEHP")
14 and lead including, but not limited to, *Super Shoot Football* (#6 03076 30752 5) and *Football,*
15 *Baseball, Basketball Set* (#6 03076 30752 5); vinyl bags containing DEHP including, but not
16 limited to, *Cal-Best Halloween Treat Bag, Item 90592* (#6 03076 90592 9); pillows with vinyl
17 components containing DEHP including, but not limited to *Cal-Best Baby's First X'Mas Pillow,*
18 *Item 96028* (#6 03076 96028 7). Brimer alleges that Shims has manufactured, distributed and/or
19 sold in the State of California vinyl-coated paper fasteners containing lead including, but not
20 limited to those contained in *Cal-Best Stationery Kits, Item 61165* (#6 03076 61165 3). DEHP and
21 lead are listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California
22 Health & Safety Code §25249.5, *et seq.* ("Proposition 65"), as chemicals known to the State of
23 California to cause birth defects and other reproductive harm. DEHP and lead shall be referred to
24 herein as the "Listed Chemicals."

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1 **1.3 Product Description**

2 The products that are covered by this Consent Judgment are defined, as follows: children's
3 soft vinyl balls, vinyl-coated paper fasteners, vinyl bags and/or pillows with vinyl components
4 manufactured, distributed and/or sold in California by Shims which contain one or more of the
5 Listed Chemicals. All such items shall be referred to herein as the "Products."

6 **1.4 Notices of Violation**

7 On or about December 23, 2008, and September 15, 2009, Held served Shims and various
8 public enforcement agencies with documents entitled "60-Day Notice of Violation" that provided
9 Shims and such public enforcers with notice that alleged that Shims was in violation of California
10 Health & Safety Code §25249.6 for (1) failing to warn consumers and customers that one or more
11 of the Products exposed users in California to DEHP and/or lead. Similarly, on March 5, 2009,
12 Brimer served Shims and various public enforcement agencies with a document entitled "60-Day
13 Notice of Violation" that provided Shims and such public enforcers with notice that alleged that
14 Shims was in violation of California Health & Safety Code §25249.6 for (1) failing to warn
15 consumers and customers that one or more of the Products exposed users in California to lead. All
16 the 60-Day Notices of Violation referenced in this section 1.4 shall hereinafter be collectively
17 referred to as the "Notices." No public enforcer has diligently prosecuted the allegations set forth in
18 the Notices.

19 **1.5 No Admission**

20 Shims denies the material factual and legal allegations contained in Plaintiffs' Notices and
21 maintains that all products that it has sold and distributed in California, including the Products, have
22 been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as
23 an admission by Shims of any fact, finding, issue of law, or violation of law; nor shall compliance
24 with this Consent Judgment constitute or be construed as an admission by Shims of any fact,
25 finding, conclusion, issue of law or violation of law, such being specifically denied by Shims.
26 However, this section shall not diminish or otherwise affect the obligations, responsibilities and
27 duties of Shims under this Consent Judgment.

28 ///

1 Products are sold. In order to avail themselves of the point-of-sale warning option, Shims shall
2 provide a written notice (via certified mail in the first quarter of each calendar year or, in the
3 alternative, at the point-of-sale) to each retailer or distributor to whom Shims sells or transfers the
4 Products directly, which informs such retailers or distributors that point-of-sale warnings are
5 required at each retail location in the State of California. Shims shall include a copy of the warning
6 signs and posting instructions with such notice. Point-of-sale warnings shall be provided through
7 one or more signs posted in close proximity to the point of display of the Products.

8 **WARNING:** This product contains DEHP, a phthalate
9 chemical, lead and other chemicals known
10 to the State of California to cause cancer,
11 birth defects and other reproductive harm.

12 Where more than one Product is sold in proximity to other like items or to those that do not
13 require a warning (*e.g.*, Reformulated Products as defined in Section 2.3), the following statement
14 must be used:¹

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

19 **2.2 Exceptions To Warning Requirements**

20 The warning requirements set forth in Section 2.1 shall not apply to Reformulated Products
21 (as defined in Section 2.3 below).

22 **2.3 Reformulation Commitment**

23 As of June 30, 2010, Shims shall only sell or cause to be sold, Products in California that are
24 Phthalate Free and Lead Free. For purposes of this Consent Judgment, "Phthalate Free" Products
25 shall mean Products containing less than or equal to 1,000 parts per million ("ppm") of DEHP and
26 "Lead Free" shall mean products containing less than or equal to 300 ppm of lead when analyzed
27 pursuant to Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C

28 ¹For purposes of the consent judgment, "sold in proximity" shall mean that any Products and another product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

1 for DEHP, 3050B and 6010B for lead, or equivalent methods as may be allowed under Proposition
2 65.

3 **2.4 Recall of Past Products**

4 Shims hereby agrees to recall the following Products sold in California without a clear and
5 reasonable Proposition 65 warning prior to the Effective Date: the children's soft vinyl balls
6 containing DEHP and lead, *Super Shoot Football* (#6 03076 30752 5) and *Football, Baseball,*
7 *Basketball Sets* (#6 03076 30752 5); the vinyl-coated paper fasteners containing lead in the *Cal-*
8 *Best Stationery Kits* (#6 03076 61165 3); the vinyl bags containing DEHP, *Cal-Best Halloween*
9 *Treat Bags* (#6 03076 90592 9); and the pillows with vinyl components containing DEHP, *Cal-Best*
10 *Baby's First X'Mas Pillows* (#6 03076 96028 7). Shims shall post a recall notice in each of its
11 facilities where one or more Products are sold, viewed for future sale or distributed, including all
12 showrooms, retail facilities, distribution warehouses and wholesale facilities for the following
13 Products: the children's soft vinyl balls containing DEHP and lead including *Super Shoot Football*
14 (*#6 03076 30752 5*) and *Football, Baseball, Basketball Set* (#6 03076 30752 5); the vinyl-coated
15 paper fasteners containing lead including those contained in *Cal-Best Stationery Kits* (#6 03076
16 61165 3); the vinyl bags containing DEHP including *Cal-Best Halloween Treat Bag* (#6 03076
17 90592 9); the pillows with vinyl components containing DEHP including *Cal-Best Baby's First*
18 *X'Mas Pillow* (#6 03076 96028 7). The recall notice posted at each of Shims' facilities shall be
19 prominently placed with such conspicuousness as compared with other words, statements, designs,
20 or devices as to render it likely to be read and understood by an ordinary individual. Said recall
21 notice shall be posted within thirty (30) days of the Effective Date and shall remain posted for not
22 less than six months.

23 **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

24 In settlement of all the claims referred to in this Consent Judgment against it, Shims shall pay
25 \$20,000 in civil penalties to be apportioned in accordance with California Health & Safety Code
26 §25192, with 75% of these funds remitted to the State of California's Office of Environmental
27 Health Hazard Assessment and the remaining 25% of these penalty monies remitted to Held as
28 provided by California Health & Safety Code §25249.12(d). Shims shall issue three separate

1 checks for the penalty payment: (a) one check made payable to Chanler Law Group in Trust for the
2 State of California's Office of Environmental Health Hazard Assessment ("Chanler Law Group in
3 Trust for OEHHA") in the amount of \$15,000, representing 75% of the total penalty, (b) one check
4 to "Chanler Law Group in Trust for A. Held" in the amount of \$2,500, representing one-half of
5 25% of the total penalty, (c) one check to "Chanler Law Group in Trust for R. Brimer" in the
6 amount of \$2,500, representing one-half of 25% of the total penalty. Three separate 1099s shall be
7 issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010,
8 Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$15,000. The second and third 1099
9 shall be issued to Held and Brimer, respectively, in the amount of \$2,500, whose addresses and tax
10 identification numbers shall be furnished, upon request, at least five calendar days before payment
11 is due. The payments shall be delivered on or before December 15, 2009, at the following address:

12 Chanler Law Group
13 Attn: Proposition 65 Coordinator
14 2560 Ninth Street, Suite 214
15 Berkeley, CA 94710

16 4. **REIMBURSEMENT OF FEES AND COSTS**

17 The parties reached an accord on the compensation due to Plaintiffs and their counsel under
18 the private attorney general doctrine and principles of contract law. Under these legal principles,
19 Shims shall reimburse Plaintiffs' counsel for fees and costs, incurred as a result of investigating,
20 bringing this matter to Shims attention, and negotiating a settlement in the public interest. This
21 figure includes Plaintiffs' future fees and costs including attorney's fees to be incurred in seeking
22 judicial approval of this Consent Judgment as well as any other legal work performed after the
23 execution of this Consent Judgment incurred in an effort to obtain finality of the case. Shims shall
24 pay Plaintiffs and their counsel \$65,000 for all attorneys' fees, expert and investigation fees, and
25 related costs. The payment shall be issued in a fourth separate check made payable to "Chanler
26 Law Group" and shall be delivered on or before December 15, 2009, the following address:

27 Chanler Law Group
28 Attn: Proposition 65 Coordinator
2560 Ninth Street, Suite 214
Berkeley, CA 94710

1 Shims shall issue a separate 1099 for fees and costs paid in the amount of \$65,000 to Chanler Law
2 Group, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, California, 94710 (EIN: 20-3929984).

3 **5. RELEASE OF ALL CLAIMS**

4 **5.1 Release of Shims and Downstream Customers**

5 In further consideration of the promises and agreements herein contained, and for the
6 payments to be made pursuant to Sections 3 and 4 above, Plaintiffs, on behalf of themselves, their
7 past and current agents, representatives, attorneys, successors and/or assignees, and in the interest
8 of the general public, hereby waive all rights to institute or participate in, directly or indirectly, any
9 form of legal action and release all claims, including, without limitation, all actions, and causes of
10 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,
11 losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees
12 and costs) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively
13 "Claims"), against Shims and each of its downstream distributors, wholesalers, licensors, licensees,
14 auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies,
15 corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,
16 shareholders, agents, and employees, and sister and parent entities (collectively "Releasees"). This
17 release is limited to those claims that arise under Proposition 65, as such claims relate to Shims'
18 alleged failure to warn about exposures to or identification of DEHP and/or lead contained in the
19 Products.

20 In addition to the foregoing, Plaintiffs, on behalf of themselves, their past and current agents,
21 representatives, attorneys, and successors and/or assignees, and *not* in either of their representative
22 capacity hereby waive all rights to institute or participate in, directly or indirectly, any form of legal
23 action concerning and release all Claims against Shims and each of its Releasees, including all
24 Claims against Shims for any Products that were purchased prior to the Effective Date.

25 **5.2 Shims' Release of Held and Brimer**

26 Shims waives any and all claims against Plaintiffs and their attorneys and other
27 representatives, for any and all actions taken or statements made (or those that could have been
28 taken or made) by Plaintiffs and their attorneys and other representatives, whether in the course of

1 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
2 and/or with respect to the Products.

3 **6. SEVERABILITY**

4 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
5 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
6 provisions remaining shall not be adversely affected.

7 **7. GOVERNING LAW**

8 The terms of this Consent Judgment shall be governed by the laws of the State of California
9 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
10 rendered inapplicable by reason of law generally, or as to the Products, then Shims shall provide
11 written notice to Plaintiffs of any asserted change in the law, and shall have no further obligations
12 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so
13 affected.

14 **8. NOTICES**

15 Unless specified herein, all correspondence and notices required to be provided pursuant to
16 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
17 (registered or certified mail) return receipt requested; or (ii) overnight courier on one or more
18 parties by any other party at the following addresses:

19 For Shims:

20 John P. Lee, Esq.
21 Law Offices of John P. Lee PC
22 3435 Wilshire Boulevard, Suite 2050
23 Los Angeles, California 90010

For Held and/or Brimer:

Proposition 65 Coordinator
Chanler Law Group
2560 Ninth Street, Suite 214
Berkeley, CA 94710-2565

24 Any party, from time to time, may specify in writing to the other parties a change of address
25 to which all notices and other communications shall be sent.

26 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

1 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

2 Plaintiffs agree to comply with the reporting form requirements referenced in Health &
3 Safety Code § 25249.7(f).

4 **11. MODIFICATION**

5 This Consent Judgment may be modified only by a written agreement of the Parties.

6 **12. AUTHORIZATION**

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

<p>10 AGREED TO:</p> <p>11 Date: APPROVED By Anthony Held at 1:21 pm, Dec 01, 2000</p> <p>12</p> <p>13 By: <u>Anthony E. Held</u> Anthony Held</p>	<p>AGREED TO:</p> <p>Date: _____</p> <p>14 By: <u>James Shim</u> James Shim, President Shims Bargain, Inc. dba IC Sales</p>
<p>16 AGREED TO:</p> <p>17 Date: _____</p> <p>18</p> <p>19</p> <p>20 By: _____ Russell Brimer</p>	

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22 **IT IS SO ORDERED.**

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24 Date: _____

JUDGE OF THE SUPERIOR COURT

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10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

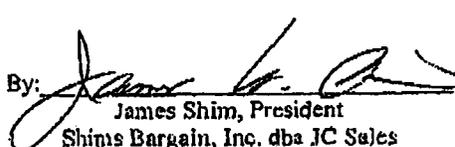
Plaintiffs agree to comply with the reporting form requirements referenced in Health & Safety Code § 25249.7(f).

11. MODIFICATION

This Consent Judgment may be modified only by a written agreement of the Parties.

12. AUTHORIZATION

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

<p style="text-align: center;">AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Anthony Held</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: _____</p> <p>By:  James Shim, President Shims Bargain, Inc. dba IC Sales</p>
<p style="text-align: center;">AGREED TO:</p> <p>Date: <u>D-1-09</u></p> <p>By:  Russell Brimer</p>	

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT