

SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING WATER
AND TOXIC ENFORCEMENT ACT OF 1986
(*Cal. Health & Safety Code* § 25249.5, *et seq.*) ("Proposition 65")

February 8, 2011

Michael Shim, President or
Current President/CEO
Shim's Marketing, Inc.
735 South Vermont Avenue
Los Angeles, CA 90005-1518

Michael Shim, President or
Current President/CEO
Shim's Marketing, Inc.
3075 N San Fernando Rd
Los Angeles, CA 90065-1410

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

Re: Violations of Proposition 65 concerning **(1) Dükxen 6 PC PVC TAPE (Item No. 95462) (2) TORCH HEAVY DUTY RUBBER Flashlight (Item No: TL-0114); (3) Work Electrical Tape (High- Quality AAA; 3A)**

Dear Mr. Shim, and to whom else this may concern:

Consumer Advocacy Group, Inc. ("CAG"), the noticing entity, serves this Notice of Violation ("Notice") on Shim's Bargain Centers and Shim's Marketing, Inc. (referred to herein as "Violators") pursuant to and in compliance with Proposition 65. Violators may contact CAG concerning this Notice through its designated person within the entity, its attorney, Reuben Yeroushalmi 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, CA 90212, telephone no. (310) 623-3183, facsimile no. (310) 623-1930. This Notice satisfies a prerequisite for CAG to commence an action against Violators in any Superior Court of California to enforce Proposition 65. The violations addressed by this Notice occurred at numerous locations in each county in California as reflected in the district attorney addresses listed in the attached distribution list. CAG is serving this Notice upon each person or entity responsible for the alleged violations, the California Attorney General, the district attorney for each county where alleged violations occurred, and the City Attorney for each city with a population (according to the most recent decennial census) of over 750,000 located within counties where the alleged violations occurred.

- CAG is a registered corporation based in California. CAG is a nonprofit entity dedicated to protecting the environment, improving human health, and supporting environmentally sound practices. By sending this Notice, CAG is acting "in the public interest" pursuant to Proposition 65.
- This Notice concerns violations of the warning prong of Proposition 65, which states that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual . . ." *Cal. Health & Safety Code* § 25249.6.
- **(1) Dükxen 6 PC PVC TAPE (Item No. 95462); and (2) TORCH HEAVY DUTY RUBBER Flashlight (Item No: TL-0114) and (3) Work Electrical Tape (High- Quality AAA; 3A);** contain lead, which is known to the State of California to cause both cancer and reproductive toxicity, developmental, female, male. On February 27, 1987, the Governor of California added lead to the list of chemicals known to the State to cause reproductive toxicity, developmental, female, male, and on

October 1, 1992, the Governor added lead and lead compounds to the list of chemicals known to the State to cause cancer. Both additions took place more than twenty (20) months before CAG served this Notice.

- This Notice addresses consumer products exposures. A “[c]onsumer products exposure’ is an exposure which results from a person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27 § 25602(b)*.

Violators caused consumer product exposures in violation of Proposition 65 by producing or making available for distribution or sale in California to consumers (1) **Düksen 6 PC PVC TAPE (Item No. 95462)** (“PVC Tape”), (2) **TORCH HEAVY DUTY RUBBER Flashlight (Item No: TL-0114)** (“Flashlight”), and (3) **Work Electrical Tape (High- Quality AAA; 3A)** “**Electrical Tape**”. The packaging for **PVC Tape, Flashlight, and Electrical Tape**(meaning any label or other written, printed or graphic matter affixed to or accompanying the product or its container or wrapper) contains no Proposition 65-complaint warning. Nor did Violators, with regard to **PVC Tape, Flashlight, and Electrical Tape** provide a system of signs, public advertising identifying the system and toll-free information services, or any other system, which provided clear and reasonable warnings. Nor did Violators, with regard to **PVC Tape, Flashlight, and Electrical Tape** provide identification of the product at retail outlets in a manner that provided a warning through shelf labeling, signs, menus, or a combination thereof. **Flashlight** is designed for use as a personal luminary device, **PVC Tape** is designed for personal use in a variety of home and commercial applications, including but not limited to home repair, carpentry, and arts and crafts. **Electrical Tape** is designed for personal use in a variety of home and commercial applications, including but not limited to home repair, carpentry, and arts and crafts.

- This Notice also concerns occupational exposures. An “[o]ccupational exposure’ means an exposure to any employee in his or her employer’s workplace.” *Cal. Code Regs. tit. 27, § 25602(f)*.

Violators caused occupational exposures in violation of Proposition 65 by allowing employees to handle the **Flashlight** in the course of distributing, shipping, packaging, promoting, and selling **Flashlight**, in the scope of their employment, without having first given clear and reasonable warnings to such employees that by handling the **Flashlight** such employees would suffer exposures to lead and lead compounds. Violators’ employees were exposed to lead by touching **Flashlight**, with their bare skin at Violators’ premises located at 735 South Vermont Avenue, Los Angeles, California 90005. Violators did not provide any Proposition 65-compliant warnings on either the products or any substance present or any sign or system of signs within the workplace.

This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997.

This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to (a) the conduct of manufacturers occurring outside the State of California; and (b) employers with less than ten (10) employees. The approval also provides that an employer may use any means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement be subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the California Attorney General.

- This Notice also addresses environmental exposures. An “[e]nvironmental exposure’ is an exposure which may foreseeably occur as the result of contact with an environmental medium, including, but not limited to, ambient air, indoor air, drinking water, standing water, running water, soil vegetation, or manmade or natural substances, either through inhalation, ingestion, skin contact or otherwise. Environmental exposures include all exposures which are not consumer products exposures, or occupational exposures.” *Cal. Code Regs. tit. 27, § 25602(c)*.

Violators caused environmental exposures by not providing any Proposition 65-compliant warnings at Violators’ facilities located at 735 South Vermont Avenue, Los Angeles, California 90005 to persons who could foreseeably come into contact with lead in environmental mediums through the distribution, packaging, shipping, and promoting **PVC Tape, Flashlight, and Electrical Tape**. Such exposures also occurred beyond the property owned or controlled by Violators.

Violators caused environmental exposures by not providing any Proposition 65-compliant warnings at Violators’ facilities located at 3075 N. San Fernando Rd. Los Angeles, California 90065 to persons who could foreseeably come into contact with lead in environmental mediums through the distribution, packaging, shipping, and promoting **PVC Tape and Electrical Tape**. Such exposures also occurred beyond the property owned or controlled by Violators.

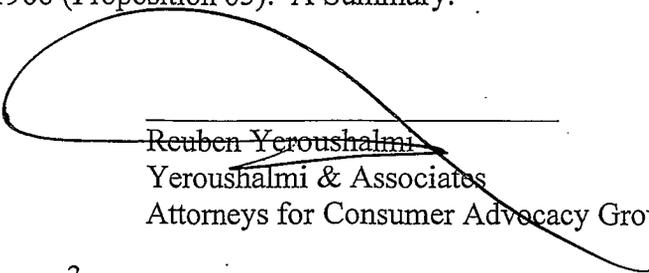
With regard to **PVC Tape and Flashlight**, these violations occurred each day between January 6, 2008, and January 6, 2011, and are ever continuing thereafter.

The principal routes of exposure with regard to **PVC Tape, and Flashlight**, are and were through dermal contact, ingestion, and inhalation. Persons sustain exposures by handling **PVC Tape, and Flashlight**, without wearing gloves or any other personal protective equipment, or by touching bare skin or mucous membranes with gloves after handling **PVC Tape, and Flashlight** as well as through hand to mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed from **PVC Tape, and Flashlight**,

Proposition 65 requires that notice of intent to sue be given to the violator(s) sixty (60) days before the suit is filed. *Cal. Health & Safety Code § 252549.7(d)(1)*. With this letter, CAG gives notice of the alleged violations to Violator and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within sixty (60) calendar days of the sending of this notice (plus five (5) calendar days because the place of address is within the State of California or ten (10) calendar days because the place of address is beyond the State of California but within the United States), CAG may file suit. *See Cal. Code Civ. Proc. § 1013; Cal. Health & Safety Code § 25249.7(d)(1); and Cal. Code Regs. tit. 27, § 25903(d)(1)*. CAG remains open to discussing the possibility of resolving its grievances short of formal litigation.

With the copy of this notice submitted to the Violator, a copy of the following is attached: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.

Dated: February 8, 2011



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

(1) Dükken 6 PC PVC TAPE (Item No. 95462) (2) TORCH HEAVY DUTY RUBBER Flashlight (Item No: TL-0114; (3) Work Electrical Tape (High-Quality AAA; 3A)

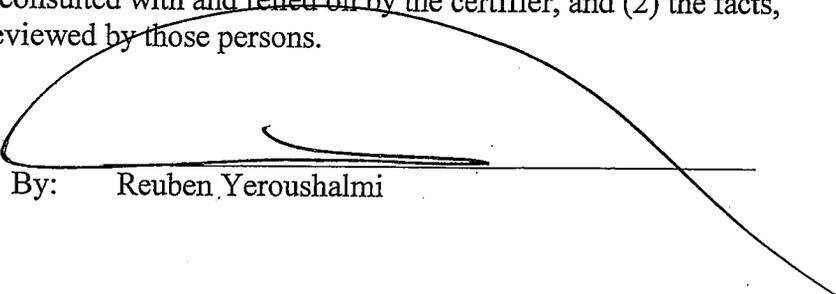
CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Reuben Yeroushalmi, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notice(s) has violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with at least one person with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: February 8, 2011


By: Reuben Yeroushalmi

CERTIFICATE OF SERVICE

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, CA 90212.

ON THE DATE SHOWN BELOW, I SERVED THE FOLLOWING:

- 1) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Certificate of Merit (Attorney General Copy): Factual information sufficient to establish the basis of the certificate of merit (*only sent to Attorney General*)
- 4) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary

by enclosing copies of the same in a sealed envelope, along with an unsigned copy of this declaration, addressed to each person shown below and depositing the envelope in the U.S. mail with the postage fully prepaid. Place of Mailing: Beverly Hills, CA

Name and address of each party to whom documents were mailed:

Michael Shim, President or
Current President/CEO
Shim's Marketing, Inc.
735 South Vermont Avenue
Los Angeles, CA 90005-1518

Michael Shim, President or
Current President/CEO
Shim's Marketing, Inc.
3075 N San Fernando Rd
Los Angeles, CA 90065-1410

Name and address of each public prosecutor to whom documents were mailed:

See Distribution List		
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date of Mailing: 03/06/11

By: _____
Henry Pan

Distribution List

Los Angeles County District Attorney 210 W Temple St, 18th Floor Los Angeles, CA 90012
Los Angeles City Attorney 200 N Main St Ste 1800 Los Angeles CA 90012

Office of the Attorney General P.O. Box 70550 Oakland, CA 94612-0550