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17 Attorney for Defendant
18 SHIMS BARGAINS, INC.

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 FOR THE COUNTY OF CONTRA COSTA
21 UNLIMITED CIVIL JURISDICTION

22 WHITNEY R. LEEMAN, Ph.D.,

23 Plaintiff,

24 v.

25 SHIMS BARGAIN, INC.; and DOES 1
26 through 150, inclusive,

27 Defendants.

Case No. MSC08-01873

**STIPULATION AND [PROPOSED]
ORDER RE: CONSENT JUDGMENT**

28 **1. INTRODUCTION**

1.1 Whitney R. Leeman, Ph.D. and Shims Bargain, Inc.

This Consent Judgment is entered into by and between plaintiff Whitney R. Leeman, Ph.D., ("Dr. Leeman" or "Plaintiff") and defendant Shims Bargain, Inc. ("Defendant"), with Dr. Leeman and Defendant referred to as the "parties."

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1.2 Dr. Leeman

Dr. Leeman is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products.

1.3 Defendant

Defendant employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §25249.6 *et seq.* (Proposition 65).

1.4 General Allegations

Dr. Leeman alleges that Defendant has manufactured, distributed and/or sold cosmetic kits containing lead in the State of California without the requisite health hazard warnings. Lead is a substance known to cause birth defects and other reproductive harm and is listed pursuant to Proposition 65. Lead shall be referred to hereinafter as the "listed chemical."

1.5 Product Description

The products that are covered by this Consent Judgment are defined as follows: cosmetic kits containing a combination of eye shadow and/or blush containing lead including, but not limited to, *Lovely Girl Beauty Combination, No. 25163F (#6 03076 32050 0)*. All such cosmetic kits containing lead shall be referred to hereinafter as the "Products".

1.6 Notice of Violation

On November 19, 2007, Dr. Leeman served Defendant and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (Notice) that provided Defendant and public enforcers with notice that alleged that Defendant was in violation of California Health & Safety Code §25249.6 for failing to warn consumers that the Products that Defendant sold exposed users in California to the listed chemical.

1.7 Complaint

On July 24, 2008, Dr. Leeman, who is acting in the interest of the general public in California, filed a complaint ("Complaint" or "Action") in the Superior Court in and for the County of Contra Costa against Shims Bargain, Inc. and Does 1 through 150, (*Leeman v. Shims*

1 *Bargain, Inc. et al.*, Case No. MCS08-01873) alleging violations of California Health & Safety
2 Code §25249.6 based on the alleged exposures to the listed chemical contained in the Products
3 sold by Defendant.

4 **1.8 No Admission**

5 Defendant denies the material factual and legal allegations contained in Dr. Leeman's
6 Notice and Complaint and maintains that all Products that it has sold and distributed in California
7 have been and are in compliance with all laws. Nothing in this Consent Judgment shall be
8 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law, nor
9 shall compliance with this Consent Judgment constitute or be construed as an admission by
10 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
11 specifically denied by Defendant. However, this Section shall not diminish or otherwise affect
12 Defendant's obligations, responsibilities, and duties under this Consent Judgment.

13 **1.9 Consent to Jurisdiction**

14 For purposes of this Consent Judgment only, the parties stipulate that this Court has
15 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper
16 in the County of Contra Costa and that this Court has jurisdiction to enter and enforce the
17 provisions of this Consent Judgment.

18 **1.10 Effective Date**

19 For purposes of this Consent Judgment, the term "effective date" shall mean October 31,
20 2008.

21 **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

22 **2.1 Product Warnings**

23 After the effective date, Defendant shall not sell, ship, or offer to be shipped for sale in
24 California Products containing the listed chemical unless such Products are sold or shipped with
25 one of the clear and reasonable warnings set forth in subsections 2.1(a) and (b), or are exempt
26 pursuant to Section 2.2 as compliant with the reformulation standards set forth in Section 2.3.

27 Each warning shall be prominently placed with such conspicuousness as compared with
28 other words, statements, designs, or devices as to render it likely to be read and understood by an

1 ordinary individual under customary conditions before purchase or use. Each warning shall be
2 provided in a manner such that the consumer or user understands to which *specific* Product the
3 warning applies, so as to minimize if not eliminate the chance that an overwarning situation will
4 arise. The warning requirement shall apply when the Product is sold either to consumers or in a
5 business-to-business transaction.

6 (a) **Product Labeling.** Defendant may perform its warning obligation by
7 ensuring that a warning is affixed to the packaging, labeling, or directly on each Product sold to
8 distributors and/or retailers by Defendant or its agents, that states:

9
10 **WARNING:** The cosmetic components in this product
11 contain lead, a chemical known to the State of
California to cause birth defects and other
reproductive harm.¹

12 (b) **Point-of-Sale Warnings.** Defendant may perform its warning obligations by
13 ensuring that signs are posted at retail outlets in the State of California where the Products are
14 sold. In order to avail themselves of the point-of-sale option, Defendant shall provide a written
15 notice (via certified mail in the first quarter of each calendar year or, in the alternative, at the point-
16 of-sale) to each retailer or distributor to whom Defendant sells or transfers the Products directly,
17 which informs such retailers or distributors that point-of-sale warnings are required at each retail
18 location in the State of California. Defendant shall include a copy of the warning signs and
19 posting instructions with such notice. Further, Defendant must receive and make available for Dr.
20 Leeman's inspection, upon request, a written commitment: (a) from each retailer to whom
21 Defendant sells Products directly that said retailer will post the warning signs; and (b) from each
22 distributor to whom Defendant sells Products directly that the distributor will transmit the
23 point-of-sale warning notice and instructions to its direct customers. Point-of-sale warnings shall
24 be provided through one or more signs posted in close proximity to the point of display of the
25 Products that states:

26 _____
27 ¹If one or more cosmetic components in the Products are exempt pursuant to Section 2.3, then the term
28 "cosmetic components" may be replaced with each of the specific cosmetic component(s) not qualifying as
reformulated, e.g. "the eye shadow component(s) in this product contain lead ..."

1 **WARNING:** The cosmetic components in this product
2 contain lead, a chemical known to the State
3 of California to cause birth defects and other
 reproductive harm.²

4 Where more than one Product is sold in proximity to other like items or to those that do not
5 require a warning (*e.g.* Reformulated Products as defined in Section 2.3), the following statement
6 must be used:³

7 **WARNING:** The cosmetic components in the following
8 products contain lead, a chemical known to
 the State of California to cause birth defects
 and other reproductive harm.⁴

9 [*list products for which warning is required*]

10 **2.2 Exception To Warning Requirements**

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

13 **2.3 Reformulation Standards**

14 Reformulated Product components are defined as follows: (1) eye shadows and blushes
15 that contain less than or equal to 0.5 parts per million (“ppm”) of lead. The warnings required
16 pursuant to Section 2.1 above shall not be required for Reformulated Products.

17 Defendant shall use Environmental Protection Agency (“EPA”) testing methodology 6020
18 or 6010 to determine whether the respective levels have been exceeded in its Products.

19 **2.4 Reformulation Commitment**

20 Defendant hereby commits that one-hundred percent (100%) of the Products that it offers
21 for sale in California after October 31, 2008, shall qualify as Reformulated Products.

22 **2.5 Recall of Past Products**

23 _____ Defendant hereby agrees to recall all cosmetic kits containing a combination of eye shadow
24 _____

25 ²See footnote 1, *supra*, fully incorporated herein by reference.

26 ³For purposes of the Consent Judgment, “sold in proximity” shall mean that the Product and another product
27 are offered for sale close enough to each other that the consumer under customary conditions, could not reasonably
 determine which of the two products is subject to the warning sign.

28 ⁴See footnote 1, *supra*, fully incorporated herein by reference.

1 and/or blush containing lead including *Lovely Girl Beauty Combination, No. 25163F (#6 03076*
2 *32050 0)*, sold in California. Defendant shall use its best efforts to contact each of its direct
3 customers for whom it has an address via certified mail. Each recall notice shall be mailed within
4 30 days of the effective date and shall be made available to Dr. Leeman upon written request.
5 Defendant shall post a recalling notice for all cosmetic kits containing a combination of eye
6 shadow and/or blush containing lead including *Lovely Girl Beauty Combination, No. 25163F (#6*
7 *03076 32050 0)*, in each facility. The recall notice posted at each of Defendant's facilities shall be
8 prominently placed with such conspicuousness as compared with other words, statements, designs,
9 or devices as to render it likely to be read and understood by an ordinary individual. Said recall
10 notice shall be posted within thirty (30) days of the effective date and shall remain posted for not
11 less than six months.

12 **3. MONETARY PAYMENTS**

13 **3.1 Payments to be Made Pursuant to Health & Safety Code §25249.7(b)**

14 In settlement of all the claims referred to in this Consent Judgment against Defendant, it
15 shall pay \$4,000 in civil penalties to be apportioned in accordance with California Health & Safety
16 Code §25192, with 75% of these funds remitted to the State of California's Office of
17 Environmental Health Hazard Assessment and the remaining 25% of these penalty monies
18 remitted to Plaintiff as provided by California Health & Safety Code §25249.12(d). Defendant
19 shall issue two separate checks for the penalty payment:

20 (a) One check made payable to Hirst & Chanler LLP in Trust for the State of
21 California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of
22 \$3,000, representing 75% of the total penalty; and

23 (b) One check to "Hirst & Chanler LLP in Trust For Dr. Whitney R. Leeman,"
24 in the amount of \$1,000, representing 25% of the total penalty.

25 Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued
26 to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$3,000.
27 The second 1099 shall be issued to Plaintiff in the amount of \$1,000, whose address and tax
28 identification number shall be furnished, upon request, five calendar days before payment is due.

1 **3.2 Apportionment of Payments Received under §25249.7** All monies received
2 shall be apportioned by Dr. Leeman in accordance with California Health & Safety Code §25192,
3 with seventy-five percent (75%) of these funds remitted by Dr. Leeman to the State of California's
4 Office of Environmental Health Hazard Assessment and the remaining twenty-five percent (25%)
5 of these monies retained by Dr. Leeman as provided by California Health & Safety Code
6 §25249.12(d). Dr. Leeman shall bear all responsibility for apportioning and paying to the State of
7 California the appropriate amounts of the funds in accordance with this Section.

8 **4. REIMBURSEMENT OF ATTORNEY'S FEES AND COSTS**

9 The parties acknowledge that Dr. Leeman and her counsel offered to resolve this dispute
10 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
11 this fee and cost issue to be resolved after the material terms of the agreement had been settled.
12 Defendant then expressed a desire to resolve the fee and cost issue after the other settlement terms
13 had been finalized. The parties then reached an accord on the compensation due to Dr. Leeman
14 and her counsel under the private attorney general doctrine codified at California Code of Civil
15 Procedure §1021.5 for all work performed in reaching and finalizing this Consent Judgment.
16 Under the private attorney general doctrine, Defendant shall reimburse Dr. Leeman and her
17 counsel for fees and costs incurred as a result of investigating, bringing this matter to Defendant's
18 attention, and negotiating a settlement in the public interest, including the moving the Court for
19 approval of the settlement. Defendant shall pay Dr. Leeman and her counsel \$28,000 for all
20 attorneys' fees, expert and investigation fees, litigation including a motion to approve the
21 settlement and related costs. The payment shall be made payable to "HIRST & CHANLER LLP"
22 and shall be delivered within fifteen (15) days of the effective date, at the following address:

23 HIRST & CHANLER LLP
24 Attn: Proposition 65 Controller
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710-2565

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1 **5. RELEASE OF ALL CLAIMS**

2 **5.1 Dr. Leeman's Release of Defendant**

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

17 The parties further understand and agree that this release shall not extend upstream to any
18 entities that manufactured the Products or any component parts thereof, or any distributors or
19 suppliers who sold the Products or any component parts thereof to Defendant.

20 **5.2 Defendant's Release of Dr. Leeman**

21 Defendant waives any and all claims against Dr. Leeman, her attorneys, and other
22 representatives for any and all actions taken or statements made (or those that could have been
23 taken or made) by Dr. Leeman and her attorneys and other representatives, whether in the course
24 of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this
25 matter, and/or with respect to the Products.

26 **6. COURT APPROVAL**

27 This Consent Judgment is not effective until it is approved and entered by the Court and
28 shall be null and void if, for any reason, it is not approved and entered by the court within one year

1 after it has been fully executed by all parties, in which event any monies that have been provided
2 to Plaintiff, or her counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within
3 fifteen (15) days after receiving written notice from Defendant that the one-year period has
4 expired.

5 **7. SEVERABILITY**

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

9 **8. ATTORNEYS' FEES**

10 In the event that, after the execution of this Consent Judgment: (1) a dispute arises with
11 respect to any provision of this Consent Judgment; or (2) Dr. Leeman takes reasonable and
12 necessary steps to enforce the terms of this Consent Judgment, the prevailing party shall be entitled
13 to reasonable attorneys' fees and costs. In the event that, after the execution of this Consent
14 Judgment Defendant seeks modification of this Consent Judgment pursuant to Section 14 below,
15 Dr. Leeman shall be entitled to her reasonable attorneys' fees and costs pursuant to CCP §1021.5.

16 **9. GOVERNING LAW**

17 The terms of this Consent Judgment shall be governed by the laws of the State of
18 California and apply within the State of California. In the event that Proposition 65 is repealed or
19 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then
20 Defendant shall provide written notice to Dr. Leeman of any asserted change in the law, and shall
21 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
22 that, the Products are so affected.

23 **10. NOTICES**

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

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To Defendant:

John P. Lee, Esq.
LAW OFFICES OF JOHN P. LEE PC
3435 Wilshire Boulevard, Suite 2920
Los Angeles, California 90010

To Dr. Leeman:

Proposition 65 Coordinator
HIRST & CHANLER LLP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

11. COUNTERPARTS; FACSIMILE SIGNATURES

This Consent Judgment may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

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

Dr. Leeman agrees to comply with the reporting form requirements referenced in California Health & Safety Code §25249.7(f).

13. ADDITIONAL POST EXECUTION ACTIVITIES

Dr. Leeman and Defendant agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the court in a timely manner. The parties acknowledge that, pursuant to California Health & Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. Accordingly, Plaintiff agrees to file a Motion to Approve the Agreement (“Motion”). Defendant shall have no additional responsibility to Plaintiff’s counsel pursuant to Code of Civil Procedure §1021.5 or otherwise with regard to reimbursement of any fees and costs incurred with respect to the preparation and filing of the Motion or with regard to Plaintiff’s counsel appearing for a hearing thereon.

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1 **14. MODIFICATION**

2 This Consent Judgment may be modified only: (1) by written agreement of the parties and
3 upon entry of a modified Consent Judgment by the court thereon; or (2) upon a successful motion
4 of any party and entry of a modified Consent Judgment by the court. The Attorney General shall
5 be served with notice of any proposed modification to this Consent Judgment at least fifteen (15)
6 days in advance of its consideration by the court.

7 **15. AUTHORIZATION**

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

<p>11 AGREED TO:</p> <p>12 Date: <u>01/22/08</u></p> <p>13</p> <p>14 By: <u>Whitney Leeman</u> 15 Plaintiff, WHITNEY R. LEEMAN, Ph.D.</p>	<p>AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Defendant, SHIMS BARGAIN, INC.</p>
<p>17 APPROVED AS TO FORM:</p> <p>18 Date: _____</p> <p>19 HIRST & CHANLER LLP</p> <p>20 By: _____ 21 Laralei S. Paras 22 Attorneys for Plaintiff 23 WHITNEY R. LEEMAN, Ph.D.</p>	<p>APPROVED AS TO FORM:</p> <p>Date: _____</p> <p>LAW OFFICES OF JOHN P. LEE</p> <p>By: _____ John P. Lee Attorneys for Defendant SHIMS BARGAIN, INC.</p>

24 **IT IS SO ORDERED.**

25 Date: _____

26 _____
27 JUDGE OF THE SUPERIOR COURT
28

14. **MODIFICATION**

This Consent Judgment may be modified only: (1) by written agreement of the parties and upon entry of a modified Consent Judgment by the court thereon; or (2) upon a successful motion of any party and entry of a modified Consent Judgment by the court. The Attorney General shall be served with notice of any proposed modification to this Consent Judgment at least fifteen (15) days in advance of its consideration by the court.

15. **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 align="center">AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Plaintiff, WHITNEY R. LEEMAN, Ph.D.</p>	<p align="center">AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Defendant, SHIMS BARGAIN, INC.</p>
<p align="center">APPROVED AS TO FORM:</p> <p>Date: <u>10-21-2002</u></p> <p align="center">HIRST & CHANLER LLP</p> <p>By:  Daralei S. Paras Attorneys for Plaintiff WHITNEY R. LEEMAN, Ph.D.</p>	<p align="center">APPROVED AS TO FORM:</p> <p>Date: _____</p> <p align="center">LAW OFFICES OF JOHN P. LEE</p> <p>By: _____ John P. Lee Attorneys for Defendant SHIMS BARGAIN, INC.</p>

IT IS SO ORDERED.

Date: _____

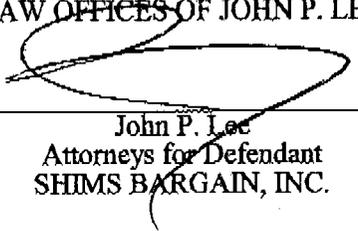
JUDGE OF THE SUPERIOR COURT

1 **14. MODIFICATION**

2 This Consent Judgment may be modified only: (1) by written agreement of the parties and
3 upon entry of a modified Consent Judgment by the court thereon; or (2) upon a successful motion
4 of any party and entry of a modified Consent Judgment by the court. The Attorney General shall
5 be served with notice of any proposed modification to this Consent Judgment at least fifteen (15)
6 days in advance of its consideration by the court.

7 **15. AUTHORIZATION**

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

<p style="text-align: center;">AGREED TO:</p> <p>Date: _____</p> <p>By: _____ Plaintiff, WHITNEY R. LEEMAN, Ph.D.</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: <u>10/22/08</u></p> <p>By:  Defendant, SHIMS BARGAIN, INC.</p>
<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: _____</p> <p style="text-align: center;">HIRST & CHANLER LLP</p> <p>By: _____ Laralei S. Paras Attorneys for Plaintiff WHITNEY R. LEEMAN, Ph.D.</p>	<p style="text-align: center;">APPROVED AS TO FORM:</p> <p>Date: <u>Oct. 22, 2008</u></p> <p style="text-align: center;">LAW OFFICES OF JOHN P. LEE</p> <p>By:  John P. Lee Attorneys for Defendant SHIMS BARGAIN, INC.</p>

24 **IT IS SO ORDERED.**

25 Date: _____

26 _____
JUDGE OF THE SUPERIOR COURT

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