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10 Attorneys for Defendant
11 26 CALIFORNIA BAZAR, INC.
12

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE CITY AND COUNTY OF SAN FRANCISCO
15 UNLIMITED CIVIL JURISDICTION

16 ANTHONY E. HELD, Ph.D., P.E.,

17 Plaintiff,

18 vs.
19

20 26 CALIFORNIA BAZAR, INC. and DOES 1
through 150, inclusive,

21 Defendants.
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Case No. CGC-08-480732

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

Health & Safety Code § 25249.6

1 **I. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and 26 California Bazar, Inc.**

3 This Consent Judgment is entered into by and between Plaintiff Anthony E. Held, Ph.D.,
4 P.E. ("Dr. Held" or "Plaintiff") and Defendant 26 California Bazar, Inc. ("26 California Bazar" or
5 "Defendant"), with Plaintiff and Defendant collectively referred to as the "parties."

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 26 California Bazar employs ten or more persons and thus is a person in the course of
12 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
13 California Health & Safety Code § 25249.6 *et seq.* (Proposition 65).

14 **1.4 General Allegations**

15 Dr. Held alleges that 26 California Bazar has manufactured, distributed and/or sold certain
16 (1) bibs, including but not limited to the Fancy Baby Bib, Baby-Garden, GN123; and (2)
17 inflatable vinyl toys, including but not limited to the Spiderman Swim Ring, SS1286, containing
18 di(2-ethylhexyl)phthalate ("DEHP") without the requisite Proposition 65 warnings. DEHP is a
19 phthalate that is listed as a reproductive and developmental toxicant pursuant to Proposition 65
20 and is referred to hereinafter as the "Listed Chemical."

21 **1.5 Product Description**

22 The products covered by this Consent Judgment are bibs and inflatable vinyl toys,
23 including but not limited to the Fancy Baby Bib, Baby-Garden, GN123 (#7 35392 46123 9), and
24 the Spiderman Swim Ring, SS1286 (#7 35932 18286 8). All bibs and inflatable vinyl toys
25 containing the Listed Chemical and sold or distributed by 26 California Bazar are referred to
26 hereinafter as the "Covered Products."

27 **1.6 Notices of Violation**

28 On April 22, 2008, Dr. Held served 26 California Bazar and various public enforcement

1 agencies with a document entitled "60-Day Notice of Violation" (the "Notices") that provided 26
2 California Bazar and public enforcers with notice of alleged violations of Health & Safety Code §
3 25249.6 for failing to warn consumers that the Covered Products that 26 California Bazar
4 manufactured, distributed and/or sold exposed users in California to DEHP. To the best of the
5 parties' knowledge, no public enforcer has diligently prosecuted the allegations set forth in the
6 Notices.

7 **1.7 Complaint**

8 On October 8, 2008, Dr. Held, acting in the interest of the general public in California,
9 filed a complaint ("Complaint" or "Action") in the Superior Court in and for the County of San
10 Francisco against 26 California Bazar and Does 1 through 150, alleging violations of Health &
11 Safety Code § 25249.6 based on alleged exposures to DEHP contained in Covered Products
12 manufactured, distributed and/or sold by 26 California Bazar.

13 **1.8 No Admission**

14 26 California Bazar denies the material, factual and legal allegations contained in Dr.
15 Held's Notices and Complaint, and maintains that all Covered Products it has distributed and/or
16 sold in California have been and are in compliance with all applicable laws. Nothing in this
17 Consent Judgment shall be construed as an admission by 26 California Bazar of any fact, finding,
18 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or
19 be construed as an admission by 26 California Bazar of any fact, finding, conclusion, issue of
20 law, or violation of law, such being specifically denied by 26 California Bazar. However, this
21 Section shall not diminish or otherwise affect 26 California Bazar's obligations, responsibilities,
22 and duties under this Consent Judgment.

23 **1.9 Consent to Jurisdiction**

24 For purposes of this Consent Judgment only, the parties stipulate that this Court has
25 jurisdiction over 26 California Bazar as to the allegations contained in the Complaint, that venue
26 is proper in the City and County of San Francisco, and that this Court has jurisdiction to enter and
27 enforce the provisions of this Consent Judgment.
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II. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

Commencing on the Effective Date, 26 California Bazar shall not sell, ship, or offer to be shipped for sale in California any Covered Products unless such Products are sold or shipped with one of the clear and reasonable warnings set forth in subsections 2.1(a) and (b), are otherwise exempt pursuant to Section 2.2, or comply with the reformulation standards set forth in Section 2.3.

(a) Retail Store Sales.

WARNING: This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

Page 3

1 **WARNING:** This product contains DEHP, a phthalate
2 chemical known to the State of California
3 to cause birth defects and other
4 reproductive harm.

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

8 **WARNING:** The following products contain DEHP, a phthalate
9 chemical known to the State of California to
10 cause birth defects and other reproductive harm.

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

12 **(b) Mail Order Catalog and Internet Sales.** In the event that 26 California
13 Bazar sells Covered Products via mail order catalog or internet to customers located in California
14 after the Effective Date that are not Reformulated Products, 26 California Bazar shall satisfy its
15 warning obligations for Covered Products sold via mail order catalog or the Internet to California
16 residents by providing a warning: (i) in the mail order catalog, or (ii) on the website. Warnings
17 given in the mail order catalog or on the website shall identify the specific Covered Product to
18 which the warning applies as further specified in Sections 2.1(b)(i) and (ii).

19 **(i) Mail Order Catalog Warning.** Any warning provided in a mail
20 order catalog must be in the same type size or larger than the Covered Product description text
21 within the catalog. The following warning shall be provided on the same page and in the same
22 location as the display and/or description of the Covered Product:

23 **WARNING:** This product contains DEHP, a phthalate
24 chemical known to the State of California
25 to cause birth defects and other
26 reproductive harm.

27 Where it is impracticable to provide the warning on the same page and in the same
28 location as the display and/or description of the Covered Product, 26 California Bazar may utilize

¹ For purposes of the consent judgment, "sold in proximity" shall mean that the Covered Product 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 a designated symbol to cross reference the applicable warning and shall define the term
2 “designated symbol” with the following language on the inside of the front cover of the catalog or
3 on the same page as any order form for the Covered Product(s):

4 **WARNING:** Certain products identified with this
5 symbol ▼ and offered for sale in this
6 catalog contain DEHP, a phthalate
7 chemical known to the State of California
8 to cause birth defects and other
9 reproductive harm.

10 The designated symbol must appear on the same page and in close proximity to the
11 display and/or description of the Covered Product. On each page where the designated symbol
12 appears, 26 California Bazar must provide a header or footer directing the consumer to the
13 warning language and definition of the designated symbol.

14 If 26 California Bazar elects to provide warnings in the mail order catalog, then the
15 warnings must be included in all catalogs offering to sell one or more Products printed after
16 March 31, 2009.

17 (ii) **Internet Website Warning.** A warning may be given in
18 conjunction with the sale of the Covered Product via the Internet, provided it appears either: (a)
19 on the same web page on which the Covered Product is displayed; (b) on the same web page as
20 the order form for the Covered Product; (c) on the same page as the price for any Covered
21 Product; or (d) on one or more web pages displayed to a purchaser during the checkout process.
22 The following warning statement shall be used and shall appear in any of the above instances
23 adjacent to or immediately following the display, description, or price of the Covered Product for
24 which it is given in the same type size or larger than the Covered Product description text:

25 **WARNING:** This product contains DEHP, a phthalate
26 chemical known to the State of California to
27 cause birth defects and other reproductive harm.

28 Alternatively, the designated symbol may appear adjacent to or immediately following the
display, description, or price of the Covered Product for which a warning is being given, provided
that the following warning statement also appears elsewhere on the same web page, as follows:

WARNING: Products identified on this page with the following symbol contain DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm: ▼.

2.2 Exceptions To Warning Requirements

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

2.3 Reformulation Standards

Reformulated Products are defined as those Covered Products containing less than or equal to 1,000 parts per million ("ppm") of DEHP. The warnings required pursuant to Section 2.1 above shall not be required for Reformulated Products. 26 California Bazar shall use Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C, or other comparable methodologies accepted by one or more federal and/or state agencies, to determine whether the respective levels have been exceeded in its Covered Products.

2.4 Reformulation Commitment

26 California Bazar hereby commits that one hundred percent (100%) of the Covered Products that it sells in California after April 17, 2009, shall qualify as Reformulated Products or shall otherwise be exempt from the warning requirements of Section 2.1.

III. MONETARY PAYMENTS

3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)

In settlement of all claims related to the Covered Products and Listed Chemical referred to in the Complaint and this Consent Judgment pursuant to Health & Safety Code § 25249.7(b), 26 California Bazar shall pay \$6,000 in civil penalties. Civil penalties are to be apportioned in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Anthony Held as provided by California Health & Safety Code § 25249.12(d). 26 California Bazar shall issue two separate checks for the penalty payment: (a) one check made payable to "Hirst & Chanler LLP in Trust for OEHHA" in the amount of \$4,500, representing 75% of the total penalty; and (b) one check to "Hirst & Chanler

1 LLP in Trust for Anthony Held" in the amount of \$1,500, representing 25% of the total penalty.
2 Two separate 1099s shall be issued for the above-payments: (a) OEHHA, P.O. Box 4010,
3 Sacramento, CA 95814 (EIN: 68-0284486); and (b) Anthony Held, whose information shall be
4 provided five calendar days before the payment is due.

5 Payment shall be delivered to Dr. Held's counsel on or before May 1, 2009, at the
6 following address:

7 Hirst & Chanler LLP
8 Attn: Proposition 65 Controller
9 2560 Ninth Street
10 Parker Plaza, Suite 214
11 Berkeley, CA 94710

12 **IV. REIMBURSEMENT OF FEES AND COSTS**

13 **4.1 Attorney Fees and Costs**

14 The Parties acknowledge that Dr. Held offered to resolve the dispute without reaching an
15 agreement on the amount of attorney's fees and costs to be reimbursed to him, thereby leaving
16 open this issue to be resolved after the material terms of the settlement had been reached, and the
17 agreement signed. The Parties then attempted to (but did not) reach an accord on the
18 compensation due to Dr. Held and his counsel under the private attorney general doctrine codified
19 at Code of Civil Procedure § 1021.5 for all work performed through the Effective Date of the
20 Agreement and reasonably to be performed in connection with the terms set forth in this
21 Agreement after the Effective Date. The parties do agree, however, that Dr. Held and his counsel
22 are entitled to their reasonable attorneys fees and costs under the prerequisites set forth by CCP
23 §1021.5; however, they disagree as to the amount of such fees and costs. Accordingly, following
24 the execution of this Agreement, plaintiff shall make an application to the Court for an award of
25 his expert, investigation and attorneys fees and costs under the private attorney general doctrine
26 codified at Code of Civil Procedure §1021.5.

27 In an effort to save resources, 26 California Bazar may elect to have the outstanding fee
28 and cost issue adjudicated by binding arbitration through the American Arbitration Association or
JAMS Resolution Services in the third party's San Francisco offices so long as 26 California
Bazar: (1) provides written notice to Dr. Held of its intent to invoke this procedural option no

1 later than the close of business on May 1, 2009; (2) agrees to pay the costs of the arbitration;
2 (3) stipulates that the parties will inform the arbitration service that it is the objective of the
3 parties that the process be completed on or before June 30, 2009; and (4) the award shall be paid
4 within three days of the issuance of the decision.

5 **V. CLAIMS COVERED AND RELEASE**

6 **5.1 Release of 26 California Bazar**

7 In further consideration of the promises and agreements herein contained, the injunctive
8 relief commitments set forth in Section 2, and for the payments to be made pursuant to Sections 3
9 and 4, Dr. Held on behalf of himself, his past and current agents, representatives, attorneys,
10 successors, and/or assignees, and the general public, hereby waives with respect to baby bibs and
11 inflatable swim rings only all rights to institute or participate in, directly or indirectly, any form
12 of legal action and releases all claims, including, without limitation, all actions, and causes of
13 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,
14 losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys'
15 fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively
16 "claims"), against 26 California Bazar and each of its wholesalers, licensors, licensees, retailers,
17 franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates,
18 subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders,
19 agents, and employees, and sister and parent entities (collectively "Releasees") that arise under
20 Proposition 65 or any other statutory or common law claims that could have been asserted in the
21 public interest, as such claims relate to the Releasees' alleged failure to warn about exposures to
22 the Listed Chemical contained in the Covered Products. 26 California Bazar's compliance with
23 this Consent Judgment shall constitute compliance with Proposition 65 for 26 California Bazar
24 and its Releasees with respect to the Listed Chemical in such items after the Effective Date.

25 The parties further understand and agree that this release shall not extend upstream to any
26 entities that manufactured the Covered Products or any component parts thereof, or any
27 distributors or suppliers who sold the Covered Products or any component parts thereof to 26
28 California Bazar.

1 **5.2 26 California Bazar's Release of Dr. Held**

2 26 California Bazar waives any and all claims against Dr. Held, his attorneys, and other
3 representatives for any and all actions taken or statements made (or those that could have been
4 taken or made) by Dr. Held and his attorneys and other representatives, whether in the course of
5 investigating claims or otherwise seeking enforcement of Proposition 65 against them in this
6 matter, and/or with respect to the Covered Products.

7 **VI. COURT APPROVAL**

8 This Consent Judgment is not effective until it is approved and entered by the Court and
9 shall be null and void if, for any reason, it is not approved and entered by the Court within nine
10 months after it has been fully executed by all parties. In the event this Consent Judgment is
11 (a) not entered by this Court within nine months (or thereafter) for any reason whatsoever, or
12 (b) is entered by the Court and subsequently overturned by any appellate court, any monies that
13 have been provided to Dr. Held, or his counsel pursuant to Section 3 and/or Section 4 above,
14 together with interest at the prevailing federal rate accruing from the date of payment by 26
15 California Bazar, shall be refunded within fifteen (15) days after receiving written demand from
16 26 California Bazar for return of such funds.

17 **VII. SEVERABILITY**

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

21 **VIII. GOVERNING LAW**

22 The terms of this Consent Judgment shall be governed by the laws of the State of
23 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
24 inapplicable by reason of law generally, or as to the Listed Chemical and/or the Covered
25 Products, then 26 California Bazar shall have no further obligations pursuant to this Consent
26 Judgment with respect to, and to the extent that, the Covered Products are so affected.

27 **IX. NOTICES**

28 Unless specified herein, all correspondence and notices required to be provided pursuant

1 to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
2 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
3 other party at the following addresses:

4 To 26 California Bazar:

5 26 California Bazar
6 c/o Robert B. Mobasseri, Esq.
7 445 S. Figueroa Street, #2700
8 Los Angeles, California 90071

8 To Dr. Held:

9 Hirst & Chanler LLP
10 Attn: Proposition 65 Coordinator
11 2560 Ninth Street, Suite 214
12 Berkeley, CA 94710

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

14 **X. COUNTERPARTS, FACSIMILE SIGNATURES**

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

18 **XI. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

19 Dr. Held agrees to comply with the reporting form requirements referenced in California
20 Health & Safety Code §25249.7(f). This Consent Judgment shall be served on the Attorney
21 General per Health and Safety Code §25249.7(f)(5) and is not intended to affect the Attorney
22 General's rights as against any other person or entity not a party to this Consent Judgment
23 concerning the Covered Products.

24 **XII. ADDITIONAL POST EXECUTION ACTIVITIES**

25 The parties acknowledge that pursuant to Health & Safety Code §25249.7, a noticed
26 motion is required to obtain judicial approval of this Consent Judgment. In furtherance of
27 obtaining such approval, Dr. Held, 26 California Bazar and their respective counsel agree to
28 mutually employ their best efforts to support the entry of this agreement as a Consent Judgment

1 and obtain approval of the Consent Judgment by the Court in a timely manner. For purposes of
2 this paragraph, best efforts shall include, at a minimum, cooperating on the drafting and filing any
3 papers, asserting any oral argument in support of the required motion for judicial approval, and
4 defending any appellate review of the Court's approval.

5 **XIII. MODIFICATION**

6 This Consent Judgment may be modified only: (1) by written agreement of the parties; or
7 (2) upon a successful motion of any party and entry of a modified Consent Judgment by the
8 Court. Should either party bring a motion to modify the terms of this Consent Judgment, the
9 responding party shall be entitled to seek its/his reasonable fees and costs incurred in the
10 modification process under C.C.P. § 1021.5.

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1 **XIV. AUTHORIZATION**

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

5 **AGREED TO:**

AGREED TO:

6 Date: _____

Date: 4-17-09

7
8 By: _____
9 Plaintiff ANTHONY E. HELD, Ph.D., P.E.

By: 
Defendant 26 CALIFORNIA BAZAR, INC.

10 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

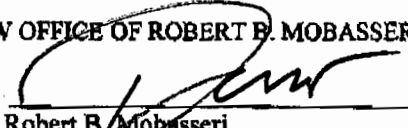
11 Date: _____

Date: 4-17-09

12 **HIRST & CHANLER LLP**

LAW OFFICE OF ROBERT B. MOBASSERI PC

13 By: _____
14 David Lavine
15 Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

By: 
Robert B. Mobasser
Attorneys for Defendant
26 CALIFORNIA BAZAR, INC.

16 **IT IS SO ORDERED.**

17 Date: _____

JUDGE OF THE SUPERIOR COURT

1 **XIV. AUTHORIZATION**

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

5 AGREED TO:

AGREED TO:

6 Date: 04/17/2009

Date: _____

7
8 By: Anthony E. Held
9 Plaintiff ANTHONY E. HELD, Ph.D., P.E.

By: _____
Defendant 26 CALIFORNIA BAZAR, INC.

10 APPROVED AS TO FORM:

APPROVED AS TO FORM:

11 Date: April 20, 2009

Date: _____

12 HIRST & CHANLER LLP

LAW OFFICE OF ROBERT B. MOBASSERI PC

13 By: David Lavine
14 David Lavine
15 Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

By: _____
Robert B. Mobasseri
Attorneys for Defendant
26 CALIFORNIA BAZAR, INC.

16
17 **IT IS SO ORDERED.**

18 Date: _____

JUDGE OF THE SUPERIOR COURT