David Lavine, State Bar No. 166744
HIRST & CHANLER LLP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, California 94710
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

Robert B. Mobasseri, State Bar No. 193193
LAW OFFICES OF ROBERT B. MOBASSERI, A P.C.
445 S. Figueroa Street, 27th Floor
Los Angeles, California 90071
Telephone: (213) 612-7701
Facsimile: (213) 612-7781

Attorneys for Defendant
26 CALIFORNIA BAZAR, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE CITY AND COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, Ph.D., P.E., Plaintiff, vs. 26 CALIFORNIA BAZAR, INC. and DOES 1 through 150, inclusive, Defendants.	Case No. CGC-08-480732 **REVISED STIPULATION AND [PROPOSED] ORDER RE: CONSENT JUDGMENT** Health & Safety Code § 25249.6

I. INTRODUCTION

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

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

1.2 Plaintiff

Dr. Held 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

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

1.5 Product Description

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

1.6 Notices of Violation

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

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

1.7 Complaint

On October 8, 2008, Dr. Held, 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 San Francisco against 26 California Bazar and Does 1 through 150, alleging violations of Health & Safety Code § 25249.6 based on alleged exposures to DEHP contained in Covered Products manufactured, distributed and/or sold by 26 California Bazar.

1.8 No Admission

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

1.9 Consent to Jurisdiction

For purposes of this Consent Judgment only, the parties stipulate that this Court has jurisdiction over 26 California Bazar as to the allegations contained in the Complaint, that venue is proper in the City and County of San Francisco, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

1.10 Effective Date

For purposes of this Consent Judgment, the term "Effective Date" shall mean April 17, 2009.

II. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 Product Warnings

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.

Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which specific Covered Product the warning applies, so as to minimize if not eliminate the chance that an overwarning situation will arise.

(a) Retail Store Sales.

(i) Product Labeling. 26 California Bazar may perform its warning obligation by ensuring that a warning is affixed to the packaging, labeling, or directly on each Covered Product sold in California by 26 California Bazar or its agents, that states:

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

(ii) Point-of-Sale Warnings. 26 California Bazar may perform its warning obligations by providing warning signs in the form below to its customers in California with instructions to post the warnings in close proximity to the point of display of the Covered Products.

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

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

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

[*list products for which warning is required*]

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

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

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

Where it is impracticable to provide the warning on the same page and in the same 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.

a designated symbol to cross reference the applicable warning and shall define the term "designated symbol" with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Covered Product(s):

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

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

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

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

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

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

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

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

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

IV. REIMBURSEMENT OF FEES AND COSTS

4.1 Attorney Fees and Costs

The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. After the other settlement terms had been finalized, the Parties attempted to (and did) reach an accord on the compensation due to Dr. Held and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure (CCP) §1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, 26 California Bazar shall reimburse Dr. Held's counsel for fees and costs incurred as a result of investigating, bringing this matter to 26 California Bazar's attention, and negotiating a settlement in the public interest. 26 California Bazar shall pay Dr. Held and his counsel $5,000 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be issued in a third separate check made payable to "Hirst & Chanler LLP" and shall be delivered on or before June 30, 2009, at the following address:

HIRST & CHANLER LLP
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

26 California Bazar shall issue a separate 1099 for fees and cost paid in the amount of

$5,000 to Hirst & Chanler LLP, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, CA 94710 (EIN: 20-3929984).

V. CLAIMS COVERED AND RELEASE

5.1 Release of 26 California Bazar

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

In addition to the foregoing, Dr. Held, on behalf of himself, his past and current agents, representatives, attorneys, and successors and/or assignees, and not in his representative capacity hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all Claims against 26 California Bazar. This additional release, which Dr. Held is providing in his individual capacity, includes 26 California Bazar's alleged failure to warn about exposures to or identification of any chemicals listed under Proposition 65 contained

in any products sold by 26 California Bazar.

5.2 26 California Bazar's Release of Dr. Held

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

VI. COURT APPROVAL

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

VII. SEVERABILITY

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

VIII. GOVERNING LAW

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

IX. NOTICES

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

To 26 California Bazar:

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

To Dr. Held:

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

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.

X. 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 documents.

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

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

XII. ADDITIONAL POST EXECUTION ACTIVITIES

The parties acknowledge that pursuant to Health & Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of

obtaining such approval, Dr. Held, 26 California Bazar and their respective counsel 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. For purposes of this paragraph, best efforts shall include, at a minimum, cooperating on the drafting and filing any papers, asserting any oral argument in support of the required motion for judicial approval, and defending any appellate review of the Court's approval.

XIII. MODIFICATION

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

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XIV. 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.

AGREED TO:

APPROVED
By Anthony E Held at 6:40 pm, 7/7/09

Date: _____

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

APPROVED AS TO FORM:

Date: 7/10/2009

HIRST & CHANLER LLP

By: Lar D. Han for
David Lavine
Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

AGREED TO:

Date: 7-6-09

By: [signature]
Defendant 26 CALIFORNIA BAZAR, INC.

APPROVED AS TO FORM:

Date: 7/6/09

LAW OFFICE OF ROBERT B. MOBASSERI PC

By: [signature]
Robert B. Mobasseri
Attorneys for Defendant
26 CALIFORNIA BAZAR, INC.

IT IS SO ORDERED.

Date: _____

_____
JUDGE OF THE SUPERIOR COURT