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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.

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.

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1           **1.6    Effective Date**

2           For purposes of this Consent Judgment, the term “Effective Date” shall mean the date of  
3 execution of this Consent Judgment by the Parties.

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

5           **2.1    Product Warnings**

6           Commencing on the Effective Date, Shims shall not sell, ship, or offer to be shipped for sale  
7 in California any Product unless such Product is sold or shipped with one of the clear and  
8 reasonable warnings set forth in subsections 2.1(a) and (b), or is otherwise exempt pursuant to  
9 Section 2.2, as compliant with the reformulation standards set forth in Section 2.3.

10          Each warning shall be prominently placed with such conspicuousness as compared with other  
11 words, statements, designs, or devices as to render it likely to be read and understood by an  
12 ordinary individual under customary conditions before purchase or use. Each warning shall be  
13 provided in a manner such that the consumer or user understands to which *specific* Product the  
14 warning applies, so as to minimize if not eliminate the chance that an overwarning situation will  
15 arise. Nothing in this Consent Judgment shall be interpreted to relieve Shims from any obligation  
16 to comply with any pertinent state or federal toxics control laws (*e.g.*, the federal ban on selling  
17 childcare items and certain children’s toys containing more than 1,000 ppm of DEHP or more than  
18 300 ppm of lead).

19           **(a)    Product Labeling.** Shims may affix or cause to be affixed a warning to the  
20 packaging, labeling, or directly on each Product sold in retail outlets in California by Shims or its  
21 agents, that states:

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

25           **(b)    Point-of-Sale Warnings.** Alternatively, Shims may provide or cause to be  
26 provided warning signs in the form below to its customers in California with instructions to post the  
27 warnings in close proximity to the point of display of the Products. Shims may perform its warning  
28 obligations by ensuring that signs are posted at retail outlets in the State of California where the

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:<sup>1</sup>

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 <sup>1</sup>For 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:

26 Chanler Law Group  
27 Attn: Proposition 65 Coordinator  
28 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  
Los Angeles, California 90010

For Held and/or Brimer:

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

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

25 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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;"><b>AGREED TO:</b></p> <p>Date: <span style="border: 1px solid black; padding: 2px;">APPROVED By Anthony Held at 1:21 pm, Dec 01, 2000</span></p> <p>By: <u>Anthony E. Held</u> Anthony Held</p>	<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: <u>James Shim</u> James Shim, President Shims Bargain, Inc. dba JC Sales</p>
<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: _____ Russell Brimer</p>	<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: _____</p>

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

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

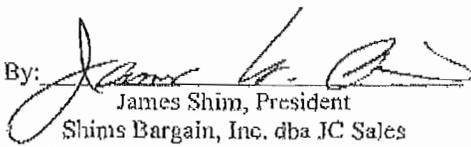
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<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By: _____ Anthony Held</p>	<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: _____</p> <p>By:  James Shim, President Shims Bargain, Inc. dba JC Sales</p>
<p style="text-align: center;"><b>AGREED TO:</b></p> <p>Date: <u>12-1-09</u></p> <p>By:  Russell Brimer</p>	

IT IS SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT