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6 Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION
11

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

13 Plaintiff,

14 v.

15 SHIN'S TRADING CO., INC., dba CALA
16 PRODUCTS; and DOES 1-150, inclusive,

17 Defendants.
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Case No. RG11564506

**[PROPOSED] CONSENT
JUDGMENT**

Health & Safety Code § 25249.6

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Shin’s Trading Co., Inc., and Cala Products**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E. (“Dr.
4 Held” or “Plaintiff”) Shin’s Trading Co., Inc., a California corporation, dba Cala Products,
5 (hereinafter “Defendant”), with Dr. Held and Defendant collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Dr. Held alleges that Defendant employs ten or more persons and 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 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Dr. Held alleges that Defendant has manufactured, distributed, and/or offered for sale in
16 California cosmetic cases/bags containing di(2-ethylhexyl)phthalate (“DEHP”) without the requisite
17 Proposition 65 warnings. DEHP is listed pursuant to Proposition 65 as a chemical known to the
18 State of California to cause reproductive toxicity (hereinafter the “Listed Chemical”).

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are “cosmetic cases/bags
21 containing the Listed Chemical”, including, but not limited to, toiletry, manicure/pedicure, and
22 personal care kits, such as the Cala Travel Manicure Kit, Item #70-669B (#6 16513 70669 0) and
23 Cala Pretty Nail Kit, Item # 70-614, manufactured, distributed, or sold by Defendant in California
24 (“Products”).

25 **1.6 Notice of Violation**

26 On December 30, 2010, Dr. Held served Defendant and various public enforcement agencies
27 with a document entitled 60-Day Notice of Violation (“Notice”) that provided Defendant and such
28 public enforcers with notice that alleged that Defendant was in violation of Proposition 65 for

1 failing to warn consumers and customers that its products exposed users in California to the Listed
2 Chemical.

3 **1.7 Complaint**

4 On March 8, 2011, Dr. Held filed a complaint in the instant action in the Alameda County
5 Superior Court (the "Complaint"), against Defendant alleging violations of Proposition 65 based on
6 the allegations in the Notice.

7 **1.8 No Admission**

8 Defendant denies the factual and legal allegations contained in the Notice and Complaint,
9 and maintain that all products that they have sold in California have been and are in compliance
10 with all laws, including, without limitation, Proposition 65. Nothing in this Consent Judgment shall
11 be construed as an admission by Defendant of any fact, finding, conclusion, issue of law, or
12 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
13 admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such
14 being specifically denied by Defendant. However, this Section shall not diminish or otherwise
15 affect Defendant's obligations, responsibilities and duties under this Consent Judgment.

16 **1.9 Consent to Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper in
19 the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of
20 this Consent Judgment, pursuant to California Code of Civil Procedure section 664.6, as a full and
21 binding resolution of all claims which were or could have been raised in the Complaint against
22 Defendant based on the facts alleged therein and in the Notice.

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term "Effective Date" shall mean October 1,
25 2011.

26 **2. INJUNCTIVE RELIEF**

27 As of the Effective Date, Defendant shall not ship, sell, or offer to be shipped for sale in
28 California any Product unless it has been reformulated to contain the Listed Chemical in

1 concentrations less than 1,000 parts per million (the “DEHP Standard”) in each accessible
2 component when analyzed pursuant to U.S. Environmental Protection Agency testing
3 methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for
4 the purpose of determining the Listed Chemical content in a solid substance.

5 **3. MONETARY PAYMENTS**

6 In settlement of all the claims referred to in this Consent Judgment against it, Defendant shall
7 make a payment of \$8,000 to be apportioned in accordance with Health & Safety Code
8 section 25249.12 (c)(1) and (d), with 75% of these funds remitted to the State of California’s Office
9 of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of these penalty
10 monies remitted to Dr. Held as provided by Health & Safety Code section 25249.12(d). Defendant
11 shall issue two checks for the penalty payment, made payable to: (a) “The Chanler Group in Trust
12 for OEHHA” in the amount of \$6,000, representing 75% of the total penalty, and (b) “The Chanler
13 Group in Trust for Anthony E. Held” in the amount of \$2,000, representing 25% of the total
14 penalty. Two separate 1099s shall be issued for the above payments. The first 1099 shall be issued
15 to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814
16 (EIN: 68-0284486) in the amount of \$6,000. The second 1099 shall be issued to Dr. Held in the
17 amount of \$2,000, whose address and tax identification number shall be furnished upon request.
18 The payments shall be delivered on or before October 1, 2011. All payments shall be delivered to
19 the “Payment Address”:

20 The Chanler Group
21 Attn: Proposition 65 Controller
22 2560 Ninth Street
23 Parker Plaza, Suite 214
24 Berkeley, CA 94710

23 **4. REIMBURSEMENT OF FEES AND COSTS**

24 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute
25 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
26 this fee issue to be resolved after the material terms of the agreement had been settled. Defendant
27 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
28 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to

1 Dr. Held and his counsel under general contract principles and the private attorney general doctrine
2 codified at California Code of Civil Procedure section 1021.5, for all work performed in this matter,
3 except fees that may be incurred on appeal. Under these legal principles, Defendant shall pay the
4 amount of \$28,000 for fees and costs incurred as a result of investigating, bringing this matter to
5 Defendant's attention, and negotiating a settlement in the public interest. Payments shall be made
6 in four installments, delivered to the Payment Address: on October 1, 2011, \$1,000; on November
7 1, 2011, \$9,000; on December 1, 2011, \$9,000; and on December 31, 2011, \$9,000. Defendant
8 shall issue a separate 1099 for fees and costs (EIN: 94-3171522) and shall make checks payable to
9 "The Chanler Group."

10 **5. CLAIMS COVERED AND RELEASED**

11 **5.1 Full, Final and Binding Resolution of Proposition 65 Allegations**

12 This Consent Judgment is a full, final and binding resolution between Plaintiff, on behalf of
13 himself and the public, and Defendant, of any violation of Proposition 65 that was or could have been
14 asserted by Plaintiff against Defendant, its parents, subsidiaries, affiliated entities that are under
15 common ownership, directors, officers, employees, attorneys, and each entity to whom Defendant
16 directly or indirectly distribute or sell the Products, including but not limited to downstream
17 distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and
18 licensees ("Releasees"), based on their failure to warn about alleged exposures to the Listed Chemical
19 contained in the Products that were sold by Defendant.

20 **5.2 Plaintiff's Public Release of Proposition 65 Claims**

21 In further consideration of the promises and agreements herein contained, Plaintiff on behalf
22 of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in
23 the interest of the general public, hereby waives all rights to institute or participate in, directly or
24 indirectly, any form of legal action and releases all claims, including, without limitation, all actions,
25 and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
26 penalties, losses, or expenses--including, but not limited to, investigation fees, expert fees, and
27 attorneys' fees, but exclusive of fees and costs on appeal--limited to and arising under Proposition 65
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1 with respect to the Listed Chemical in the Products sold by Defendant (collectively “claims”), against
2 Defendant and Releasees.

3 **5.3 Plaintiff’s Individual Release of Claims**

4 Plaintiff also, in his individual capacity, provides a release herein which shall be effective as a
5 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
6 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Plaintiff of any nature,
7 character or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of
8 alleged or actual exposures to the Listed Chemical in the Products manufactured, distributed or sold
9 by Defendant.

10 **5.4 Defendant’s Release of Plaintiff**

11 Defendant on behalf of itself, its past and current agents, representatives, attorneys,
12 successors, and/or assignees, hereby waives any and all claims against Plaintiff, his attorneys and
13 other representatives, for any and all actions taken or statements made (or those that could have been
14 taken or made) by Plaintiff and his attorneys and other representatives, whether in the course of
15 investigating claims or otherwise seeking to enforce Proposition 65 against them in this matter with
16 respect to the Products.

17 **6. COURT APPROVAL**

18 This Consent Judgment is not effective until it is approved and entered by the Court and
19 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
20 after it has been fully executed by all Parties, in which event any monies that have been provided to
21 Dr. Held or his counsel pursuant to Section 3 and/or Section 4 above shall be refunded within
22 fifteen (15) days after receiving written notice from Defendant that the one-year period has expired.

23 **7. SEVERABILITY**

24 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
25 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions
26 remaining shall not be adversely affected.
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1 **8. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California
3 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
4 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Defendant
5 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the
6 extent that, the Products are so affected.

7 **9. NOTICES**

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

12 For Defendant:

13 Jung Min Shin, President
14 Shin's Trading Co., Inc., dba Cala Products
15 3121 South Main Street
Los Angeles, CA 90007

16 with a copy to:

17 Alexander J. Chang, Esq.
18 Ardent Law Group, P.C.
2600 Michelson Dr., Suite 1700
19 Irvine, CA 92612

20 For Dr. Held:

21 Proposition 65 Coordinator
22 The Chanler Group
2560 Ninth Street
23 Parker Plaza, Suite 214
Berkeley, CA 94710

24 Any party, from time to time, may specify in writing to the other party a change of address
25 to which all notices and other communications shall be sent.
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1 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

5 **11. POST EXECUTION ACTIVITIES**

6 Dr. Held agrees to comply with the reporting form requirements referenced in California
7 Health & Safety Code section 25249.7(f). In addition, the Parties acknowledge that, pursuant to
8 California Health & Safety Code section 25249.7, a noticed motion is required to obtain judicial
9 approval of this Consent Judgment. In furtherance of obtaining such approval, Dr. Held and
10 Defendant agree to mutually employ their best efforts to support the entry of this agreement as a
11 Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.
12 For purposes of this section, best efforts shall include, at a minimum, cooperating on the drafting
13 and filing of any papers in support of the required motion for judicial approval.

14 **12. MODIFICATION**

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

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1 **13. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment and have read,
3 understood, and agree to all of the terms and conditions of this Consent Judgment.

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5 **AGREED TO:**

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7 By: Anthony E Held
8 ANTHONY E. HELD, PH.D., P.E.

5 **AGREED TO:**

6
7 By: [Signature]
8 JUNG MIN SHIN, PRESIDENT
9 SHIN'S TRADING CO., INC.,
10 DBA CALA PRODUCTS

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Date: APPROVED
By Tony Held at 4:38 pm, Sep 30, 2011

Date: 9/28/11