

SETTLEMENT AGREEMENT

BETWEEN

CONSUMER ADVOCACY GROUP, INC.

AND

SHIMS BARGAIN, INC.

Consumer Advocacy Group, Inc. (“CAG”), and Shims Bargain, Inc. (“Shims”) (collectively, the “Parties”) enter into this agreement (“Settlement Agreement”) to settle CAG’s allegations that Shims violated Proposition 65 for the purpose of avoiding prolonged and costly litigation. The effective date of this agreement shall be the date upon which it is fully executed by all Parties hereto (the “Effective Date”).

1.0 Introduction

1.1 CAG is a California-based entity that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer and industrial products.

1.2 Shims previously manufactured, sold, and/or distributed, at various times, **A-1 Tools 2PCS Car Battery Terminals (Item No: 8815)** (referred to throughout as the “Covered Product”).

1.3 CAG alleges that the Covered Product contains Lead, and that Shims did not provide a required warning in compliance with the California Safe Drinking Water and Toxic Enforcement Act (*Cal. Health & Safety Code § 25249.5, et seq.* (“Proposition 65”). On February 27, 1987, the Governor of California added Lead to the list of chemicals known to the State to cause reproductive toxicity,

developmental, male, female, and on October 1, 1992, the Governor added Lead and Lead Components to the list of chemicals known to the State to cause cancer. Both additions took place more than twenty (20) months before CAG served its “Sixty-Day Notice of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986” which is further described below. Lead is referred to hereafter as the “Covered Chemical.”

1.4 On or about March 11, 2011, CAG served Shims and certain relevant public enforcement agencies with a document dated March 10, 2011 and entitled “Sixty-Day Notice Of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986” (“Notice”). The Notice alleged that Shims violated Proposition 65 by failing to warn consumers in California that use of the Covered Product exposes persons to the Covered Chemical.

1.5 The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth below concerning the Parties’ and the Covered Product’s compliance with Proposition 65 (the “Dispute”).

1.6 By execution of this Settlement Agreement, the Parties do not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law regarding any violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission or evidence of fault,

wrongdoing, or liability by Shims, its officers, directors, employees, or parents, subsidiaries or affiliated corporations, in any administrative or judicial proceeding or litigation in any court, agency, or forum.

2.0 Release

This Settlement Agreement is a full, final, and binding resolution between CAG, on the one hand, and (a) Shims and its owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, predecessors, successors, and assigns (collectively "Releasees") and (b) all entities to whom Releasees directly or indirectly provide, distribute or sell the Covered Product, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Downstream Releasees"), on the other hand, of any violation or claimed violation of Proposition 65 or any statutory or common law claim that has been or could be asserted against the Releasees and Downstream Releasees regarding exposing persons to the Covered Chemical and the failure to warn about exposure to the Covered Chemical arising in connection with the Covered Product manufactured, shipped and/or otherwise distributed prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date. Shims' compliance with this Settlement Agreement shall constitute compliance with Proposition 65 with respect to the Covered Chemical in the Covered Product for both Releasees and Downstream Releasees for any Covered Product distributed and/or sold by Releasees or Downstream Releasees after the Effective Date.

CAG, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives and releases with respect to the Covered

Product all rights to institute or participate in, directly or indirectly, any form of legal action, 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) (collectively "Claims"), against Releasees and/or Downstream Releasees that arise under Proposition 65 or any other statutory or common law claims, only to the extent that such claims relate to Releasees' and/or Downstream Releasees' alleged exposure of persons to the Covered Chemical, or any failure by Releasees and Downstream Releasees to warn about exposures to the Covered Chemical, contained in the Covered Product.

It is intended by the Parties that the releases provided in this Paragraph 2.0 shall prevent CAG from asserting any Claims against Releasees and/or Downstream Releasees that arise under Proposition 65 or any other statutory or common law, to the extent that such claims relate to Releasees' and/or Downstream Releasees' alleged exposure of persons to the Covered Chemical or any failure by Releasees and Downstream Releasees to warn about exposures to the Covered Chemical in the Covered Product.

CAG, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of any nature, character or kind, known or unknown, suspected or unsuspected, against Releasees and Downstream Releasees arising under Proposition 65 to the extent that such claims relate to Releasees' alleged exposure of persons to the Covered Chemical in the Covered Product, and the failure to warn about exposures to the Covered

Chemical contained in the Covered Product sold by Releasees and/or Downstream Releasees through the Effective Date of this Settlement Agreement. CAG acknowledges that it is familiar with Section 1542 of Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

CAG, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of Civil Code § 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

3.0 Shims' Duties

3.1 Shims agrees, promises, and represents that by the thirtieth (30th) day after the Effective Date it will cease sale and distribution of the Covered Product in California, unless the Covered Product either is reformulated to a point where the level of Lead in the Covered Product is no more than 100 parts per million, or is covered by a Proposition 65 warning. The following language shall be a satisfactory warning for this section:

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

If Shims chooses to do so, this language may be modified to identify one or more chemicals.

4.0 Payments

4.1 Shims shall pay a total of forty-two thousand dollars (\$42,000.00) by separate checks apportioned as follows:

4.1.1. Payment to CAG: one thousand dollars (\$1,000.00) shall be paid to Consumer Advocacy Group, Inc. The check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212.

4.1.2. Attorneys' Fees and Costs: forty thousand dollars (\$40,000.00) of such payment shall be paid to Yeroushalmi & Associates, as CAG's attorneys, for reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating and bringing this matter to Shims' attention. The check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212.

4.1.3. Penalty: Shims shall issue two separate checks for a total amount of one thousand dollars (\$1,000.00) as penalties pursuant to Health & Safety Code § 25249.12: (a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of \$750.00, representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the

amount of \$250.00, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$750.00. The second 1099 shall be issued in the amount of \$250.00 to CAG and delivered to: Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212.

5.0 Authority to Enter Into Settlement Agreement

5.1 CAG represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind CAG to this Settlement Agreement.

5.2 Shims represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Shims to this Settlement Agreement.

6.0 Report of the Settlement Agreement to the Office of the Attorney General Of California

6.1 CAG shall report this Settlement Agreement to the Attorney General's Office within five (5) days of the Parties' execution of this Settlement Agreement.

7.0 Execution in Counterparts and Facsimile

7.1 This Settlement Agreement may be executed in counterparts, which taken together shall be deemed to constitute the same document. A facsimile or portable document format (PDF) signature shall be as valid as the original.

8.0 Modification of Settlement Agreement

8.1 Any modification to this Settlement Agreement shall be in writing and signed by the Parties.

9.0 Application of Settlement Agreement

9.1 This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, the CAG and the Releasees and Downstream Releasees identified in Section 2.0 above.

10.0 Enforcement of Settlement Agreement

10.1 Any party hereto may file suit before the Superior Court of the County of Los Angeles, consistent with the terms and conditions set forth in paragraphs 10.2 and 10.3 of this Settlement Agreement, to enforce the terms and conditions contained in this Settlement Agreement. The prevailing party may request its reasonable attorneys' fees and costs associated with such enforcement.

10.2 No action to enforce this Settlement Agreement may be commenced or maintained, and no notice of violation related to the Covered Product may be served or filed against a Releasee or a Downstream Releasee by CAG, unless the party seeking enforcement or alleging violation notifies the other party of the specific future acts alleged to breach this Settlement Agreement at least 90 days before serving or filing any action or Notice of Violation and the entity receiving the notice fails to comply with the requirements set forth in Section 10.3 below. Any notice to a Releasee or a Downstream Releasee must contain (a) the name of the product, (b) specific dates when the product was sold after the Effective Date in California without either reformulation or a Proposition 65 compliant warning, (c) the store or other place at which the product was available for sale to consumers, and (d) any other evidence or other support for the allegations in the

notice. Shims shall be provided with a copy of any notice to a Releasee or a Downstream Releasee with respect to a Shims product.

10.3 Within 30 days of receiving the notice described in Section 10.2, Shims, a Releasee, or a Downstream Releasee shall, as appropriate, either (1) withdraw the product for sale to the public, (2) refute the information provided under Section 10.2, or (3) otherwise establish that a violation of this Settlement Agreement has not occurred. Should the parties be unable to resolve the dispute, any party may seek relief under Section 10.1.

11.0 Notification Requirements

11.1 Any notice required or permitted hereunder shall be effective only if given in writing and delivered in person, certified or registered mail return receipt requested, or traceable overnight delivery service, to the following designees:

For CAG:

Reuben Yeroushalmi
YEROUSHALMI & ASSOCIATES
9100 Wilshire Boulevard, Suite 610 E
Beverly Hills, CA 90212
Fax: 310.623.1930

For Shims:

Gary M. Roberts
SNR DENTON
601 S. Figueroa Street, Suite 2500
Los Angeles, CA 90017-5704
Fax: (213) 623-9924

Any party may change its designee(s) for purposes of notification by providing written notice of such change pursuant to this section.

12.0 SEVERABILITY

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

13.0 GOVERNING LAW

13.1 The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within 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 Covered Chemical and/or the Covered Product, then Shims shall provide written notice to CAG of any asserted change in the law, and shall have no further obligations pursuant to this Agreement with respect to, and to the extent that, the Covered Product is so affected

CONSUMER ADVOCACY GROUP, INC.

Dated: _____

By: _____

Name: _____

Title: _____

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CONSUMER ADVOCACY GROUP, INC.

Dated: 2-28-12

By: 

Name: MICHEL SASSOON

Title: EXECUTIVE DIRECTOR

SHIMS BARGAIN, INC.

Dated: 2/17/2012


By: 

Name: K. Kenneth Sah


Title: president

As to form only:

Dated: 2/28/12

By: 
Reuben Yeroushalmi
Yeroushalmi & Associates
Attorneys for
Consumer Advocacy Group, Inc.

Dated: 2-23-12

By: 
Gary M. Roberts
SNR Denton
Attorneys for
Shims Bargain, Inc.