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

ENDORSED
FILED
San Francisco County Superior Court
SEP 23 2009
GORDON PARK-LI, Clerk
BY: ERICKA LARNAUTI
Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE ~~CITY AND~~ COUNTY OF SAN FRANCISCO
13 UNLIMITED CIVIL JURISDICTION

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

15 Plaintiff,

16 v.

17 26 CALIFORNIA BAZAR, INC., and DOES
18 1 through 150, inclusive,

19 Defendants.

Case No. CGC-08-480732

~~PROPOSED~~ JUDGMENT PURSUANT
TO TERMS OF REVISED STIPULATION
AND ORDER RE: CONSENT
JUDGMENT

Date: August 27, 2009

Time: 9:30 a.m.

Dept.: 302

Judge: Hon. Charlotte Walter Woolard

1 In the above-entitled action, Plaintiff ANTHONY E. HELD, Ph.D., P.E. and Defendant 26
2 CALIFORNIA BAZAR, INC., having agreed through their respective counsel that judgment be
3 entered pursuant to the terms of the Proposition 65 settlement agreement in the form of a Revised
4 Stipulation and [Proposed] Order Re: Consent Judgment entered into by the parties, and following
5 issuance of an order approving this Proposition 65 settlement agreement and entering the Revised
6 Stipulation and Order Re: Consent Judgment on August 27, 2009.

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Code of Civil
8 Procedure §664.6, judgment is entered in accordance with the terms of the Revised Stipulation and
9 Order Re: Consent Judgment attached hereto as **Exhibit 1**.

10 **IT IS SO ORDERED.**

11
12 Dated: OCT 09 2009

CHARLOTTE WALTER WOOLARD
JUDGE OF THE SUPERIOR COURT

Exhibit 1

1 David Lavine, State Bar No. 166744
HIRST & CHANLER LLP
2 2560 Ninth Street
Parker Plaza, Suite 214
3 Berkeley, California 94710
Telephone: (510) 848-8880
4 Facsimile: (510) 848-8118

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

7 Robert B. Mobasser, State Bar No. 193193
LAW OFFICES OF ROBERT B. MOBASSERI, A P.C.
8 445 S. Figueroa Street, 27th Floor
Los Angeles, California 90071
9 Telephone: (213) 612-7701
Facsimile: (213) 612-7781

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

Case No. CGC-08-480732

**REVISED 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.
28

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term "Effective Date" shall mean April 17,
3 2009.

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

5 **2.1 Product Warnings**

6 Commencing on the Effective Date, 26 California Bazar shall not sell, ship, or offer to be
7 shipped for sale in California any Covered Products unless such Products are sold or shipped with
8 one of the clear and reasonable warnings set forth in subsections 2.1(a) and (b), are otherwise
9 exempt pursuant to Section 2.2, or comply with the reformulation standards set forth in Section
10 2.3.

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

17 **(a) Retail Store Sales.**

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

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

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

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

¹For 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:

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

4 **2.2 Exceptions To Warning Requirements**

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

7 **2.3 Reformulation Standards**

8 Reformulated Products are defined as those Covered Products containing less than or
9 equal to 1,000 parts per million (“ppm”) of DEHP. The warnings required pursuant to Section
10 2.1 above shall not be required for Reformulated Products. 26 California Bazar shall use
11 Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C, or other
12 comparable methodologies accepted by one or more federal and/or state agencies, to determine
13 whether the respective levels have been exceeded in its Covered Products.

14 **2.4 Reformulation Commitment**

15 26 California Bazar hereby commits that one hundred percent (100%) of the Covered
16 Products that it sells in California after April 17, 2009, shall qualify as Reformulated Products or
17 shall otherwise be exempt from the warning requirements of Section 2.1.

18 **III. MONETARY PAYMENTS**

19 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

20 In settlement of all claims related to the Covered Products and Listed Chemical referred to
21 in the Complaint and this Consent Judgment pursuant to Health & Safety Code § 25249.7(b), 26
22 California Bazar shall pay \$6,000 in civil penalties. Civil penalties are to be apportioned in
23 accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to
24 the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the
25 remaining 25% of the penalty remitted to Anthony Held as provided by California Health &
26 Safety Code §25249.12(d). 26 California Bazar shall issue two separate checks for the penalty
27 payment: (a) one check made payable to "Hirst & Chanler LLP in Trust for OEHHA" in the
28 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 and his counsel offered to resolve this dispute
15 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
16 this fee issue to be resolved after the material terms of the agreement had been settled. After the
17 other settlement terms had been finalized, the Parties attempted to (and did) reach an accord on
18 the compensation due to Dr. Held and his counsel under general contract principles and the
19 private attorney general doctrine codified at California Code of Civil Procedure (CCP) §1021.5,
20 for all work performed through the mutual execution of this agreement. Under these legal
21 principles, 26 California Bazar shall reimburse Dr. Held's counsel for fees and costs incurred as a
22 result of investigating, bringing this matter to 26 California Bazar's attention, and negotiating a
23 settlement in the public interest. 26 California Bazar shall pay Dr. Held and his counsel \$5,000
24 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be
25 issued in a third separate check made payable to "Hirst & Chanler LLP" and shall be delivered on
26 or before June 30, 2009, at the following address:

27 HIRST & CHANLER LLP
28 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

1 \$5,000 to Hirst & Chanler LLP, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, CA 94710
2 (EIN: 20-3929984).

3 **V. CLAIMS COVERED AND RELEASE**

4 **5.1 Release of 26 California Bazar**

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

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

1 in any products sold by 26 California Bazar.

2 **5.2 26 California Bazar's Release of Dr. Held**

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

8 **VI. COURT APPROVAL**

9 This Consent Judgment is not effective until it is approved and entered by the Court and
10 shall be null and void if, for any reason, it is not approved and entered by the Court within nine
11 months after it has been fully executed by all parties. In the event this Consent Judgment is
12 (a) not entered by this Court within nine months (or thereafter) for any reason whatsoever, or
13 (b) is entered by the Court and subsequently overturned by any appellate court, any monies that
14 have been provided to Dr. Held, or his counsel pursuant to Section 3 and/or Section 4 above,
15 together with interest at the prevailing federal rate accruing from the date of payment by 26
16 California Bazar, shall be refunded within fifteen (15) days after receiving written demand from
17 26 California Bazar for return of such funds.

18 **VII. SEVERABILITY**

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

22 **VIII. GOVERNING LAW**

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

28

1 **IX. NOTICES**

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

6 To 26 California Bazar:

7 26 California Bazar
8 c/o Robert B. Mobasseri, Esq.
9 445 S. Figueroa Street, #2700
Los Angeles, California 90071

10 To Dr. Held:

11 Hirst & Chanler LLP
12 Attn: Proposition 65 Coordinator
13 2560 Ninth Street, Suite 214
Berkeley, CA 94710

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

16 **X. COUNTERPARTS, FACSIMILE SIGNATURES**

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

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

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

26 **XII. ADDITIONAL POST EXECUTION ACTIVITIES**

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

1 obtaining such approval, Dr. Held, 26 California Bazar and their respective counsel agree to
2 mutually employ their best efforts to support the entry of this agreement as a Consent Judgment
3 and obtain approval of the Consent Judgment by the Court in a timely manner. For purposes of
4 this paragraph, best efforts shall include, at a minimum, cooperating on the drafting and filing any
5 papers, asserting any oral argument in support of the required motion for judicial approval, and
6 defending any appellate review of the Court's approval.

7 **XIII. MODIFICATION**

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

AGREED TO:

Date: 7-6-09

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

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

APPROVED AS TO FORM:

Date: 7/10/2009

APPROVED AS TO FORM:

Date: 7/6/09

HIRST & CHANLER LLP

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

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