

1 Clifford A. Chanler, State Bar No. 135534
Laralei S. Paras State Bar No. 203319
2 CHANLER LAW GROUP
2560 Ninth Street, 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.

6
7 Matthew P. Vafidis, State Bar No. 103578
HOLLAND & KNIGHT LLP
8 50 California Street, Suite 2800
San Francisco, CA 94111
9 Telephone: (415) 743-6950
Facsimile: (415) 743-6910

10 Attorneys for Defendant
11 NAKAJIMA USA, INC.

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF SACRAMENTO
15 UNLIMITED CIVIL JURISDICTION
16

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

18 Plaintiff,

19 v.

20 NAKAJIMA USA, INC.; and DOES 1 through
21 150, inclusive,

22 Defendant.

Case No. 34-2009-00042711

**STIPULATION AND [PROPOSED]
ORDER RE: CONSENT JUDGMENT**

Health & Safety Code § 25249.6, *et seq.*

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Nakajima USA, Inc.**

3 This Stipulation and [Proposed] Order Re: Consent Judgment (hereinafter “Consent
4 Judgment”) is entered into by and between Anthony E. Held, Ph.D., P.E. (hereinafter “Dr. Held”) and Nakajima USA, Inc. (hereinafter “Nakajima”), with Dr. Held and Nakajima collectively
5 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 Nakajima employs ten or more persons and is a person in the course of doing business for
12 purposes of Proposition 65.

13 **1.4 General Allegations**

14 Dr. Held alleges that Nakajima has manufactured, distributed, and/or sold in the State of
15 California children’s vinyl card cases and accessories with vinyl components containing di(2-
16 ethylhexyl)phthalate (commonly referred to as “DEHP”). DEHP is listed pursuant to the Safe
17 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code
18 §§ 25249.5, *et seq.* (“Proposition 65”), as a chemical known to the State of California to cause
19 birth defects and other reproductive harm. DEHP is referred to herein as the “Listed Chemical.”

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as children’s vinyl
22 card cases and accessories with vinyl components containing di(2-ethylhexyl)phthalate including,
23 but not limited to, *Sesame Street Elmo Card Case*, Model No. 29345-8 (UPC #8 81780 29345 1),
24 *Elmo Cardholder*, Model No. 780-64293-2 (UPC #8 81780 64293 8), *Elmo Coinbag*, Model No.
25 64298-3 (UPC #8 81780 64298 3), *Teno Purse*, Model No. 42962-7 (UPC #8 81780 42962 1),
26 *Kuromi Wallet*, Model No. 1200-74076-4 (UPC #8 81780 74076 4), *Pandapple Wallet*, Model
27 No. 560-35959-9 (UPC #8 81780 35959 1), *Pandapple ID Badge*, Model No. 700-13296-9 (UPC
28

1 #8 81780 13296 5), *Hello Kitty Lollipop Eraser*, Model No. 260-62374-1 (UPC #8 81780 62374
2 6), and *Hello Kitty Keychain*, Model No. 400-39549-8 (UPC #8 81780 39549 0). All such
3 products containing DEHP are referred to hereinafter as the “Products”.

4 **1.6 Notice of Violation**

5 On January 26, 2009, Dr. Held served Nakajima and various public enforcement agencies
6 with a “60-Day Notice of Violation” (the “Notice”) that provided Nakajima with notice of alleged
7 violations of Health & Safety Code § 25249.6 for the failure to warn consumers that the Products
8 that Nakajima sold exposed users in California to the Listed Chemical. After receiving the
9 Notice, Nakajima began immediately to have returned to it from the retail stores and outlets
10 Products sold and shipped by Nakajima and to start the process of reformulating such Products.

11 **1.7 Complaint**

12 On April 29, 2009, Dr. Held, who was and is acting in the interest of the general public in
13 California, filed a complaint (“Complaint” or “Action”) in the Superior Court for the County of
14 Sacramento against Nakajima, and Does 1 through 150, alleging violations of Health & Safety
15 Code § 25249.6 based on the alleged exposures to DEHP contained in children’s vinyl card cases
16 and accessories with vinyl components manufactured, distributed and/or sold by Nakajima.

17 **1.8 No Admission**

18 Nakajima denies the material factual and legal allegations contained in Dr. Held’s Notice
19 and Complaint and maintains that all products that it has sold and distributed in California,
20 including the Products, have been and are in compliance with all laws. Nothing in this Consent
21 Judgment shall be construed as an admission by Nakajima of any fact, finding, issue of law, or
22 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
23 admission by Nakajima of any fact, finding, conclusion, issue of law or violation of law, such
24 being specifically denied by Nakajima. However, this section shall not diminish or otherwise
25 affect the obligations, responsibilities and duties of Nakajima under this Consent Judgment.

26 ///

27 ///

28 ///

1 **1.9 Consent to Jurisdiction**

2 For purposes of this Consent Judgment only, the parties stipulate that this Court has
3 jurisdiction over Nakajima as to the allegations contained in the Complaint, that venue is proper in
4 the County of Sacramento and that this Court has jurisdiction to enter and enforce the provisions
5 of this Consent Judgment.

6 **1.10 Effective Date**

7 For purposes of this Consent Judgment, the term “Effective Date” shall mean February 19,
8 2010.

9 **2. INJUNCTIVE RELIEF: REFORMULATION**

10 **2.1 Reformulation Commitments and Schedule**

11 Except as otherwise provided for in this Consent Judgment, as of the Effective Date,
12 Nakajima shall only manufacture and/or distribute Products for sale in California that are
13 Phthalate Free, as set forth below. For purposes of this Consent Judgment, “Phthalate Free”
14 Products shall mean Products containing less than or equal to 1,000 parts per million (“ppm”) of
15 DEHP when analyzed pursuant to Environmental Protection Agency (“EPA”) testing
16 methodologies 3580A and 8270C, or equivalent methods as may be allowed by state or federal
17 agencies. This standard is referred to herein as the “Reformulation Standard.”

18 **3. MONETARY PAYMENTS**

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

20 In settlement of all the claims referred to in this Consent Judgment against it, Nakajima
21 shall pay \$8,000 in civil penalties to be apportioned in accordance with California Health &
22 Safety Code § 25192, with 75% of these funds remitted to the State of California’s Office of
23 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of these funds
24 remitted to Dr. Held as provided by California Health & Safety Code § 25249.12(d). Nakajima
25 shall issue two separate checks for the penalty payment: (a) one check made payable to Chanler
26 Law Group in Trust for OEHHA in the amount of \$6,000, representing 75% of the total penalty,
27 and (b) one check to Chanler Law Group in Trust for Dr. Held in the amount of \$2,000,
28 representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments

1 to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) and to Dr. Held whose
2 address and tax identification number shall be furnished, upon request, five calendar days before
3 payment is due. The payments shall be delivered on or before five (5) business days following the
4 Effective Date to the following address:

5 Chanler Law Group
6 Attn: Proposition 65 Controller
7 2560 Ninth Street, Suite 214
8 Berkeley, CA 94710

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

9 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute
10 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
11 this fee issue to be resolved after the material terms of the agreement had been settled. After the
12 other settlement terms had been finalized, the Parties attempted to (and did) reach an accord on
13 the compensation due to Dr. Held and his counsel under general contract principles and the private
14 attorney general doctrine codified at California Code of Civil Procedure (“CCP”) §1021.5, for all
15 work performed through the mutual execution of this agreement. Nakajima shall reimburse Dr.
16 Held and his counsel for fees and costs incurred as a result of investigating, bringing this matter to
17 Nakajima’s attention, litigating, negotiating a settlement in the public interest and working to have
18 any applicable Consent Judgment entered. Exclusive of fees and costs that may be incurred in the
19 event of an appeal, this amount is includes anticipated future fees and costs to seek judicial
20 approval of this Consent Judgment in the trial court and completing other necessary tasks after the
21 execution of the Consent Judgment, such as, drafting and filing of the motion to approve papers,
22 fulfilling the reporting requirements referenced in Health & Safety Code § 25249.7(f), responding
23 to any third party objections, filing of notice of entry of the judgment, corresponding with
24 opposing counsel and appearing before the Court related to the approval process. Nakajima shall
25 pay Dr. Held and his counsel \$37,000 for fees and costs incurred as a result of investigating,
26 bringing this matter to Nakajima’s attention, and litigating and negotiating a settlement in the
27 public interest.

28 ///

1 Nakajima shall issue a separate 1099 for fees and costs (EIN: 94-3171522) and shall
2 make the check payable to “Chanler Law Group” and shall be delivered five (5) business days
3 following the Effective Date to the following:

4 Chanler Law Group
5 Attn: Proposition 65 Controller
6 2560 Ninth Street, Suite 214
7 Berkeley, CA 94710

7 **5. RELEASE OF ALL CLAIMS**

8 **5.1 Release of Nakajima and Downstream Customers**

9 In further consideration of the promises and agreements herein contained, and for the
10 payments to be made pursuant to Sections 3 and 4 above, Dr. Held, on behalf of himself, his past
11 and current agents, representatives, attorneys, successors and/or assignees, and in the interest of
12 the general public, hereby waives all rights to institute or participate in, directly or indirectly, any
13 form of legal action and releases all claims, including, without limitation, all actions, and causes
14 of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
15 penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and
16 attorneys’ fees) of any nature whatsoever, whether known or unknown, fixed or contingent
17 (collectively “Claims”), that were brought or could have been brought against Nakajima and its
18 affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,
19 shareholders, agents, employees, and sister and parent entities and each of Nakajima’s
20 downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers (including, but
21 not limited to, G10 Galleria), franchisees, dealers, customers, owners, purchasers, users, parent
22 companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys,
23 representatives, shareholders, agents, employees and sister and parent entities (collectively
24 “Releasees”) that arise under Proposition 65 or any other statutory or common law Claims that
25 could have been asserted relating to Nakajima’s and each of its Releasees’ alleged failure to warn
26 about exposures to or identification of the Listed Chemical contained in the Products.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5.2 Nakajima's Release of Dr. Held

Nakajima 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 it in this matter, and/or with respect to the Products.

6. 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 one year after it has been fully executed by all parties, in which event any monies that have been provided to Dr. Held, or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen (15) days after receiving written notice from Nakajima that the one-year period has expired.

7. 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.

8. GOVERNING LAW

The terms of this Consent Judgment 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 or is otherwise rendered inapplicable by reason of state or federal law generally, or as to the Products, then Nakajima shall provide written notice to Dr. Held of any asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

///
///
///
///

1 **9. NOTICES**

2 Unless specified herein, all correspondence and notices required to be provided pursuant to
3 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 Nakajima:**
7 Matthew P. Vafidis, Esq.
8 HOLLAND & KNIGHT LLP
9 50 California Street, Suite 2800
10 San Francisco, CA 94111

6 **To Dr. Held:**
7 Proposition 65 Coordinator
8 Chanler Law Group
9 2560 Ninth Street, Suite 214
10 Berkeley, CA 94710-2565

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

13 **10. COUNTERPARTS, FACSIMILE SIGNATURES**

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

18 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

19 Dr. Held agrees to comply with the reporting form requirements referenced in California
20 Health & Safety Code § 25249.7(f).

21 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

22 The parties acknowledge that pursuant to Health & Safety Code § 25249.7, a noticed
23 motion is required to obtain judicial approval of this Consent Judgment. In furtherance of
24 obtaining such approval, Dr. Held, Nakajima and their respective counsel agree to mutually
25 employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain
26 approval of the Consent Judgment by the Court in a timely manner. For purposes of this
27 paragraph, best efforts shall include, at a minimum, cooperating on the drafting and filing any
28 papers, asserting any oral argument in support of the required motion for judicial approval, and
defending any appellate review of the Court's approval.

///

1 **13. MODIFICATION**

2 This Consent Judgment may be modified only: (1) by written agreement of the parties and
3 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion
4 of any party and entry of a modified consent judgment by the Court.

5 **14. AUTHORIZATION**

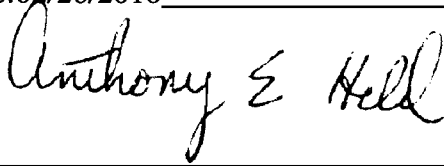
6 The undersigned are authorized to execute this Consent Judgment on behalf of themselves
7 or their respective parties and have read, understood, and agree to all of the terms and conditions
8 of this Consent Judgment.

9 **AGREED TO:**

AGREED TO:

10 Date: 02/26/2010 _____

Date: _____

11 

12 By: _____
13 Plaintiff, ANTHONY E. HELD, Ph.D., P.E.

By: _____
Shinji Nakajima, President
Defendant, NAKAJIMA USA, INC.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

13. MODIFICATION

This Consent Judgment may be modified only: (1) by written agreement of the parties and upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of any party and entry of a modified consent judgment by the Court.

14. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment on behalf of themselves or their respective parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

Date: _____

By: _____
Plaintiff, ANTHONY E. HELD, Ph.D., P.E.

AGREED TO:

Date: 02/22/10

By: 
Shinji Nakajima, President
Defendant, NAKAJIMA USA, INC.