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ORIGINAL FILED
MAR 05 2010
LOS ANGELES
SUPERIOR COURT

9 RECEIVED
10 MAR 02 2010
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
UNLIMITED CIVIL JURISDICTION

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

14 Plaintiff,

15 v.
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17 NAVAJO MANUFACTURING COMPANY;
and DOES 1 through 150, inclusive,

18 Defendants.
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Case No. BC404532

~~PROPOSED~~ CONSENT
JUDGMENT

Health & Safety Code §25249.6

~~PROPOSED~~ CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Navajo Manufacturing Company**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E.
4 (hereinafter "Dr. Held" or "plaintiff") and Navajo Manufacturing Company (hereinafter "Navajo"),
5 with Dr. Held and Navajo 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 exposures
8 to toxic chemicals and improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 Navajo employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety
13 Code §25249.5, *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

15 Dr. Held alleges that Navajo has manufactured, distributed and/or sold in the State of
16 California certain (1) children's soft sporting balls, party favors/squeeze animals, soft eyewear cases,
17 and eyewear cords with vinyl components containing di(2-ethylhexyl)phthalate ("DEHP"); and (2)
18 jumper/booster cables containing lead. DEHP and lead are listed pursuant to the Safe Drinking
19 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§25249.5, *et seq.*
20 ("Proposition 65"), as chemicals known to the State of California to cause birth defects and other
21 reproductive harm. DEHP and lead are referred to herein as the "Listed Chemicals."

22 **1.5 Product Description**

23 The products that are covered by this Consent Judgment are defined as follows: (1) children's
24 soft sporting balls containing DEHP, including, but not limited to, *Sport Soft Ball (#0 24291 25257*
25 *3)*, *Sport Soft Ball, Soccer (#0 24291 25257 3)*, and *Sport Soft Ball, Football (#0 24291 25257 3)*; (2)
26 soft eyewear cases containing DEHP, including, but not limited to, *Designer Eyewear Case, No.*
27 *92812 (#0 24291 92812 6)*; (3) eyewear cords with vinyl components containing DEHP, including,
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1 but not limited to, *Sports Eyewear Cord, No. 92861 (#0 24291 92861 4)*; (4) party favors/squeez
2 animals containing DEHP, including, but not limited to, *Bubble Animal Series, #FL-12 (#0 24291*
3 *25251 1)*; and (5) jumper/booster cables containing lead including, but not limited to, *Pennzoil All*
4 *Season Booster Cables 10 Gauge, 12 Ft., No. 14825 (#0 24291 14825 8)*. All such items shall be
5 referred to herein as the "Products."

6 **1.6 Notices of Violation**

7 On or about July 10, 2008, August 14, 2009, and September 30, 2009, Dr. Held served Navajo
8 and various public enforcement agencies with documents entitled "60-Day Notice of Violation" (the
9 "Notices") that provided Navajo and such public enforcers with notice which alleged that Navajo was
10 in violation of California Health & Safety Code §25249.6 for failing to warn consumers and
11 customers that the Products exposed users in California to the Listed Chemicals. No public enforcer
12 has diligently prosecuted the allegations set forth in the Notices. Since receipt of the Notices, Navajo
13 has represented that it has discontinued, and not resumed distribution of, the Products at issue, though
14 it may resume distribution in the future.

15 **1.7 Complaints**

16 On December 23, 2008, Dr. Held, who was and is acting in the interest of the general public
17 in California, in the Superior Court in and for the County of Los Angeles, filed a complaint against
18 Navajo as a defendant and alleging violations of Health & Safety Code §25249.6 by Navajo based on
19 the alleged exposures to DEHP contained in the children's soft sporting balls manufactured,
20 distributed and/or offered for sale in California by Navajo. On December 10, 2009, Dr. Held filed a
21 First Amended Complaint naming Navajo, among others, and alleging violations of Health & Safety
22 Code §25249.6 by Navajo based on the alleged exposures to DEHP and lead contained in the
23 Products manufactured, distributed and/or offered for sale in California by Navajo.

24 **1.8 No Admission**

25 Navajo denies the material factual and legal allegations contained in Dr. Held's Notice and
26 Complaint, and maintains that all products that it has sold and distributed in California, including the
27 Products, have been and are in compliance with all laws. Nothing in this Consent Judgment shall be
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1 construed as an admission by Navajo of any fact, finding, issue of law, or violation of law; nor shall
2 compliance with this Consent Judgment constitute or be construed as an admission by Navajo of any
3 fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Navajo.
4 However, this section shall not diminish or otherwise affect the obligations, responsibilities and
5 duties of Navajo under this Consent Judgment.

6 **1.9 Consent to Jurisdiction**

7 For purposes of this Consent Judgment only, the parties stipulate that this Court has
8 jurisdiction over Navajo as to the allegations contained in the Complaint, that venue is proper in the
9 County of Los Angeles, and that this Court has jurisdiction to enter and enforce the provisions of this
10 Consent Judgment.

11 **1.10 Effective Date**

12 For purposes of this Consent Judgment, the term "Effective Date" shall mean November 30,
13 2009.

14 **2. INJUNCTIVE RELIEF: WARNINGS**

15 **2.1 Product Warnings**

16 After the Effective Date, Navajo shall not knowingly sell, ship, or offer to be shipped for sale
17 in California, Products containing the Listed Chemicals unless such Products are shipped with the
18 clear and reasonable warnings set out in Sections 2.2 and 2.3. At its option, Navajo may discontinue
19 sales of the Products in California instead.

20 Any warning issued for Products pursuant to Sections 2.2 and 2.3, below, shall be
21 prominently placed with such conspicuousness as compared with other words, statements, designs or
22 devices as to render it likely to be read and understood by an ordinary individual under customary
23 conditions before purchase or, for Products shipped directly to an individual in California, before use.

24 **2.2 Warnings For Retail Store Sales**

25 (a) **Product Labeling.** Navajo may perform its warning obligation by
26 affixing a warning to the packaging of, labeling to, or, if no label exists, directly on each Product sold
27 in retail outlets in California by Navajo or its retail customers, that states:
28

1 **WARNING:** This product contains [lead, a chemical] [DEHP,
2 a phthalate chemical] known to the State of
3 California to cause [cancer][birth defects and
4 other reproductive harm].

5 **(b) Point-of-Sale Warnings.** Navajo may perform its warning obligations
6 by ensuring that signs are posted at retail outlets in the State of California where the Products are
7 sold. Point-of-sale warnings shall be provided through one or more signs posted in close proximity to
8 the point of display of the Products that state:

9 **WARNING:** This product contains [lead, a chemical] [DEHP,
10 a phthalate chemical] known to the State of
11 California to cause [cancer][birth defects and
12 other reproductive harm].

13 Where more than one Product is sold in proximity to other like items or to those that do not
14 require a warning, the following statement must be used:¹

15 **WARNING:** The following products contain [lead, a
16 chemical] [DEHP, a phthalate chemical] known
17 to the State of California to cause [cancer][birth
18 defects and other reproductive harm].

19 *[list products for which warning is required]*

20 **2.3 Warnings For Mail Order Catalog and Internet Sales**

21 Navajo shall satisfy its warning obligations for Products for which it sells via mail order
22 catalog or the Internet to California residents by providing a warning: (i) in the mail order catalog; or
23 (ii) on the website. Warnings given in the mail order catalog or on the website shall identify the
24 specific Product to which the warning applies as further specified in subsections (a) and (b) below.

25 **(a) Mail Order Catalog Warning.** Any warning provided in a mail order
26 catalog must be in the same type size or larger than the Product description text within the catalog.
27 The following warning shall be provided on the same page and in the same location as each display

28 ¹ For purposes of this Consent Judgment, "sold in proximity to other like items" shall mean that the Product and
another product are offered for sale close enough to each other so that the consumer, under customary conditions of
purchase, could not reasonably determine which of the two products is subject to the warning sign.

1 of the Product:

2 **WARNING:** This product contains [lead, a chemical] [DEHP,
3 a phthalate chemical] known to the State of
4 California to cause [cancer][birth defects and
5 other reproductive harm].

6 Where it is impracticable to provide the warning on the same page and in the same location as
7 the display of the Product, Navajo may utilize a designated symbol (▼) to cross reference the
8 applicable warning and shall define the term "designated symbol" with the following language on the
9 inside of the front cover of the catalog and on the same page as any order form for the Product(s):

10 **WARNING:** Certain products identified with this symbol ▼
11 and offered for sale in this catalog contain [lead,
12 a chemical] [DEHP, a phthalate chemical]
13 known to the State of California to [cancer][birth
14 defects and other reproductive harm].

15 The designated symbol must appear on the same page and in close proximity to the display or
16 description of the Product on such page. On each page where the designated symbol appears, Navajo
17 must provide a reference directing the consumer to the warning language and definition of the
18 designated symbol.

19 If Navajo elects to sell one or more Products to consumers via mail order catalog after the
20 Effective Date, then the warnings must be included in all offering to sell one or more Products
21 printed after the Effective Date.

22 **(b) Internet Website Warning.** A warning may be given in conjunction
23 with the sale of the Product by Navajo to a California consumer via the Internet, provided it appears
24 either: (a) on the same web page on which the Product is displayed; (b) on the same web page as the
25 order form for the Product; (c) on the same page as the price for any Product; or (d) on one or more
26 web pages displayed to a purchaser during the checkout process. The following warning statement
27 shall be used and shall appear in any of the above instances adjacent to or immediately following the
28 display, description, or price of the Product for which it is given in the same type size or larger than
29 the Product description text:

1 **WARNING:** This product contains [lead, a chemical] [DEHP,
2 a phthalate chemical] known to the State of
3 California to [cancer][birth defects and other
 reproductive harm].

4 Alternatively, the designated symbol may appear adjacent to or immediately following
5 the display, description, or price of the Product for which a warning is being given, provided that the
6 following warning statement also appears elsewhere on the same web page, as follows:

7 **WARNING:** Products identified on this page with the
8 following symbol ▼ contain [lead, a chemical]
9 [DEHP, a phthalate chemical] known to the State
 of California to cause [cancer][birth defects and
 other reproductive harm].

10 **2.4 Exceptions To Warning Requirements**

11 The warning requirements set forth in Sections 2.1 through 2.3, above, shall not apply to any
12 Products manufactured before the Effective Date.

13 **3. MONETARY PAYMENTS**

14 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

15 In settlement of all the claims referred to in this Consent Judgment, Navajo shall pay \$20,000
16 in settlement payments to be apportioned in accordance with California Health & Safety Code
17 §25192, with 75% of these funds remitted to the State of California's Office of Environmental Health
18 Hazard Assessment and the remaining 25% of these settlement monies remitted to Dr. Held as
19 provided by California Health & Safety Code §25249.12(d). Navajo shall issue two separate checks
20 for the settlement payments: (a) one check made payable to Chanler Law Group in Trust for the
21 State of California's Office of Environmental Health Hazard Assessment ("Chanler Law Group in
22 Trust for OEHHA") in the amount of \$15,000, representing 75% of the total penalty and (b) one
23 check to "Chanler Law Group in Trust for A. Held" in the amount of \$5,000, representing 25% of the
24 total settlement payments. Two separate 1099s shall be issued for the above payments: The first
25 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the
26 amount of \$15,000. The second 1099 shall be issued to Dr. Held in the amount of \$5,000, whose
27 address and tax identification number shall be furnished, upon request, at least five calendar days
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1 before payment is due. The payments shall be delivered on or before ten calendar days after the
2 Effective Date, at the following address:

3 CHANLER LAW GROUP
4 Attn: Proposition 65 Controller
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710

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

9 **4.1 Attorney Fees and Costs**

10 The parties reached an accord on the compensation due to Dr. Held and his counsel under the
11 private attorney general doctrine and principles of contract law. Under these legal principles, Navajo
12 shall reimburse Dr. Held's counsel for fees and costs incurred as a result of investigating, bringing
13 this matter to Navajo's attention, and negotiating a settlement in the public interest. Navajo shall pay
14 Dr. Held and his counsel \$43,000 for all attorneys' fees, expert and investigation fees, and related
15 costs, offset by \$10,000 in recognition and resolution of earlier discovery disputes. A total payment
16 of \$33,000 shall be issued in equal portions of \$16,500 each, in third and fourth separate checks,
17 made payable to "Chanler Law Group," and shall be delivered on or before 45 days and 75 days
18 following the Effective Date, respectively, at the following address:

19 CHANLER LAW GROUP
20 Attn: Proposition 65 Controller
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710

24 Navajo shall issue a separate 1099 for fees and cost paid in the amount of \$33,000 to Chanler
25 Law Group, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, CA 94710 (EIN: 94-3171522).

26 **4.2 Agreement to Stipulate to Vacate Discovery Order and to Support Plaintiff's
27 Appeal Seeking Reversal of the Discovery Order**

28 In the interest of settlement, the parties agree to forthwith execute and submit to the Court a
stipulation and proposed order to vacate the discovery order issued by the Court on September 25,
2009. Should the Court be willing to enter an order vacating the discovery order, plaintiff will
withdraw his pending appeal of the discovery order. Should the Court deny the parties' joint request

1 to vacate the discovery order, plaintiff will persist in his appeal of the discovery order, and Navajo
2 agrees to file a statement with the Court of Appeals that it has no objection to the discovery order
3 being vacated or reversed. Navajo further agrees not to seek enforcement of, or in any way to
4 support, the discovery order at any time.

5 **5. RELEASE OF ALL CLAIMS**

6 **5.1 Release of Navajo and Downstream Customers**

7 In further consideration of the promises and agreements herein contained, and for the
8 payments to be made pursuant to Sections 3 and 4 above, Dr. Held, on behalf of himself, his past and
9 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
10 general public and on behalf of the public interest, hereby waives all rights to institute or participate
11 in, directly or indirectly, any form of legal action and releases all claims, liabilities, obligations,
12 losses, costs, expenses, fines and damages, including, without limitation, all actions, and causes of
13 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,
14 losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of
15 any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"),
16 against Navajo and its past, present and future directors, officers, employees, attorneys,
17 representatives, shareholders, agents, parents, subsidiaries, divisions, affiliates, successors,
18 predecessors, and assigns and each of its downstream distributors, wholesalers, licensors, licensees,
19 auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies,
20 affiliated entities, partners, subsidiaries, successors, and assigns, specifically including, but not
21 limited to Wal-Mart Stores, Inc., CVS Pharmacy, Inc., and CVS Caremark Corporation, and each of
22 their respective officers, directors, attorneys, representatives, shareholders, agents, and employees,
23 affiliates, subsidiaries, and sister and parent entities (collectively "Releasees"). This release is
24 limited to those claims that arise under Proposition 65, as such claims relate to Navajo's alleged
25 failure to warn about exposures to or identification of the Listed Chemicals contained in the Products.

26 The Parties further understand and agree that this release shall not extend upstream to any
27 entities that manufactured the Products or any component parts thereof, or to any distributors or
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1 suppliers who sold the Products or any component parts thereof to Navajo.

2 **5.2 Navajo's Release of Dr. Held**

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

8 **6. COURT APPROVAL**

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

14 **7. SEVERABILITY**

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

18 **8. GOVERNING LAW**

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

24 **9. NOTICES**

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

2 To Navajo:

3 Thomas H. Cadden, Esq.
4 Cadden & Fuller LLP
5 114 Pacifica, Suite 450
6 Irvine, CA 92618

6 For Dr. Held:

7 Proposition 65 Coordinator
8 Chanler Law Group
9 2560 Ninth Street
10 Parker Plaza, Suite 214
11 Berkeley, CA 94710-2565

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

12 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

13 This Consent Judgment may be executed in counterparts and by facsimile, each of which shall
14 be deemed an original, and all of which, when taken together, shall constitute one and the same
15 document.

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

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

19 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

20 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion
21 is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such
22 approval, Dr. Held and Navajo agree to mutually employ their best efforts to support the entry of this
23 agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a
24 timely manner.

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 their respective parties and have read, understood, and agree to all of the terms and conditions hereof.

AGREED TO:

APPROVED

By Tony Held at 2:03 pm, Dec 02, 2009

Date:

AGREED TO:

Date: December 2, 2009

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

By: [Signature] CEO
Navajo Manufacturing Company

APPROVED AS TO FORM:

Dec. 2, 2009

Date:

APPROVED AS TO FORM:

December 2, 2009

Date:

CHANLER LAW GROUP

CADDEN & FULLER LLP

By: [Signature]
David Levine
Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

By: [Signature]
Ignacio J. Lopez
Attorneys for Defendant
NAVAJO MANUFACTURING COMPANY

IT IS SO ORDERED,

MAR 05 2010

Date:

DAVID L. MINNING

JUDGE OF THE SUPERIOR COURT