

1 Clifford A. Chanler, State Bar No. 135534
Daniel Bornstein, State Bar No. 181711
2 HIRST & CHANLER LLP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118
5

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

7 Timothy Martin, State Bar No. 223174
JEFFER MANGELS BUTLER & MARMARO LLP
8 1900 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067
9 Telephone: (310) 203-8080
Facsimile: (310) 203-0567
10

11 Attorneys for Defendant
OKK TRADING, INC.

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

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

17 Plaintiff,

18 v.

19 OKK TRADING, INC., and DOES 1
20 through 150, inclusive,

21 Defendant.
22

Case No. RG08387319

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

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and OKK Trading, Inc.**

3 This Consent Judgment is entered into by and between public enforcer Anthony E. Held,
4 Ph.D., P.E. (“Dr. Held”) and OKK Trading, Inc. (“OKK” or “Defendant”), with Dr. Held and
5 OKK 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 OKK employs ten or more persons and are each a person in the course of doing business
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
13 & Safety Code §25249.6 *et seq.* (Proposition 65).

14 **1.4 General Allegations**

15 Dr. Held alleges that OKK has manufactured, distributed and/or sold certain children’s
16 products containing di(2-ethylhexyl)phthalate (hereinafter “DEHP”) in the State of California
17 without the requisite health hazard warnings. DEHP is known to cause birth defects and other
18 reproductive harm and are listed by their chemical nomenclature pursuant to Proposition 65.
19 DEHP shall be referred to hereinafter as the “Listed Chemical.”

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as follows: (1)
22 children’s rubber ducks containing the plasticizer phthalate DEHP, such as the *Bath Toy, Item No.*
23 *47876/76319, (6 80058 47876 3)*; and (2) children’s boxing gloves containing the plasticizer
24 phthalate DEHP, such as the *Boxing Set, No. 2255 (#6 80058 33097 9)*. All such children’s
25 rubber ducks and boxing gloves containing DEHP are referred to hereinafter as the “Products”.

26

27

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

1.6 Notice of Violation

On January 11, 2008, and March 24, 2008, Dr. Held served OKK and various public enforcement agencies with documents entitled “60-Day Notice of Violation” (the “Notices”) that provided OKK and public enforcers with notice of alleged violations of California Health & Safety Code §25249.6 for failing to warn consumers that the Products that OKKs sold exposed users in California to the Listed Chemical. No public enforcer has diligently prosecuted the allegations set forth in the Notices.

1.7 Complaint

On May 13, 2008, Dr. Held, who was and is acting in the interest of the general public in California, filed a complaint (“Complaint”) in the Superior Court in and for the County of Alameda against OKK and Does 1 through 150, alleging violations of Health & Safety Code §25249.6 based on the alleged exposures to the Listed Chemical contained in children’s bath toys sold by OKK. The case number for the action is RG 08387319. OKK filed an Answer to the Complaint on June 6, 2008. The Complaint shall be deemed amended by this Consent Judgment to include the allegations regarding children’s sporting toys contained in the March 24, 2008, 60-Day Notice of Violation as of May 28, 2008, since no authorized public prosecutor has filed a Proposition 65 enforcement action with respect to the Listed Chemical in the Sporting Toys addressed in the March 24, 2008, 60-Day Notice of Violation.

1.8 No Admission

OKK denies the material factual and legal allegations contained in Dr. Held’s Notices and maintains that all Products that it has sold and distributed in California have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by OKK of any fact, finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by OKK of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by OKK. However, this Section shall not diminish or otherwise affect OKK’s obligations, responsibilities, and duties under this Consent Judgment.

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

1.9 Consent to Jurisdiction

For purposes of this Consent Judgment only, the parties stipulate that the Alameda County Superior Court has jurisdiction over OKK to enforce to enforce the provisions of this Consent Judgment.

1.10 Effective Date

For purposes of this Consent Judgment, the term “effective date” shall mean, July 15, 2008.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 Product Warnings

After the Effective Date, Defendant shall not sell, ship, or offer to be shipped for sale in California Products unless such Products are sold or shipped with one of the clear and reasonable warnings set forth in subsections 2.1(a), are otherwise exempt pursuant to Section 2.2, or comply with the reformulation standards set forth in Section 2.3.

Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use.

(a) Retail Store Sales.

(i) Product Labeling.

Defendant may perform its warning obligation by ensuring that a warning is affixed to the packaging, labeling, or directly on each Product sold in retail outlets in California by OKK or its agents, that states:

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

(ii) Point-of-Sale Warnings.

Defendant may perform its warning obligations by providing warning signs via certified mail, in the form below, to its customers in the State of California with clear instructions to post

1 the warnings in close proximity¹ to the point of display of the Products so that the consumer
2 knows to which Product the warning refers:

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

6 **2.2 Exceptions To Warning Requirements**

7 The warning requirements set forth in Section 2.1 shall not apply to:

- 8 (i) Any Products shipped before July 15, 2008; or
9 (ii) Reformulated Products (as defined in Section 2.3 below).

10 **2.3 Reformulation Standards**

11 Reformulated Products are defined as those Products containing less than or equal to
12 1,000 parts per million (“ppm”) of DEHP. The warnings required pursuant to Section 2.1 above
13 shall not be required for Reformulated Products.

14 Defendant shall use Environmental Protection Agency (“EPA”) testing methodologies
15 3580A and 8270C to determine whether the respective levels have been exceeded in its Products.

16 **2.4 Reformulation Commitment**

17 Defendant hereby commits to ensure that 100% of the Products that they offer for sale in
18 California after October 31, 2008, shall qualify as Reformulated Products or shall otherwise be
19 exempt from the warning requirements of Section 2.1.

20 **3. MONETARY PAYMENTS**

21 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

22 In settlement of all the claims referred to in this Consent Judgment, OKK shall pay \$7,500
23 in civil penalties to be apportioned in accordance with California Health & Safety Code §25192,
24 with 75% of these funds remitted to the State of California’s Office of Environmental Health
25 Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Anthony Held

26 _____
27 ¹ For purposes of the consent judgment, “sold in proximity” shall mean that the 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 as provided by California Health & Safety Code §25249.12(d). OKK shall issue two separate
2 checks for the penalty payment: (a) one check made payable to “Hirst & Chanler LLP in Trust
3 For OEHHA” in the amount of \$5,625, representing 75% of the total penalty; and (b) one check
4 to ““Hirst & Chanler LLP in Trust for Anthony Held” in the amount of \$1,875, representing 25%
5 of the total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA,
6 P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Anthony Held, whose
7 information shall be provided five calendar days before the payment is due.

8 Payment shall be delivered to Dr. Held’s counsel on or before August 20, 2008, at the
9 following address:

10 HIRST & CHANLER LLP
11 Attn: Proposition 65 Controller
12 455 Capitol Mall, Suite 605
Sacramento, CA 95814

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

14 **4.1 Attorney Fees and Costs.**

15 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute
16 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
17 this fee issue to be resolved after the material terms of the agreement had been settled. OKK and
18 Plaintiff then expressed a desire to resolve the fee and cost issue shortly after the other settlement
19 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
20 compensation due to Dr. Held and his counsel under general contract principles and the private
21 attorney general doctrine codified at California Code of Civil Procedure (CCP) §1021.5, for all
22 work performed through the mutual execution of this agreement. Defendant shall reimburse Dr.
23 Held and his counsel a total of \$37,000 for the fees and costs incurred as a result of investigating,
24 bringing this matter to Defendant’s attention, and litigating and negotiating a settlement in the
25 public interest. Defendant shall issue a separate 1099 for fees and costs (EIN: 20-3929984) and
26 shall make the check payable to “HIRST & CHANLER LLP” and shall be delivered on or before
27 August 20, 2008, to the following address:

1 HIRST & CHANLER LLP
2 Attn: Proposition 65 Controller
3 455 Capitol Mall, Suite 605
4 Sacramento, CA 95814

4 **4.2 Additional Attorney Fees and Costs in Seeking Judicial Approval**

5 Pursuant to CCP §§1021 and 1021.5, the Parties agree that Defendant will reimburse Dr.
6 Held and his counsel for their reasonable fees and costs incurred in seeking judicial approval of
7 this settlement agreement in the trial court, in an amount not to exceed \$5,000. Such additional
8 fees and costs, exclusive of fees and costs that may be incurred in the event of an appeal include,
9 but are not limited to, drafting and filing of the motion to approve papers, fulfilling the reporting
10 requirements referenced in Health & Safety Code §25249.7(f), responding to any third party
11 objections, corresponding with opposing counsel and appearing before the Court related to the
12 approval process.

13 Reimbursement of such additional fees and costs shall be due within ten days after receipt
14 of a billing statement from Dr. Held (“Additional Fee Claim”). Payment of the Additional Fee
15 Claim shall be made to “Hirst & Chanler LLP,” and the payment shall be delivered, at the
16 following address:

17 HIRST & CHANLER LLP
18 Attn: Proposition 65 Controller
19 455 Capitol Mall, Suite 605
20 Sacramento, CA 95814

20 Defendant has the right to object to such reimbursement and may submit the resolution of
21 this issue to the American Arbitration Association (AAA) in Northern California to determine the
22 reasonableness of the additional fees and costs sought, provided that an arbitration such notice of
23 objection or decision to arbitrate is received by Dr. Held by the end of the ten calendar days. If an
24 arbitration notice is not filed with AAA in a timely manner, Dr. Held may file a motion with the
25 Court pursuant to both CCP §1021.5 and this settlement agreement to recover additional attorney
26 fees and costs incurred as set forth in this paragraph. In the event Defendant submits the matter to
27 arbitration, Dr. Held may seek, pursuant to CCP §1021.5, reasonable attorney fees and costs

1 incurred for the arbitration.

2 Dr. Held's counsel agrees that it shall hold all civil penalties and attorney's fees and costs
3 paid pursuant to Sections 3.1 and 4.1 above in its trust account until such time as this Consent
4 Judgment is approved by the Court. In the event that this Consent Judgment is not approved by
5 the Court in the time period prescribed in Section 6 of this Consent Judgment, the civil penalties
6 and attorney's fees and costs paid pursuant to Sections 3.1 and 4.1 above, along with interest
7 accrued at the existing federal funds rate, shall be refunded to OKK.

8 **5. RELEASE OF ALL CLAIMS**

9 **5.1 Dr. Held's Release of Defendant**

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

24 The parties further understand and agree that this release shall not extend upstream to any
25 entities that manufactured the Products or any component parts thereof, or any distributors or
26 suppliers who sold the Products or any component parts thereof to Defendant.

27

1 **5.2 Defendant’s Release of Dr. Held**

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

7 **6. COURT APPROVAL**

8 This consent judgment is not effective until it is approved and entered by the Court and
9 shall be null and void if, for any reason, it is not approved and entered by the Court within six
10 months after it has been fully executed by all parties, in which event any monies that have been
11 provided to Dr. Held, or his counsel pursuant to Section 3 and/or Section 4 above, shall be
12 refunded within fifteen (15) days after receiving written notice from Defendant that the six month
13 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
17 provisions 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
20 California and apply within the State of California. In the event that Proposition 65 is repealed or
21 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then
22 Defendant shall provide written notice to Dr. Held of any asserted change in the law, and shall
23 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
24 that, the Products are so affected.

25 **9. NOTICES**

26 Unless specified herein, all correspondence and notices required to be provided pursuant
27 to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,

1 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
2 other party at the following addresses:

3 To OKK:

With a copy to:

4 William Hung
5 OKK TRADING, INC.
6 5500 East Olympic Blvd., Suite A
Los Angeles, CA 90022

Timothy Martin, Esq.
JEFFER, MANGELS, BUTLER, et al.
1900 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067

7 To Dr. Held:

8 Proposition 65 Coordinator
9 HIRST & CHANLER LLP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

10 Any party, from time to time, may specify in writing to the other party a change of address
11 to 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 be
14 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 Health
18 & 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
21 motion is required to obtain judicial approval of this Consent Judgment. In furtherance of
22 obtaining such approval, Held and Defendant agree to mutually employ their best efforts to
23 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
24 Judgment by the Court in a timely manner.

25 **13. MODIFICATION**

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

1 motion of any party and entry of a modified consent judgment by the Court. The Attorney
2 General shall be served with notice of any proposed modification to this consent judgment at least
3 fifteen days in advance of its consideration by the Court. Dr. Held shall be entitled to his
4 reasonable fees and costs incurred in the modification process under CCP §1021.5 if Defendant,
5 the Attorney General and/or any third party seeks to modify the terms of this Consent Judgment.

6 ///

7 ///

8 ///

9 ///

10 ///

11 ///

12 ///

13 ///

14 ///

15

16

17

18

19

20

21

22

23

24

25

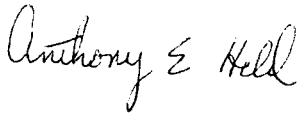
26

27

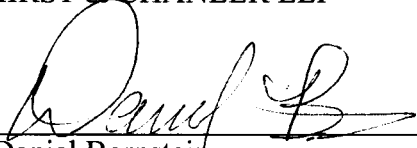
1 **14. AUTHORIZATION**

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

5 **AGREED TO:**

| | |
|----------------------------|---|
| 6 Dated: <u>10/07/2008</u> | ANTHONY E. HELD, Ph.D., P.E.  By: _____ Anthony E. Held, Ph.D., P.E. Plaintiff |
| 10 Dated: _____ | OKK TRADING, INC. By: _____ OKK TRADING, INC. Defendant |

14 **APPROVED AS TO FORM:**

| | |
|--------------------------|---|
| 15 Dated: <u>10/8/08</u> | HIRST & CHANLER LLP  By: _____ Daniel Bornstein Attorneys for Plaintiff ANTHONY E. HELD, Ph.D., P.E. |
| 20 Dated: _____ | JEFFER, MANGELS, BUTLER & MARMARO LLP By: _____ Timothy Martin Attorneys for Defendant OKK TRADING, INC. |

25 IT IS SO ORDERED.

26 Date:

27 JUDGE OF THE SUPERIOR COURT

1
2 **14. AUTHORIZATION**

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

6 **AGREED TO:**

| | |
|----------------------------|--|
| 7 Dated: _____ | ANTHONY E. HELD, Ph.D., P.E. |
| 8 | By: _____ Anthony E. Held, Ph.D., P.E. Plaintiff |
| 9 | |
| 10 | |
| 11 Dated: <u>4/26/2008</u> | OKK TRADING, INC. |
| 12 | By: _____ OKK TRADING, INC. Defendant |
| 13 | |
| 14 | |

15 **APPROVED AS TO FORM:**

| | |
|-----------------|--|
| 16 Dated: _____ | HIRST & CHANLER LLP |
| 17 | By: _____ Daniel Bornstein Attorneys for Plaintiff ANTHONY E. HELD, Ph.D., P.E. |
| 18 | |
| 19 | |
| 20 | |
| 21 Dated: _____ | JEFFER, MANGELS, BUTLER & MARMARO LLP |
| 22 | By: _____ Timothy Martin Attorneys for Defendant OKK TRADING, INC. |
| 23 | |
| 24 | |
| 25 | |

26 IT IS SO ORDERED.

27 Date: _____

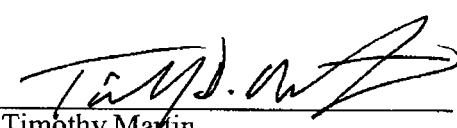
1 **14. AUTHORIZATION**

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

5 **AGREED TO:**

| | |
|--|--|
| <p>6 Dated: _____</p> <p>7</p> <p>8</p> <p>9</p> | <p>ANTHONY E. HELD, Ph.D., P.E.</p> <p>By: _____</p> <p>Anthony E. Held, Ph.D., P.E. Plaintiff</p> |
| <p>10 Dated: _____</p> <p>11</p> <p>12</p> <p>13</p> | <p>OKK TRADING, INC.</p> <p>By: _____</p> <p>OKK TRADING, INC. Defendant</p> |

14 **APPROVED AS TO FORM:**

| | |
|---|--|
| <p>15 Dated: _____</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> | <p>HIRST & CHANLER LLP</p> <p>By: _____</p> <p>Daniel Bornstein Attorneys for Plaintiff ANTHONY E. HELD, Ph.D., P.E.</p> |
| <p>20 Dated: <u>9/29/08</u></p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> | <p>JEFFER, MANGELS, BUTLER & MARMARO LLP</p> <p>By: </p> <p>Timothy Martin Attorneys for Defendant OKK TRADING, INC.</p> |

25 IT IS SO ORDERED.

26 Date: _____
27 JUDGE OF THE SUPERIOR COURT