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7 Consumer Advocacy Group, Inc.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF SAN FRANCISCO**

10  
11 CONSUMER ADVOCACY GROUP, INC., in  
12 the public interest,

13 Plaintiff,

14 v.

15 NAKAJIMA USA, INC., a California  
16 Corporation, and DOES 1-20;

17 Defendants.  
18

CASE NO. CGC-12-523309

**CONSENT JUDGMENT [PROPOSED]**

Dept: 206  
Judge: Cynthia M. Lee

Dept: 302  
Law & Motion Judge: Ernest H. Goldsmith

Complaint filed: August 16, 2012

19 **1. INTRODUCTION**

20 **1.1** This Consent Judgment is entered into by and between plaintiff CONSUMER  
21 ADVOCACY GROUP, INC. (referred to as "CAG") acting on behalf of itself and in the interest  
22 of the public and defendant NAKAJIMA USA, INC. (referred to as "NAKAJIMA"), with each a  
23 Party and collectively referred to as "Parties."

24 **1.2** CAG is a California corporation that serves as a private enforcer of Proposition  
25 65, as described in Proposition 65 and the regulations of the Attorney General of California at 11  
26  
27  
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1 Cal. Code Regs. § 3000 *et seq.*

2       **1.3** NAKAJIMA employs ten or more persons, is a person in the course of doing  
3 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California  
4 Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”), and has manufactured, distributed,  
5 and sold Chococat Steering Wheel Cover, #3500 29453-5, and manufactures, distributes, uses,  
6 and sells other steering wheel covers.

7       **1.3 Notice of Violation.**

8           1.3.1 On or about April 10, 2012, CAG served NAKAJIMA and various public  
9 enforcement agencies with a document entitled “60-Day Notice of Violation” (the  
10 “Notice”) that provided the recipients with notice of alleged violations of Health & Safety  
11 Code § 25249.6 for failing to warn individuals in California of exposures to di(2-  
12 ethylhexyl)phthalate (DEHP) contained in Steering Wheel Covers.

13           1.3.2 No public enforcer has commenced or diligently prosecuted the allegations  
14 set forth in the Notice.

15       **1.4 Complaint.**

16       On August 16, 2012, CAG filed a Complaint for civil penalties and injunctive relief  
17 (“Complaint”) in San Francisco Superior Court, Case No. CGC-12-523309. The Complaint  
18 alleges, among other things, that NAKAJIMA violated Proposition 65 by failing to give clear and  
19 reasonable warnings of exposure to DEHP from Steering Wheel Covers.

20       **1.5 Consent to Jurisdiction**

21       For purposes of this Consent Judgment, the parties stipulate that this Court has jurisdiction  
22 over the allegations of violations contained in the Complaint and personal jurisdiction over  
23 NAKAJIMA as to the acts alleged in the Complaint, that venue is proper in the City and County  
24 of San Francisco and that this Court has jurisdiction to enter this Consent Judgment as a full  
25 settlement and resolution of the allegations contained in the Complaint and of all claims which  
26 were or could have been raised by any person or entity based in whole or in part, directly or  
27 indirectly, on the facts alleged therein or arising therefrom or related to.

1           **1.6 No Admission**

2           This Consent Judgment resolves claims that are denied and disputed. The parties enter into  
3 this Consent Judgment pursuant to a full and final settlement of any and all claims between the  
4 parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not  
5 constitute an admission with respect to any material allegation of the Complaint, each and every  
6 allegation of which NAKAJIMA denies, nor may this Consent Judgment or compliance with it be  
7 used as evidence of any wrongdoing, misconduct, culpability or liability on the part of  
8 NAKAJIMA.

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10          **2. DEFINITIONS**

11           **2.1** “Covered Products” means steering wheel covers sold by NAKAJIMA.

12           **2.2** “Effective Date” means the date that this Consent Judgment is entered by the Court.

13  
14          **3. INJUNCTIVE RELIEF/REFORMULATION**

15           **3.1** As of the Effective Date, NAKAJIMA shall not sell or offer for sale in California  
16 the Covered Products unless the Covered Products have been reformulated to contain less than  
17 0.1% DEHP by weight.

18           **3.2** For any Covered Products still existing in NAKAJIMA’s inventory as of the  
19 Effective Date, NAKAJIMA shall place a Proposition 65 compliant warning. Any warning  
20 provided pursuant to this section shall be affixed to the packaging of, or directly on, the Covered  
21 Products, and be prominently placed with such conspicuousness as compared with other words,  
22 statements, designs, or devices as to render it likely to be read and understood by an ordinary  
23 individual under customary conditions before purchase or use. The warning shall state:

24                   **WARNING:** This product contains a chemical known to the State of California to  
25 cause cancer and birth defects or other reproductive harm.

26          **4. SETTLEMENT PAYMENT**

27           **4.1** NAKAJIMA shall pay a total of \$175,000 as complete settlement of all monetary  
28

1 claims by CAG related to the Notice, as follows:

2           **4.2 Reimbursement of Attorneys' Fees and Costs:** NAKAJIMA shall pay one-  
3 hundred and twenty-five thousand dollars (\$125,000.00) payable to "Yeroushalmi & Associates"  
4 as reimbursement for the investigation fees and costs, testing costs, expert fees, attorney fees, and  
5 other litigation costs and expenses for all work performed through the approval of this Consent  
6 Judgment.

7           **4.3 Civil Penalties.** NAKAJIMA shall issue two separate checks for a total amount of  
8 fifty thousand dollars (\$50,000.00) as civil penalties pursuant to Health & Safety Code § 25249.12:  
9 (a) one check made payable to the State of California's Office of Environmental Health Hazard  
10 Assessment (OEHHA) in the amount of \$37,500.00, representing 75% of the total penalty; and (b)  
11 one check to Consumer Advocacy Group, Inc. in the amount of \$12,500.00, representing 25% of  
12 the total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall  
13 be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount  
14 of \$37,500.00 The second 1099 shall be issued in the amount of \$12,500.00 to CAG and delivered  
15 to: Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California  
16 90212.

17           **4.4** Payments pursuant to 4.2 and 4.3 shall be delivered to: Reuben Yeroushalmi,  
18 Yeroushalmi & Associates, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212.

19 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT**

20           5.1 This Consent Judgment is a full, final, and binding resolution between CAG on  
21 behalf of itself and in the public interest and NAKAJIMA and its officers, directors, insurers,  
22 employees, agents, parent companies, shareholders, divisions, subdivisions, subsidiaries, partners,  
23 affiliates, sister companies and their successors and assigns , including but not limited to each of  
24 its suppliers, customers, distributors, wholesalers, retailers, or any other person in the course of  
25 doing business, and the successors and assigns of any of them, who may use, manufacture,  
26 maintain, distribute or sell Covered Products (collectively, "Defendant Releasees"), for all claims  
27 for violations of Proposition 65 up through the Effective Date based on exposure to DEHP from  
28 the Covered Products. NAKAJIMA and/or other Defendant Releasees' compliance with this

1 Consent Judgment shall constitute compliance with Proposition 65 with respect to DEHP from  
2 Covered Products. Nothing in this Section affects CAG's right to commence or prosecute an action  
3 under Proposition 65 against any person other than Defendant Releasees.

4       5.2     CAG on behalf of itself, its past and current agents, representatives, attorneys,  
5 successors, and/or assignees (collectively, "CAG"), hereby waives all rights to institute or  
6 participate in, directly or indirectly, any form of legal action and releases all claims, including,  
7 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,  
8 obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to,  
9 investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or  
10 unknown, fixed or contingent (collectively "Claims"), against any or all Defendant Releasees  
11 arising from any violation of Proposition 65 or any other statutory or common law regarding the  
12 failure to warn about exposure and/or exposure to DEHP from Covered Products manufactured,  
13 distributed, used, or sold by any or all Defendant Releasees. In furtherance of the foregoing, as to  
14 alleged exposures to DEHP from the Covered Products, CAG hereby waives any and all rights and  
15 benefits which it now has, or in the future may have, conferred upon it with respect to the Claims  
16 arising from any violation of Proposition 65 and/or any other statutory or common law regarding  
17 the failure to warn about exposure and/or exposure to DEHP from Covered Products by virtue of  
18 the provisions of section 1542 of the California Civil Code, which provides as follows:

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

22 CAG understands and acknowledges that the significance and consequence of this waiver of  
23 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or  
24 resulting from, or related directly or indirectly to, in whole or in part, the Claims arising from any  
25 violation of Proposition 65 and/or any other statutory or common law regarding the failure to warn  
26 about exposure and/or exposure to DEHP from the Covered Products, including but not limited to  
27 any exposure to, and/or failure to warn with respect to exposure to DEHP from the Covered  
28 Products, CAG will not be able to make any claim for those damages against any or all Defendant

1 Releasees. Furthermore, CAG acknowledges that it intends these consequences for any and all  
2 such Claims arising from any and all violations of Proposition 65 and/or any other statutory or  
3 common law regarding the failure to warn about exposure and/or exposure to DEHP from the  
4 Covered Products as may exist as of the date of this release but which CAG does not know exist,  
5 and which, if known, would materially affect their decision to enter into this Consent Judgment,  
6 regardless of whether their lack of knowledge is the result of ignorance, oversight, error,  
7 negligence, or any other cause.

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9 **6. ENFORCEMENT OF JUDGMENT**

10 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties  
11 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of  
12 California, San Francisco County, giving the notice required by law, enforce the terms and  
13 conditions contained herein. A Party may enforce any of the terms and conditions of this Consent  
14 Judgment only after that Party first provides 90 days' notice to the Party allegedly failing to comply  
15 with the terms and conditions of this Consent Judgment and attempts to resolve such Party's failure  
16 to comply in an open and good faith manner.

17 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other  
18 proceeding to enforce the terms of this Consent Judgment, CAG shall provide a Notice of Violation  
19 ("NOV") to Nakajima. The NOV shall include for each of the Covered Products: the date(s) the  
20 alleged violation(s) was observed and the location at which the Covered Products were offered for  
21 sale, and shall be accompanied by all test data obtained by CAG regarding the Covered Products,  
22 including an identification of the component(s) of the Covered Products that were tested. CAG  
23 shall make available the Covered Products that are the subject of the NOV for testing by  
24 NAKAJIMA upon NAKAJIMA'S request. Multiple units of Covered Products sold in California  
25 by Defendant Releasees that were part of the same shipment by NAKAJIMA to any other  
26 Defendant Releasee or group of Defendant Releasees, shall only support one NOV.

1           6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the  
2 alleged violation if, within 60 days of receiving such NOV, Nakajima serves a Notice of  
3 Election (“NOE”) that meets one of the following conditions:

4           (a) The Covered Products were shipped by Nakajima for sale in  
5 California before the Effective Date, or

6           (b) Since receiving the NOV, Nakajima has taken corrective action by  
7 either (i) requesting that its customers or stores in California, as applicable, remove the  
8 Covered Products identified in the NOV from sale in California and destroy or return the  
9 Covered Products to Nakajima or vendor, as applicable, or (ii) providing a clear and  
10 reasonable warning for the Covered Products identified in the NOV pursuant to 27 Cal.  
11 Code Regs. § 25603.

12           6.2.2 **Contested NOV.** Nakajima may serve an NOE informing CAG of its  
13 election to contest the NOV within 30 days of receiving the NOV. Failure to provide an  
14 NOE within 30 days of receiving the NOV shall be deemed an election to contest the NOV.

15           6.3 In any proceeding brought by either Party to enforce this Consent Judgment, such  
16 Party may seek whatever fines, costs, penalties or remedies as may be provided by law for any  
17 violation of Proposition 65 or this Consent Judgment.

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19 **7. ENTRY OF CONSENT JUDGMENT**

20           7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to  
21 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and  
22 NAKAJIMA waive their respective rights to a hearing or trial on the allegations of the Complaint.

23           7.2 If this Consent Judgment is not approved in its entirety by the Court, (a) this  
24 Consent Judgment and any and all prior agreements between the parties merged herein shall  
25 terminate and become null and void, and the actions shall revert to the status that existed prior to  
26 the execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft  
27 thereof, or of the negotiation, documentation, or other part or aspect of the Parties’ settlement  
28 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any

1 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to  
2 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

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4 **8. MODIFICATION OF JUDGMENT**

5 **8.1** This Consent Judgment may be modified only upon written agreement of the  
6 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of  
7 any Party as provided by law and upon entry of a modified Consent Judgment by the Court.

8 **8.2** Any Party seeking to modify this Consent Judgment shall attempt in good faith to  
9 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

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11 **9. RETENTION OF JURISDICTION**

12 **9.1** This Court shall retain jurisdiction of this matter to implement and enforce the terms  
13 of this Consent Judgment.

14  
15 **10. DUTIES LIMITED TO CALIFORNIA**

16 This Consent Judgment shall have no effect on Covered Products sold outside the State of  
17 California.

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19 **11. SERVICE ON THE ATTORNEY GENERAL**

20 **11.1** CAG shall serve a copy of this Consent Judgment, signed by both parties, on the  
21 California Attorney General so that the Attorney General may review this Consent Judgment prior  
22 to its submittal to the Court for approval. No sooner than forty five (45) days after the Attorney  
23 General has received the aforementioned copy of this Consent Judgment, and in the absence of  
24 any written objection by the Attorney General to the terms of this Consent Judgment, the parties  
25 may then submit it to the Court for approval.

26  
27 **12. ATTORNEY FEES**

28 **12.1** Except as specifically provided in Section 4, each Party shall bear its own costs and

1 attorney fees in connection with this action.

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3 **13. GOVERNING LAW**

4 **13.1** The validity, construction and performance of this Consent Judgment shall be  
5 governed by the laws of the State of California, without reference to any conflicts of law provisions  
6 of California law.

7 **13.2** The Parties, including their counsel, have participated in the preparation of this  
8 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
9 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
10 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or  
11 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result  
12 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment  
13 agrees that any statute or rule of construction providing that ambiguities are to be resolved against  
14 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in  
15 this regard, the Parties hereby waive California Civil Code § 1654.

16  
17 **14. EXECUTION AND COUNTERPARTS**

18 **14.1** This Consent Judgment may be executed in counterparts and by means of facsimile  
19 or portable document format (pdf), which taken together shall be deemed to constitute one  
20 document.

21  
22 **15. NOTICES**

23 **15.1** Any notices under this Consent Judgment shall be by personal delivery or First  
24 Class Mail.

25  
26 If to CAG:

27 Reuben Yeroushalmi, Esq.  
28 9100 Wilshire Boulevard, Suite 240W  
Beverly Hills, CA 90212  
(310) 623-1926

1 If to Nakajima USA, Inc.:

2 Nakajima USA, Inc.

3 :  
4 C/O Eric Y. Nishizawa, Esq.  
5 Law Offices Of Eric Y. Nishizawa  
6 4712 Admiralty Way, No. 1115  
7 Marina Del Rey, CA 90292

6 **16. AUTHORITY TO STIPULATE**

7 **16.1** Each signatory to this Consent Judgment certifies that he or she is fully authorized  
8 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of  
9 the Party represented and legally to bind that Party.

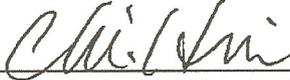
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12 **AGREED TO:**

13 Date: 2-23-15, 2013

**AGREED TO:**

14 Date: 2/15/2015, 2013 <sup>CH</sup>

15  
16 By:   
17 Plaintiff, CONSUMER ADVOCACY  
18 GROUP, INC.

19  
20 By:   
21 Defendant, NAKAJIMA USA, INC.

1 **IT IS SO ORDERED.**

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3 Date: \_\_\_\_\_

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JUDGE OF THE SUPERIOR COURT

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