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

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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF SANTA CLARA  
15 UNLIMITED CIVIL JURISDICTION  
16  
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18 ANTHONY E. HELD, PH.D., P.E.

19 Plaintiff,

20 v.

21 NATHAN SPORTS INC., *et al*,

22 Defendants.

23 Case No. 114CV270086

24 **[PROPOSED] CONSENT JUDGMENT**

25 (Health & Safety Code § 25249.6 *et seq.* and  
26 Code of Civil Procedure § 664.6)

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CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,  
4 P.E. (“Held”) and defendant Nathan Sports Inc. (“Nathan”), with Held and Nathan each referred to  
5 individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Held is a resident of the State of California who seeks to promote awareness of exposures to  
8 toxic chemicals, and to improve human health by reducing or eliminating harmful substances  
9 contained in consumer and commercial products.

10 **1.3 Defendant**

11 Nathan employs ten or more persons and, solely for purposes of this consent judgment, is a  
12 person in the course of doing business for purposes of the Safe Drinking Water and Toxic  
13 Enforcement Act of 1986, California Health and Safety Code section 25249.5 *et seq.* (“Proposition  
14 65”).

15 **1.4 General Allegations**

16 Held alleges that Nathan manufactures, imports, sells and/or distributes for sale in  
17 California, hydration bladders (a backpack or waist pack with one or more mobile reservoirs of  
18 water or other liquids, containing a hose for hands-free drinking) with vinyl/PVC tubing containing  
19 Diisononyl phthalate (“DINP”), and fitness vests with vinyl/PVC components containing di(2-  
20 ethylhexyl)phthalate (“DEHP”), and that it does so without providing the health hazard warnings  
21 that Held alleges are required by Proposition 65.

22 **1.5 Product Description**

23 The products covered by this Consent Judgment are: (a) hydration bladders with vinyl/PVC  
24 tubing including, but not limited to, the *Nathan Human Propulsion Laboratories Synergy Dual*  
25 *Chamber Hydration Bladder, #10018N, UPC #7 17064 86037 1* (“Hydration Products”); (b) fitness  
26 vests with vinyl/PVC components, including, but not limited to, the *Komen Reflective Vest, Style#*  
27 *NB2001SGK, UPC #717064876518* (“Vest Products”). The Hydration Products with vinyl/PVC  
28 components and Vest Products described herein are collectively referred to as “Covered Products”.

1           **1.6 Notices of Violation**

2           On and before August 10, 2015, Held served Nathan and the requisite public enforcement  
3 agencies with a 60-Day Notice of Violation (“Notice”), alleging that Nathan violated Proposition 65  
4 when it failed to warn its customers and consumers in California that the Hydration Products  
5 expose users to DINP. Held also issued a 60 Day Notice of Violation (Initial Notice) to Nathan and  
6 the requisite public enforcement agencies alleging that Nathan violated Proposition 65 when it  
7 failed to warn its customers and consumers in California that the Vest Products expose users to  
8 DEHP. The Notice and the Initial Notice are referred to collectively hereinafter as the “Notices.”  
9 To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently  
10 prosecuting an action to enforce the allegations set forth in either of the Notices.

11           **1.7 Complaint**

12           On August 29, 2014, Held commenced the instant action, naming Nathan as a defendant for  
13 the alleged violations of Proposition 65 that are the subject of the Initial Notice. Upon the Court's  
14 entry of this Consent Judgment, the Complaint shall be deemed amended nunc pro tunc to include  
15 all Products and alleged violations that are the subject of the Notices.

16           **1.8 No Admission**

17           Nathan denies the material, factual, and legal allegations contained in the Notices and  
18 Complaint, and maintains that all of the products that it has sold or distributed for sale in California,  
19 including the Covered Products, have been, and are safe and in compliance with all laws. Nothing  
20 in this Consent Judgment shall be construed as an admission by Nathan of any fact, finding,  
21 conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent  
22 Judgment constitute or be construed as an admission by Nathan of any fact, finding, conclusion of  
23 law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect  
24 Nathan’s obligations, responsibilities, and duties under this Consent Judgment.

25           **1.9 Jurisdiction**

26           For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
27 jurisdiction over Nathan as to the allegations contained in the Complaint, that venue is proper in the  
28

1 County of Santa Clara, and that the Court has jurisdiction to enter and enforce the provisions of this  
2 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

3 **1.10 Effective Date**

4 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that  
5 the Court enters this Consent Judgment as contemplated by Section 5.

6 **2. INJUNCTIVE SETTLEMENT TERMS: REFORMULATION**

7 Commencing on the Effective Date, and continuing thereafter, Nathan shall only  
8 manufacture for sale in California, or purchase for sale in California, Covered Products that are  
9 Reformulated Products, which are defined as (i) with respect to Hydration Products, those Covered  
10 Products with a maximum DINP concentration 0.1 percent (1,000 parts per million) in components  
11 that are accessible during normal use or that are in contact with fluids during normal use, when  
12 analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and  
13 8270C, or other methodologies utilized by state or federal agencies for the purpose of determining  
14 DINP content in a solid substance (“Reformulated Hydration Products”), and (ii) with respect to  
15 Vest Products, those Covered Products with a maximum DEHP concentration 0.1 percent (1,000  
16 parts per million) in components that are accessible during normal use when analyzed pursuant to  
17 U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or other  
18 methodologies utilized by state or federal agencies for the purpose of determining DEHP content in  
19 a solid substance (“Reformulated Vest Products”). On or before November 2, 2015, an officer of  
20 Nathan shall provide in writing to Plaintiff that Nathan has met reformulation standards set forth  
21 above.

22 **2.1 Commitment to Notify Vendors of Reformulation Standard**

23 No later than 30 days after the Effective Date, to the extent it has not already done so,  
24 Nathan shall provide written notice to all of its vendors of Covered Products that Nathan knows and  
25 intends will be sold in California and, thereafter, for each subsequently-engaged vendor, if any,  
26 instructing each vendor to provide only Reformulated Products (i.e., Hydration Products with no  
27 more than 1,000 ppm DINP content in components that are accessible during normal use or that are  
28 in contact with fluids during normal use, and Vest Products with no more than 1,000 ppm DEHP

1 content in components that are accessible during normal use). In addressing the obligation set forth  
2 in the preceding sentence, Nathan shall not employ statements to encourage a vendor to delay  
3 compliance with Nathan's request.

4 Since the Notice, Nathan asserts that it has taken the following steps to reduce, if not  
5 eliminate, the alleged violations: (i) it has tested representative samples its current line of Covered  
6 Products to confirm the DEHP and DINP reformulation standards set forth above can be met; and  
7 (ii) inquired of its current vendors regarding their formulation standards for Covered Products they  
8 produce for Nathan and requested that they adhere to the reformulation standard for Covered  
9 Products set forth in this Consent Judgment.

10 **3. MONETARY SETTLEMENT TERMS**

11 **3.1 Payment Pursuant to Health and Safety Code § 25249.7(b)(2)**

12 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the  
13 claims referred to in this Consent Judgment, Nathan shall pay \$15,000 in civil penalties. The  
14 penalty payment will be allocated in accordance with California Health & Safety Code §  
15 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental  
16 Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Held.  
17 Nathan shall provide its payment in a single check made payable to "Anthony E. Held, Client Trust  
18 Account" to be delivered to the address provided in Section 3.4, below. Held's counsel shall be  
19 responsible for remitting Nathan's penalty payment under this Consent Judgment to OEHHA.

20 **3.2 Reimbursement of Attorneys' Fees and Costs**

21 The Parties acknowledge that Held and his counsel offered to resolve this dispute without  
22 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue  
23 to be resolved after the material terms of the agreement had been settled. Shortly after the other  
24 settlement terms had been finalized, Nathan expressed a desire to resolve Held's fees and costs.  
25 The Parties then negotiated a resolution of the compensation due to Held and his counsel under  
26 general contract principles and the private attorney general doctrine codified at California Code of  
27 Civil Procedure § 1021.5. For all work performed and reasonably expected to be performed in this  
28 matter, including all fees and costs incurred by Held investigating, bringing this matter to Nathan's

1 attention and to the attention of public prosecutors, litigating, negotiating and obtaining approval  
2 of the settlement of the matter in the public interest, but exclusive of fees and costs on appeal, if  
3 any, Nathan shall reimburse Held and his counsel \$51,000. Nathan's payment shall be delivered to  
4 the address in Section 3.4 in the form of a check payable to "The Chanler Group."

5 **3.3 Payment Timing; Payments Held In Trust**

6 By November 1, 2015 Nathan shall deliver all payments required by this Consent Judgment  
7 to its counsel. Nathan's counsel shall confirm receipt of settlement funds in writing to Held's  
8 counsel and, thereafter, hold the amounts paid in trust until such time as the Court grants the  
9 motion for approval of the Parties' settlement contemplated by Section 5. Within two days of the  
10 Effective Date, Nathan's counsel shall deliver all settlement payments it has held in trust to Held's  
11 counsel at the address provided in Section 3.4.

12 **3.4 Payment Address**

13 All payments required by this Consent Judgment shall be delivered to the following  
14 address:

15 The Chanler Group  
16 Attn: Proposition 65 Controller  
2560 Ninth Street  
17 Parker Plaza, Suite 214  
Berkeley, CA 94710

18 **4. CLAIMS COVERED AND RELEASED**

19 **4.1 Held's Release of Proposition 65 Claims**

20 Held, acting on his own behalf and in the public interest, releases Nathan and its parents,  
21 subsidiaries, predecessors and successors in interest, any affiliated entities under common  
22 ownership, and their directors, officers, employees, agents, shareholders, partners, members and  
23 attorneys ("Releasees") and each entity to whom Nathan directly or indirectly distributes or sells the  
24 Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers,  
25 franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for any  
26 violations arising under Proposition 65 for unwarned exposures to DINP in its Hydration Products  
27 and DEHP in its Vest Products that are manufactured, imported, distributed or sold by Nathan prior  
28 to the Effective Date, as set forth in the Notice. Compliance with the terms of this Consent

1 Judgment constitutes compliance with Proposition 65 by all Releasees and Downstream Releasees  
2 with respect to the alleged or actual failure to warn about exposures to DEHP and DINP from  
3 Covered Products manufactured, sold or distributed for sale by Nathan after the Effective Date.

4 **4.2 Held's Individual Release of Claims**

5 Held, in his individual capacity only and *not* in his representative capacity, also provides a  
6 release to Defendants, Releasees, and Downstream Releasees which shall be effective as a full and  
7 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,  
8 attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or  
9 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual  
10 exposures to DEHP and DINP in Products manufactured, imported, distributed or sold by Nathan  
11 before the Effective Date.

12 **4.3 Nathan's Release of Held**

13 Nathan, on its own behalf and on behalf of its past and current agents, representatives,  
14 attorneys, successors and/or assignees, hereby waives any and all claims against Held and his  
15 attorneys and other representatives, for any and all actions taken or statements made (or those that  
16 could have been taken or made) by Held and his attorneys and other representatives in the course of  
17 investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to  
18 the Products.

19 **5. COURT APPROVAL**

20 This Consent Judgment is not effective until it is approved and entered by the Court and  
21 shall be null and void if, for any reason, it is not approved and entered by the Court within one year  
22 after it has been fully executed by all Parties. Held and Nathan agree to support the entry of this  
23 agreement as a judgment, and to obtain the Court's approval of their settlement in a timely manner.  
24 The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a  
25 noticed motion is required for judicial approval of this Consent Judgment, which motion Held shall  
26 draft and file and Nathan shall support, appearing at the hearing if so requested. If any third-party  
27 objection to the motion is filed, Held and Nathan agree to work together to file a reply and appear at  
28

1 any hearing. This provision is a material component of the Consent Judgment and shall be treated  
2 as such in the event of a breach.

3 **6. GOVERNING LAW**

4 The terms of this Consent Judgment shall be governed by the laws of the State of California  
5 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or  
6 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Nathan  
7 may provide Held with written notice of any asserted change in the law, and shall have no further  
8 obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products  
9 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Nathan from its  
10 obligation to comply with any pertinent state or federal law or regulation.

11 **7. NOTICE**

12 Unless specified herein, all correspondence and notice required by this Consent Judgment  
13 shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail,  
14 return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the  
15 following addresses:

16 To Nathan:

17  
18 Paul S. Rosenlund, Esq.  
19 Duane Morris LLP  
20 One Market Plaza, Spear Tower, Suite 2200  
21 San Francisco, CA 94105-1127

To Held:

Attn: Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

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

24 **8. ENFORCEMENT**

25 Any Party may, by motion, application for an order to show cause before the Santa Clara  
26 County Superior Court, or any other appropriate action, enforce the terms and conditions contained  
27 in this Consent Judgment. A Party may file such a motion, action or application only after that  
28 Party first provides 30 days' notice to the Party allegedly failing to comply with the terms and



1 conditions of this Consent Judgment and attempts to resolve such Party's failure to comply in an  
2 open and good faith manner for a period of no less than 30 days, which efforts shall include an open  
3 exchange of the evidence pertaining to the claim or alleged violation. The prevailing party on any  
4 motion, application to show cause, or other available remedy at law to enforce or redress an actual  
5 or alleged violation of this Consent Judgment, shall be entitled to his reasonable attorneys' fees and  
6 costs incurred as a result of such motion, application, or other remedy at law.

7 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

8 This Consent Judgment may be executed in counterparts and by facsimile or portable  
9 document format (pdf) signature, each of which shall be deemed an original and, all of which, when  
10 taken together, shall constitute one and the same document.

11 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

12 Held and his counsel shall comply with the reporting form requirements referenced in  
13 California Health and Safety Code section 25249.7(f).

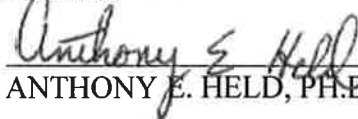
14 **11. MODIFICATION**

15 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and  
16 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of  
17 any party and the entry of a modified Consent Judgment by the Court thereon.

18 **12. AUTHORIZATION**

19 The undersigned are authorized to execute this Consent Judgment on behalf of their  
20 respective Parties and have read, understood, and agree to all of the terms and conditions of this  
21 Consent Judgment.

22 **AGREED TO:**

23   
24 ANTHONY E. HELD, PH.D., P.E.

25 Dated: 10/20/2015

22 **AGREED TO:**

23   
24 NATHAN SPORTS INC.

25 By: Bridgit Lombard  
(Print Name)

26 Its: CEO  
(Title)

27 Dated: 10/20/15

28