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ENDORSED
FILED

AUG 29 2011

Superior Court
County of Santa Clara
D. W. W. J. J.

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SANTA CLARA
13 UNLIMITED CIVIL JURISDICTION

14 ANTHONY E. HELD, PH.D., P.E.,

15 Plaintiff,

16 v.

17 NATHAN SPORTS INC.; and DOES 1-150,
18 inclusive,

19 Defendants.

Case No. _____

114CV270086

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 *et seq.*)

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff ANTHONY E.
3 HELD, PH.D., P.E., in the public interest of the citizens of the State of California to enforce the
4 People’s right to be informed about exposures to di(2-ethylhexyl)phthalate (“DEHP”), a toxic
5 chemical that is found in and on fitness vests with vinyl/PVC components that are sold in
6 California.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
8 warn California citizens about the risks of exposures to DEHP present in and on the fitness vests
9 with vinyl/PVC components manufactured, distributed, sold, and offered for sale or use to
10 consumers throughout the State of California.

11 3. Detectable levels of DEHP are commonly found in and on the fitness vests with
12 vinyl/PVC components that defendants import, manufacture, distribute, ship, sell and/or offer
13 for sale to consumers throughout the State of California.

14 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
15 Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of
16 doing business shall knowingly and intentionally expose any individual to a chemical known to
17 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
18 warning to such individual” Health & Safety Code § 25249.6.

19 5. On October 24, 2003, California listed DEHP pursuant to Proposition 65 as a
20 chemical that is known to cause birth defects or other reproductive harm. DEHP became
21 subject to the “clear and reasonable warning” requirements of the act one year later on October
22 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
23 25249.10(b). DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

24 6. Defendants manufacture, distribute, import, sell, and offer for sale without
25 warning in California, fitness vests with vinyl/PVC components containing the LISTED
26 CHEMICAL, including, but not limited to, the *Komen Reflective Vest, Style# NB2001SGK*,
27
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1 UPC #717064876518. All such fitness vests with vinyl/PVC components containing the
2 LISTED CHEMICAL are referred to collectively hereinafter as the "PRODUCTS."

3 7. Defendants' failure to warn consumers and other individuals in California of the
4 harms associated with exposures to the LISTED CHEMICAL in conjunction with defendants'
5 sales of the PRODUCTS containing the LISTED CHEMICAL are violations of Proposition 65,
6 and subject defendants to enjoinder of such conduct, as well as civil penalties for each
7 violation. Health & Safety Code § 25249.7(a) & (b)(1).

8 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
9 permanent injunctive relief to compel defendants to provide purchasers and users of the
10 PRODUCTS with the required warning regarding the health hazards associated with exposures
11 to the LISTED CHEMICAL. Health & Safety Code § 25249.7(a).

12 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
13 penalties against defendants, and each of them, for each violation of Proposition 65.

14 PARTIES

15 10. Plaintiff ANTHONY E. HELD, PH.D., P.E. is a citizen of the State of California
16 who is dedicated to protecting the health of California citizens through the elimination or
17 reduction of harmful exposures to toxic chemicals from consumer products. He brings this
18 action in the public interest pursuant to Health and Safety Code section 25249.7(d).

19 11. Defendant Nathan Sports Inc. ("Nathan") is a person in the course of doing
20 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

21 12. Nathan manufactures, imports, distributes, sells, and/or offers the PRODUCTS for
22 sale or use in the State of California, or it implies by its conduct that it manufactures, imports,
23 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

24 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a
25 person in the course of doing business within the meaning of Health and Safety Codes sections
26 25249.6 and 25249.11.

1 DEFENDANTS conducted, and continue to conduct, business in Santa Clara County with
2 respect to the PRODUCTS.

3 22. The California Superior Court has jurisdiction over this action pursuant to
4 California Constitution Article VI, section 10, which grants the Superior Court “original
5 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
6 which this action is brought does not specify any other basis of subject matter jurisdiction.

7 23. The California Superior Court has jurisdiction over DEFENDANTS based on
8 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
9 association that is a citizen of the State of California, has sufficient minimum contacts in the
10 State of California, and/or otherwise purposefully avails itself of the California market.
11 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
12 California courts consistent with traditional notions of fair play and substantial justice.

13 **FIRST CAUSE OF ACTION**

14 **(Violation of Proposition 65 - Against All Defendants)**

15 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
16 Paragraphs 1 through 23, inclusive.

17 25. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
18 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be
19 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
20 harm.”

21 26. Proposition 65 states, “[n]o person in the course of doing business shall
22 knowingly and intentionally expose any individual to a chemical known to the state to cause
23 cancer or reproductive toxicity without first giving clear and reasonable warning to such
24 individual” Health & Safety Code § 25249.6.

25 27. On April 30, 2014, plaintiff’s sixty-day notice of violation, together with the
26 requisite certificate of merit, was provided to Nathan and the requisite public enforcement
27 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the
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1 LISTED CHEMICAL, workers, consumers, and other individuals in the State of California
2 were being exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use
3 of the PRODUCTS, without the individual purchasers and users first having received a “clear
4 and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

5 28. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
6 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
7 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
8 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and
9 continuous in nature, and will continue to occur in the future.

10 29. After receiving plaintiff’s sixty-day notice of violation, the appropriate public
11 enforcement agencies have failed to commence and diligently prosecute a cause of action
12 against DEFENDANTS under Proposition 65.

13 30. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
14 or use in California by DEFENDANTS contain the LISTED CHEMICAL in such a way that the
15 reasonably foreseeable uses of these products result in exposures that require a “clear and
16 reasonable” warning under Proposition 65.

17 31. DEFENDANTS knew or should have known that the PRODUCTS they
18 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
19 CHEMICAL.

20 32. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
21 expose individuals through dermal contact and/or ingestion during reasonably foreseeable use.

22 33. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
23 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
24 defined by title 27 of the California Code of Regulations, section 25602(b).

25 34. DEFENDANTS have knowledge that the normal and reasonably foreseeable uses
26 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact
27 and/or ingestion.

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1 reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601
2 *et seq.*, as to the harms associated with exposures the LISTED CHEMICAL;

3 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

4 4. That the Court grant such other and further relief as may be just and proper.

5 Dated: August 28, 2014

6 Respectfully Submitted,
7 THE CHANLER GROUP

8
9 By: 
10 Christopher Tuttle
11 Attorneys for Plaintiff
12 ANTHONY E. HELD, PH.D., P.E.