

# SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE § 25249.7(d)

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DATE: August 10, 2015

TO: Bridgit Lombard, Chief Executive Officer – Nathan Sports Inc.  
California Attorney General’s Office;  
District Attorney’s Office for 58 Counties; and  
City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles

FROM: Anthony E. Held, Ph.D., P.E.

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## I. INTRODUCTION

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My name is Anthony E. Held. I hold a Doctor of Philosophy degree in Environmental Engineering and I am a registered professional engineer in the State of California. I am a citizen of the State of California acting in the interest of the general public. I seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items. This Notice is provided to the public agencies listed above pursuant to California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”) and supplements the 60-Day Notice of Violation sent on April 30, 2014. As noted above, notice is also being provided to the alleged violator, Nathan Sports Inc. (the “Violator”). The violations covered by this Notice consist of the product exposures, routes of exposure, and type of harm potentially resulting from exposure to the toxic chemicals (“listed chemicals”) identified below, as follows:

Product Exposure: See Section VII. Exhibit A  
Listed Chemicals: Di(2-ethylhexyl)phthalate (“DEHP”); Diisononyl phthalate (“DINP”)  
Routes of Exposure: Ingestion, Dermal  
Types of Harm: Birth Defects and Other Reproductive Harm; Cancer

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## II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

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The specific types of products that are causing consumer exposures in violation of Proposition 65, and that are covered by this Notice, are listed under “Product Category/Type” in Exhibit A in Section VII below. All products within the categories covered by this Notice shall be referred to hereinafter as the “products.” Exposures to the listed chemicals from the use of the products have been occurring without the clear and reasonable warning required by Proposition 65, dating as far back as August 10, 2012. Without proper warnings regarding the toxic effects of exposures to the listed chemicals resulting from contact with the products, California citizens lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the listed chemicals from the reasonably foreseeable use of the products.

**A. CONSUMER PRODUCT EXPOSURE (DEHP)**

California citizens, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemical. By way of example, consumers and other individuals, including women of childbearing age, ingest the listed chemical when they, among other activities, touch the products and transfer the listed chemical from the products to their mouths through hand-to-mouth activities that may continue to occur for a significant period after contact with the products stops. Additionally, consumers and other individuals, including women of childbearing age, are exposed to the listed chemical through direct dermal contact when they, among other activities, handle, touch or otherwise use the products.

**B. CONSUMER PRODUCT EXPOSURE (DINP)**

California consumers and other individuals, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemical. California citizens ingest the listed chemical when they, among other activities, touch the products and transfer the listed chemical from the products to their mouths through hand-to-mouth activities that may continue to occur for a significant period after contact with the products stops. California citizens are exposed to the listed chemical through direct dermal contact when they, among other activities, handle, touch or otherwise use the products. People likely to be exposed include both children and adults.

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**III. CONTACT INFORMATION**

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Please direct all questions concerning this notice to me through my counsel's office at the following address:

Anthony E. Held, Ph.D., P.E.  
c/o Clifford A. Chanler  
The Chanler Group  
Parker Plaza  
2560 Ninth Street, Suite 214  
Berkeley, CA 94710  
Telephone: (510) 848-8880

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**IV. PROPOSITION 65 INFORMATION**

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For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment's ("OEHHA") Proposition 65 Implementation Office at (916) 445-6900. For the Violator's reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

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## V. RESOLUTION OF NOTICED CLAIMS

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Based on the allegations set forth in this Notice, I intend to file a citizen enforcement lawsuit against the alleged Violator unless such Violator enters into a binding written agreement to: (1) recall products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those who have received such products; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the DEHP and DINP exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health & Safety Code § 25249.7(b). If the alleged Violator is interested in resolving this dispute without resorting to time-consuming and expensive litigation, please feel free to contact my counsel identified in Section III above. It should be noted that neither my counsel nor I can: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any district or city attorney who received this Notice. Therefore, while reaching an agreement with me will resolve my claims, such agreement may not satisfy the public prosecutors.

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## VI. ADDITIONAL NOTICE INFORMATION

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Identified below are specific examples of products recently purchased and witnessed as being available for purchase or use in California that are within the categories or types of offending products covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the examples within the categories or types of products are also provided below. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 “clear and reasonable warning” at one or more locations and/or via other means including, but not limited to, transactions made over-the-counter, business-to-business, through the internet and/or via a catalog by the Violator and other retailers and distributors of the manufacturer.

<i>Product*</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Komen Reflective Vest, Style# NB2001SGK, UPC #717064876518	New Balance, Inc. ( <a href="http://www.newbalance.com">http://www.newbalance.com</a> )	Nathan Sports Inc.
Nathan Human Propulsion Laboratories Synergy Dual Chamber Hydration Bladder, #10018N, UPC #7 17064 86037 1	Bike Somewhere ( <a href="http://www.bikesomewhere.com">http://www.bikesomewhere.com</a> )	Nathan Sports Inc.

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## VII. EXHIBIT A

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<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Fitness Vests with Vinyl/PVC Components	Komen Reflective Vest, Style# NB2001SGK, UPC #717064876518	Di(2-ethylhexyl)phthalate

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**VII. EXHIBIT A (continued)**

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<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Hydration Bladders with Vinyl/PVC Tubing	Nathan Human Propulsion Laboratories Synergy Dual Chamber Hydration Bladder, #10018N, UPC #7 17064 86037 1	Diisononyl phthalate

\*The specifically identified examples of the types of products that are subject to this Notice are for the recipient's benefit to assist in its investigation of, among other things, the magnitude of potential exposures to the listed chemicals from other items within the product categories/types listed in Exhibit A. It is important to note that these examples are not meant to be an exhaustive or comprehensive identification of each specific offending product of the types listed under "Product Category/Type" in Exhibit A. Further, it is this citizen's position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the types or categories described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.

# PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am over the age of 18 years, and not a party to the within action; my business address is Parker Plaza, 2560 Ninth Street, Suite 214, Berkeley, CA 94710.

On August 10, 2015, I served the following documents:

**SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(d);**

**PROPOSITION 65: A SUMMARY;**

**CERTIFICATE OF MERIT; AND**

**CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE ATTORNEY GENERAL)**

on the entity listed below via First Class Certified Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the entity listed below and providing each envelope to a United States Postal Service Representative:

Bridgit Lombard, Chief Executive Officer  
Nathan Sports Inc.  
2009 Elmwood Avenue, Suite 101  
Sharon Hill, PA 19079

Bridgit Lombard, Chief Executive Officer  
Nathan Sports Inc.  
P.O. Box 1036  
Sharon Hill, PA 19079

as well as by providing copies of the above documents electronically uploaded to the public enforcers according to directions from their respective offices, and/or by placing a true and correct copy in a sealed envelope, addressed to each party listed below, and served as follows:

<i>Electronically Uploaded to the Attorney General's website:</i>	The Attorney General of the State of California;
<i>By placing each envelope in a United States Postal Service mailbox, postage prepaid:</i>	The District Attorney for Each of the 58 counties in California; and  The City Attorney for Los Angeles, San Diego, San Jose, San Francisco and Sacramento

*A list of addresses for each of these recipients is attached.*

Executed on August 10, 2015, at Berkeley, California.



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Caroline Pak

# CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Clifford A. Chanler, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the party identified in the notice has violated Health and Safety Code § 25249.6 by failing to provide clear and reasonable warnings;
2. I am the attorney for the noticing party;
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the *alleged* exposure to the listed chemicals that are the subject of this action;
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established and the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute;
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health and Safety Code § 25249.7(h)(2) (*i.e.*, (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons).

Dated: August 10, 2015



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Clifford A. Chanler

# SERVICE LIST

The Honorable Nancy O'Malley  
Alameda County District Attorney  
1225 Fallon Street, Room 900  
Oakland, CA 94612

The Honorable Terese Drabec  
Alpine County District Attorney  
270 Laramie Street, PO BOX 248  
Markleeville, CA 96120

The Honorable Todd Riebe  
Amador County District Attorney  
708 Court Street  
Jackson, CA 95642

The Honorable Michael Ramsey  
Butte County District Attorney  
25 County Center Drive  
Oroville, CA 95965

The Honorable Barbara Yook  
Calaveras County District Attorney  
891 Mountain Ranch Road  
San Andreas, CA 95249

The Honorable John Poyner  
Colusa County District Attorney  
346 Fifth Street  
Colusa, CA 95932

The Honorable Mark Peterson  
Contra Costa County District Attorney  
900 Ward Street  
Martinez, CA 94553

The Honorable Dale Trigg  
Del Norte County District Attorney  
450 H Street, Room 171  
Crescent City, CA 95531

The Honorable Vern Pierson  
El Dorado County District Attorney  
515 Main Street  
Placerville, CA 95667

The Honorable Lisa Smittcamp  
Fresno County District Attorney  
2220 Tulare Street, #1000  
Fresno, CA 93721

The Honorable Dwayne Stewart  
Glenn County District Attorney  
P.O. Box 430  
Willows, CA 95988

The Honorable Maggie Fleming  
Humboldt County District Attorney  
825 5th Street, Fourth Floor  
Eureka, CA 95501

The Honorable Gilbert Otero  
Imperial County District Attorney  
940 West Main Street, Suite 102  
El Centro, CA 92243

The Honorable Thomas Hardy  
Inyo County District Attorney  
168 North Edwards Street  
Independence, CA 93526

The Honorable Lisa Green  
Kern County District Attorney  
1215 Truxtun Avenue  
Bakersfield, CA 93301

The Honorable Keith Fagundas  
Kings County District Attorney  
1400 West Lacey Boulevard  
Hanford, CA 93230

The Honorable Donald Anderson  
Lake County District Attorney  
255 North Forbes Street  
Lakeport, CA 95453

The Honorable Stacey Montgomery  
Lassen County District Attorney  
220 South Lassen Street, Ste. 8  
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The Honorable Jackie Lacey  
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210 West Temple Street, Suite 18000  
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The Honorable David Linn  
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209 West Yosemite Avenue  
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The Honorable Edward Berberian  
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The Honorable Thomas Cooke  
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Ukiah, CA 95482

The Honorable Larry Morse II  
Merced County District Attorney  
550 W. Main Street  
Merced, CA 95340

The Honorable Jordan Funk  
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204 S. Court Street, Suite 202  
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The Honorable Tim Kendall  
Mono County District Attorney  
P.O. Box 617  
Bridgeport, CA 93517

The Honorable Dean Flippo  
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P.O. Box 1131  
Salinas, CA 93902

The Honorable Gary Lieberstein  
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931 Parkway Mall  
P.O. Box 720  
Napa, CA 94559

The Honorable Clifford Newell  
Nevada County District Attorney  
201 Commercial Street  
Nevada City, CA 95959

The Honorable Tony Rackauckas  
Orange County District Attorney  
401 Civic Center Drive West  
Santa Ana, CA 92701

The Honorable R. Scott Owens  
Placer County District Attorney  
10810 Justice Center Drive, Suite 240  
Roseville, CA 95678

The Honorable David Hollister  
Plumas County District Attorney  
520 Main Street, Room 404  
Quincy, CA 95971

The Honorable Michael Hestrin  
Riverside County District Attorney  
3960 Orange Street  
Riverside, CA 92501

The Honorable Anne Marie Schubert  
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Sacramento, CA 95814

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San Diego, CA 92101

The Honorable George Gascon  
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850 Bryant Street, Room 322  
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1035 Palm Street, 4th Floor  
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The Honorable Jeff Rosell  
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The Honorable Stephen Carlton  
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Sacramento, CA 95814

The Honorable Jan Goldsmith  
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1200 Third Avenue, Suite 1620  
San Diego, CA 92101

The Honorable Dennis Herrera  
Office of the City Attorney, San Francisco  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102

The Honorable Richard Doyle  
Office of the City Attorney, San Jose  
200 East Santa Clara Street, 16th Floor  
San Jose, CA 95113

Office of the California Attorney General  
Proposition 65 Enforcement Reporting  
ATTN: Prop 65 Coordinator  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550