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

11  
12 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13  
14 IN AND FOR THE COUNTY OF SACRAMENTO  
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16 UNLIMITED CIVIL JURISDICTION  
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18 ANTHONY E. HELD, Ph.D., P.E.,  
19  
20 Plaintiff,  
21  
22 vs.  
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24 FRANKLIN SPORTS, INC.; and DOES 1  
25 through 150, inclusive,  
26  
27 Defendant.  
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Case No. 34-2008-00007134

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



1           **1.5    Notice of Violation**

2           On November 20, 2007, Dr. Held served Franklin and various public enforcement  
3 agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) alleging  
4 violations of California Health & Safety Code §25249.6 for failing to warn consumers that  
5 Covered Products distributed by Franklin exposed users in California to the Listed Chemicals.  
6 No public enforcer has diligently prosecuted the allegations set forth in the notices.

7                           **1.5.1   Supplemental Notice**

8           During the settlement negotiations in this case, Franklin expressed a desire to resolve  
9 potential Proposition 65 issues relating to the children products it sold in California other than  
10 those identified in the Notice. In order for Dr. Held to perfect standing to resolve those matters in  
11 public interest, the parties have agreed that, prior to the hearing on the motion for approval of this  
12 Consent Judgment, Dr. Held will also have served Franklin and the public enforcers with a  
13 document, entitled “Supplemental Notice of Violation” (“Supplemental Notice”) that provided  
14 Franklin and the public enforcers with notice that Franklin was alleged to be in violation of  
15 Health & Safety Code §25249.6 for failing to warn individuals that the Covered Products expose  
16 individuals in California to other listed phthalate chemicals (besides DEHP) contained in the  
17 Covered Products and that the scope of the “Covered Products” at issue include other child care  
18 products (besides children sporting toys). Accordingly, the definition of Listed Chemical shall be  
19 deemed to include the other phthalate chemicals and the definition of Covered Products shall be  
20 expanded to include a broader category of children products upon the sixty-sixth day following  
21 the date of issuance of the Supplemental Notice. This Consent Judgment shall not, as of the  
22 sixty-sixth day, include the other listed chemicals or an expanded category of products if an  
23 authorized public prosecutor has, prior to that date, filed a Proposition 65 enforcement action as  
24 to the expanded list of chemicals and/or category of products whichever is applicable. Franklin  
25 shall reasonably cooperate with Dr. Held in providing additional information or representations  
26 necessary to enable him to issue a Supplemental Notice.

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**1.6 Settlement Discussions**

Franklin asserts that it has conducted testing of the Covered Products and responded to the Notice within the 60-day period, and maintains its denial that the Covered Products caused an exposure to the Listed Chemical. The parties exchanged product information and testing results, engaged in discussions from January through May 2008 to resolve the disputed claims, and reached the settlement described herein.

**1.7 Complaint**

On March 28, 2008, Dr. Held, acting in the interest of the general public in California filed a complaint (“Complaint” or “Action”) in the Superior Court in and for the County of Sacramento against Franklin and Does 1 through 150, alleging violations of California Health & Safety Code §25249.6 based on the alleged exposures to the Listed Chemical contained in the Covered Products distributed by Franklin.

**1.8 No Admission**

Franklin denies the material, factual and legal allegations contained in Dr. Held’s Notice and Complaint, and maintains that all Covered Products that they have sold and distributed in California have been and are in compliance with all laws, including without limitation Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by Franklin 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 Franklin of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Franklin. However, this Section shall not diminish or otherwise affect Franklin’s obligations, responsibilities, and duties under this Consent Judgment.

**1.9 Consent to Jurisdiction**

For purposes of this Consent Judgment only, the parties stipulate that this Court has jurisdiction over Franklin as to the allegations contained in the Complaint, that venue is proper in the County of Sacramento and that this Court has jurisdiction to enter and enforce the provisions

1 of this Consent Judgment.

2 **1.10 Effective Date**

3 For purposes of this Consent Judgment, the term "Effective Date" shall mean July 31,  
4 2008.

5 **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

6 **2.1 Product Warnings**

7 After the Effective Date, Franklin shall not sell, distribute, ship, or offer to be shipped for  
8 sale in California Covered Products containing the Listed Chemical unless such Covered Products  
9 are sold or shipped with one of the clear and reasonable warnings set forth in subsections 2.1(a)  
10 and (b), are otherwise exempt pursuant to Section 2.2, or comply with the reformulation standards  
11 set forth in Section 2.3.

12 Each warning shall be prominently placed with such conspicuousness as compared with  
13 other words, statements, designs, or devices as to render it likely to be read and understood by an  
14 ordinary individual under customary conditions before purchase or use. Each warning shall be  
15 provided in a manner such that the consumer or user understands to which *specific* Product the  
16 warning applies, so as to minimize if not eliminate the chance that an overwarning situation will  
17 arise. The warning requirement shall apply when the Covered Product is sold either to consumers  
18 or in a business-to-business transaction for distribution in California.

19 **(a) Retail Store Sales.**

20 **(i) Product Labeling.**

21 Franklin may perform their warning obligation by ensuring that a warning is affixed to the  
22 packaging, labeling, or directly on each Covered Product sold in retail outlets by Franklin or their  
23 agents, that states:

24 **WARNING:** This product contains DEHP, a phthalate  
25 chemical known to the State of California to  
26 cause birth defects and other reproductive  
27 harm.  
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**(ii) Point-of-Sale Warnings.**

Franklin may perform its warning obligations by ensuring that signs are posted at retail outlets in the State of California where the Covered Products are sold. Point-of-sale warnings shall be provided through one or more signs posted in close proximity to the point of display of the Covered Products that states:

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

Where more than one Covered Product is sold in proximity to other like items or to those that do not require a warning (e.g., Reformulated Products as defined in Section 2.3), the following statement must be used:<sup>1</sup>

**WARNING:** The following products contain DEHP, a phthalate chemical known to the State of California to cause birth defects and other reproductive harm.

*[List products for which warning is required]*

**(b) Mail Order Catalog and Internet Sales.**

Franklin shall satisfy its warning obligations for Covered Products sold directly by it via mail order catalog or the Internet to California residents by providing a warning: (i) in the mail order catalog; or (ii) on the website. Warnings given in the mail order catalog or on the website shall identify the specific Covered Product to which the warning applies as further specified in Sections 2.1(b)(i) and (ii).

**(i) Mail Order Catalog Warning.**

Any such warning provided in a mail order catalog must be in the same type size or larger than the Covered Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the

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<sup>1</sup> For purposes of the Consent Judgment, "sold in proximity" shall mean that the Covered 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 Covered Product:

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

6                   Where it is impracticable to provide the warning on the same page and in the same  
7                   location as the display and/or description of the Covered Product, Franklin may utilize a  
8                   designated symbol to cross reference the applicable warning and shall define the term “designated  
9                   symbol” with the following language on the inside of the front cover of the catalog or on the same  
10                  page as any order form for the Covered Product(s):

11                   **WARNING:** Certain products identified with this symbol  
12                   ▼ and offered for sale in this catalog contain  
13                   DEHP, a phthalate chemical known to the  
14                   State of California to cause birth defects and  
15                   other reproductive harm.

16                  The designated symbol must appear on the same page and in close proximity to the  
17                  display and/or description of the Covered Product. On each page where the designated symbol  
18                  appears, Franklin must provide a header or footer directing the consumer to the warning language  
19                  and definition of the designated symbol.

20                  If Franklin elects to provide warnings in the mail order catalog, then the warnings must be  
21                  included in all catalogs offering to sell the Covered Products printed after May 30, 2008.

22                                   **(ii) Internet Website Warning.**

23                  A warning may be given in conjunction with the sale of the Covered Product by Franklin  
24                  via the Internet, provided it appears either: (a) on the same web page on which the Covered  
25                  Product is displayed; (b) on the same web page as the order form for the Covered Product; (c) on  
26                  the same page as the price for any Covered Product; or (d) on one or more web pages displayed to  
27                  a purchaser during the checkout process. The following warning statement shall be used and  
28                  shall appear in any of the above instances adjacent to or immediately following the display,  
description, or price of the Covered Product for which it is given in the same type size or larger

1 than the Covered Product description text:

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

6                   Alternatively, the designated symbol may appear adjacent to or immediately following the  
7                   display, description, or price of the Covered Products for which a warning is being given,  
8                   provided that the following warning statement also appears elsewhere on the same web page, as  
9                   follows:

10                   **WARNING:** Products identified on this page with the  
11                                   following symbol contain DEHP, a phthalate  
12                                   chemical known to the State of California to  
13                                   cause birth defects and other reproductive  
14                                   harm:

15                   **2.2    Exceptions To Warning Requirements**

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

- 17                   (i)     Any Covered Products shipped to retailers in California before the  
18                   Effective Date; or
- 19                   (ii)    Reformulated Products (as defined in Section 2.3 below).

20                   **2.3    Reformulation Standards**

21                   Reformulated Products are defined as those Covered Products containing less than or  
22                   equal to 1,000 parts per million (“ppm”) of phthalate chemical defined herein as DEHP, BBP,  
23                   DBP and DIDP. The warnings required pursuant to Section 2.1 above shall not be required for  
24                   Reformulated Products. Franklin shall use Environmental Protection Agency (“EPA”) testing  
25                   methodologies 3580 and 8270 or any revised standard; or European Union’s EN 71 Standard; or  
26                   any other method deemed acceptable by the U.S. Consumer Product Safety Commission or the  
27                   State of California to determine whether the respective levels have been exceeded in its Covered  
28                   Products.

1           **2.4     Reformulation Commitment**

2           Franklin hereby commits that one hundred percent (100%) of the Covered Products that  
3 they offer for sale in California after November 30, 2008, shall qualify as Reformulated Products  
4 or shall otherwise be exempt from the warning requirements of Section 2.1.

5           **2.5     Recall of Past Products**

6           Franklin hereby agrees to recall all *Sizzlin' Cool Baseball Glove and Ball #14240S5 (#0*  
7 *25725 22675 7)* which exceed 1,000 ppm DEHP and were sold to distributors that Franklin  
8 knows (or has reason to believe) have shipped or offered the product for ultimate sale to  
9 consumers in California since January 1, 2008, by contacting each of its direct customers for such  
10 recalled Products via certified mail. Each recall notice shall be mailed within thirty (30) days of  
11 the Effective Date and shall be made available to Dr. Held upon written request. Franklin shall  
12 post a recall notice for these products on its website. The recall notice posted on Franklin's  
13 website shall be available for viewing on their home page, via a hyperlink available on their  
14 homepage, or via a hyperlink available on the product safety page. Said recall notice shall be  
15 posted within thirty (30) days of the Effective Date and shall remain posted for not less than six  
16 (6) months.

17           **3.     MONETARY PAYMENTS**

18           **3.1     Penalties Pursuant to Health & Safety Code §25249.7(b)**

19           In settlement of all the claims referred to in this Consent Judgment, Franklin shall pay  
20 \$8,000 in civil penalties to be apportioned in accordance with California Health & Safety Code  
21 §25192, with 75% of these funds remitted to the State of California's Office of Environmental  
22 Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to  
23 Anthony Held as provided by California Health & Safety Code §25249.12(d). Franklin shall  
24 issue two separate checks for the penalty payment: (a) one check made payable to "Hirst &  
25 Chanler LLP in Trust For OEHHA" in the amount of \$6,000, representing 75% of the total  
26 penalty; and (b) one check to "Hirst & Chanler LLP in Trust for Anthony Held" in the amount of  
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1 \$2,000, representing 25% of the total penalty. Two separate 1099s shall be issued for the above  
2 payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b)  
3 Anthony Held, whose information shall be provided five calendar days before the payment is due.

4 Payment shall be delivered to Dr. Held's counsel within ten (10) days of the Effective  
5 Date at the following address:

6 HIRST & CHANLER LLP  
7 Attn: Proposition 65 Controller  
8 455 Capitol Mall, Suite 605  
9 Sacramento, CA 95814

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

10 **4.1 Attorney Fees and Costs.**

11 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute  
12 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
13 this fee issue to be resolved after the material terms of the agreement had been settled. Franklin  
14 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms  
15 had been finalized. The Parties then attempted to (and did) reach an accord on the compensation  
16 due to Dr. Held and his counsel under general contract principles and the private attorney general  
17 doctrine codified at California Code of Civil Procedure (CCP) §1021.5, for all work performed  
18 through the mutual execution of this agreement. Franklin shall reimburse Dr. Held and his  
19 counsel a total of \$24,000 for fees and costs incurred as a result of investigating, bringing this  
20 matter to Franklin's attention, and litigating and negotiating a settlement in the public interest.  
21 Franklin shall issue a separate 1099 for fees and costs (EIN: 20-3929984) and shall make the  
22 check payable to "Hirst & Chanler LLP" and shall be delivered within ten (10) days of the  
23 Effective Date to the following address:

24 HIRST & CHANLER LLP  
25 Attn: Proposition 65 Controller  
26 455 Capitol Mall, Suite 605  
27 Sacramento, CA 95814  
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1           **4.2 Additional Attorney Fees and Costs in Seeking Judicial Approval.**

2           Pursuant to CCP §§1021 and 1021.5, the Parties agree that Franklin will reimburse Dr.  
3 Held and his counsel for their reasonable fees and costs incurred in seeking judicial approval of  
4 this settlement agreement in the trial court, in an amount not to exceed \$8,500. If Franklin  
5 transmits the necessary motion to approve papers to counsel for Dr. Held on or before July 1,  
6 2008, Dr. Held and his counsel will limit the fees and costs covered in this paragraph to \$3,750.  
7 Such additional fees and costs, exclusive of fees and costs that may be incurred in the event of an  
8 appeal include, but are not limited to, drafting and filing of the motion to approve papers,  
9 fulfilling the reporting requirements referenced in Health & Safety Code §25249.7(f),  
10 corresponding with opposing counsel responding to any third party objections and appearing  
11 before the Court related to the approval process.

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

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

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

3 **5. RELEASE OF ALL CLAIMS**

4 **5.1 Dr. Held's Release of Franklin**

5 In further consideration of the promises and agreements herein contained, and for the  
6 payments to be made pursuant to Sections 3 and 4, Dr. Held on behalf of himself, his past and  
7 current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the  
8 general public, hereby waives all rights to institute or participate in, directly or indirectly, any  
9 form of legal action and releases all claims including, without limitation, all actions, and causes  
10 of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,  
11 penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and  
12 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent  
13 (collectively "claims"), that were brought or could have been brought against Franklin, and each  
14 of its licensors, downstream wholesalers, licensors, licensees, auctioneers, retailers, distributors,  
15 franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates,  
16 subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders,  
17 agents, and employees, and sister and parent entities (collectively "releasees") in this Action.  
18 This release is limited to those claims that arise under Proposition 65, as such claims relate to  
19 Franklin's alleged failure to warn about exposures to the Listed Chemical contained in the  
20 Covered Products.

21 The parties further understand and agree that this release shall not extend upstream to any  
22 entities that manufactured the Covered Products or any component parts thereof, or any  
23 distributors or suppliers who sold the Covered Products or any component parts thereof to  
24 Franklin.

1           **5.2 Franklin's Release of Dr. Held**

2           Franklin 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 Covered 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 one  
10 year 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 Franklin that the one-year  
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,  
21 preempted, or otherwise rendered inapplicable by reason of law, or as to requirements for the  
22 Covered Products, Franklin shall have no further obligations hereunder with respect to such  
23 Covered Products to the extent that they are so affected.

24          **9. NOTICES**

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

4 Frederick Locker, Esq.  
5 LOCKER, GREENBERG & BRAININ PC  
6 420 Fifth Avenue  
New York, NY 10018

7 To Dr. Held:

8 Proposition 65 Coordinator  
9 HIRST & CHANLER LLP  
10 2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

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

13 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

14 This Consent Judgment may be executed in counterparts and by facsimile, each of which  
15 shall be deemed an original, and all of which, when taken together, shall constitute one and the  
16 same document.

17 **11. COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(f)**

18 Dr. Held agrees to comply with the reporting form requirements referenced in California  
19 Health & Safety Code §25249.7(f).

20 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

21 Dr. Held and Franklin agree to mutually employ their best efforts to obtain approval and  
22 entry of this Consent Judgment by the Court in a timely manner. The parties acknowledge that,  
23 pursuant to California Health & Safety Code §25249.7, a noticed motion is required to obtain  
24 judicial approval of this Consent Judgment. Accordingly, Dr. Held agrees to file a motion to  
25 approve the Consent Judgment.

1 **13. MODIFICATION**

2 This Consent Judgment may be modified only: (1) by written agreement of the parties  
3 and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful  
4 motion of any party and entry of a modified Consent Judgment by the Court. The Attorney  
5 General shall be served with notice of any proposed modification to this Consent Judgment at  
6 least fifteen (15) days in advance of its consideration by the court. Dr. Held shall be entitled to  
7 his reasonable fees and costs incurred in the modification process under CCP §1021.5 if Franklin,  
8 the Attorney General and/or any third party seeks to modify the terms of this Consent Judgment.

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**AUTHORIZATION**

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

**AGREED TO:**

Dated: June 18, 2008

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

By: Anthony E. Held  
Anthony E. Held, Ph.D., P.E.  
Plaintiff

Dated: June \_\_\_\_, 2008

FRANKLIN SPORTS, INC.

By: Larry Franklin  
Larry Franklin, Chief Executive Officer

**APPROVED AS TO FORM:**

Dated: June 18, 2008

HIRST & CHANLER LLP

By: Clifford A. Chanler  
Clifford A. Chanler  
Attorneys for Plaintiff  
ANTHONY E. HELD, Ph.D., P.E.

Dated: June \_\_\_\_, 2008

By: \_\_\_\_\_  
Frederick Locker, Esq.  
Attorneys for Defendant  
FRANKLIN SPORTS, INC.

IT IS SO ORDERED.

Date:

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

1 **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: June \_\_\_\_\_, 2008

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

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8

By: \_\_\_\_\_  
Anthony E. Held, Ph.D., P.E.  
Plaintiff

9

10 Dated: June \_\_\_\_\_, 2008

FRANKLIN SPORTS, INC.

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By:   
Larry Franklin, Chief Executive Officer

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15 **APPROVED AS TO FORM:**

16

17 Dated: June \_\_\_\_\_, 2008

HIRST & CHANLER LLP

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By: \_\_\_\_\_  
Clifford A. Chanler  
Attorneys for Plaintiff  
ANTHONY E. HELD, Ph.D., P.E.

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21 Dated: June 17, 2008

By:   
Frederick Locker, Esq.  
Attorneys for Defendant  
FRANKLIN SPORTS, INC.

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IT IS SO ORDERED.

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Date:

JUDGE OF THE SUPERIOR COURT

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