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

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE CITY AND COUNTY OF ORANGE  
UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

KITTRICH CORPORATION; J.C. COLLINS,  
INC.; MLB CLUBHOUSE; and DOES 1  
through 150, inclusive,

Defendants.

Case No. 30-2009-00118955

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

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**1. INTRODUCTION**

**1.1 Anthony E. Held, Ph.D., P.E., and Kittrich Corporation**

This consent judgment is entered into by and between plaintiff Anthony E. Held, Ph.D., P.E. (“Dr. Held” or “Plaintiff”) and defendant Kittrich Corporation (“Kittrich” or “Defendant”) with Dr. Held and Kittrich collectively referred to as the “parties.”

**1.2 Plaintiff Dr. Anthony Held**

Dr. Held represents he is an individual residing in the County of Sacramento who seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products.

**1.3 Defendant**

Kittrich employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §25249.6 *et seq.* (Proposition 65).

**1.4 General Allegations**

Dr. Held alleges that Kittrich has manufactured, distributed and/or sold certain sporting toys containing di(2-ethylhexyl)phthalate (hereinafter “DEHP”) in the State of California without the requisite health hazard warnings. DEHP is listed pursuant to Proposition 65, and is known to cause birth defects and other reproductive harm. DEHP shall be referred to hereinafter as the “listed chemical.”

**1.5 Product Description**

The products that are covered by this consent judgment are defined as follows: sporting toys containing DEHP including, but not limited to, *Plush NBA Mini Basketball, #84-186 (0 87508 06675 2)*, and *Lakers 2” Vinyl Basketball Key Ring, #32941981 (0 87508 06686 8)*. All such sporting toys containing DEHP are referred to hereinafter as the “Products”.

**1.6 Notice of Violation**

On or about July 10, 2008, Dr. Held served Kittrich and various public enforcement agencies with a “60-Day Notice of Violation” (the “Notice”) that provided Kittrich and public

1 enforcers with notice of alleged violations of Health & Safety Code §25249.6 for failing to warn  
2 consumers that Products that Kittrich manufactured, distributed, and/or sold exposed users in  
3 California to DEHP. As of the Effective Date, no public enforcer diligently prosecuted the  
4 allegations set forth in the Notice.

5 **1.7 Complaint**

6 On February 20, 2009, Dr. Held, who was and is acting in the interest of the general public  
7 in California, filed a complaint (“Complaint” or “Action”) in the Superior Court in and for the  
8 County of Orange against Kittrich Corporation; J.C. Collins, Inc.; MLB Clubhouse; and Does 1  
9 through 150, alleging violations of California Health & Safety Code §25249.6 based on the alleged  
10 exposures to the listed chemical contained in the Products sold by Kittrich.

11 **1.8 No Admission**

12 Kittrich denies the material, factual and legal allegations contained in Dr. Held’s Notice and  
13 Complaint and maintains that all Products that it has sold and distributed in California have been  
14 and are in compliance with all laws. Nothing in this consent judgment shall be construed as an  
15 admission by Kittrich of any fact, finding, issue of law, or violation of law, nor shall compliance  
16 with this consent judgment constitute or be construed as an admission by Kittrich of any fact,  
17 finding, conclusion, issue of law, or violation of law, such being specifically denied by Kittrich. In  
18 order to avoid the costs and expenses of litigation and without admitting liability or wrongdoing,  
19 Kittrich has elected to resolve this matter by settlement and on the terms set forth herein. However,  
20 this section shall not diminish or otherwise affect Kittrich’s obligations, responsibilities, and duties  
21 under this consent judgment.

22 **1.9 Consent to Jurisdiction**

23 For purposes of this consent judgment only, the parties stipulate that this Court has  
24 jurisdiction over Kittrich as to the allegations contained in the Complaint, that venue is proper in the  
25 County of Orange and this Court has jurisdiction to enter and enforce this consent judgment as a full  
26 and final binding resolution of all claims which were or could have been raised in the Complaint  
27 against Kittrich based on the facts alleged therein and in the Notice.  
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**1.10 Effective Date**

For purposes of this consent judgment, the term “Effective Date” shall mean May 29, 2009.

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

**2.1 Product Warnings**

After the Effective Date, Kittrich shall not sell, ship, or offer to be shipped for sale in California any Products containing the listed chemical unless: such Products are sold or shipped with one of the clear and reasonable warnings set forth in subsections 2.1(a) and (b), are otherwise exempt pursuant to Section 2.2, or comply with the reformulation standards set forth in Section 2.3, below.

Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which specific Product the warning applies, so as to minimize if not eliminate the chance that an overwarning situation will arise.

**(a) Retail Store Sales.**

**(i) Product Labeling.** Kittrich may perform its warning obligation by ensuring that a warning is affixed to the packaging, labeling, or directly on each Product sold in retail outlets by Kittrich or its agents, that states:

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

**(ii) Point-of-Sale Warnings.** Kittrich may, alternatively, perform its warning obligations by ensuring that signs are posted at retail outlets in the State of California where the 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 Products that state:



1 the Product(s):

2                   **WARNING:** Certain products identified with this  
3                   symbol ▼ and offered for sale in this  
4                   catalog contain DEHP, a phthalate  
5                   chemical known to the State of California  
6                   to cause birth defects and other  
7                   reproductive harm.

8                   The designated symbol must appear on the same page and in close proximity to the display  
9                   and/or description of the Products. On each page where the designated symbol appears, Kittrich  
10                  must provide a header or footer directing the consumer to the warning language and definition of  
11                  the designated symbol.

12                  If Kittrich elects to provide warnings in the mail order catalog, then the warnings must be  
13                  included in all catalogs offering to sell one or more Products printed after the date of entry of this  
14                  consent judgment.

15                               (ii)    **Internet Website Warning.** A warning may be given in conjunction  
16                               with the sale of the Products via the Internet, provided it appears either: (a) on the same web page  
17                               on which the Product is displayed; (b) on the same web page as the order form for the Product; (c)  
18                               on the same page as the price for any Product; or (d) on one or more web pages displayed to a  
19                               purchaser during the checkout process. The following warning statement shall be used and shall  
20                               appear in any of the above instances adjacent to or immediately following the display, description,  
21                               or price of the Products for which it is given in the same type size or larger than the Product  
22                               description text:

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

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

1                   **WARNING:** Products identified on this page with the  
2                   following symbol contain DEHP, a  
3                   phthalate chemical known to the State of  
                    California to cause birth defects and other  
                    reproductive harm: ▼.

4                   **2.2    Exceptions To Warning Requirements**

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

- 6                   (i)     any Products received by Kittrich prior to receipt of the Notice, provided that  
7                   Kittrich does not have actual knowledge, or reason from communications  
8                   with its suppliers of the Products to believe, that the Listed Chemical is  
9                   present in such Products in concentrations exceeding 1000 ppm each;
- 10                  (ii)    any Product shipped by Kittrich to its customers in California prior to the  
11                  Effective Date; or
- 12                  (iii)   Reformulated Products (as defined in Section 2.3 below).

13                  **2.3    Reformulation Standards**

14                  Reformulated Products are defined as those containing less than 1,000 ppm of DEHP, as  
15                  measured by Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C.

16                  **2.4    Reformulation Commitment**

17                  Upon Kittrich’s receipt of the Notice, Kittrich undertook immediate efforts to reformulate  
18                  the Products so as to eliminate the presence of DEHP. Kittrich hereby commits to use its best  
19                  efforts to reformulate one hundred percent (100%) of the Products that they offer for sale in  
20                  California after May 29, 2009 so that the Products shall qualify as Reformulated Products or shall  
21                  otherwise be exempt from the warning requirements.

22                  **3.    MONETARY PAYMENTS**

23                  **3.1    Payments Pursuant to Health & Safety Code §25249.7(b)**

24                  Pursuant to Health & Safety Code §25249.7(b), the total civil penalty assessed shall be  
25                  \$15,000. Civil penalties are to be apportioned in accordance with California Health & Safety Code  
26                  §25192, with 75% of these funds remitted to the State of California’s Office of Environmental  
27                  Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Anthony  
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1 Held as provided by California Health & Safety Code §25249.12(d). Kittrich shall issue two  
2 separate checks for the penalty payment: (a) one check made payable to “Hirst & Chanler LLP in  
3 Trust For OEHHA” in the amount of \$11,250, representing 75% of the total penalty; and (b) one  
4 check to “Hirst & Chanler LLP in Trust for Anthony Held” in the amount of \$3,750, representing  
5 25% of the total penalty. Two separate 1099s shall be issued for the above payments to OEHHA,  
6 P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) and to Held whose address and tax  
7 identification number shall be furnished, upon request, five calendar days before payment is due.  
8 The payments shall be delivered on or before May 29, 2009, to the following address:

9 HIRST & CHANLER LLP  
10 Attn: Proposition 65 Controller  
11 2560 Ninth Street  
12 Parker Plaza, Suite 214  
13 Berkeley, CA 94710

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

15 **4.1 Attorney Fees and Costs.**

16 The parties acknowledge that Dr. Held and his counsel offered to resolve this dispute  
17 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
18 this fee issue to be resolved after the material terms of the agreement had been settled. Kittrich then  
19 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been  
20 finalized. The parties then attempted to (and did) reach an accord on the compensation due to Dr.  
21 Held and his counsel under general contract principles and the private attorney general doctrine  
22 codified at California Code of Civil Procedure (CCP) §1021.5, for all work performed through the  
23 mutual execution of this agreement. Kittrich shall reimburse Dr. Held and his counsel \$24,000 for  
24 fees and costs incurred as a result of investigating, bringing this matter to Kittrich’s attention, and  
25 litigating and negotiating a settlement in the public interest. Kittrich shall issue a separate 1099 for  
26 fees and costs (EIN: 20-3929984) and shall make the check payable to “Hirst & Chanler LLP” and  
27 shall be delivered on or before May 29, 2009, to the following address:  
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1 HIRST & CHANLER LLP  
2 Attn: Proposition 65 Controller  
3 455 Capitol Mall, Suite 605  
4 Sacramento, CA 95814

5 **4.2 Additional Attorney Fees and Costs in Seeking Judicial Approval.**

6 Pursuant to CCP §§1021 and 1021.5, the parties further agree that Kittrich will reimburse  
7 Dr. Held and his counsel for their reasonable fees and costs incurred in seeking judicial approval of  
8 this settlement agreement in the trial court and fulfilling other necessary tasks in an amount not to  
9 exceed \$7,500. Such additional fees and costs, exclusive of fees and costs that may be incurred in  
10 the event of an appeal include, but are not limited to, drafting and filing of the motion to approve  
11 papers, fulfilling the reporting requirements referenced in Health & Safety Code §25249.7(f),  
12 responding to any third-party objections, filing notice of entry of the Court's approval,  
13 corresponding with opposing counsel and appearing before the Court related to the approval  
14 process.

15 Reimbursement of such additional fees and costs shall be due within twenty calendar days  
16 after receipt of a billing statement from Dr. Held ("Additional Fee Claim"). Payment of the  
17 Additional Fee Claim shall be made to "Hirst & Chanler LLP," and the payment shall be delivered,  
18 at the following address:

19 HIRST & CHANLER LLP  
20 Attn: Proposition 65 Controller  
21 455 Capitol Mall, Suite 605  
22 Sacramento, CA 95814

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

1 incurred for the arbitration.

2 Dr. Held's counsel agrees that it shall hold all civil penalties and attorney's fees and costs  
3 paid pursuant to Section 3.1 and 4.1 above in its trust account until such time as this consent  
4 judgment is approved by the Court. In the event that this consent judgment is not approved by the  
5 Court in the time prescribed in Section 6 of this consent judgment, the civil penalties and attorney's  
6 fees and costs paid pursuant to Sections 3.1 and 4.1 above, along with interest accrued at the  
7 existing federal funds rate, shall be refunded to Kittrich.

8 **5. RELEASE OF ALL CLAIMS**

9 **5.1 Dr. Held's Release of Kittrich**

10 In further consideration of the promises and agreements herein contained, and for the  
11 payments to be made pursuant to Sections 3 and 4, Dr. Held on behalf of himself, his past and  
12 current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the  
13 general public only as to mini-sporting toys, hereby waives all rights to institute or participate in,  
14 directly or indirectly, any form of legal action and releases all claims including, without limitation,  
15 all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,  
16 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees,  
17 expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or  
18 contingent (collectively "Claims"), that were brought or could have been brought against Kittrich or  
19 its parents, subsidiaries or affiliates, and all of their customers, distributors, wholesalers, retailers,  
20 licensors, licensees, or any other person in the course of doing business, and the successors and  
21 assigns of any of them, who may use, maintain, manufacture, distribute, advertise, market or sell  
22 Products, and the officers, directors, managers, employees, members, shareholders, agents, insurers  
23 and representatives of each of them (collectively "Defendant Releasees") in this Action. This  
24 release is limited to, but is intended to be a full, final, and binding resolution of, those Claims that  
25 arise under Proposition 65, as against Kittrich and Defendant Releasees, as such Claims relate to  
26 Kittrich's alleged failure to warn about exposures to the Listed Chemical contained in the Products.  
27 Accordingly, it is further understood and agreed by the Parties that Case No. 30-2009-00118955 as  
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1 against Kittrich, J.C. Collins, Inc. and MLB Clubhouse shall be dismissed with prejudice upon  
2 notice of entry of settlement approval.

3 The Parties further understand and agree that this release shall not extend upstream to any  
4 entities that manufactured the Products for Kittrich or any component parts thereof or to any  
5 distributors or suppliers who sold the Products or any component parts thereof to Kittrich.

6 **5.2 Kittrich's Release of Dr. Held**

7 Kittrich waives any and all claims against Dr. Held, his attorneys, and other representatives  
8 for any and all actions taken or statements made (or those that could have been taken or made) by  
9 Dr. Held and his attorneys and other representatives, whether in the course of investigating claims  
10 or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with respect  
11 to the Products.

12 **6. COURT APPROVAL**

13 This consent judgment is not effective until it is approved and entered by the Court and shall  
14 be null and void if, for any reason, it is not approved and entered by the Court within one year after  
15 it has been fully executed by all parties. If the Court does not approve the consent judgment, the  
16 parties shall meet and confer as to (and jointly agree on) whether to modify the language or appeal  
17 the ruling. If the parties do not jointly agree on a course of action to take, then the case shall  
18 proceed in its normal course on the trial court's calendar. In the event that this consent judgment is  
19 entered by the Court and subsequently overturned by any appellate court or the motion to approve is  
20 not ultimately granted, any monies that have been provided to Plaintiff, or his counsel pursuant to  
21 Section 3 and/or Section 4 above, shall be refunded within fifteen days of the appellate decision  
22 becoming final. If the Court's approval is ultimately overturned by an appellate court, the parties  
23 shall meet and confer as to (and jointly agree on) whether to modify the terms of the consent  
24 judgment. If the parties do not jointly agree on a course of action to take, then the case shall  
25 proceed in its normal course on the trial court's calendar.

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1       **7. SEVERABILITY**

2           If, subsequent to the execution of this consent judgment, any of the provisions of this  
3 consent judgment are held by a court to be unenforceable, the validity of the enforceable provisions  
4 remaining shall not be adversely affected.

5       **8. ENTIRE AGREEMENT**

6           This consent judgment contains the sole and entire agreement and understanding of the  
7 parties with respect to the entire subject matter hereof, and any and all prior discussions,  
8 negotiations, commitments, and understandings related hereto. No representations, oral or  
9 otherwise, express or implied, other than those contained herein have been made by any party  
10 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed  
11 to exist or to bind any of the parties.

12       **9. GOVERNING LAW**

13           The terms of this consent judgment shall be governed by the laws of the State of California  
14 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise  
15 rendered inapplicable by reason of state or federal law generally, or as to the Products, then Kittrich  
16 shall provide written notice to Dr. Held of any asserted change in the law, and shall have no further  
17 obligations pursuant to this consent judgment with respect to, and to the extent that, the Products are  
18 so affected.

19       **10. NOTICES**

20           Unless specified herein, all correspondence and notices required to be provided pursuant to  
21 this consent judgment shall be in writing and personally delivered or sent by: (i) first-class,  
22 registered or certified mail, return receipt requested; or (ii) overnight courier on any party by the  
23 other party at the following addresses:

24       To Kittrich:

25           Robert Friedland, President  
26           Kittrich Corporation  
27           14555 Alondra Boulevard  
28           La Mirada, CA 90638

1 To Dr. Held:

2 Proposition 65 Coordinator  
3 HIRST & CHANLER, LLP  
4 2560 Ninth Street  
5 Parker Plaza, Suite 214  
6 Berkeley, CA 94710-2565

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

9 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

10 This consent judgment may be executed in counterparts and by facsimile, each of which  
11 shall be deemed an original, and all of which, when taken together, shall constitute one and the  
12 same document.

13 **12. COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(f)**

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

16 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

17 The Parties acknowledge that, pursuant to California Health & Safety Code §25249.7, a  
18 noticed motion is required to obtain judicial approval of this consent judgment. Dr. Held and  
19 Kittrich agree to mutually employ their best efforts to support the entry of this agreement as a  
20 consent judgment by the trial court and defend the agreement against any appellate review.  
21 Accordingly, Dr. Held agrees to file a motion to approve the consent judgment, and Kittrich agrees  
22 to support it.

23 **14. MODIFICATION AND ATTORNEYS FEES**

24 This consent judgment may be modified only: (1) by written agreement of the parties and  
25 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of  
26 any party and entry of a modified consent judgment by the Court. In the event that, after execution  
27 of this Stipulated Consent Judgment: (1) a dispute arises with respect to any provisions of this  
28 Consent Judgment; or (2) either Party seeks to enforce the terms of this Consent Judgment, the  
prevailing party shall be entitled to reasonable attorney's fees and costs.

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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.

<p><b>AGREED TO:</b></p> <p><b>APPROVED</b> By Anthony E Held at 11:46 am, 5/1/09</p> <p>Date: _____</p> <p>By: <u>Anthony E Held</u> ANTHONY E. HELD, Ph.D., P.E.</p>	<p><b>AGREED TO:</b></p> <p>Date: <u>4/30/09</u></p> <p>By: <u>[Signature]</u> Robert Friedland, President KITTRICH CORPORATION</p>
<p><b>APPROVED AS TO FORM:</b></p> <p>Date: <u>May 1, 2009</u></p> <p>HIRST &amp; CHANLER LLP</p> <p>By: <u>[Signature]</u> David Lavine Attorneys for Plaintiff ANTHONY E. HELD, Ph.D., P.E.</p>	<p><b>APPROVED AS TO FORM:</b></p> <p>Date: <u>4/30/09</u></p> <p>WINTER &amp; ASSOCIATES LLP</p> <p>By: <u>[Signature]</u> Todd Winter Attorneys for Defendant KITTRICH CORPORATION</p>

**IT IS SO ORDERED.**

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

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