

1 ROBERT L. FALK (BAR NO. 142007)  
E-mail: RFalk@mofocom  
2 MORRISON & FOERSTER LLP  
425 Market Street, Suite 3300  
3 San Francisco, California 94105-2482  
Telephone: (415) 268-7000  
4 Facsimile: (415) 268-7522

5 Attorneys for Defendants  
EASTON SPORTS, INC., EASTON-BELL SPORTS, INC.

6 CLIFFORD A. CHANLER (BAR NO. 135534)  
7 DAVID LAVINE (BAR NO. 166744)  
HIRST & CHANLER LLP  
8 2560 Ninth Street  
Parker Plaza, Suite 214  
9 Berkeley, CA 94710-2565  
Telephone: (510) 848-8880  
10 Facsimile: (510) 848-8118

11 Attorneys for Plaintiff  
ANTHONY E. HELD, Ph.D., P.E.

12  
13  
14  
15 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
16 COUNTY OF MARIN

17  
18 ANTHONY E. HELD, Ph.D., P.E.,

19 Plaintiff,

20 v.

21 EASTON SPORTS, INC., EASTON-BELL  
SPORTS, INC. and DOES 1 through 150,  
22 inclusive,

23 Defendants.

Case No. CIV 091146

[PROPOSED] CONSENT  
JUDGMENT

HEALTH & SAFETY CODE §25249.6

1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and Easton Sports, Inc./Easton-Bell Sports, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D., P.E.  
4 (“Dr. Held” or “Plaintiff”) and defendants Easton Sports, Inc. and Easton-Bell Sports, Inc.  
5 (“Easton/Bell”), with Plaintiff and Easton/Bell collectively referred to as the “parties.”

6 **1.2 Plaintiff**

7 Dr. Held is an individual residing in the State of California who seeks to promote awareness  
8 of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous  
9 substances contained in consumer products.

10 **1.3 Defendants**

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

14 **1.4 General Allegations**

15 Dr. Held generally alleges that Easton/Bell have manufactured, distributed and/or sold certain  
16 sporting products containing di(2-ethylhexyl)phthalate (“DEHP”) and lead without the requisite  
17 health hazard warnings allegedly required by Proposition 65. DEHP and other phthalates such as  
18 butyl benzyl phthalate (“BBP”) and Di-n-butyl phthalate (“DBP”) as well as lead, are listed as  
19 reproductive and developmental toxicants pursuant to Proposition 65. DEHP, BBP, DBP, and lead  
20 shall be collectively referred to hereinafter as “Listed Chemicals.”

21 **1.5 Product Description**

22 The products that are addressed in this Consent Judgment are defined as:

23 (a) miniature-sized and regular-sized vinyl (or similar synthetic material)-containing  
24 baseball gloves designed for or reasonably used by children through twelve years of age (collectively,  
25 the “Products”), and

26 (b) other sporting goods, including but not limited to, balls, bats, gloves, and helmets,  
27 designed for or reasonably used by children through twelve years of age (“Additional Products”).  
28

1 All Products and Additional Products are collectively referred to hereinafter as the “Covered  
2 Products.”

3 **1.6 Notice of Violation**

4 On November 7, 2008 and March 5, 2009 respectively, Dr. Held served Easton/Bell and  
5 various public enforcement agencies with a “60-Day Notice of Violation” and “Supplemental 60-Day  
6 Notice of Violation (collectively, the “Notices”) that provided Easton/Bell and public enforcers with  
7 notice of alleged violations of Health & Safety Code §25249.6 for failing to warn consumers that  
8 Products that Easton/Bell sold exposed users in California to DEHP and lead. No public enforcer has  
9 of the Effective Date diligently prosecuted the allegations set forth in the Notice.

10 **1.7 Complaint**

11 On March 13, 2009, Dr. Held, who was and is acting in the interest of the general public in  
12 California, filed an amendment to a complaint in the Superior Court in and for the County of Marin  
13 alleging violations of Health & Safety Code §25249.6 by Easton/Bell based on the alleged exposures  
14 to DEHP contained in a children’s baseball gloves and other Products distributed for sale in  
15 California by Easton/Bell (“Complaint” or “Action”) . Provided that no authorized public prosecutor  
16 has then filed suit against Easton/Bell based on the supplemental Notice, the Complaint shall be  
17 deemed further amended as of May 9, 2009 to include Held’s allegations as to lead in the Products.

18 **1.8 No Admission**

19 Easton/Bell deny the material, factual and legal allegations contained in Dr. Held’s Notice and  
20 Complaint and maintain that all Covered Products that they have sold and distributed in California  
21 have been and are in compliance with all applicable laws. Nothing in this Consent Judgment shall be  
22 construed as an admission by Easton/Bell of any fact, finding, issue of law, or violation of law; nor  
23 shall compliance with this Consent Judgment constitute or be construed as an admission by  
24 Easton/Bell of any fact, finding, conclusion, issue of law, or violation of law, such being specifically  
25 denied by Easton/Bell. However, this Section shall not diminish or otherwise affect Easton/Bell’s  
26 obligations, responsibilities, and duties under this Consent Judgment.

1           **1.9     Consent to Jurisdiction**

2           For purposes of this Consent Judgment only, the parties stipulate that this Court has  
3 jurisdiction over Easton/Bell as to the allegations contained in the Complaint, that venue is proper in  
4 the County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of this  
5 Consent Judgment.

6           **1.10    Effective Date**

7           For purposes of this Consent Judgment, the term “Effective Date” shall mean March 10, 2009.

8           **2.     INJUNCTIVE RELIEF: REFORMULATION IN LIEU OF WARNINGS**

9           **2.1     Reformulation Definitions, Representations, and Commitments**

10          For purposes of this section “Phthalate Free” Covered Products shall mean Covered Products  
11 containing less than or equal to 1,000 parts per million (“ppm”) of each of DEHP, BBP, and DBP,  
12 when analyzed by any testing methodology selected by Easton/Bell that is acceptable to state or  
13 federal government agencies in determining compliance with phthalate standards. For purposes of  
14 this section, “Lead Free” Covered Products shall mean Covered Products containing accessible  
15 components that have less than 300 ppm lead when analyzed pursuant to EPA method 3050B.  
16 Products that are both Lead Free and Phthalate Free are referred to hereinafter as “Reformulated  
17 Products.”

18           Following its receipt of Held’s November 7, 2008 Notice, Easton/Bell: (a) immediately  
19 conducted an investigation concerning the potential presence of Listed Chemicals in Covered  
20 Products, (b) implemented a reformulation process to terminate the use of Listed Chemicals in the  
21 manufacture of all Covered Products, and (c) since at least January 1, 2009, has only shipped for sale  
22 in California Products which constitute Reformulated Products.

23           In lieu of providing Proposition 65 warnings for them, Easton/Bell agrees to continue to only  
24 ship Products that constitute Reformulated Products even if such Products are otherwise exempted  
25 from the requirements of the federal Consumer Product Safety Improvement Act or California  
26 Assembly Bill (“AB”) 1108. In addition, as of the Effective Date, Easton/Bell shall cause all  
27 Additional Products to be manufactured such that they also constitute Refomulated Products.  
28

1       **3.       MONETARY PAYMENTS**

2               **3.1       Payments Pursuant to Health & Safety Code §25249.7(b)**

3               Pursuant to Health & Safety Code §25249.7(b), the total civil penalty assessed shall be  
4       \$10,000. The foregoing amount of civil penalties was calculated in light of Easton/Bell’s prompt  
5       cooperation with Dr. Held in resolving this matter, their volunteering to expand the scope of this  
6       Consent Judgment to cover a wider range of Listed Chemicals and Covered Products, and their  
7       reformulation representations and commitments as set forth in Section 2.1 above.

8               Civil penalties are to be apportioned in accordance with California Health & Safety Code  
9       §25192, with 75% of these funds remitted to the State of California’s Office of Environmental Health  
10       Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Anthony Held as  
11       provided by California Health & Safety Code §25249.12(d). Easton/Bell shall issue two separate  
12       checks for the penalty payment: (a) one check made payable to “Hirst & Chanler LLP in Trust For  
13       OEHHA” in the amount of \$7,500, representing 75% of the total penalty; and (b) one check to  
14       “Hirst & Chanler LLP in Trust for Anthony Held” in the amount of \$2,500, representing 25% of the  
15       total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box  
16       4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) Anthony Held, whose information shall be  
17       provided to Easton/Bell at least ten calendar days before the payment is due.

18               Payment shall be delivered to Dr. Held’s counsel within fifteen days of the Effective Date at  
19       the following address:

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

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

24               **4.1       Attorney Fees and Costs.**

25               The parties acknowledge that Dr. Held and his counsel offered to resolve this dispute without  
26       reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
27       issue to be resolved after the material terms of the agreement had been settled. Easton/Bell then  
28       expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been

1 finalized. The parties then attempted to (and did) reach an accord on the compensation due to Dr.  
2 Held and his counsel under general contract principles and the private attorney general doctrine  
3 codified at California Code of Civil Procedure (CCP) §1021.5, for all work performed through the  
4 mutual execution of this agreement. Easton/Bell shall reimburse Dr. Held and his counsel a total of  
5 \$34,000 for fees and costs incurred as a result of investigating, bringing this matter to Easton Bell's  
6 attention, and litigating and negotiating a settlement in the public interest. Easton/Bell shall issue a  
7 separate 1099 for fees and costs (tax identification number to be provided to Easton/Bell at least ten  
8 days prior to when this payment is due) and shall make the check payable to "Hirst & Chanler LLP."  
9 Said check shall be delivered within fifteen days of the Effective Date to the following address:

10           HIRST & CHANLER LLP  
11           Attn: Proposition 65 Controller  
12           455 Capitol Mall, Suite 605  
13           Sacramento, CA 95814

13           **4.2 Additional Attorney Fees and Costs in Seeking Judicial Approval.**

14           Pursuant to CCP §§1021 and 1021.5, the Parties agree that Easton/Bell will reimburse Dr.  
15 Held and his counsel for their reasonable fees and costs incurred in seeking judicial approval of this  
16 settlement in the trial court, in an amount not to exceed \$4,000. Such additional fees and costs,  
17 exclusive of fees and costs that may be incurred in the event of an appeal include, but are not limited  
18 to, drafting and filing of the motion to approve papers, fulfilling the reporting requirements  
19 referenced in Health & Safety Code §25249.7(f), responding to any third party objections,  
20 corresponding with opposing counsel, and appearing before the Court related to the approval process.

21           Reimbursement of such additional fees and costs shall be due within fifteen days after receipt  
22 of a billing statement from Dr. Held ("Additional Fee Claim"). Payment of the Additional Fee Claim  
23 shall be made to "Hirst & Chanler LLP," and the payment shall be delivered, at the following  
24 address:

25           HIRST & CHANLER LLP  
26           Attn: Proposition 65 Controller  
27           Capitol Mall Complex  
28           455 Capitol Mall, Suite 605  
              Sacramento, CA 95814

1 Easton/Bell has the right to object to such reimbursement and may submit the resolution of  
2 this issue to the American Arbitration Association (AAA) in Northern California to determine the  
3 reasonableness of the additional fees and costs sought, provided that an arbitration such notice of  
4 objection or decision to arbitrate is received by Dr. Held by the end of the fifteen calendar days  
5 provided for payment following receipt of the Additional Fee Claim. If an arbitration notice is not  
6 filed with AAA in a timely manner, Dr. Held may file a motion with the Court pursuant to both CCP  
7 §1021.5 and this settlement to recover additional attorney fees and costs incurred as set forth in this  
8 paragraph. In the event Easton/Bell submits the matter to arbitration, Dr. Held may seek, pursuant to  
9 CCP §1021.5, reasonable attorney fees and costs incurred for the arbitration.

10 **5. RELEASE OF ALL CLAIMS**

11 **5.1 Dr. Held's Release of Easton/Bell**

12 In further consideration of the promises and agreements herein contained, the injunctive relief  
13 commitments set forth in Section 2.1, and for the payments to be made pursuant to Sections 3 and 4,  
14 Dr. Held on behalf of himself, his past and current agents, representatives, attorneys, successors,  
15 and/or assignees, and in the interest of the general public, hereby waives all rights to institute or  
16 participate in, directly or indirectly, any form of legal action and releases all claims, including,  
17 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,  
18 obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to,  
19 investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or  
20 unknown, fixed or contingent (collectively "claims"), against Easton/Bell and each of their  
21 wholesalers, licensors, licensees, import partners, auctioneers, retailers, franchisees, dealers,  
22 customers, owners, purchasers, users, parent companies, corporate affiliates, and subsidiaries  
23 (including Bell Sports, Inc.), and their respective officers, directors, attorneys, representatives,  
24 shareholders, agents, and employees, and sister and parent entities (collectively "Releasees"). This  
25 release is limited pursuant to the Notices to those claims that arise under Proposition 65 with respect  
26 to DEHP and lead in the Products, as such claims relate to the alleged failure to warn under Health &  
27 Safety Code §25249.6; however, it does not extend to the Additional Products. Nevertheless, Dr.  
28 Held on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or

1 assignees, but not on behalf of the general public, hereby also waives all claims for failure to warn  
2 under Proposition 65 with respect to Listed Chemicals in the Additional Products.

3 **5.2 Easton/Bell's Release of Dr. Held**

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

9 **6. COURT APPROVAL**

10 This Consent Judgment is not effective until it is approved and entered by the Court and shall  
11 be null and void if, for any reason, it is not approved and entered by the Court within one year after it  
12 has been fully executed by all parties, in which event any monies that have been provided to Dr.  
13 Held, or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen  
14 (15) days after receiving written notice from Easton/Bell that the one year period has expired.

15 **7. SEVERABILITY**

16 If, subsequent to the execution of this Consent Judgment, any of the provisions of this  
17 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions  
18 remaining shall not be adversely affected.

19 **8. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the State of California  
21 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is  
22 otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then  
23 Easton/Bell shall have no further obligations pursuant to this Consent Judgment with respect to, and  
24 to the extent that, the Covered Products are so affected.

25 **9. NOTICES**

26 Unless specified herein, all correspondence and notices required to be provided pursuant to  
27 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,  
28

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 Easton/Bell:

4 Thom Parks  
5 Vice President, Corporate Affairs  
6 Bell Sports, Inc.  
7 380 Encinal Street  
8 Santa Cruz, CA 95060

9 With a copy to:

10 Robert L. Falk  
11 MORRISON & FOERSTER LLP  
12 425 Market Street, 32nd Floor  
13 San Francisco, California 94105

14 To Dr. Held:

15 Proposition 65 Coordinator  
16 HIRST & CHANLER LLP  
17 2560 Ninth Street  
18 Parker Plaza, Suite 214  
19 Berkeley, CA 94710-2565

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

22 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

**12. ADDITIONAL POST EXECUTION ACTIVITIES**

The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion  
is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such  
approval, Held and Easton/Bell and their respective counsel agree to mutually employ their best

1 efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the  
2 Consent Judgment by the Court in a timely manner. For purposes of this paragraph, best efforts shall  
3 include, at a minimum, cooperating on the drafting and filing any papers in support of the required  
4 motion for judicial approval.

5 **13. MODIFICATION**

6 This Consent Judgment may be modified only: (1) by written agreement of the parties and  
7 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of  
8 any party and entry of a modified consent judgment by the Court. The Attorney General shall be  
9 served with notice of any proposed modification to this Consent Judgment at least fifteen days in  
10 advance of its consideration by the Court.

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

14. 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 hereof.

AGREED TO: **APPROVED**  
By Anthony E Held at 3:03 pm, 3/12/09  
Date: \_\_\_\_\_

AGREED TO:  
Date: MARCH 16, 2009

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

By: [Signature]  
Defendants, EASTON SPORTS, INC. and EASTON-BELL SPORTS, INC.

APPROVED AS TO FORM:  
Date: 3/12/09

APPROVED AS TO FORM:  
Date: March 16, 2009

HIRST & CHANLER LLP  
By: [Signature]  
Clifford A. Chanler  
Attorneys for Plaintiff  
ANTHONY E. HELD, Ph.D., P.E.

MORRISON & FOERSTER LLP  
By: [Signature]  
Robert L. Falk  
Attorneys for Defendants  
EASTON SPORTS, INC. and EASTON-BELL SPORTS, INC.

IT IS SO ORDERED.

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

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