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4 THE CHANLER GROUP
5 2560 Ninth Street
6 Parker Plaza, Suite 214
7 Berkeley, CA 94710-2565
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9 Facsimile: (510) 848-8118

10 Attorneys for Plaintiff
11 JOHN MOORE

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF MARIN

14 JOHN MOORE,
15 Plaintiff,
16 v.
17 BELL SPORTS, INC., *et al.*,
18 Defendants.

Case No. CIV-10002842

UNLIMITED JURISDICTION

**[PROPOSED] CONSENT
JUDGMENT**

Dept: J
Judge: Honorable V. Adams
Date: None set

Complaint Filed: June 2, 2010

1 **I. INTRODUCTION**

2 **A. John Moore and the Settling Defendants.**

3 This Consent Judgment is entered into by and between plaintiff John Moore ("Moore")
4 and the defendants listed on Exhibit A, attached hereto, collectively the "Settling Defendants,"
5 with Moore and the Settling Defendants collectively referred to as the "Parties." Moore is an
6 individual residing in the State of California who seeks to promote awareness of exposure to toxic
7 chemicals and improve human health by reducing or eliminating hazardous substances contained
8 in consumer and commercial products. Each of the Settling Defendants employ ten or more
9 persons and each are persons in the course of doing business for purposes of the Safe Drinking
10 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6, *et seq.*
11 ("Proposition 65").

12 **B. General Allegations**

13 Moore has alleged that Settling Defendants have manufactured, imported, distributed
14 and/or offered for sale exercise/fitness mats which contain phthalates, including di(2-
15 ethylhexyl)phthalate ("DEHP") without the requisite Proposition 65 warnings. DEHP and other
16 phthalates such as butyl benzyl phthalate ("BBP") and Di-n-butyl phthalate ("DBP") are listed
17 under Proposition 65 as chemicals known to cause birth defects and other reproductive harm.
18 (Collectively, DEHP, BBP and DBP are referred to herein as the "Listed Chemicals.")

19 **C. Covered Products**

20 The products that are covered by this Consent Judgment are defined as follows: (a)
21 exercise/fitness mats containing DEHP, referred to hereinafter as the "Products," and, (b) only for
22 those Settling Defendants for whom it is indicated on Exhibit A, other sporting goods and
23 exercise equipment containing the Listed Chemicals and which are not primarily intended for use
24 by children ages twelve and under (the "Additional Products"). Additional Products shall be
25 defined as the following but shall only be applicable to a Settling Defendant to the extent
26 denominated for them on Exhibits A and B: (i) sports and exercise balls; (ii) equipment used for
27 balance or strength improvement or core stability; (iii) bands/cables/ropes/straps used for
28

1 exercise; (iv) barbells/weights and associated weight-lifting related accessories (including
2 benches, bars, and ankle cuffs) and (v) sports or exercise-related belts, gloves, bags/totes,
3 helmets, wristwraps, and hand grips. Specifically excluded from the definition of Additional
4 Products are sporting goods and exercise equipment containing the Listed Chemicals for which a
5 Settling Defendant has, prior to October 29, 2010, received a 60 Day Notice of Violation, vinyl
6 flooring, and all clothing (other than items specified in (v) above) containing poly vinyl chloride
7 or other soft plastic, vinyl, or synthetic leather, including, but not limited to, sauna suits.

8 **D. Notices of Violation**

9 Beginning on or about March 19, 2010, Moore served Settling Defendants and various
10 public enforcement agencies with a document entitled "60-Day Notice of Violation", along with
11 the requisite Certificates of Merit, (the "Notices") that provided Settling Defendants and public
12 enforcers with notice of alleged violations of Proposition 65 for failing to warn consumers that
13 the Products that Settling Defendants sold in California exposed users to DEHP. Although more
14 than 60-days, plus service time, has passed from the date of each Settling Defendant's Notice, no
15 public enforcer has diligently prosecuted the allegations set forth in the Notices.

16 **E. Complaint**

17 On June 2, 2010, Moore filed a complaint in the Superior Court in and for the County of
18 Marin against Natco Products Corporation ("Natco") and Does 1 through 150, *Moore v. Natco, et*
19 *al.*, Case No. CIV-1002842 (the "Action"), alleging violations of California Health & Safety
20 Code § 25249.6, based on the alleged exposures to DEHP contained in certain vinyl flooring
21 products Natco sold. On July 2, 2010, Moore filed a First Amended Complaint (the
22 "Complaint") in the Action, renaming it as *Moore v. Bell Sports, Inc., et al.*, alleging additional
23 violations of California Health & Safety Code § 25249.6 based on the alleged exposures to DEHP
24 contained in Products sold by the Settling Defendants and others.

25 **F. No Admission**

26 Settling Defendants deny the material, factual and legal allegations contained in Moore's
27 Notices and Complaint and maintain that all Products and Additional Products they have sold and
28

1 distributed in California have been and are in compliance with all laws. Nothing in this Consent
2 Judgment shall be construed as an admission by Settling Defendants of any fact, finding, issue of
3 law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be
4 construed as an admission by Settling Defendants of any fact, finding, conclusion, issue of law, or
5 violation of law, such being specifically denied by the Settling Defendants. However, this section
6 shall not diminish or otherwise affect the Settling Defendants' obligations, responsibilities, and
7 duties under this Consent Judgment.

8 **G. Effective Date**

9 For purposes of this Consent Judgment, the term "Effective Date" shall mean, as to the
10 Products, December 31, 2010. As to Additional Products, the term "Effective Date" shall mean
11 June 30, 2011.

12 **II. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

13 **A. Injunction as to the Products**

14 As of the Effective Date, Settling Defendants shall only manufacture, or accept from a
15 manufacturer or other supplier, Products to be offered for sale in California that are "Phthalate
16 Free." For purposes of this Settlement Agreement, "Phthalate Free" products shall mean products
17 containing less than or equal to 1,000 parts per million ("ppm") each of DEHP, BBP, and DBP in
18 poly vinyl chloride or other plastic components that are reasonably likely to be handled, touched
19 or mouthed during ordinary use or handling, when analyzed pursuant to U.S. Environmental
20 Protection Agency testing methodologies 3580A and 8270C.

21 **B. Obligations as to Additional Products**

22 As of the Effective Date, Settling Defendants for whom Exhibit A indicates are
23 participating in this Consent Judgment as to Additional Products, shall only manufacture, or
24 accept from a manufacturer or other supplier, Additional Products to be offered for sale in
25 California that: (1) are Phthalate Free, as defined in Section II.A., or (2) carry a clear and
26 reasonable Proposition 65 warning pursuant to Section II.C below. Any warning issued for
27 Additional Products pursuant to this Consent Judgment, shall be prominently placed with such
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1 conspicuousness as compared with other words, statements, designs or devices as to render it
2 likely to be read and understood by an ordinary individual under customary conditions before
3 purchase or, for Additional Products shipped directly to an individual in California, before use.

4 **C. Warnings**

5 To the extent they do not address their obligations under Section II.B through timely
6 reformulation, Settling Defendants shall address their warning obligation under Section II.B
7 above by affixing a warning to the packaging of, or, if no packaging exists, directly on, each
8 Additional Product sold in California that states:

9 **WARNING:** This product contains one or more phthalate
10 chemicals known to the State of California
11 to cause birth defects and other reproductive
12 harm.

13 For Additional Products sold by catalog or via the internet or by telephone, the preceding
14 warning statement must be supplemented with written information advising the consumer, in a
15 conspicuous manner, that he or she may return the Additional Product for a full refund (including
16 shipping costs for both the receipt and the return of the product) within fifteen (15) days of his or
17 her receipt of the Additional Product.

18 **D. Warning Exceptions**

19 The warning requirements set forth in Section II.C shall not apply to:

- 20 (i) Additional Products received by Settling Defendants before the
21 Effective Date (as defined in Section I.G); or
22 (ii) Additional Products which are Phthalate Free (as defined in
23 Section II.A).

24 **III. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

25 **A. Initial Civil Penalty**

26 In settlement of all the claims referred to in this Consent Judgment, each Settling
27 Defendant shall pay an initial civil penalty in the amount indicated for each Settling Defendant in
28 Exhibit A attached hereto, to be apportioned in accordance with California Health & Safety Code
§ 25192, with 75% of these funds remitted to the State of California's Office of Environmental
Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to John

1 Moore, as provided by California Health & Safety Code § 25249.12(d). Said initial civil
2 penalties have each been reduced by \$20,000 due to the Settling Defendants' commitment, in
3 furtherance of the public interest, to reformulate the Products at issue.

4 Each Settling Defendant shall issue two separate checks for the penalty payment: (a) one
5 check made payable to "The Chanler Group in Trust For OEHHA" in an amount representing
6 75% of the total penalty; and (b) one check to "The Chanler Group in Trust for John Moore" in an
7 amount representing 25% of the total penalty. Two separate 1099s shall be issued for the above
8 payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) John
9 Moore, whose information shall be provided by email or other means within five (5) calendar
10 days of a Settling Defendant's execution and delivery of this Consent Judgment document to
11 Moore's counsel.

12 Payment shall be delivered to Moore's counsel on or before November 30, 2010, at the
13 following address:

14 The Chanler Group
15 Attn: Proposition 65 Controller
16 2560 Ninth Street
17 Parker Plaza, Suite 214
18 Berkeley, CA 94710

19 **B. Additional Civil Penalty**

20 Settling Defendants, for whom Exhibit A indicates are participating in this Consent
21 Judgment as to Additional Products, shall pay an additional civil penalty of \$53,000 on July 15,
22 2011. As an incentive for achievement reformulating the Additional Products, however, this
23 additional civil penalty shall be waived in its entirety for a Settling Defendant if an officer of the
24 Settling Defendant certifies in writing that, as of June 30, 2011, it will only manufacture, or
25 accept from a manufacturer or other supplier, for sale in California Additional Products which are
26 Phthalate Free. Such certification must be received by The Chanler Group on or before July 15,
27 2011.

28 **C. Payment Allocation**

Additional civil penalty payments required pursuant to Section III. B shall be apportioned

1 in accordance with California Health & Safety Code §25192, with 75% of these funds remitted to
2 the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the
3 remaining 25% of the penalty remitted to John Moore, as provided by California Health & Safety
4 Code § 25249.12(d). Each Settling Defendant shall issue two separate checks for the final civil
5 penalty payment: (a) one check made payable to "The Chanler Group in Trust For OEHHA" in an
6 amount representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust
7 for John Moore" in an amount representing 25% of the total penalty. Two separate 1099s shall be
8 issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-
9 0284486); and (b) John Moore, whose information shall be provided by email or other means at
10 least thirty (30) calendar days before the payment is due.

11 Payment shall be delivered to Moore's counsel at the following address:

12 The Chanler Group
13 Attn: Proposition 65 Controller
14 2560 Ninth Street
15 Parker Plaza, Suite 214
16 Berkeley, CA 94710

15 IV. REIMBURSEMENT OF FEES AND COSTS

16 A. Settling Defendants Not Electing to be Covered for Additional Products

17 The Parties reached an accord on the compensation due to Moore and his counsel under
18 the private attorney general doctrine and principles of contract law. Under these legal principles,
19 Settling Defendants shall each reimburse Moore's counsel for fees and costs, incurred as a result
20 of investigating, bringing this matter to their attention, and negotiating a settlement and consent
21 judgment in the public interest. Each Settling Defendant that has not elected to be covered for
22 Additional Products, shall pay Moore and his counsel \$48,000 for all attorneys' fees, expert and
23 investigation fees, and related costs. The payment shall be issued in a separate check made
24 payable to "The Chanler Group" and shall be delivered on or before November 30, 2010, to the
25 following address:

26 The Chanler Group
27 Attn: Proposition 65 Controller
28 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

1 Settling Defendants shall issue a separate 1099 for attorney's fees and costs paid under
2 this paragraph to The Chanler Group, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley,
3 California 94710 (EIN: 94-3171522).

4 **B. Settling Defendants Electing to be Covered for Additional Products**

5 The Parties reached a further accord on the compensation due to Moore and his counsel
6 under the private attorney general doctrine and principles of contract law with respect to the
7 Consent Judgment addressing the Additional Products. Under these legal principles, each
8 Settling Defendant, for whom Exhibit A indicates that the Consent Judgment addresses their
9 Additional Products, shall include with its payment to Moore and his counsel, an additional
10 \$2,500 (i.e., in addition to the amount specified in Section IV.A above) for all related attorneys'
11 fees, expert and investigation fees, and costs, including the fees and costs associated with
12 negotiating, drafting, and implementing the provisions of this Consent Judgment addressing both
13 the Products and Additional Products. The payment shall be issued in a check made payable to
14 "The Chanler Group" and shall be delivered on or before November 30, 2010, to the following
15 address:

16 The Chanler Group
17 Attn: Proposition 65 Controller
18 2560 Ninth Street
19 Parker Plaza, Suite 214
20 Berkeley, CA 94710

21 Settling Defendants shall issue a 1099 for all attorney's fees and costs paid pursuant to
22 this paragraph to: The Chanler Group, 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley,
23 California 94710 (EIN: 94-3171522).

24 **V. RELEASE OF ALL CLAIMS**

25 **A. Moore's Release of the Settling Defendants**

26 In consideration of the promises and agreements herein contained, and for the payments to
27 be made pursuant to Sections 3 and 4, Moore on behalf of himself and in his representative
28 capacity, his past and current agents, representatives, attorneys, successors, and/or assignees, and
in the interest of the general public, hereby waives all rights to institute or participate in, directly

1 or indirectly, any form of legal action and releases all claims, including, without limitation, all
2 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
3 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
4 fees, and attorney's fees) of any nature whatsoever, whether known or unknown, fixed or
5 contingent (collectively "claims"), against Settling Defendants and each of their downstream
6 wholesalers, licensors, licensees, auctioneers, distributors, franchisees, dealers, customers,
7 owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their
8 respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and
9 sister and parent entities, (collectively "Releasees"), that arise under Proposition 65, as such
10 claims relate to Settling Defendants' alleged failure to warn about exposures to DEHP contained
11 in the category of Products identified in the Notice they previously received from Moore. The
12 Parties understand and agree that this release shall not extend upstream to any entities that
13 manufactured the Products or any component parts thereof, or any distributors or suppliers who
14 sold the Products or any component parts thereof to the Settling Defendants.

15 While Moore, on behalf of himself and his past and current agents, representatives,
16 attorneys, successors, and/or assignees and *not* in his representative capacity, also agrees to
17 release Settling Defendants as to Proposition 65 claims relating to BBP or DBP in the Products,
18 the Parties understand and agree that this further release does not extend to a release on behalf of
19 the general public. Nevertheless, compliance with the terms of Section II.A of this Consent
20 Judgment by a Settling Defendant shall be deemed to achieve compliance with Proposition 65
21 with respect to Listed Chemicals in the Products.

22 In addition, as to those Settling Defendants that indicate on Exhibit A that they wish to
23 have this Consent Judgment extend to the Additional Products, Moore on behalf of himself and
24 his past and current agents, representatives, attorneys, successors, and/or assignees and *not* in his
25 representative capacity, hereby waives all rights to institute or participate in, directly or indirectly,
26 any form of legal action and releases all claims for failure to warn under Proposition 65 as to
27 Listed Chemicals in the Additional Products (as specified for each Settling Defendant on Exhibits
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1 A and B). The Parties understand and agree that this further release also does not extend to a
2 release on behalf of the general public. Nevertheless, compliance with the terms of Section II.B
3 of this Consent Judgment by a Settling Defendant shall be deemed to achieve compliance with
4 Proposition 65 with respect to Listed Chemicals in the Additional Products.

5 **B. Settling Defendants' Release of Moore**

6 Settling Defendants, on behalf of themselves and their Releasees, waive any and all claims
7 against Moore, his attorneys, and other representatives for any and all actions taken by Moore and
8 his attorneys and other representatives, whether in the course of investigating claims or otherwise
9 seeking enforcement of Proposition 65 against them in this matter, and/or with respect to the
10 Listed Chemicals in the Products or Additional Products.

11 **VI. ADDITIONAL ENFORCEMENT FOR NONCONFORMING NON-COVERED**
12 **PRODUCTS**

13 A. If, on or after October 31, 2010, Moore alleges that a Settling Defendant offered for
14 retail sale to California consumers, or to a distributor for the purpose of retail sales in California,
15 a product that is not a Product or an Additional Product for a Settling Defendant as specified on
16 Exhibit A and, if applicable, Exhibit B; does not fall within the product categories of (i) sauna
17 suits, (ii) window coverings or curtains, or (iii) vinyl flooring; that contains one or more Listed
18 Chemicals in an amount that exceeds the amount this Consent Judgment deems as Phthalate Free
19 ("Nonconforming Non-Covered Product"); and for which a Settling Defendant has not already
20 received a 60 Day Notice of Violation, then prior to serving a 60-Day Notice under Proposition
21 65 on such Settling Defendant, Moore shall provide notice to the Settling Defendant and the
22 parties shall then proceed pursuant to this Section VI.

23 B. The notice shall contain the following information: (a) the date the alleged violation
24 was observed and the product was purchased; (b) the location or website at which the product was
25 offered for sale; (c) a description of the product, including a picture thereof and any identifying
26 information on tags and labels; and (d) data obtained by Moore regarding the product such as
27 laboratory results associated with the testing of the product. Within 30 days of receiving a notice
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1 pursuant to Section VI, the Settling Defendant shall serve a Notice of Election on Moore. The
2 Notice of Election shall:

3 1. Identify to Plaintiff (by proper name, address of principal place of business and
4 telephone number) the person or entity that sold the Nonconforming Non-Covered
5 Product to the Settling Defendant;

6 2. Identify the manufacturer and other distributors in the chain of distribution of
7 the Nonconforming Non-Covered Product, provided that such information is reasonably
8 available to the Settling Defendant; and

9 3. Include either: (i) a statement that the Settling Defendant elects not to proceed
10 under this Section VI, in which case Moore may take further action including issuance of
11 a 60-Day Notice under Proposition 65; (ii) a statement that the Settling Defendant elects
12 to proceed under this Section VI, or (iii) a statement that the Settling Defendant contends
13 that the Nonconforming Non-Covered Product is released from liability by a Qualified
14 Settlement under Section VI.D.1 below along with a copy of such Qualified Settlement.

15 C. A party's disclosure pursuant to this Section VI of any (i) test reports, (ii) confidential
16 business information, or (iii) other information that may be subject to a claim of privilege or
17 confidentiality, shall not constitute a waiver of any such claim of privilege or confidentiality,
18 provided that the party disclosing such information shall clearly designate it as confidential. Any
19 party receiving information designated as confidential pursuant to this Section VI.C shall not
20 disclose such information to any unrelated person or entity, and shall use such information solely
21 for purposes of resolving any disputes under this Consent Judgment.

22 D. No further action is required of the Settling Defendant under this Consent Judgment,
23 and Moore shall not serve a 60-Day Notice on the Settling Defendant regarding the
24 Nonconforming Non-Covered Product, if either:

25 1. The Nonconforming Non-Covered Product is otherwise released from liability
26 for alleged violations of Proposition 65 with respect to Listed Chemicals in the
27 Nonconforming Non-Covered Product by the terms of a separate settlement agreement or
28 consent judgment entered into under Health and Safety Code § 25249.7 and, if an

1 authorized public prosecutor of Proposition 65 is not a party, reported to the California
2 Attorney General's Office ("Qualified Settlement"); or

3 2. At least one of the person(s) identified by the Settling Defendant pursuant to
4 Section VI.B is a person in the course of doing business as defined in Health & Safety
5 Code § 25249.11(b) and (ii) has a principal place of business located within the United
6 States; and is not a Settling Defendant.

7 E. If the Settling Defendant elects not to proceed under Section VI.B, then neither the
8 Settling Defendant nor Moore have any further duty under this Section VI and either may pursue
9 any available remedies under Proposition 65 or otherwise.

10 F. If the Settling Defendant elects to proceed under this Section VI and is not relieved of
11 liability under Section VI.D, the Settling Defendant shall within thirty (30) days: (i) terminate its
12 further distribution for sale of the Nonconforming Non-Covered Product in California, (ii) pay a
13 statutory penalty in the amount of \$4,000 pursuant to Health and Safety Code Section 25249.7(b)
14 of which 25% shall be paid to Moore and 75% shall be paid to the State of California's Office of
15 Environmental Health Hazard Assessment, and (iii) pay \$25,800 in reimbursement of attorneys
16 fees and costs incurred by Moore with respect to the notice.

17 G. If a Settling Defendant makes payments pursuant to Section VI.F and at a later date
18 Moore resolves the alleged violation with the direct or indirect vendor of the Nonconforming
19 Non-Covered Product, Moore shall notify the Settling Defendant and the Settling Defendant shall
20 be entitled to a refund of the lesser amount of its contribution or the settlement amount paid by
21 such vendor. If the settlement or consent judgment between Moore and the direct or indirect
22 vendor of the Nonconforming Non-Covered Product does not provide for the refund to be paid
23 directly by the vendor to the Settling Defendant, then Moore shall pay the refund to the Settling
24 Defendant within 15 days of receiving the vendor's settlement payment.

25 H. Nothing in this Section VI affects Moore's right to issue a 60-Day Notice under
26 Proposition 65 against any entity other than a Settling Defendant, except as to a Settling
27 Defendant's customer of a product the Settling Defendant has elected to address pursuant to
28 Section VI.B.

1 **VII. SEVERABILITY**

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

5 **VIII. GOVERNING LAW**

6 The terms of this Settlement Agreement shall be governed by the laws of the State of
7 California and apply within the State of California.

8 **IX. NOTICES**

9 Unless specified herein, all correspondence and notices required to be provided pursuant
10 to this settlement agreement shall be in writing and personally delivered or sent by: (i) first-class,
11 registered or certified mail, return receipt requested; or (ii) overnight courier on any party by the
12 other party at the following addresses:

13 To Settling Defendants:

14 At the address shown in Exhibit C.

15 To John Moore:

16 Proposition 65 Coordinator
17 The Chanler Group
2560 Ninth Street
18 Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

21 **X. COUNTERPARTS; FACSIMILE SIGNATURES**

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

26 **XI. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

27 Moore and his attorneys agree to comply with the requirements referenced in California
28 Health & Safety Code § 25249.7(f).

1 **XII. MODIFICATION AND ATTORNEY'S FEES**

2 **A. Modification**

3 This Consent Judgment may be modified only by stipulation of the Parties and an order of
4 the Court or upon a motion by any Party that is granted by the Court.

5 **B. Attorney's Fees**

6 1. Should Moore prevail on any motion, application for an order to show
7 cause, or other proceeding to enforce a violation of this Consent Judgment, Moore shall be
8 entitled to his reasonable attorney's fees and costs incurred as a result of such motion or
9 application, consistent with CCP § 1021.5. Should any Settling Defendant prevail on any
10 motion or application for an order to show cause or other proceeding, such Settling
11 Defendant may be awarded its reasonable attorney's fees and costs as a result of such
12 motion or application upon a finding by the court that Moore's prosecution of the motion
13 or application lacked substantial justification. For purposes of this Consent Judgment, the
14 term substantial justification shall carry the same meaning as used in Civil Discovery Act
15 of 1986, Code of Civil Procedure §§ 2016, *et seq.*

16 2. Except as specifically provided in Section IV and XII.B1. above, each
17 Party shall bear its own costs and attorney's fees in connection with this action. Nothing
18 in this Section XII shall preclude a Party from seeking an award of sanctions pursuant to
19 law.

20 **XIII. ADDITIONAL POST-EXECUTION ACTIVITIES**

21 The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed
22 motion is required to obtain judicial approval of this Consent Judgment. In furtherance of
23 obtaining such approval, Moore's counsel shall prepare a motion for this Consent Judgment's
24 approval by the Court, and Moore and the Settling Defendants, and their respective counsel, agree
25 to mutually employ their best efforts to support the entry of this agreement as a Consent
26 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.

27 **XIV. ENTIRE AGREEMENT**

28 This Consent Judgment contains the sole and entire agreement and understanding of the

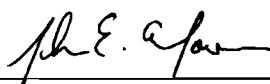
1 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
2 negotiations, commitments, and understandings related hereto. No representations, oral or
3 otherwise, express or implied, other than those contained herein have been made by any Party
4 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
5 deemed to exist or to bind any of the Parties.

6 **XV. AUTHORIZATION**

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

10
11 AGREED TO:

12 Dated: JANUARY 11, 2011

By: 
John Moore

13
14 AGREED TO:

15 Dated: _____

By: _____
[COMPANY]

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1 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
2 negotiations, commitments, and understandings related hereto. No representations, oral or
3 otherwise, express or implied, other than those contained herein have been made by any Party
4 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
5 deemed to exist or to bind any of the Parties.

6 **XV. AUTHORIZATION**

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

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11 **AGREED TO:**

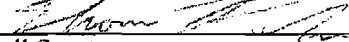
12 Dated: _____

By: _____
John Moore

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14 **AGREED TO:**

15 Dated: December 2, 2010

By:  _____
Bell Sports

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1 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
2 negotiations, commitments, and understandings related hereto. No representations, oral or
3 otherwise, express or implied, other than those contained herein have been made by any Party
4 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
5 deemed to exist or to bind any of the Parties.

6 **XV. AUTHORIZATION**

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

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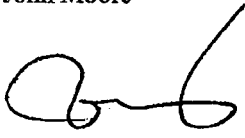
AGREED TO:

Dated: _____

By: _____
John Moore

AGREED TO:

Dated: 11/05/2010

By: 
[COMPANY] CAP BARBELL, INC.

1 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
2 negotiations, commitments, and understandings related hereto. No representations, oral or
3 otherwise, express or implied, other than those contained herein have been made by any Party
4 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
5 deemed to exist or to bind any of the Parties.

6 **XV. AUTHORIZATION**

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

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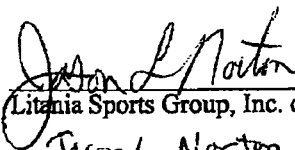
AGREED TO:

Dated: _____

By: _____
John Moore

AGREED TO:

Dated: _____

By: 
Litania Sports Group, Inc. d/b/a Gill Athletics
Jason L. Norton, CEO

1 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
2 negotiations, commitments, and understandings related hereto. No representations, oral or
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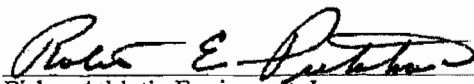
12 Dated: _____

By: _____
John Moore

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14 **AGREED TO:**

15 Dated: 12-16-10

By: 
Fisher Athletic Equipment, Inc.

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9 Consent Judgment.

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11 **AGREED TO:**

12 Dated: _____

By: _____
John Moore

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14 **AGREED TO:**

15 Dated: NOVEMBER 4, 2010

By: _____
[COMPANY] *McCormick & Co. Inc DBA*
HARBINGER

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AGREED TO:

Dated: _____

By: _____
John Moore

AGREED TO:

Dated: 12/24/10

By:  CHAMPION SPORTS
[COMPANY]

1 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
2 negotiations, commitments, and understandings related hereto. No representations, oral or
3 otherwise, express or implied, other than those contained herein have been made by any Party
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9 Consent Judgment.

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11 **AGREED TO:**

12 Dated: _____

By: _____
John Moore

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14 **AGREED TO:**

15 Dated: December 17, 2010

By: W. A. Coe
Power Systems, Inc.

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8 respective parties and have read, understood, and agree to all of the terms and conditions of this
9 Consent Judgment.

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11 **AGREED TO:**

12 Dated: _____

By: _____
John Moore

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14 **AGREED TO:**

15 Dated: DEC. 14, 2010

By:  _____
TKO Sports Group USA Limited

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Exhibit A

Name of Settling Defendant (and relevant associated entities under common ownership as specified)	Initial civil penalty payment amount required*	X=Consent Judgment will be extended to the “Additional Products”** (on Exhibit B, Settling Defendant shall specify and delineate the categories of Additional Products to which this Consent Judgment shall be extended)
Bell Sports, Inc.***	\$48,000	X
Cap Barbell, Inc.	\$28,000	X
Fisher Athletic Equipment, Inc.	\$1,000	
Litania Sports Group, Inc. d/b/a/ Gill Athletics	\$500	X
McCrane, Inc. d/b/a Harbinger	\$10,000	X
Power Systems, Inc.	\$10,000	X
Pro Sports, Inc. d/b/a/ Champion Sports	\$6,000	X
TKO Sports Group USA Limited	\$5,000	X

*** Attorney fee and cost reimbursement also required as specified in Section IV.A**

**** Additional Civil Penalty and attorney fees payments apply based on Sections
III.B and IV.B respectively**

***** Bell Sports, Corp. and Easton-Bell Sports, Inc. were named in the Complaint
and are included as Settling Defendants as to the Products.**

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Exhibit B

Name of Settling Defendant: Bell Sports, Inc. _____

Participating as to:

☒ X Balls

☒ X Balance/Strength/Core Improvement Equipment

☒ X Exercise Bands/Cables/Ropes/Straps

☒ X Weight Lifting Equipment/Accessories

☒ X Sports-Related Belts, Gloves, Bags, Helmets, Wristwraps, Grips

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Exhibit B

Name of Settling Defendant: CAP BARBELL, INC.

Participating as to:

☒ Balls

☒ Balance/Strength/Core Improvement Equipment

☒ Exercise Bands/Cables/Ropes/Straps

☒ Weight Lifting Equipment/Accessories

☒ Sports-Related Belts, Gloves, Bags, Helmets, Wristwraps, Grips

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Exhibit B

Name of Settling Defendant: Litania Sports Group, Inc. d/b/a Gill Athletics

Participating as to:

☒ Balls

☒ Balance/Strength/Core Improvement Equipment

☒ Exercise Bands/Cables/Ropes/Straps

☒ Weight Lifting Equipment/Accessories

☒ Sports-Related Belts, Gloves, Bags, Helmets, Wristwraps, Grips

EXHIBIT B

Name of Settling Defendant: **McCrane, Inc., d/b/a Harbinger**
Participating as to:

☒ Balls

☒ Balance/Strength/Core Improvement Equipment

☒ Exercise Bands/Cables/Ropes/Straps

☒ Weight Lifting Equipment/Accessories

☒ Sports-Related Belts, Gloves, Bags, Helmets, Wristwraps, Grips

Exhibit B

Name of Settling Defendant: Pro Sports, Inc. d/b/a/ Champion Sports

Participating as to:

- ☒ Balls
- ☒ Balance/Strength/Core Improvement Equipment
- ☒ Exercise Bands/Cables/Ropes/Straps
- ☒ Weight Lifting Equipment/Accessories
- ☒ Sports-Related Belts, Gloves, Bags, Helmets, Wristwraps, Grips

Exhibit B

Name of Settling Defendant: Power Systems, Inc.

Participating as to:

☒ Balls

☒ Balance/Strength/Core Improvement Equipment

☒ Exercise Bands/Cables/Ropes/Straps

☒ Weight Lifting Equipment/Accessories

☒ Sports-Related Belts, Gloves, Bags, Helmets, Wristwraps, Grips

Exhibit B

Name of Settling Defendant: TKO Sports Group USA Limited

Participating as to:

X Balls

X Balance/Strength/Core Improvement Equipment

X Exercise Bands/Cables/Ropes/Straps

X Weight Lifting Equipment/Accessories

X Sports-Related Belts, Gloves, Bags, Helmets, Wristwraps, Grips

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EXHIBIT C
(Settling Defendants' Addresses for Future Notice)

Name of Company: Bell Sports, Inc.
Name of Contact Person: Thom Parks
Street/Suite Address: 5550 Scotts Valley Drive
City/State/Zip: Scotts Valley, CA 95066
Telephone No.: 831-461-7621
Facsimile No.: 831-461-7506
Email Address: tparks@eastonbellsports.com

EXHIBIT C
(Settling Defendants' Addresses for Future Notice)

Name of Company: CAP BARBELL, INC.

Name of Contact Person: Olga Romero

Street/Suite Address: 10820 Westpark Dr.

City/State/Zip: Houston, TX 77042

Telephone No.: 713-977-3090

Facsimile No.: 713-977-3099

Email Address: olgar@capbarbell.com

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EXHIBIT C
(Settling Defendants' Addresses for Future Notice)

Name of Company: Litania Sports Group, Inc. d/b/a Gill Athletics

Name of Contact Person: Jay Norton

Street/Suite Address: P.O. Box 1790

City/State/Zip: Champaign, IL 61824-1790

Telephone No.: 217-367-8438

Email Address: jnorton@litaniasports.com

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EXHIBIT C
(Settling Defendants' Addresses for Future Notice)

Name of Company: Fisher Athletic Equipment, Inc.

Name of Contact Person: Bob Pritchard

Street/Suite Address: 2060 Cauble Road - P.O. Box 1985

City/State/Zip: Salisbury, NC 28144

Telephone No.: 704-636-5713

Email Address: bobpritchard@fisherathletic.com

REP
12.16.10

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EXHIBIT C
(Settling Defendants' Addresses for Future Notice)

Name of Company: McCrane Inc. d/b/a Harbinger
Name of Contact Person: David McCrane
Street/Suite Address: 35 Executive Ct.,
City/State/Zip: Napa CA 94558
Telephone No.: 707-257-5838
Facsimile No.: 707-257-5843
Email Address: dmccrane@harbingerfitness.com

***** Note: Effective January 1, 2011, the following should be substituted for the address shown above: 801 Chadbourne, Suite 103, Fairfield CA 94534.**

With a copy to:

Robert L. Falk
Morrison & Foerster LLP
425 Market Street, 32nd Floor
San Francisco, CA 94105

Email: Rfalk@mofo.com
Tel. 415-268-6294

EXHIBIT C
(Settling Defendants' Addresses for Future Notice)

Name of Company: Pro Sports, Inc. d/b/a/ Champion Sports

Name of Contact Person: Howard Meller

Street/Suite Address: 1 Champion Way, P.O. Box 368

City/State/Zip: Marlboro, NJ 07746

Telephone No.: 732-294-5561

Facsimile No.: 732-294-5562

Email Address: hmeller@championsports.com

With a copy to:

Michael Van Zandt
Sophia Belloli
Hanson Bridgett LLP
425 Market Street, 26th Floor
San Francisco, CA 941054

mvanzandt@hansonbridgett.com
[sbelloi@hansonbridgett.com](mailto:sbelloli@hansonbridgett.com)

Tel: 415-995-5001

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EXHIBIT C
(Settling Defendants' Addresses for Future Notice)

Name of Company: Power Systems, Inc.

Name of Contact Person: ~~Richard L. Fraser, Risk Manager~~ **MIKE AKERS CHIEF OPERATING OFFICE**

Street/Suite Address: 5700 Casey Drive

City/State/Zip: Knoxville, TN 37909

Telephone No.: (865) 368-7585

Facsimile No.: (865) 769-8211

Email Address: RFraser@power-systems.com

EXHIBIT C
(Settling Defendants' Addresses for Future Notice)

Name of Company: TKO Sports Group USA Limited.

Name of Contact Person: Garry Kurtz

Street/Suite Address: 7354 Denny Road, Ste. 100

City/State/Zip: Houston, TX 77040

Telephone No.: 713-895-9270, Ext. 299

Facsimile No.: 713-895-9078

Email Address: gwkurtz@tko.com

With copy to:

James Robert Maxwell
Rogers Joseph O'Donnell
311 California Street, 10th Floor
San Francisco, CA 94104
Telephone No.: 415-956-2828, Ext. 5376
Facsimile No.: 415-956-6457
Email Address: jrm@rjo.com