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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 IN AND FOR THE COUNTY OF SAN FRANCISCO

13 UNLIMITED CIVIL JURISDICTION

14 RUSSELL BRIMER,

15 Plaintiff,

16 v.

17 PRO PERFORMANCE SPORTS, LLC, THE  
18 SPORTS AUTHORITY, INC. and DOES 2-150,

19 Defendants.

Case No. CGC-11-509210

**CONSENT TO JUDGMENT AS TO  
DEFENDANT PRO PERFORMANCE  
SPORTS, LLC AND THE SPORTS  
AUTHORITY, INC.**

Action Filed: March 15, 2011  
Trial Date: May 19, 2014

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent To Judgment is entered into by and between Plaintiff Russell Brimer,  
4 (“Brimer” or “Plaintiff”) and Defendants Pro Performance Sports, LLC (“Pro Performance”) and  
5 The Sports Authority, Inc., (“Sports Authority”), with Brimer, Pro Performance and Sports  
6 Authority collectively referred to as the “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendants**

12 Pro Performance employs 10 or more persons and is a person in the course of doing  
13 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California  
14 Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

15 Sports Authority employs 10 or more persons and is a person in the course of doing  
16 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California  
17 Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

18 **1.4 General Allegations**

19 Brimer alleges that both Pro Performance and Sports Authority manufactured,  
20 distributed and/or sold, in the State of California, certain types of flag football belt sets made  
21 with components containing Lead and DEHP, including, but not limited to, SKLZ Flag Football  
22 belt and flag sets, that exposed users to Lead and DEHP without first providing “clear and  
23 reasonable warning” under Proposition 65. Lead and DEHP are listed as reproductive and  
24 developmental toxicants pursuant to Proposition 65 and are referred to hereinafter as the “Listed  
25 Chemical.” Pro Performance and Sports Authority disputes these allegations and contends that  
26 the reasonably anticipated rate of exposure for average users of the consumer product, is below  
27 the maximum allowable dose level (“MADL”) of 0.5 ug/day established by the Office of

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1 Environmental Health Hazard Assessment for lead and 410 ug/ day for DEHP (as applicable to  
2 adults)<sup>1</sup>.

3 **1.5 Notice of Violation**

4 On November 23, 2010, Brimer served Pro Performance and various public enforcement  
5 agencies with a document entitled "60-Day Notice of Violation" ("Notice") that provided public  
6 enforcers and these entities with notice of alleged violations of Health & Safety Code § 25249.6  
7 for failing to warn consumers of the presence of Lead, a toxic chemical alleged to be found in  
8 and on their flag football flag products sold in California. Pro performance received the Notice.

9 On December 3, 2012, Brimer served Pro Performance, Sports Authority and various  
10 public enforcement agencies with a document entitled "Supplemental 60-Day Notice of  
11 Violation" ("Supplemental Notice") that provided public enforcers and these entities with  
12 notice of the same alleged violations of Health & Safety Code § 25249.6 regarding Lead alleged  
13 to be present in and on their flag football flag products. Pro performance and Sports Authority  
14 received the Supplemental Notice.

15 On May 2, 2014, Brimer served Pro Performance, Sports Authority and various public  
16 enforcement agencies with a document entitled "Second Supplemental 60-Day Notice of  
17 Violation" ("Second Supplemental Notice") that provided public enforcers and these entities  
18 with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn  
19 consumers of the presence of DEHP, a toxic chemical alleged to be found in and on SKLZ flag  
20 football flag products sold in California. Pro performance and Sports Authority received the  
21 Second Supplemental Notice.

22 Pro performance and Sports Authority represent that, as of the date they each execute  
23 this Consent Judgment, each believes that no public enforcer is diligently prosecuting a  
24 Proposition 65 enforcement action related to either Lead or DEHP in the products identified in  
25 the Notice and Supplemental Notice.

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28 <sup>1</sup> Defendants allege that infant boys (ages 29 days to 24 months) and neonatal infant boys (ages 0-28 days) are not "average users" of the product and, therefore, the MADLs for DEHP for those categories are not applicable.

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**1.6 Complaint**

On March 15, 2011, Brimer, acting, in the interest of the general public in California, filed a Complaint in the Superior Court of the State of California for the County of San Francisco, alleging violations by Pro Performance of Health & Safety Code § 25249.6 based, *inter alia*, on the alleged exposures to Lead contained in the referenced flag football belt set products (the “Action”). On March 22, 2013, Brimer, in the interest of the general public in California, filed an amendment to the Complaint substituting defendant Sports Authority as DOE 1.

**1.7 Stipulation To Serve DEHP Notice And Amend Complaint**

As part of, and upon execution of, this Consent Judgment, the parties stipulate and agree that the amended Complaint shall and will be further amended to include the parties, recitals, and allegations against defendants of claims relating to DEHP in the Covered Products as was identified in the Second Supplemental Notice issued to Pro Performance and to Sports Authority.

The Parties agree that this stipulated amendment to the Complaint (“Amendment”) will be presented for approval to the Court as part of and in conjunction with the motion to approve this Consent Judgment. Defendants stipulate and agree to waive service of the Amendment to the Complaint except as part of the anticipated motion to approve this settlement and approve the Amendment. Settling Defendants further stipulate that the response filed and served by the defendants to the Amended Complaint shall, in all respects (including the affirmative defenses), be applicable to the [Second] Amended Complaint and defendants agree to waive any further response to such Complaint as amended by the Amendment. The Parties further stipulate that the Complaint as amended by the Amendment shall be deemed at issue as to defendants upon approval of the Amendment and stipulate that this Court may and shall immediately enter judgment on the Complaint, as amended by the Amendments, against defendants pursuant to these stipulations and this Consent Judgment.

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**1.8 No Admission**

This Consent To Judgment resolves claims that are denied and disputed by Pro Performance and Sports Authority. The Parties enter into this Consent To Judgment pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged and costly litigation. Defendants deny the material factual and legal allegations contained in the Notice, Supplemental Notices and Action, maintain they did not knowingly or intentionally expose California consumers to Lead or DEHP through the reasonably foreseeable use of the Covered Products and otherwise contend that all Covered Products they have manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws. Nothing in this Consent To Judgment shall be construed as an admission by either defendant of any fact, finding, issue of law, or violation of law, nor shall compliance with this Consent To Judgment constitute or be construed as an admission by defendants of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by defendants. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Pro Performance’s or Sports Authority’s obligations, responsibilities, and duties under this Consent To Judgment.

**1.9 Consent to Jurisdiction**

For purposes of this Consent To Judgment only, the Parties stipulate that this Court has jurisdiction over Pro Performance and Sports Authority as to the allegations contained in the Complaint, that venue is proper in the County of San Francisco, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment. As an express part of this Agreement, pursuant to C.C.P. §664.6 the Court in which this action was filed shall retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

1 **2. DEFINITIONS**

2 2.1 The term "Complaint" shall mean the March 15, 2011, Complaint, the March 22,  
3 2013, amendment to the March 15, 2011, Complaint and the stipulated amendment to add DEHP  
4 to the Complaint.

5 2.2 The term "Covered Products" means any Pro Performance Sports, LLC  
6 distributed flag football belt and flag set with flags containing Lead and/or DEHP, including,  
7 but not limited to, SKLZ Single Belt With 2 Flags yellow and blue replacement flag football sets.

8 2.3 The term "Effective Date" shall mean December 31, 2015.

9 2.4 The term "Lead Free" Covered Products shall mean Covered Products containing  
10 materials or other components that may be handled, touched or mouthed by a consumer, and  
11 which components yield less than 1.0 microgram of lead when using a wipe test pursuant to  
12 NIOSH Test Method 9100 and yield less than 100 parts per million ("ppm") lead when analyzed  
13 by a laboratory certified by the State of California or accredited by the State of California, a  
14 federal agency, the National Environmental Laboratory Accreditation Program or similar  
15 nationally recognized accrediting organization to perform the chemical analysis in question  
16 pursuant to EPA testing methodologies 3050B and 6010B, or other equivalent methodologies  
17 utilized by federal or state agencies for the purpose of determining lead content in consumer  
18 products.

19 2.5 The term "DEHP Free" Covered Products shall mean Covered Products  
20 containing materials or other components that may be handled, touched or mouthed by a  
21 consumer, and which components contain less than or equal to 1,000 parts per million ("ppm")  
22 of DEHP when analyzed by an accredited United States laboratory pursuant to U.S.  
23 Environmental Protection Agency testing methodologies 3580A and 8270C or any other  
24 methodology utilized by federal or state agencies for the purpose of determining the DEHP  
25 content in consumer products.

26 2.6 The term "Interim Lead Free" Covered Products shall mean no less than three  
27 randomly selected units of Covered Products from each purchase order of said products that

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1 each yield an XRF lead (pb) test result of the flag material of less than 200 ppm or, for any XRF  
2 lead test result in excess of 200ppm, that each yield less than 1.0 microgram of lead when using a  
3 wipe test of the flag material pursuant to NIOSH Test Method 9100.

4       2.7     The term “Interim DEHP Free” Covered Products shall mean Covered Products  
5 containing materials or other components that may be handled, touched or mouthed by a  
6 consumer, and which components contain less than or equal to 1,000 parts per million (“ppm”)  
7 of DEHP when analyzed by an accredited United States laboratory pursuant to U.S.  
8 Environmental Protection Agency testing methodologies 3580A and 8270C or any other  
9 methodology utilized by federal or state agencies for the purpose of determining the DEHP  
10 content in consumer products.

11 **3.     INJUNCTIVE RELIEF**

12       **3.1     Formulation Commitment**

13               **3.1.1**   No later than the Effective Date, Pro Performance shall not order, cause to  
14 be ordered, manufacture or cause to be manufactured any Covered Product that is not Lead Free  
15 and DEHP Free. Compliance with this Section 3.1.1, shall be determined either by (1) express  
16 certification from the vendor of Covered Products, for each purchase order for Covered  
17 Products, that the Covered Products delivered pursuant to such purchase order meet the DEHP  
18 Free and Lead Free standards of Sections 2.4 and 2.5 of this Agreement or (2) Pro Performance’s  
19 own confirmation of compliance with Sections 2.4 and 2.5 of this Agreement through testing of  
20 Covered Products from each purchase order of said products. As part of this Agreement, Pro  
21 Performance agrees to use reasonable best efforts to achieve compliance with the Formulation  
22 Commitment of this section earlier than the Effective Date.

23               **3.1.2**   After the Effective Date, Pro Performance shall maintain copies of all  
24 testing of Covered Products demonstrating compliance with this section and shall produce such  
25 copies to Brimer within fifteen (15) days of receipt of written request from Brimer.

26       **3.2     Previously Obtained or Distributed Covered Products.**

1                   **3.2.1** No later than September 1, 2014, Pro Performance shall issue a, written  
2 letter (electronic or otherwise) notice to (1) each retail store or establishment in California to  
3 which it sold or supplied any Covered Products after May 15, 2014, or to any other national  
4 retailer that Pro Performance is reasonably aware maintains retail outlets in California, (2) any  
5 Pro Performance company store or retail establishment in California from which Pro  
6 Performance sold any Covered Products after may 15, 2014, and (3) any other store or  
7 establishment that Pro Performance is reasonably aware of having sold any Covered Product in  
8 California after May 15, 2014, that identifies the Covered Product (by brand and trade name,  
9 SKU, ISB or any other identifying name or number utilized by Pro Performance in the sale of the  
10 Covered Product), advises the recipient that (i) this notice is being sent pursuant to a Consent to  
11 Judgment entered in this case; and (ii) each such identified Covered Product “may contain LEAD  
12 and DEHP, chemicals known to the State of California to cause birth defects and other  
13 reproductive harm”, and requests such recipient to either label the Covered Product with the  
14 product label identified in Section 3.2.3(a)(i) or to return the Covered Product to Pro  
15 Performance at Pro performance’s sole expense. Pro Performance shall maintain records of all  
16 compliance correspondence or other communication generated pursuant to this Section for two  
17 (2) years from the Effective Date and shall produce copies of such records upon written request  
18 by Brimer.

19                   **3.2.2** No later than the October 1, 2014, Sports Authority shall either (1) destroy  
20 any California inventory of Covered Products or (2) issue an express, written letter (electronic or  
21 otherwise) notice to each of its California retail stores, and each distribution center that  
22 distributes to its California retail stores, with any record of having any inventory of Covered  
23 Products as of September 1, 2014, that identifies the Covered Product (by brand and trade name,  
24 SKU, ISB or any other identifying name or number utilized by Sports Authority in the sale of the  
25 Covered Product), advises the recipient that this notice is being sent pursuant to a Consent to  
26 Judgment entered in this case; and requests such recipient to label the Covered Product with the  
27 product label identified in Section 3.2.3(a)(i). Sports Authority shall maintain records of all



1 compliance correspondence or other communication generated pursuant to this Section for two  
2 (2) years from the Effective Date and shall produce copies of such records upon written request  
3 by Brimer.

### 4 **3.2.3 Product Warnings For Previously Obtained Covered Products**

5 Commencing on September 1, 2014, Pro Performance and Sports Authority shall not sell,  
6 ship, or offer to be sold or shipped for sale in California any Covered Products not meeting the  
7 Formulation Commitment of Section 3.1.1 unless such Covered Products are either confirmed to  
8 meet the Interim Lead Free standard of Section 2.6 and the Interim DEHP Free standard of  
9 Section 2.7 or are sold or shipped with one of the clear and reasonable warnings set forth  
10 hereafter.

11 Should any tested purchase order sample of Covered Product meet either the Interim  
12 Lead Free Standard or the Interim DEHP Free warning standard, but not both standards, then  
13 such Covered Product shall only be sold or shipped, or offered to be sold or shipped for sale in  
14 California with one of the clear and reasonable warnings set forth hereafter except that such  
15 warning may be modified to remove the word "Lead" or "DEHP" depending upon which  
16 interim warning standard was not met and shall replace ", chemicals" with "a chemical".

17 Each warning shall be prominently placed with such conspicuousness as compared with  
18 other words, statements, designs, or devices as to render it likely to be read and understood by  
19 an ordinary individual under customary conditions *before* purchase or use. Each warning shall  
20 be provided in a manner such that the consumer or user understands to which *specific* Covered  
21 Product the warning applies, so as to minimize the risk of consumer confusion.

22 (a) **Retail Store Product Labeling.** Pro Performance and Sports Authority  
23 may affix a warning to the packaging, labeling, or directly on any Covered Products sold to or at  
24 a retail outlet in California that states:

25 **WARNING:** This product contains Lead and DEHP,  
26 chemicals known to the State of California to  
27 cause birth defects and other reproductive  
28 harm.

1 (b) **Mail Order Catalog and Internet Sales.** In the event that Pro Performance  
2 or Sports Authority sells any Covered Products via mail order catalog or an Internet site owned,  
3 operated or controlled by either, to customers located in California, any such catalog or Internet  
4 site offering any Covered Product for sale shall include a warning in the catalog or within the  
5 website, identifying the specific Covered Product to which the warning applies, as specified in  
6 Sections 3.2.32(b)(i) and (ii).

7 (i) **Mail Order Catalog Warning.** Any warning provided in a mail  
8 order catalog must be in the same type size or larger than the Covered Product description text  
9 within the catalog. The following warning shall be provided on the same page and in the same  
10 location as the display and/or description of the Covered Product:

11 **WARNING TO CALIFORNIA CONSUMERS**  
12 **UNDER PROPOSITION 65:** This product  
13 contains Lead and DEHP, chemicals known to  
14 the State of California to cause birth defects and  
15 other reproductive harm.

16 Where it is impracticable to provide the warning on the same page and in the same  
17 location as the display and/or description of the Covered Product, defendants may utilize a  
18 designated symbol to cross reference the applicable warning and shall define the term  
19 "designated symbol" with the following language on the inside of the front or back cover of the  
20 catalog or on the same page as any order form for the Covered Product(s):

21 **WARNING TO CALIFORNIA CONSUMERS**  
22 **UNDER PROPOSITION 65:** Certain products  
23 identified with this symbol ▼ and offered for  
24 sale in this catalog contain Lead and DEHP,  
25 chemicals known to the State of California to  
26 cause birth defects and other reproductive  
27 harm.

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

1 If a defendant elects to provide warnings in any mail order catalog, then the warnings  
2 must be included in all catalogs offering to sell one or more Covered Products printed after the  
3 Effective Date to consumers in California.

4 (ii) **Internet Website Warning.** A warning must be given in  
5 conjunction with the sale of any Covered Products to consumers in California via any Internet  
6 sales site owned, operated or controlled by either defendant, provided it appears either: (a) on  
7 the same web page on which a Covered Product is displayed; (b) on the same web page as the  
8 order form for a Covered Product; (c) on the same page as the price for any Covered Product; or  
9 (d) on one or more web pages displayed to a purchaser during the checkout process. The  
10 following warning statement shall be used and shall appear in any of the above instances  
11 adjacent to or immediately following the display, description, or price of the Covered Product  
12 for which it is given in the same type size or larger than the Covered Product description text:

13 **WARNING TO CALIFORNIA CONSUMERS**  
14 **UNDER PROPOSITION 65:** This product  
15 contains Lead and DEHP, chemicals known to  
16 the State of California to cause birth defects and  
17 other reproductive harm.

17 Alternatively, the designated symbol may appear adjacent to or immediately following  
18 the display, description, or price of the Covered Product for which a warning is being given,  
19 provided that the following warning statement also appears elsewhere on the same web page, as  
20 follows:

21 **WARNING TO CALIFORNIA CONSUMERS**  
22 **UNDER PROPOSITION 65:** Products  
23 identified on this page with the following  
24 symbol ▼ contain Lead and DEHP, chemicals  
25 known to the State of California to cause birth  
26 defects and other reproductive harm.

25 **3.2.4** No later than April 1, 2016, Pro Performance and Sports Authority shall  
26 discontinue all sales of any Covered Products that are not Lead Free and DEHP Free in  
27 California, regardless of compliance with Section 3.3.1.

1                   **3.2.5** Pro Performance and Sports Authority shall maintain records of  
2 compliance correspondence, inventory reports or other communication confirming compliance  
3 with §§ 3.2.1 through 3.2.4 for two (2) years from the Effective Date and shall produce copies of  
4 such records upon written request by Brimer.

5 **4. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(B)**

6 **4.1 Civil Penalty Amounts**

7 In settlement of all the claims referred to in this Consent to Judgment, Pro Performance  
8 shall pay a total of \$30,000.00 in civil penalties in accordance with this Section. Each penalty  
9 payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) &  
10 (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard  
11 Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Brimer.

12 Pro Performance shall deliver payment of all penalties under this Section, within fifteen  
13 (15) days of the date of approval and entry of this Consent to Judgment by the Court, as detailed  
14 in Section 4.3.1 below. Any penalty, or any portion thereof, not timely delivered as required by  
15 this agreement, shall accrue simple interest at a rate of 10% per annum until paid.

16 **4.3 Payment Procedures**

17 **4.3.1. Issuance of Payments.** Payments shall be delivered as follows:

- 18 (a) All payments owed to Brimer, pursuant to Sections 4.1 through 4.2,  
19 shall be delivered to the following payment address:

20 The Chanler Group  
21 Attn: Proposition 65 Controller  
22 2560 Ninth Street  
23 Parker Plaza, Suite 214  
24 Berkeley, CA 94710

- 25 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to  
26 Sections 4.1 through 4.2, shall be delivered directly to OEHHA (Memo  
27 line "Prop 65 Penalties") at the following addresses:

28 For United States Postal Service Delivery:  
Mike Gyurics  
Fiscal Operations Branch Chief

Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in 4.3.1(a), as proof of payment to OEHHA.

**4.3.2 Issuance of 1099 Forms.** After any penalty payment, each Pro

Performance and Sports Authority shall issue separate 1099 forms for each payment to Brimer, whose address and tax identification number shall be furnished upon request after this Consent Judgment has been fully executed by the Parties, and OEHHA at the addresses listed in Section 4.3.1 above.

**5. REIMBURSEMENT OF FEES AND COSTS**

The parties acknowledge that Brimer and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Defendants expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on the compensation due to Brimer and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement.

Pro Performance shall pay \$250,000.00 for fees and costs incurred as a result of investigating, bringing this matter to Pro Performance's attention, and negotiating a settlement in the public interest. Pro Performance shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the check payable to "The Chanler Group" and shall deliver payment,

1 within five (5) business days of the date of approval of this Consent to Judgment by the Court, to  
2 the address listed in Section 4.3.1 above. Any fee/cost reimbursement, or any portion thereof,  
3 not timely delivered as required by this agreement, shall accrue simple interest at a rate of 10%  
4 per annum until paid.

5 **6. CLAIMS COVERED AND RELEASE**

6 **6.1 Brimer's Releases of Pro Performance and Sports Authority**

7 **6.1.1** This Consent To Judgment is a full, final, and binding resolution between  
8 Brimer, on behalf of himself, his past and current agents, representatives, attorneys, successors,  
9 and/or assignees, and in the interest of the general public, and Pro Performance and its  
10 attorneys, successors, licensors and assigns ("Defendant Releasees"), and all entities to whom  
11 Pro Performance directly or indirectly distributed or sold Covered Products, including but not  
12 limited to The Sports Authority, Inc., distributors, wholesalers, customers, retailers, franchisees,  
13 cooperative members, and licensees ("Downstream Defendant Releasees") of any violation of  
14 Proposition 65 that has been or could have been asserted against Defendant Releasees and  
15 Downstream Defendant Releasees regarding the failure to warn about exposure to the Listed  
16 Chemicals arising in connection with Covered Products manufactured, sourced, distributed, or  
17 sold by Defendant Releasees prior to the Effective Date. Pro Performance's and Sports  
18 Authority's compliance with this Consent To Judgment shall constitute compliance with  
19 Proposition 65 with respect to the Listed Chemicals in the Covered Products.

20 **6.1.2** Brimer on behalf of himself, his past and current agents, representatives,  
21 attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives  
22 with respect to Covered Products all rights to institute or participate in, directly or indirectly,  
23 any form of legal action and releases all claims, including, without limitation, all actions, and  
24 causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,  
25 penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and  
26 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent  
27 (collectively "claims"), against Defendant Releasees and Downstream Defendant Releasees that

1 arise under Proposition 65 or any other statutory or common law claims that were or could have  
2 been asserted in the public interest, as such claims relate to Defendant Releasees' and  
3 Downstream Defendant Releasees' alleged failure to warn about exposures to the Listed  
4 Chemical contained in the Covered Products.

5           **6.1.3** Brimer also, in his individual capacity only and *not* in his representative  
6 capacity, provides a general release herein which shall be effective as a full and final accord and  
7 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,  
8 damages, losses, claims, liabilities and demands of Brimer of any nature, character or kind,  
9 known or unknown, suspected or unsuspected, arising out of the subject matter of the  
10 Complaint as to Covered Products manufactured, distributed or sold by Defendant Releasees  
11 and Sports Authority. Brimer acknowledges that he is familiar with Section 1542 of the  
12 California Civil Code, which provides as follows:

13           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
14           CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR  
15           AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM  
16           OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT  
17           WITH THE DEBTOR.

18           Brimer, in his individual capacity only and *not* in his representative capacity, expressly  
19 waives and relinquishes any and all rights and benefits which he may have under, or which may  
20 be conferred on him by the provisions of Section 1542 of the California Civil Code as well as  
21 under any other state or federal statute or common law principle of similar effect, to the fullest  
22 extent that he may lawfully waive such rights or benefits pertaining to the released matters. In  
23 furtherance of such intention, the release hereby given shall be and remain in effect as a full and  
24 complete release notwithstanding the discovery or existence of any such additional or different  
25 claims or facts arising out of the released matters.

26           This Section 6.1 release is expressly limited to those claims that arise under Proposition  
27 65, as such claims relate to Defendant Releasees' and Downstream Defendant Releasees' alleged  
28 failure to warn about exposures to or identification of the Listed Chemical contained in the

1 Covered Products and as such claims are identified in the Notice and Supplemental Notices to  
2 defendants.

3 As to Downstream Defendant Releasees other than Sports Authority, this Section 6.1  
4 release is expressly limited to any alleged violations that occur prior to March 1, 2015, and does  
5 not release any person, party or entity from any liability for any violation of Proposition 65  
6 regarding the Covered Products that occur after March 1, 2015.

7 The Parties further understand and agree that this Section 6.1 release shall not extend  
8 upstream to any entities, other than Pro Performance, that manufactured the Covered Products  
9 or any component parts thereof, or any distributors or suppliers, other than Pro Performance,  
10 who sold the Covered Products or any component parts thereof to defendants.

11 **6.1.4** Upon court approval of the Consent To Judgment, the Parties waive their  
12 respective rights to a hearing or trial on the allegations of the Complaint.

13 **6.2 Pro Performance's and Sports Authority's Release of Brimer**

14 **6.2.1** Each Pro Performance and Sports Authority waives any and all claims  
15 against Brimer, his attorneys, and other representatives for any and all actions taken or  
16 statements made (or those that could have been taken or made) by Brimer and his attorneys and  
17 other representatives, whether in the course of investigating claims or otherwise seeking  
18 enforcement of Proposition 65 against it in this matter, with respect to the Covered Products.

19 **6.2.2** Each Pro Performance and Sports Authority also provides a general  
20 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all  
21 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,  
22 liabilities and demands of Pro Performance of Sports Authority of any nature, character or kind,  
23 known or unknown, suspected or unsuspected, arising out of the subject matter of the Action.  
24 Pro Performance and Sports authority each acknowledges that it is familiar with Section 1542 of  
25 the California Civil Code, which provides as follows:

26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
27 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR  
AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM



1 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT  
2 WITH THE DEBTOR.

3 Pro Performance and Sports Authority expressly waive and relinquish any and all  
4 rights and benefits that each may have under, or which may be conferred on them by the  
5 provisions of Section 1542 of the California Civil Code as well as under any other state or  
6 federal statute or common law principle of similar effect, to the fullest extent that it may  
7 lawfully waive such rights or benefits pertaining to the released matters. In furtherance  
8 of such intention, the release hereby given shall be and remain in effect as a full and  
9 complete release notwithstanding the discovery or existence of any such additional or  
10 different claims or facts arising out of the released matters.

11 **7. SEVERABILITY**

12 If, subsequent to court approval of this Consent To Judgment, any of the provisions of  
13 this Consent To Judgment are Brimer by a court to be unenforceable, the validity of the  
14 enforceable provisions remaining shall not be adversely affected, unless the Court finds that any  
15 unenforceable provision is not severable from the remainder of the Consent To Judgment.

16 **8. COURT APPROVAL**

17 This Consent To Judgment is effective upon execution but must also be approved by the  
18 Court. If this Consent Judgment is not approved by the Court, in its entirety and as executed  
19 by the Parties, the Parties shall meet and confer to determine whether to modify the terms of  
20 the Consent Judgment and to resubmit it for approval. In meeting and conferring, the Parties  
21 agree to undertake any actions reasonably necessary to amend and/or modify this Consent  
22 Judgment in order to further the mutual intention of the Parties in entering into this Consent  
23 Judgment.

24 The Consent to Judgment shall become null and void if, for any reason, it is not approved  
25 and entered by the Court as executed within one year after it has been fully executed by all  
26 Parties. If the Consent to Judgment becomes null and void after any payment of monies under  
27 this agreement to The Chanler Group in trust, such monies shall be returned to defendant by  
28 payment of such monies to its counsel, in trust for Pro Performance and/or Sports Authority.

1 **9. GOVERNING LAW**

2 The terms of this Consent To Judgment shall be governed by the laws of the State of  
3 California.

4 **10. NOTICES**

5 When any Party is entitled to receive any notice under this Consent To Judgment, the  
6 notice shall be sent by certified mail and electronic mail to the following:

7 For Pro Performance, LLC to:

8 John Sarkisian, CEO  
9 Pro Performance Sports, LLC  
10 5823 Newton drive, Suite 130  
11 Carlsbad, CA 92008

12 With copy to their counsel at

13 Chris Amantea, Esq.  
14 Squire Sanders (US) LLP  
15 555 S Flower St., 31<sup>st</sup> Floor  
16 Los Angeles, CA 90071

17 For The Sports Authority, Inc. to:

18 Douglas Garrett, General Counsel  
19 The Sports Authority, Inc.  
20 1050 West Hampden Ave.  
21 Englewood, CO 80110

22 With copy to their counsel at

23 Chris Amantea, Esq.  
24 Squire Sanders (US) LLP  
25 555 S Flower Street, 31<sup>st</sup> floor  
26 Los Angeles, CA 90071

27 For Brimer to:

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

1 Any Party may modify the person and address to whom the notice is to be sent by sending each  
2 other Party notice by certified mail and/or other verifiable form of written communication,  
3 including email (with return receipt acknowledgment).

4 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

5 Brimer agrees to comply with the reporting form requirements referenced, in California  
6 Health & Safety Code §25249.7(f) and to file a motion for approval of this Consent Judgment,  
7 which motion shall be provided for review to Pro Performance and Sports Authority, in draft, at  
8 least five (5) business days before it is filed.

9 **12. MODIFICATION**

10 This Consent To Judgment may be modified only: (1) by written agreement of the  
11 Parties; or (2) upon a successful motion of any party and entry of a modified Consent To  
12 Judgment by the Court.

13 **13. ADDITIONAL POST-EXECUTION ACTIVITIES**

14 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed  
15 motion is required to obtain judicial approval of this Consent To Judgment. In furtherance of  
16 obtaining such approval, Brimer, Pro Performance, Sports Authority and their respective counsel  
17 agree to mutually employ their best efforts to support the entry of this agreement as a Consent  
18 To Judgment and obtain approval of the Consent To Judgment - sufficient to render a formal  
19 judgment approving this agreement - by the Court in a timely manner. Any effort by Pro  
20 Performance or Sports Authority to impede judicial approval of this Consent To Judgment shall  
21 subject such impeding party to liability for attorney fees and costs incurred by plaintiff or his  
22 counsel in their efforts to meet or oppose such impeding conduct. Similarly, any effort by  
23 Brimer to impede judicial approval of this Consent to Judgment shall subject Brimer to liability  
24 for attorney fees and costs incurred by defendants or their counsel in their efforts to meet or  
25 oppose such impeding conduct.

1 **14. ENTIRE AGREEMENT**

2 This Consent To Judgment contains the sole and entire agreement and understanding of  
3 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
4 negotiations, commitments, and understandings related hereto. No representations, oral or  
5 otherwise, express or implied, other than those contained herein have been made by any Party  
6 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be  
7 deemed to exist or to bind any of the Parties. No supplementation, modification, waiver, or  
8 termination of this Consent Judgment shall be binding unless executed in writing by the Party to  
9 be bound. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall  
10 constitute a waiver of any of the other provisions whether or not similar, nor shall such waiver  
11 constitute a continuing waiver

12 **15. ATTORNEY'S FEES**

13 15.1 Should Brimer prevail on any motion, application for order to show cause or  
14 other proceeding to enforce a violation of this Agreement, Brimer shall be entitled to his  
15 reasonable attorney fees and costs incurred as a result of such motion, order or application,  
16 consistent with C.C.P. §1021.5. Should Defendant prevail on any motion, application for order to  
17 show cause or other proceeding to enforce a violation of this Consent Judgment, either  
18 defendant shall be entitled to its reasonable attorney fees and costs incurred as a result of such  
19 motion, order or application consistent with C.C.P. §1021.5..

20 15.2 Except as specifically provided herein above, each Party shall bear its own costs  
21 and attorney's fees in connection with this action.

22 15.3 Nothing in this Section 15 shall preclude a Party from seeking an award of  
23 sanctions pursuant to law.

24 **16. NEUTRAL CONSTRUCTION**

25 All Parties and their counsel have participated in the preparation of this Consent  
26 Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
27 Consent Judgment was subject to revision and modification by the Parties and has been

28

1 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any  
2 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any  
3 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this  
4 Consent Judgment agrees that any statute or rule of construction providing that ambiguities  
5 are to be resolved against the drafting Party should not be employed in the interpretation of  
6 this Consent Judgment and, in this regard, the Parties hereby waive California Civil Code  
7 Section 1654.

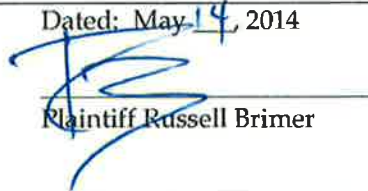
8 **17. COUNTERPARTS, FACSIMILE SIGNATURES**

9 This Consent To Judgment may be executed in counterparts and by facsimile or portable  
10 document format (PDF), each of which shall be deemed an original, and all of which, when taken  
11 together, shall constitute one and the same document.

12 **18. AUTHORIZATION**

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

16 **IT IS SO AGREED**

17 Dated: May 14, 2014 18  19 Plaintiff Russell Brimer	Dated: May __, 2014 By: _____ Its: _____ Pro Performance Sports, LLC
20 Dated: May __, 2014 21 _____ 22 By: _____ 23 Its: _____ 24 The Sports Authority, Inc.	

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3 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this  
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14 Judgment on behalf of their respective Parties and have read, understood, and agree to all of the  
15 terms and conditions of this Consent To Judgment.

16 **IT IS SO AGREED**

17 Dated: May __, 2014 18 _____ 19 Plaintiff Russell Brimer	Dated: May 14, 2014 20 _____ By: _____ Its: <u>Manager</u> Pro Performance Sports, LLC
21 Dated: May __, 2014 22 _____ By: _____ Its: _____ The Sports Authority, Inc.	

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3 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this  
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14 Judgment on behalf of their respective Parties and have read, understood, and agree to all of the  
15 terms and conditions of this Consent To Judgment.

16 **IT IS SO AGREED**

17 Dated: May __, 2014 18 _____ 19 Plaintiff Russell Brimer	Dated: May __, 2014 _____ By: _____ Its: _____ Pro Performance Sports, LLC
20 Dated: May __, 2014 21 _____ 22 By: <u>Douglas Garrett</u> 23 Its: <u>Chief Counsel</u> 24 The Sports Authority, Inc.	