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 12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 13 FOR THE COUNTY OF SACRAMENTO
 14 UNLIMITED CIVIL JURISDICTION

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 17 ANTHONY E. HELD, Ph.D., P.E.,
 18 Plaintiff,
 19 v.
 20 FRANKLIN SPORTS, INC.; TOYS "R" US,
 INC.; and DOES 1 through 150, inclusive,
 21 Defendants.

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
 AND INJUNCTIVE RELIEF**

(Cal. Health & Safety Code § 25249.6 et seq.)

FILED
Superior Court Of California,
Sacramento
Dennis Jones, Executive
Officer
03/28/2008
awoodward
 By _____, Deputy
 Case Number:
34-2008-00007134-CU-MC-GDS

DEPARTMENT 44 CMO

DEPARTMENT 53 LRM

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff ANTHONY E.
3 HELD, Ph.D., P.E., in the public interest of the citizens of the State of California, to enforce the
4 People’s right to be informed of the presence of di(2-ethylhexyl)phthalate, a toxic chemical, found
5 in certain children’s sporting items sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to warn
7 California citizens about their exposure to di(2-ethylhexyl)phthalate present in or on certain
8 sporting toys for children that defendants manufacture, distribute and/or offer for sale to consumers
9 throughout the State of California.

10 3. High levels of di(2-ethylhexyl)phthalate are commonly found in or on the children’s
11 sporting items that defendants manufacture, distribute and/or offer for sale to consumers throughout
12 the State of California.

13 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
14 California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”), “No person in the course of
15 doing business shall knowingly and intentionally expose any individual to a chemical known to the
16 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to
17 such individual” (*Cal. Health & Safety Code* § 25249.6.)

18 5. On January 1, 1988, California identified and listed di(2-ethylhexyl)phthalate as a
19 chemical known to cause birth defects and other reproductive harm. Di(2-ethylhexyl)phthalate
20 became subject to the warning requirement one year later and was therefore subject to the “clear
21 and reasonable warning” requirements of Proposition 65, beginning on January 1, 1989. (*22 CCR*
22 *§ 12000(c)*; *Cal. Health & Safety Code* § 25249.8.) Di(2-ethylhexyl)phthalate shall hereinafter be
23 referred to as the “LISTED CHEMICAL.”

24 6. Defendants manufacture, distribute and/or sporting items for children containing
25 Di(2-ethylhexyl)phthalate including, but not limited to, *Sizzlin’ Cool Baseball Glove and Ball,*
26 *#14240S5, (#0 25725 22675 7).* All such sporting items for children containing the LISTED
27 CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”
28

1 purchasers and users first having been provided with a “clear and reasonable warning” regarding
2 such toxic exposures.

3 30. DEFENDANTS have engaged in the manufacture, distribution and/or offering of the
4 PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6, and
5 DEFENDANTS’ manufacture, distribution and/or offering of the PRODUCTS for sale or use in
6 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
7 DEFENDANTS’ receipt of plaintiff’s sixty-day notice of violation. Plaintiff further alleges and
8 believes that such violations will continue to occur into the future.

9 31. After receipt of the claims asserted in the sixty-day notice of violation, the
10 appropriate public enforcement agencies have failed to commence and diligently prosecute a cause
11 of action against DEFENDANTS under Proposition 65.

12 32. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
13 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state limits.

14 33. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
15 distributed, and/or offered for sale or use by DEFENDANTS in California contained the LISTED
16 CHEMICAL.

17 34. The LISTED CHEMICAL was present in or on the PRODUCTS in such a way as to
18 expose individuals to the LISTED CHEMICAL through dermal contact and ingestion during the
19 reasonably foreseeable use of the PRODUCTS.

20 35. The normal and reasonably foreseeable use of the PRODUCTS has caused and
21 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined by
22 22 CCR §12601(b).

23 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
24 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact
25 and ingestion.

26 37. DEFENDANTS, and each of them, intended that such exposures to the LISTED
27 CHEMICAL from the reasonably foreseeable use of the PRODUCTS would occur by their
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1 deliberate, non-accidental participation in the manufacture, distribution and/or offer for sale or use
2 of PRODUCTS to individuals in the State of California.

3 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those
4 consumers and/or other individuals in the State of California who were or who could become
5 exposed to the LISTED CHEMICAL through dermal contact and ingestion during the reasonably
6 foreseeable use of the PRODUCTS.

7 39. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
8 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
9 contact and ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold by
10 DEFENDANTS without “clear and reasonable warning,” have suffered, and continue to suffer,
11 irreparable harm, for which harm they have no plain, speedy or adequate remedy at law.

12 40. As a consequence of the above-described acts, DEFENDANTS, and each of them,
13 are liable for a maximum civil penalty of \$2,500 per day for each violation pursuant to California
14 Health & Safety Code § 25249.7(b).

15 41. As a consequence of the above-described acts, California Health & Safety Code
16 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
17 DEFENDANTS.

18 42. Wherefore, plaintiff prays judgment against DEFENDANTS, and each of them, as
19 set forth hereinafter.

20 **PRAYER FOR RELIEF**

21 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

22 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess
23 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each
24 violation alleged herein;

25 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
26 preliminarily and permanently enjoin DEFENDANTS, and each of them, from manufacturing,
27 distributing and/or offering the PRODUCTS for sale or use in California, without providing “clear
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1 and reasonable warnings” as defined by 22 CCR § 12601, as to the harm associated with exposures
2 to the LISTED CHEMICAL;

3 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

4 4. That the Court grant such other and further relief as may be just and proper.

5 Dated: March 28, 2008

6 Respectfully Submitted,
HIRST & CHANLER LLP

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8 David Lavine
9 Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

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