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KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: D. Taylor, Deputy

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MARIN

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11
12 CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)

13 Plaintiff,)

14 v.)

15)
16 FRANKLIN SPORTS, INC.; WILSON)
SPORTING GOODS CO.; and Defendant DOES)
17 1 through 200, inclusive,)

18 Defendants.)
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Case No. CIV 085383

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

Health & Safety Code §25249.6, *et seq.*

(Other)

1 Plaintiff Center for Environmental Health, in the public interest, based on
2 information and belief and investigation of counsel, except for information based on knowledge,
3 hereby makes the following allegations:

4 INTRODUCTION

5 1. This Complaint seeks to remedy Defendants' continuing failure to warn
6 individuals in California that they are being exposed to lead and lead compounds (collectively,
7 "Lead"), chemicals known to the State of California to cause cancer and birth defects or other
8 reproductive harm. Such exposures have occurred, and continue to occur, through the
9 manufacture, distribution, sale and use of Defendants' sport balls, bats and volleyballs that
10 are made of or contain components made of vinyl (the "Products"). Consumers, including
11 children, are exposed to Lead when they use the Products.

12 2. Under California's Proposition 65, which is codified at Health and Safety
13 Code §25249.5 *et seq.*, it is unlawful for businesses to knowingly and intentionally expose
14 individuals in California to chemicals known to the State to cause cancer, birth defects or other
15 reproductive harm without providing clear and reasonable warnings to individuals prior to their
16 exposure. Defendants introduce Products contaminated with significant quantities of Lead into
17 the California marketplace, exposing consumers of their Products, many of whom are children, to
18 Lead.

19 3. Despite the fact that Defendants expose children and other consumers to
20 Lead, Defendants provide no warnings whatsoever about the carcinogenic or reproductive
21 hazards associated with Lead exposure. Defendants' conduct thus violates the warning provision
22 of Proposition 65. Health & Safety Code §25249.6.

23 PARTIES

24 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a
25 non-profit corporation dedicated to protecting the public from environmental health hazards and
26 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the
27 State of California. CEH is a "person" within the meaning of Health & Safety Code
28 §25249.11(a) and brings this enforcement action in the public interest pursuant to Health &

1 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair
2 play and substantial justice.

3 12. Venue is proper in the Marin Superior Court because one or more of the
4 violations arise in the County of Marin.

5 **BACKGROUND FACTS**

6 13. The People of the State of California have declared by initiative under
7 Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth
8 defects, or other reproductive harm.” Proposition 65, §1(b).

9 14. To effectuate this goal, Proposition 65 prohibits exposing people to
10 chemicals listed by the State of California as known to cause cancer, birth defects or other
11 reproductive harm above certain levels without a “clear and reasonable warning” unless the
12 business responsible for the exposure can prove that it fits within a statutory exemption. Health
13 & Safety Code §25249.6 states, in pertinent part:

14 No person in the course of doing business shall knowingly and
15 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 such individual. . .

17 15. On February 27, 1987, the State of California officially listed lead as a
18 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive
19 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to
20 the developing fetus, “female reproductive toxicity,” which means harm to the female
21 reproductive system, and “male reproductive toxicity,” which means harm to the male
22 reproductive system. 27 California Code of Regulations (“C.C.R.”) §27001(c). On February 27,
23 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead
24 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
25 under Proposition 65. 27 C.C.R. §27001(c); Health & Safety Code §25249.10(b).

26 16. On October 1, 1992, the State of California officially listed lead and lead
27 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
28 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear

1 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.
2 §27001(c); Health & Safety Code §25249.10(b).

3 17. Young children are especially susceptible to the toxic effects of Lead.
4 Children show a greater sensitivity to Lead's effects than do adults. Adverse health impacts from
5 Lead exposure generally occur in children at lower blood Lead levels than in adults. Children
6 absorb and retain more Lead in proportion to their weight than do adults. Young children also
7 show a greater prevalence of iron deficiency, a condition that can increase gastrointestinal
8 absorption of Lead. The body accumulates Lead over a lifetime and releases it slowly, so even
9 small doses received in childhood, over time, can cause adverse health impacts, including but not
10 limited to reproductive toxicity, later in life. For example, in times of physiological stress, such
11 as pregnancy, the body can mobilize accumulated stores of Lead in tissue and bone, thereby
12 increasing the level of Lead in the blood and increasing the risk of harm to the fetus.

13 18. There is no safe level of exposure to Lead and even minute amounts of
14 Lead exposure have been shown to permanently reduce mental capacity. Davis, J.M.,
15 Svendgaard, D.J.; "Lead and Child Development"; *Nature* 329:297-300, 1987. One study on the
16 effect of childhood Lead exposure declared that even the smallest detectable amount of blood
17 Lead levels in children can mean the difference between an A or B grade in school. Lanphear,
18 B.P., Dietrich, K., Auinger, P., Cox, C.; "Subclinical Lead Toxicity in U.S. Children and
19 Adolescents"; *Neurodevelopmental Disabilities II Platform*, 2000. Another study followed
20 children into adulthood and found a sevenfold increase in the risk for developing a reading
21 disability among children exposed to sufficient levels of Lead as toddlers. Needleman, H.L.,
22 Schell, A., Bellinger, D., Leviton, A., Allred, E.N.; "The Long-Term Effects of Exposure to Low
23 Doses of Lead in Childhood: An 11-Year Follow-up Report"; *New England Journal of Medicine*;
24 322:83-88, 1990.

25 19. Defendants' Products contain sufficient quantities of Lead such that
26 consumers, including children, who handle the Products are exposed to Lead through the average
27 use of the Products. The routes of exposure for the violation include direct ingestion when
28 consumers, including children, place the Products in their mouths, ingestion via hand to mouth

1 contact after consumers, including children, touch or handle the Products, and dermal absorption
2 directly through the skin when consumers, including children, touch or handle the Products.

3 20. Any person acting in the public interest has standing to enforce violations
4 of Proposition 65 provided that such person has supplied the requisite public enforcers with a
5 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the
6 action within such time. Health & Safety Code §25249.7(d).

7 21. More than sixty days prior to naming each Defendant in this lawsuit, CEH
8 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General,
9 the District Attorneys of every county in California, the City Attorneys of every California city
10 with a population greater than 750,000 and to each of the named Defendants. In compliance with
11 Health & Safety Code §25249.7(d) and 27 C.C.R. §25903(b), each of the Notices included the
12 following information: (1) the name and address of the violators; (2) the statute violated; (3) the
13 time period during which violations occurred; (4) specific descriptions of the violations,
14 including (a) the routes of exposure to Lead from the Products, and (b) the specific type of
15 Products sold and used in violation of Proposition 65; and (5) the name of the specific
16 Proposition 65-listed chemical (Lead) that is the subject of the violations described in each of the
17 Notices.

18 22. CEH also sent a Certificate of Merit for each of the Notices to the
19 California Attorney General, the District Attorneys of every county in California, the City
20 Attorneys of every California city with a population greater than 750,000 and to the named
21 Defendants. In compliance with Health & Safety Code §25249.7(d) and 11 C.C.R. §3101, each
22 of the Certificates certified that CEH’s counsel: (1) has consulted with one or more persons with
23 relevant and appropriate experience or expertise who reviewed facts, studies or other data
24 regarding the exposures to Lead alleged in each of the Notices; and (2) based on the information
25 obtained through such consultations, believes that there is a reasonable and meritorious case for a
26 citizen enforcement action based on the facts alleged in each of the Notices. In compliance with
27 Health & Safety Code §25249.7(d) and 11 C.C.R. §3102, each of the Certificates served on the
28 Attorney General included factual information – provided on a confidential basis – sufficient to

1 establish the basis for the Certificate, including the identity of the person(s) consulted by CEH's
2 counsel and the facts, studies or other data reviewed by such persons.

3 23. None of the public prosecutors with the authority to prosecute violations
4 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against the
5 Proposition 65 Defendants under Health & Safety Code §25249.5, *et seq.*, based on the claims
6 asserted in the Notice.

7 24. Defendants both know and intend that individuals, including children, will
8 handle the Products, thus exposing them to Lead.

9 25. The Products are typically made from polyvinyl chloride ("PVC"). The
10 association between PVC and Lead exposure has been widely discussed in the media in recent
11 years, with particular attention given to products made from PVC that are marketed to children.
12 Defendants' Products are also made with pigments, many of which contain Lead. Many of the
13 Defendants' Products are made for and marketed to children.

14 26. Defendants have been informed of the Lead in their Products by the 60-
15 Day Notice of Violation served on them by CEH.

16 27. Nevertheless, Defendants continue to expose consumers, including
17 children, to Lead without prior clear and reasonable warnings regarding the carcinogenic or
18 reproductive hazards of Lead.

19 28. CEH has engaged in good-faith efforts to resolve the claims alleged herein
20 prior to filing this complaint.

21 29. Any person "violating or threatening to violate" Proposition 65 may be
22 enjoined in any court of competent jurisdiction. Health & Safety Code §25249.7. "Threaten to
23 violate" is defined to mean "to create a condition in which there is a substantial probability that a
24 violation will occur." Health & Safety Code §25249.11(e). Proposition 65 provides for civil
25 penalties not to exceed \$2,500 per day for each violation of Proposition 65.

26 **FIRST CAUSE OF ACTION**

27 **(Violations of the Health & Safety Code §25249.6)**

28 30. CEH realleges and incorporates by reference as if specifically set forth

1 herein Paragraphs 1 through 29, inclusive.

2 31. By placing the Products into the stream of commerce, Defendants are a
3 person in the course of doing business within the meaning of Health & Safety Code §25249.11.

4 32. Defendants know that average use of the Products will expose users of the
5 Products to Lead. Defendants intend that the Products be used in a manner that results in users
6 of the Products being exposed to Lead contained in the Products.

7 33. The Defendants have failed, and continue to fail, to provide clear and
8 reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead to users of
9 the Products.

10 34. Lead is a chemical listed by the State of California as known to cause
11 cancer, birth defects and other reproductive harm.

12 35. By committing the acts alleged above, the Defendants have at all times
13 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing
14 individuals to Lead without first giving clear and reasonable warnings to such individuals
15 regarding the carcinogenicity and reproductive toxicity of Lead.

16 Wherefore, CEH prays judgment against the Defendants, as set forth hereafter.

17 **PRAYER FOR RELIEF**

18 Wherefore, CEH prays for judgment against Defendants as follows:

19 1. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil
20 penalties against each of the Defendants in the amount of \$2,500 per day for each violation of
21 Proposition 65 according to proof;

22 2. That the Court, pursuant to Health & Safety Code §25249.7(a),
23 preliminarily and permanently enjoin Defendants from offering the Products for sale in
24 California with sufficient quantities of Lead such that users of the Products are exposed to a
25 “significant amount” of Lead under Proposition 65 without providing clear and reasonable
26 warnings, as CEH shall specify in further application to the Court;

27 3. That the Court, pursuant to Health & Safety Code §25249.7(a), order
28 Defendants to take action to stop ongoing unwarned exposures to Lead resulting from use of

1 Products sold by Defendants, as CEH shall specify in further application to the Court;

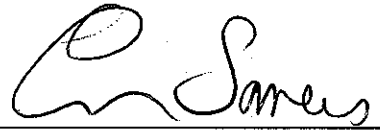
2 4. That the Court, pursuant to Code of Civil Procedure §1021.5 and/or any
3 other applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

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

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7 Dated: October 31, 2008

Respectfully submitted,

8 LEXINGTON LAW GROUP, LLP

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11 Eric S. Somers
12 Attorneys for Plaintiff
13 CENTER FOR ENVIRONMENTAL
14 HEALTH
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