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**FILED**

**MAR 13 2009**

KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT

*By: S. Hendryx, Deputy*

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF MARIN

10 UNLIMITED CIVIL JURISDICTION

11  
12 ANTHONY E. HELD, Ph.D., P.E.,

13 Plaintiff,

14 v.

15 EASTON SPORTS, INC.; EASTON-BELL  
SPORTS, INC.; and DOES 1-150, inclusive,

16 Defendants.  
17

Case No. CIV 091146

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

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  
5 found in children’s vinyl baseball/sporting toys sold in California.

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

10 3. High levels of di(2-ethylhexyl)phthalate are commonly found in and/or on  
11 children’s vinyl baseball/sporting toys that defendants manufacture, distribute and/or offer for  
12 sale to consumers throughout 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  
16 the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
17 warning to such individual. . . .” (*Cal. Health & Safety Code § 25249.6.*)

18 5. On October 24, 2003, California identified and listed di(2-ethylhexyl)phthalate as  
19 a 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 October 24, 2004.  
22 (*27 CCR § 27001; Cal. Health & Safety Code § 25249.8.*)

23 6. Di(2-ethylhexyl)phthalate shall hereinafter be referred to as the “LISTED  
24 CHEMICAL.”

25 7. Defendants manufacture, distribute, and/or sell children’s vinyl baseball/sporting  
26 toys with excessive levels of the LISTED CHEMICAL including, but not limited to, *Easton Ball*  
27 *Gloves, ETX9N (#0 85925 73541 1)*. All such children’s vinyl baseball/sporting toys containing  
28 the LISTED CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”



1 engage in the process of research, testing, designing, assembling, fabricating and/or  
2 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

3 17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons  
4 doing business within the meaning of California Health & Safety Code § 25249.11.

5 18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or  
6 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in  
7 the State of California.

8 19. Defendants DOES 101-150 (“RETAIL DEFENDANTS”) are each persons doing  
9 business within the meaning of California Health & Safety Code § 25249.11.

10 20. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the  
11 State of California.

12 21. At this time, the true names of Defendants DOES 1 through 150, inclusive, are  
13 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to  
14 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that  
15 each of the fictitiously named defendants is responsible for the acts and occurrences herein  
16 alleged. When ascertained, their true names shall be reflected in an amended complaint.

17 22. EASTON SPORTS, EASTON-BELL, MANUFACTURER DEFENDANTS,  
18 DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate,  
19 collectively be referred to hereinafter as “DEFENDANTS.”

20 **VENUE AND JURISDICTION**

21 23. Venue is proper in the Marin County Superior Court, pursuant to Code of Civil  
22 Procedure §§ 394, 395, 395.5, because this Court is a court of competent jurisdiction, because  
23 one or more instances of wrongful conduct occurred, and continues to occur, in the County of  
24 Marin and/or because DEFENDANTS conducted, and continue to conduct, business in this  
25 County with respect to the PRODUCTS.

26 24. The California Superior Court has jurisdiction over this action pursuant to  
27 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction in  
28

1 all causes except those given by statute to other trial courts.” The statute under which this action  
2 is brought does not specify any other basis of subject matter jurisdiction.

3 25. The California Superior Court has jurisdiction over DEFENDANTS based on  
4 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
5 association that either are citizens of the State of California, have sufficient minimum contacts in  
6 the State of California, or otherwise purposefully avail themselves of the California market.  
7 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California  
8 courts consistent with traditional notions of fair play and substantial justice.

9 **FIRST CAUSE OF ACTION**

10 **(Violation of Proposition 65 – Against All Defendants)**

11 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
12 Paragraphs 1 through 25, inclusive.

13 27. The citizens of the State of California have expressly stated in the Safe Drinking  
14 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, et seq.  
15 (Proposition 65) that they must be informed “about exposures to chemicals that cause cancer,  
16 birth defects and other reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

17 28. Proposition 65 states, “No person in the course of doing business shall knowingly  
18 and intentionally expose any individual to a chemical known to the state to cause cancer or  
19 reproductive toxicity without first giving clear and reasonable warning to such individual....”  
20 (*Id.*)

21 29. On November 7, 2008, a sixty-day notice of violation, together with the requisite  
22 certificate of merit, was provided to EASTON SPORTS, EASTON-BELL and various public  
23 enforcement agencies stating that as a result of DEFENDANTS’ sales of the PRODUCTS,  
24 purchasers and users in the State of California were being exposed to the LISTED CHEMICAL  
25 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual  
26 purchasers and users first having been provided with a “clear and reasonable warning” regarding  
27 such toxic exposures (“60-Day Notice of Violation”). On March 5, 2009, a supplemental sixty-  
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1 day notice of violation, together with the requisite certificate of merit, was provided to EASTON  
2 SPORTS, EASTON-BELL and various public enforcement agencies.

3 30. DEFENDANTS have engaged in the manufacture, distribution and/or offering of  
4 the 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 60-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 60-Day Notice of Violation, the  
10 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
11 cause 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  
14 limits.

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

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

21 35. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
22 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined  
23 by 27 CCR § 25602(b).

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

27 37. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
28 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-

1 accidental participation in the manufacture, distribution and/or offer for sale or use of  
2 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/or ingestion during the  
6 reasonably 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/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold  
10 by DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to  
11 suffer, 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 are liable for a  
13 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &  
14 Safety Code § 25249.7(b).

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

18 42. Wherefore, plaintiff prays for judgment against DEFENDANTS as set forth  
19 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 in the amount of \$2,500 per day for each violation  
24 alleged herein;

25 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),  
26 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing or  
27 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable  
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1 warnings” as defined by 27 CCR § 25601, as to the harms associated with exposures to the  
2 LISTED CHEMICAL;

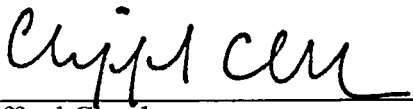
3 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

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

5 Respectfully Submitted,

6 Dated: March 13, 2009

HIRST & CHANLER LLP

7  
8 By:   
9 Clifford Chanler  
10 Attorneys for Plaintiff  
11 ANTHONY E. HELD, Ph.D., P.E.  
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