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Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: T. Fraguero, Deputy

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

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

13 Plaintiff,)

14 v.)

15 SAKAR INTERNATIONAL, INC.; TOYS "R")
16 US, INC.; and DOES 1 through 200, inclusive,)

17 Defendants.)
18

Case No. CIV 1003909

**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 and other
8 reproductive harm. Such exposures have occurred, and continue to occur, through the
9 manufacture, distribution, sale and/or use of The Biggest Loser Fitness Kit (the "Products").
10 Consumers are exposed to Lead when they touch or handle the Products.

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

17 3. Despite the fact that Defendants expose consumers who come into contact
18 with the Products to Lead, Defendants provide no warnings whatsoever about the carcinogenic or
19 reproductive hazards associated with these Lead exposures. Defendants' conduct thus violates
20 the warning provision of Proposition 65. Health & Safety Code § 25249.6.

21 **PARTIES**

22 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a
23 non-profit corporation dedicated to protecting the public from environmental health hazards and
24 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the
25 State of California. CEH is a "person" within the meaning of Health & Safety Code
26 § 25249.11(a) and brings this enforcement action in the public interest pursuant to Health &
27 Safety Code § 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy
28 group that has prosecuted a large number of Proposition 65 cases in the public interest. These

1 17. The body accumulates Lead over a lifetime and releases it slowly, so even
2 small doses received over time can cause adverse health impacts, including but not limited to
3 reproductive toxicity. For example, in times of physiological stress, such as pregnancy, the body
4 can mobilize accumulated stores of Lead in tissue and bone, thereby increasing the level of Lead
5 in the blood and increasing the risk of harm to the fetus.

6 18. There is no safe level of exposure to Lead and even minute amounts of
7 Lead exposure have been proven harmful to children and adults. Recent studies have repeatedly
8 concluded that concentrations of Lead in children's blood previously deemed acceptable can
9 have adverse health effects. *See, e.g.,* Canfield, R.L., *et al.*, "Intellectual Impairment in Children
10 with Blood Lead Concentrations below 10 ug per Deciliter," *New England Journal of Medicine*
11 348:16, 2003. Another study on the effect of childhood Lead exposure declared that even the
12 smallest detectable amount of blood Lead levels in children can mean the difference between an
13 A or B grade in school. Lanphear, B.P., Dietrich, K., Auinger, P., Cox, C., "Subclinical Lead
14 Toxicity in U.S. Children and Adolescents," *Neurodevelopmental Disabilities II Platform*, 2000.

15 19. Lead exposures for pregnant women are also of particular concern in light
16 of evidence that even short term lead exposures *in utero* may have long-term harmful effects.
17 Hu, H., *et al.*, "Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant Mental
18 Development," *Environmental Health Perspectives* 114:11, 2006; Schnaas, Lourdes, *et al.*,
19 "Reduced Intellectual Development in Children with Prenatal Lead Exposure," *Environmental*
20 *Health Perspectives* 114:5, 2006.

21 20. Lead is found in the vinyl carrying case for the Products. Defendants'
22 Products contain sufficient quantities of Lead such that consumers who use, touch and/or handle
23 the Products are exposed to Lead through the average use of the Products. The route of exposure
24 for the violations is ingestion via hand-to-mouth contact and dermal absorption directly through
25 the skin.

26 21. No clear and reasonable warning is provided with the Products regarding
27 the carcinogenic or reproductive hazards of Lead.

28 22. Any person acting in the public interest has standing to enforce violations

1 of Proposition 65 provided that such person has supplied the requisite public enforcers with a
2 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the
3 action within such time. Health & Safety Code § 25249.7(d).

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

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

27 25. None of the public prosecutors with the authority to prosecute violations
28 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against

1 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in the
2 Notice.

3 26. Under Proposition 65, an exposure is “knowing” where the party
4 responsible for such exposure has:

5 knowledge of the fact that a[n] . . . exposure to a chemical listed
6 pursuant to [Health & Safety Code § 25249.8(a)] is occurring. No
7 knowledge that the . . . exposure is unlawful is required.

8 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
9 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
10 § 12201).

11 27. As companies that manufacture, import, distribute and/or sell the Products,
12 Defendants know or should know that the Products contain Lead and that individuals who use
13 the Products will be exposed to Lead. The Lead exposures to consumers who use the Products
14 are a natural and foreseeable consequence of Defendants’ placing the Products into the stream of
15 commerce. Defendants both know and intend that individuals will touch and/or handle the
16 Products, thus exposing them to Lead.

17 28. Defendants have been informed of the Lead in their Products by the 60-
18 Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.

19 29. Nevertheless, Defendants continue to expose consumers to Lead without
20 prior clear and reasonable warnings regarding the carcinogenic and/or reproductive hazards of
21 Lead.

22 30. CEH has engaged in good-faith efforts to resolve the claims alleged herein
23 prior to filing this complaint.

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

1 **FIRST CAUSE OF ACTION**

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

3 32. CEH realleges and incorporates by reference as if specifically set forth
4 herein Paragraphs 1 through 31, inclusive.

5 33. By placing the Products into the stream of commerce, each Defendant is a
6 person in the course of doing business within the meaning of Health & Safety Code § 25249.11.

7 34. Lead is a chemical listed by the State of California as known to cause
8 cancer and birth defects or other reproductive harm.

9 35. Defendants know that average use of the Products will expose users of the
10 Products to Lead. Defendants intend that the Products be used in a manner that results in users
11 of the Products being exposed to Lead contained in the Products.

12 36. Defendants have failed, and continue to fail, to provide prior clear and
13 reasonable warnings regarding the carcinogenicity and reproductive toxicity of Lead to users of
14 the Products.

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

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

20 **PRAYER FOR RELIEF**

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

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

25 2. That the Court, pursuant to Health & Safety Code § 25249.7(a),
26 preliminarily and permanently enjoin Defendants from offering the Products for sale in
27 California without providing prior clear and reasonable warnings, as CEH shall specify in further
28 application to the Court;

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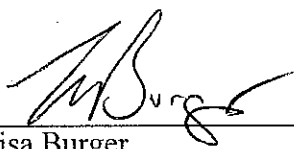
3. That the Court, pursuant to Health & Safety Code § 25249.7(a), order Defendants to take action to stop ongoing unwarned exposures to Lead resulting from use of Products sold by Defendants, as CEH shall specify in further application to the Court;

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

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

Dated: July 26, 2010

Respectfully submitted,
LEXINGTON LAW GROUP



Lisa Burger
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH