

1 Clifford A. Chanler, State Bar No. 135534
2 Gregory M. Sheffer, State Bar No. 173124
3 THE CHANLER GROUP
4 81 Throckmorton Ave., Suite 202
5 Mill Valley, CA 94941
6 Telephone: 415.388.0911
7 Facsimile: 415.388.9911

8 Attorneys for Plaintiff
9 RUSSELL BRIMER

FILED

MAK 16 2011

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF MARIN
12 UNLIMITED CIVIL JURISDICTION

13 RUSSELL BRIMER,

14 Plaintiff,

15 v.

16 FRANKLIN SPORTS, INC. and DOES 1-
17 150,

18 Defendants.

Case No. 01101389

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

NATURE OF THE ACTION

1
2 1. This Complaint is a representative action brought by plaintiff RUSSELL
3 BRIMER, in the public interest of the citizens of the State of California, to enforce the People’s
4 right to be informed of the presence of lead, a toxic chemical found in certain sports belts
5 manufactured, distributed and/or otherwise sold by defendants in California.

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

11 3. On February 27, 1987, the State of California identified and listed lead as a
12 chemical known to cause birth defects and other reproductive harm. Lead became subject to the
13 warning requirement one year later and was therefore subject to the “clear and reasonable
14 warning” requirements of Proposition 65, beginning on February 27, 1988. (*27 CCR § 27001*
15 *(c); Cal. Health & Safety Code § 25249.8.*) Lead shall hereinafter be referred to as the
16 “LISTED CHEMICAL.”

17 4. Significant levels of the LISTED CHEMICAL have been discovered in or on
18 certain materials comprising the sports belts that defendants manufacture, distribute, and/or
19 offer for sale to consumers throughout the State of California including, but not limited to,
20 *Baseball Belt, Gold, SKU #24259507 (#0 25725 24279 5)*. All such sports belts containing the
21 LISTED CHEMICAL shall hereinafter be referred to as the “PRODUCTS.”

22 5. Defendants’ failure to warn consumers and/or other individuals in the State of
23 California about their exposures to the LISTED CHEMICAL in conjunction with defendants’
24 sale of the PRODUCTS is a violation of Proposition 65.

25 6. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and
26 permanent injunctive relief to compel defendants to provide purchasers or users of the
27 PRODUCTS with the required warning regarding the health hazards of the LISTED
28 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

7. Plaintiff also seeks civil penalties against defendants for their violations of Proposition 65, as provided for by California Health & Safety Code Section 25249.7(b).

PARTIES

8. Plaintiff RUSSELL BRIMER is a citizen of the State of California who is dedicated to protecting the health of California citizens through the elimination or reduction of toxic exposures from consumer products, and brings this action in the public interest pursuant to California Health & Safety Code Section 25249.7.

9. Defendants FRANKLIN SPORTS, INC. is a person doing business within the meaning of California Health & Safety Code Section 25249.11.

10. Defendants FRANKLIN SPORTS, INC. manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California or implies by its conduct that they manufacture, distribute, and/or offer the PRODUCTS for sale or use in the State of California.

11. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons doing business within the meaning of California Health & Safety Code Section 25249.11.

12. MANUFACTURER DEFENDANTS engage in the process of research, testing, designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they engage in the process of research, testing, designing, assembling, fabricating, and/or manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

13. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons doing business within the meaning of California Health & Safety Code Section 25249.11.

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

15. Defendants DOES 101-150 ("RETAIL DEFENDANTS") are each persons doing business within the meaning of California Health & Safety Code Section 25249.11.

16. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State of California.

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

6 18. FRANKLIN SPORTS, INC., MANUFACTURER DEFENDANTS,
7 DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate,
8 collectively be referred to hereinafter as "DEFENDANTS".

9 **VENUE AND JURISDICTION**

10 19. Venue is proper in the Marin County Superior Court, pursuant to Code of Civil
11 Procedure Sections 394, 395, and 395.5, because this Court is a court of competent jurisdiction,
12 because one or more instances of wrongful conduct occurred, and continues to occur, in the
13 County of Marin and/or because DEFENDANTS conducted, and continue to conduct, business
14 in this County with respect to the PRODUCTS.

15 20. The California Superior Court has jurisdiction over this action pursuant to
16 California Constitution Article VI, Section 10, which grants the Superior Court "original
17 jurisdiction in all causes except those given by statute to other trial courts." The statute under
18 which this action is brought does not specify any other basis of subject matter jurisdiction.

19 21. The California Superior Court has jurisdiction over DEFENDANTS based on
20 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or
21 association that either are citizens of the State of California, have sufficient minimum contacts
22 in the State of California, or otherwise purposefully avail themselves of the California market.
23 DEFENDANTS' purposeful avilment renders the exercise of personal jurisdiction by
24 California courts consistent with traditional notions of fair play and substantial justice.

25 ///

26 ///

27 ///

(Violation of Proposition 65 - Against All Defendants)

22. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein, Paragraphs 1 through 21, inclusive.

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

24. On October 15, 2010, a sixty-day notice of violation (“60-Day Notice”), together with the requisite Certificate of Merit, was provided to FRANKLIN SPORTS, INC. and various public enforcement agencies stating that as a result of the DEFENDANTS’ sales of the PRODUCTS, purchasers and users in the State of California are being exposed to lead resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first having been provided with a “clear and reasonable warning” regarding such toxic exposures.

25. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 and DEFENDANTS’ manufacture, distribution, and/or offering of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6 has continued to occur beyond DEFENDANTS’ receipt of plaintiff’s 60-Day Notice. Plaintiff further alleges and believes that such violations will continue to occur into the future.

26. After receipt of the claims asserted in the 60-Day Notice, the appropriate public enforcement agencies have failed to commence and diligently prosecute a cause of action against DEFENDANTS under Proposition 65.

27. The PRODUCTS manufactured, distributed, and/or offered for sale or use in California by DEFENDANTS contain the LISTED CHEMICAL.

28. DEFENDANTS knew or should have known that the PRODUCTS contained the LISTED CHEMICAL.

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

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

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

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

11
12 Dated: March 15, 2011

Respectfully submitted,

13 THE CHANLER GROUP

14
15 By: 

16 Gregory M. Sheffer
17 Attorneys for Plaintiff
18 RUSSELL BRIMER
19
20
21
22
23
24
25
26
27
28