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CENTER FOR ENVIRONMENTAL HEALTH  
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF MARIN  
12

13 CENTER FOR ENVIRONMENTAL HEALTH, )  
14 a non-profit corporation, )

15 Plaintiff, )

16 v. )

17 MARKWORT SPORTING GOODS )  
18 COMPANY; and DOES 1 through 200, )  
inclusive, )

19 Defendants. )  
20

**FILED**

JAN 16 2014

KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: E. Chais, Deputy

Case No. CIV1301329

**FIRST AMENDED 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 use of the following specific products: (1) the Markwort 9 oz.  
10 Color Coded Weighted Baseball in Green, Item No. WT9; (2) the Markwort Youth Baseball  
11 Elastic Belt in Kelly Green, Item No. EB14Y-K, SKU No. 0-16562-25079-1; and (3) the  
12 Markwort Youth Baseball Elastic Belt in Light Gold, Item No. EB14Y-LG, SKU No.  
13 0-16562-25072-2 (collectively, the "Products"). Consumers, including children, are exposed to  
14 Lead when they use, touch or handle Defendants' Products.

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

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

#### 25 PARTIES

26 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a  
27 non-profit corporation dedicated to protecting the public from environmental health hazards and  
28 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the



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

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

5 **BACKGROUND FACTS**

6 12. 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 13. 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 14. 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 Cal. Code Regs. (“C.C.R.”) § 27001(c). On February 27, 1988, one  
23 year after it was listed as a chemical known to cause reproductive toxicity, lead became subject to  
24 the clear and reasonable warning requirement regarding reproductive toxicants under Proposition  
25 65. *Ibid.*; Health & Safety Code § 25249.10(b).

26 15. 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           16.     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           17.     There is no safe level of exposure to Lead and even minute amounts of  
14 Lead exposure have been proven harmful to children and adults. Studies have repeatedly  
15 concluded that concentrations of Lead in children's blood previously deemed acceptable can  
16 have adverse health effects. *See, e.g.,* Canfield, R.L., *et al.*, "Intellectual Impairment in Children  
17 with Blood Lead Concentrations below 10 ug per Deciliter," *New England Journal of Medicine*  
18 348:16, 2003. Another recent study found that childhood Lead exposure predicts intellectual  
19 functioning in early adulthood in that adult IQ levels are inversely associated with blood Lead  
20 concentrations from childhood. Mazumdar, M., *et al.*, "Low-Level Environmental Lead  
21 Exposure in Childhood and Adult Intellectual Function: A Follow-Up Study," *Environmental*  
22 *Health* 10:24, 2011; *see also* Lanphear, B.P., *et al.*, "Subclinical Lead Toxicity in U.S. Children  
23 and Adolescents," *Neurodevelopmental Disabilities II Platform*, 2000 (concluded that even the  
24 smallest detectable amount of blood Lead levels in children can mean the difference between an  
25 A or B grade in school).

26           18.     Lead exposures for pregnant women are also of particular concern in light  
27 of evidence that even short term lead exposures *in utero* may have long-term harmful effects.  
28 Hu, H., *et al.*, "Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant Mental

1 Development,” *Environmental Health Perspectives* 114:11, 2006; Schnaas, Lourdes, *et al.*,  
2 “Reduced Intellectual Development in Children with Prenatal Lead Exposure,” *Environmental*  
3 *Health Perspectives* 114:5, 2006.

4 19. Defendants’ Products contain sufficient quantities of Lead such that  
5 consumers, including children, who use, touch or handle the Products are exposed to Lead  
6 through the average use of the Products. The routes of exposure for the violations are ingestion  
7 via hand-to-mouth contact after consumers touch or handle the Products; dermal absorption  
8 directly through the skin when consumers touch or handle the Products; and direct ingestion  
9 when consumers (including children) place the Products in their mouths. These exposures occur  
10 in homes, workplaces and everywhere else throughout California where these Products are used,  
11 touch or handled.

12 20. No clear and reasonable warning is provided with the Products regarding  
13 the carcinogenic or reproductive hazards of Lead.

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

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

28 23. CEH also sent a Certificate of Merit for each Notice to the California

1 Attorney General, the District Attorneys of every county in California, the City Attorneys of  
2 every California city with a population greater than 750,000 and to each of the named  
3 Defendants. In compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each  
4 Certificate certified that CEH's counsel: (1) has consulted with one or more persons with  
5 relevant and appropriate experience or expertise who reviewed facts, studies or other data  
6 regarding the exposures to Lead alleged in each Notice; and (2) based on the information  
7 obtained through such consultations, believes that there is a reasonable and meritorious case for a  
8 citizen enforcement action based on the facts alleged in each Notice. In compliance with Health  
9 & Safety Code § 25249.7(d) and 11 C.C.R. § 3102, each Certificate served on the Attorney  
10 General included factual information – provided on a confidential basis – sufficient to establish  
11 the basis for the Certificate, including the identity of the person(s) consulted by CEH's counsel  
12 and the facts, studies or other data reviewed by such persons.

13           24. None of the public prosecutors with the authority to prosecute violations  
14 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against  
15 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in each  
16 of CEH's Notices.

17           25. Defendants both know and intend that individuals, including children, will  
18 use, touch or handle the Products, thus exposing them to Lead.

19           26. Under Proposition 65, an exposure is "knowing" where the party  
20 responsible for such exposure has:

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

24           27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final  
25 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,  
26 § 12201).

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



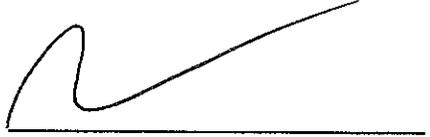


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5. That the Court grant such other and further relief as may be just and proper.

Dated: January 16, 2014

Respectfully submitted,  
LEXINGTON LAW GROUP



Howard Hirsch  
Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH