

# **SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION**

SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)

**DATE:** August 14, 2008

**TO:** Larry Franklin, President – Franklin Sports, Inc.  
California Attorney General's Office;  
District Attorney's Office for 58 Counties; and  
City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles

**FROM:** Anthony E. Held, Ph.D., P.E.

## **I. INTRODUCTION**

My name is Anthony E. Held. I hold a Doctor of Philosophy degree in Environmental Engineering and I am a registered professional engineer in the state of California. I am a citizen of the State of California acting in the interest of the general public. I seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items. This Notice is provided to the parties listed above pursuant to California Health & Safety Code §25249.6 *et seq.* ("Proposition 65") and supplements the 60-Day Notice of Violation sent on November 20, 2007. As noted above, notice is being provided to the violator, Franklin Sports, Inc. (the "Violator"). The violations covered by this Notice consist of the product exposures, routes of exposures, and types of harm potentially resulting from exposure to the toxic chemical ("listed chemical") identified below, as follows:

Product Exposure: See Section VI. Exhibit A  
Listed Chemical: Di(2-ethylhexyl)phthalate  
Routes of Exposure: Ingestion, Dermal  
Types of Harm: Birth Defects and Other Reproductive Harm

## **II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)**

The specific type of products that is causing consumer and occupational exposures in violation of Proposition 65, and that is covered by this Notice, is listed under "Product Category/Type" in Exhibit A in Section VI below. All products within the type covered by this Notice shall be referred to hereinafter as the "products." The Violator's sales of these products dating back as far as August 14, 2007 are subject to this notice. As a result of the sales of these products, exposures to the listed chemical have been occurring without clear and reasonable warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposures to the listed chemical, resulting from contact with the products, California citizens lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the toxic chemical from the reasonably foreseeable use of the products.

California citizens, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemical. By way of example but not limitation, exposures occur when infants and children place the products, or a portion thereof, into their mouth, or otherwise suck, lick, teethe and/or bite the product. In addition, exposures occur through direct dermal contact with the products, and may continue to occur for a significant period after the products are removed from the skin. These activities cause infants and children to be exposed directly through migration of the listed chemical from the products. People likely to be exposed are infants and children.

### III. CONTACT INFORMATION

Please direct all questions concerning this notice to me at the following address:

Anthony E. Held, Ph.D., P.E.  
c/o David Lavine  
c/o Clifford Chanler  
Hirst & Chanler LLP  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710  
Telephone: (510) 848-8880

### IV. PROPOSITION 65 INFORMATION

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment's ("OEHHA") Proposition 65 Implementation Office at (916) 445-6900. For the Violator's reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

### V. ADDITIONAL NOTICE INFORMATION

*THIS INFORMATION IS NOT REQUIRED TO BE PROVIDED UNDER CAL. CODE REGS., TITLE 22 §12903(b)(4).*

Identified below are specific examples of products recently purchased and witnessed as being available for purchase or use in California that is within the category or type of offending product covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the examples within the category or type of products are also provided below. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 "clear and reasonable warnings" at one or more locations and/or via other means including, but not limited to, transactions made over-the-counter, business-to-business, through the internet and/or via a catalog by the Violator and other distributors and retailers of the manufacturer.

| <i>Product*</i>   | <i>Retailer(s)</i>                                    | <i>Manufacturer(s)/Distributor(s)</i>       |
|---|---|---|
| Sizzlin' Cool Baseball Glove & Ball #14240S5 (#0 25725 22675 7)                       | Toys "R" Us<br>Sacramento County, Northern California | Franklin Sports, Inc.;<br>Toys "R" Us, Inc. |
| SpongeBob Squarepants Glove & Ball Set, #11715 (#0 25725 21582 9)                     | Target<br>Contra Costa County, Northern California    | Franklin Sports, Inc.                       |
| Official Team Logo Bag, Ball & Glove Set, New York Yankees, #6519F (#0 25725 01485 9) | NFL Shop<br>San Francisco County, Northern California | Franklin Sports, Inc.                       |
| Franklin Baseball Set (Pink), No. 14002 (#0 25725 19138 3)                            | Ross<br>Alameda County, Northern California           | Franklin Sports, Inc.                       |
| Franklin Baseball Set (Blue), No. 14002 (#0 25725 19138 3)                            | Ross<br>Alameda County, Northern California           | Franklin Sports, Inc.                       |
| Franklin Youth Glove and Ball Set, No. 684451 (#0 25725 18946 5)                      | Toys "R" Us<br>Alameda County, Northern California    | Franklin Sports, Inc.                       |
| Sizzlin' Cool Mini Airtech Football, #763273  | Toys "R" Us<br>Alameda County, Northern California    | Franklin Sports, Inc.                       |
| Sizzlin' Cool Micro Airtech Football (Green/Yellow), #5097 (#0 25725 22446 3)         | Toys "R" Us<br>Alameda County, Northern California    | Franklin Sports, Inc.                       |
| SpongeBob Squarepants Football Mini, DC934 (#0 25725 17938 1)                         | Toys "R" Us<br>Alameda County, Northern California    | Franklin Sports, Inc.                       |
| SpongeBob Squarepants Soft Sport 3 Ball Set, #11865511 (#0 25725 22650 4)             | Target<br>Alameda County, Northern California         | Franklin Sports, Inc.                       |
| Sizzlin' Cool Micro Airtech Football (Red/Yellow), #5097 (#0 25725 22446 3)           | Toys "R" Us<br>Alameda County, Northern California    | Franklin Sports, Inc.                       |
| Franklin Soft Foam Air Tech Mini Football, No. 6858 (#0 25725 10433 8)                | Toys "R" Us<br>Alameda County, Northern California    | Franklin Sports, Inc.                       |

| <i>Product*</i>  | <i>Retailer(s)</i>   | <i>Manufacturer(s)/Distributor(s)</i> |
|--|--|---------------------------------------|
| Franklin Soft Foam Air Tech Micro Football Soft Touch, No. 1747 (#0 25725 12482 4)               | Toys "R" Us<br>Alameda County, Northern California                         | Franklin Sports, Inc.                 |
| Sizzlin' Cool Mini Airtech Football (White/Blue/Green), #5096 (#0 25725 22447 0)                 | Toys "R" Us<br>Alameda County, Northern California                         | Franklin Sports, Inc.                 |
| Franklin Team Soft-Sport Baseball, San Francisco Giants, No. 6516F26 (#0 25725 01056 1)          | 99 Cents Only Stores<br>Sacramento County, Northern California             | Franklin Sports, Inc.                 |
| Franklin Ready To Play Fielding Glove, Item: 4510DDS11 (#0 25725 26015 7)                        | Target<br>Alameda County, Northern California                              | Franklin Sports, Inc.                 |
| SpongeBob Squarepants Bat & Ball Set, #11725 (#0 25725 21312 2)                                  | Target<br>Alameda County, Northern California                              | Franklin Sports, Inc.                 |
| Franklin Youth Glove & Ball Set, No. 6844S1F1 (#0 25725 24090 6)                                 | Target<br>San Mateo County, Northern California                            | Franklin Sports, Inc.                 |
| Official Team Logo Bat, Ball & Glove Set, San Francisco Giants, Item: 6519F26 (#0 25725 01501 6) | Toys "R" Us<br>Alameda County, Northern California                         | Franklin Sports, Inc.                 |
| SpongeBob Squarepants Soft Sport All Sport Set, #11711 (#0 25725 21578 2)                        | Toys "R" Us<br>Alameda County, Northern California                         | Franklin Sports, Inc.                 |
| Franklin NHL Micro Hockey Puck, No. 6506F24 (#0 25725 01767 6)                                   | Sharks Territory at Valley Fair<br>Santa Clara County, Northern California | Franklin Sports, Inc.                 |
| Official Team Logo Glove and Ball Set, Los Angeles Dodgers, No. 400SF (#0 25725 01143 8)         | Dodgers Clubhouse<br>Los Angeles County, Southern California               | Franklin Sports, Inc.                 |

# VI. EXHIBIT A

| <i>Product Category/Type</i>                                  | <i>Such As*</i>   | <i>Toxins</i>             |
|---|---|---------------------------|
| Children's Sporting Toys containing Di(2-ethylhexyl)phthalate | Sizzlin' Cool Baseball Glove & Ball #14240S5 (#0 25725 22675 7)                       | Di(2-ethylhexyl)phthalate |
| Children's Sporting Toys containing Di(2-ethylhexyl)phthalate | SpongeBob Squarepants Glove & Ball Set, #11715 (#0 25725 21582 9)                     | Di(2-ethylhexyl)phthalate |
| Children's Sporting Toys containing Di(2-ethylhexyl)phthalate | Official Team Logo Bag, Ball & Glove Set, New York Yankees, #6519F (#0 25725 01485 9) | Di(2-ethylhexyl)phthalate |
| Children's Sporting Toys containing Di(2-ethylhexyl)phthalate | Franklin Baseball Set (Pink), No. 14002 (#0 25725 19138 3)                            | Di(2-ethylhexyl)phthalate |
| Children's Sporting Toys containing Di(2-ethylhexyl)phthalate | Franklin Baseball Set (Blue), No. 14002 (#0 25725 19138 3)                            | Di(2-ethylhexyl)phthalate |
| Children's Sporting Toys containing Di(2-ethylhexyl)phthalate | Franklin Youth Glove and Ball Set, No. 684451 (#0 25725 18946 5)                      | Di(2-ethylhexyl)phthalate |
| Children's Sporting Toys containing Di(2-ethylhexyl)phthalate | Sizzlin' Cool Mini Airtech Football, #763273  | Di(2-ethylhexyl)phthalate |
| Children's Sporting Toys containing Di(2-ethylhexyl)phthalate | Sizzlin' Cool Micro Airtech Football (Green/Yellow), #5097 (#0 25725 22446 3)         | Di(2-ethylhexyl)phthalate |
| Children's Sporting Toys containing Di(2-ethylhexyl)phthalate | SpongeBob Squarepants Football Mini, DC934 (#0 25725 17938 1)                         | Di(2-ethylhexyl)phthalate |
| Children's Sporting Toys containing Di(2-ethylhexyl)phthalate | SpongeBob Squarepants Soft Sport 3 Ball Set, #11865511 (#0 25725 22650 4)             | Di(2-ethylhexyl)phthalate |
| Children's Sporting Toys containing Di(2-ethylhexyl)phthalate | Sizzlin' Cool Micro Airtech Football (Red/Yellow), #5097 (#0 25725 22446 3)           | Di(2-ethylhexyl)phthalate |
| Children's Sporting Toys containing Di(2-ethylhexyl)phthalate | Franklin Soft Foam Air Tech Mini Football, No. 6858 (#0 25725 10433 8)                | Di(2-ethylhexyl)phthalate |

| <i>Product Category/Type</i>                                  | <i>Such As*</i>  | <i>Toxins</i>             |
|---|--|---------------------------|
| Children's Sporting Toys containing Di(2-ethylhexyl)phthalate | Franklin Soft Foam Air Tech Micro Football Soft Touch, No. 1747 (#0 25725 12482 4)               | Di(2-ethylhexyl)phthalate |
| Children's Sporting Toys containing Di(2-ethylhexyl)phthalate | Sizzlin' Cool Mini Airtech Football (White/Blue/Green), #5096 (#0 25725 22447 0)                 | Di(2-ethylhexyl)phthalate |
| Children's Sporting Toys containing Di(2-ethylhexyl)phthalate | Franklin Team Soft-Sport Baseball, San Francisco Giants, No. 6516F26 (#0 25725 01056 1)          | Di(2-ethylhexyl)phthalate |
| Children's Sporting Toys containing Di(2-ethylhexyl)phthalate | Franklin Ready To Play Fielding Glove, Item: 4510DDS11 (#0 25725 26015 7)                        | Di(2-ethylhexyl)phthalate |
| Children's Sporting Toys containing Di(2-ethylhexyl)phthalate | SpongeBob Squarepants Bat & Ball Set, #11725 (#0 25725 21312 2)                                  | Di(2-ethylhexyl)phthalate |
| Children's Sporting Toys containing Di(2-ethylhexyl)phthalate | Franklin Youth Glove & Ball Set, No. 6844S1F1 (#0 25725 24090 6)                                 | Di(2-ethylhexyl)phthalate |
| Children's Sporting Toys containing Di(2-ethylhexyl)phthalate | Official Team Logo Bat, Ball & Glove Set, San Francisco Giants, Item: 6519F26 (#0 25725 01501 6) | Di(2-ethylhexyl)phthalate |
| Children's Sporting Toys containing Di(2-ethylhexyl)phthalate | SpongeBob Squarepants Soft Sport All Sport Set, #11711 (#0 25725 21578 2)                        | Di(2-ethylhexyl)phthalate |
| Children's Sporting Toys containing Di(2-ethylhexyl)phthalate | Franklin NHL Micro Hockey Puck, No. 6506F24 (#0 25725 01767 6)                                   | Di(2-ethylhexyl)phthalate |
| Children's Sporting Toys containing Di(2-ethylhexyl)phthalate | Official Team Logo Glove and Ball Set, Los Angeles Dodgers, No. 400SF (#0 25725 01143 8)         | Di(2-ethylhexyl)phthalate |

\*This specifically identified examples of the type of products which is subject to this Notice is for the recipient's benefit to assist in its investigation of, among other things, the magnitude of potential exposure to the listed chemical from other items within the product category/type listed in Exhibit A. It is important to note that these examples are not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under "Product Category/Type" in Exhibit A. Further, it is this citizen's position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's custody or control) during the relevant period so as to ensure that the requisite toxic warnings are provided to California citizens prior to purchase.

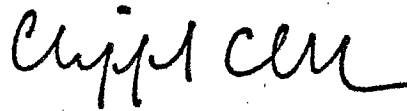
## CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Clifford Chanler, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice has violated Health and Safety Code §25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the *alleged* exposure to the listed chemical that is the subject of this action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health and Safety Code §25249.7(h)(2) (*i.e.*, (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.)

Dated: 8/14/08



Clifford Chanler

## PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, CA 94710.

On August 14, 2008, I served the following documents:

**SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION SENT IN  
COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(d);**

**PROPOSITION 65: A SUMMARY;**

**CERTIFICATE OF MERIT; AND**

**CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE  
ATTORNEY GENERAL)**

on the Violator listed below via First Class Certified Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the Violator and providing the envelope to a United States Postal Service Representative:

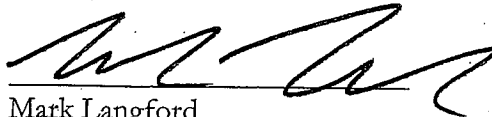
Larry Franklin, President  
Franklin Sports, Inc.  
17 Campanelli Parkway  
Stoughton, MA 02072

as well as providing copies of the notice to the public enforcers by placing a true and correct copy in a sealed envelope, addressed to each party listed below, and served as follows:

|   |   |
|---|---|
| <i>Via 2<sup>nd</sup> Day Air Service by placing such envelope in a Federal Express Drop-Off Box:</i>   | The Attorney General of the State of California;  |
| <i>By placing each envelope in a United States Postal Service mailbox, first class postage prepaid:</i> | The District Attorney for Each of the 58 counties in California; and<br><br>The City Attorney for Los Angeles, San Diego, San Jose, San Francisco and Sacramento; |

*A list of addresses for each of these recipients is attached.*

Executed on August 14, 2008, at Berkeley, California.

  
Mark Langford