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10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SAN DIEGO

12

13 **PEOPLE OF THE STATE OF CALIFORNIA,**
14 Plaintiff,
15 **v.**
16 **COLE NATIONAL CORPORATION, a Delaware**
corporation; COLE NATIONAL GROUP, INC., a
17 **Delaware corporation; COLE VISION**
CORPORATION, a Delaware corporation; COLE
18 **VISION SERVICES, INC., a Delaware corporation;**
PEARLE, INC., a Delaware corporation; PEARLE
19 **VISION, INC., also known as PEARLE VISION**
CENTER, also known as PEARLE VISION
20 **EXPRESS, also known as PEARLE EXPRESS, a**
Delaware corporation; PEARLE VISIONCARE,
21 **INC., a California corporation; STANLEY C.**
PEARLE, an individual; JEFFREY A. COLE, an
22 **individual; PEGGY DEAL, an individual; JOSEPH**
GAGLIOTTI, also known as JOSEPH GAGLIOTTI, an
23 **individual; STEPHEN L. HOLDEN, an individual;**
DENNIS C. OSGOOD, an individual; LARRY
24 **POLLACK, also known as LARRY POLLOCK, an**
individual; DAVID J. SHERRIFF, an individual;
25 **DAVID STEFKO, an individual; and DOES 1-550,**
inclusive,
26 Defendants.
27

CASE NO. GIC783135

**PETITION FOR INJUNCTION
AND COMPLAINT FOR
CIVIL PENALTIES,
RESTITUTION, AND OTHER
EQUITABLE RELIEF**

(General Civil Case)

28

1 The People of the State of California, by and through Bill Lockyer, Attorney General of the State
2 of California, are informed and believe, and based on such information and belief, allege as follows:

3 **GENERAL ALLEGATIONS**

4 1. Defendants transact business in San Diego County and elsewhere throughout
5 California. The violations of law herein alleged have been and are being carried out within San Diego
6 County and elsewhere throughout the state.

7 2. Defendant COLE NATIONAL CORPORATION (“CNC”) is a Delaware
8 corporation which represents itself as being a company “with deep roots in the optical business,” “one
9 of the nation’s leading optical ... retailers,” and “the name behind some of the most recognized brands in
10 the \$15.8 billion optical industry.”

11 3. At all relevant times, defendant CNC’s primary source of liquidity was, and is, funds
12 provided from operations of its wholly owned subsidiaries, including a chain of retail optical stores in
13 California doing business as Pearle Vision, Pearle Vision Express, Pearle Vision Center, Pearle
14 Express, and optical outlets in other retail department and discount stores.^{1/} Defendant CNC is
15 engaged in the manufacture, sale, or distribution to physicians and surgeons, optometrists, or dispensing
16 opticians of lenses, frames, optical supplies, optometric appliances or devices or kindred products.
17 Defendant CNC is not now, nor has it ever been, licensed to practice optometry in the State of
18 California. At all relevant times defendant CNC did business in San Diego County, and elsewhere in
19 California.

20 4. Defendant COLE NATIONAL GROUP, INC., (“CNG”) is a Delaware corporation,
21 is the direct wholly owned subsidiary of defendant CNC, and serves as defendant CNC’s primary
22 operating unit. Defendant CNG is engaged in the manufacture, sale, or distribution to physicians and
23 surgeons, optometrists, or dispensing opticians of lenses, frames, optical supplies, optometric
24 appliances or devices or kindred products. Defendant CNG is not

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28 1. Attached hereto as Attachment No. 1 is a diagram of the corporate structure of CNC.

1 now, nor has it ever been, licensed to practice optometry in the State of California. At all relevant
2 times, defendant CNG did business in San Diego County, and elsewhere in California.

3 5. Defendant COLE VISION CORPORATION (“CVC”) is a Delaware corporation, is
4 a wholly owned subsidiary of defendant CNC, and is an optical retailer engaged in the manufacture,
5 sale, or distribution to physicians and surgeons, optometrists, or dispensing opticians of lenses, frames,
6 optical supplies, optometric appliances or devices or kindred products. CVC is not now, nor has it
7 ever been, licensed to practice optometry in the State of California. At all relevant times, defendant
8 CVC did business in San Diego County, and elsewhere in California.

9 6. Defendant COLE VISION SERVICES, INC., (“CVS”), is a Delaware corporation, a
10 wholly owned subsidiary of defendant CNC, and describes itself as providing “optical services.”
11 Defendant CVS is engaged in the manufacture, sale, or distribution to physicians and surgeons,
12 optometrists, or dispensing opticians of lenses, frames, optical supplies, optometric appliances or
13 devices or kindred products. CVS is not now, nor has it ever been, licensed to practice optometry in
14 the State of California. At all relevant times, defendant CVS did business in San Diego County, and
15 elsewhere in California.

16 7. Defendant PEARLE, INC., (“PEARLE, INC.”), is a Delaware corporation, is a wholly
17 owned subsidiary of defendant CNC, and describes itself as being in “the optical business.” Defendant
18 PEARLE, INC., is engaged in the manufacture, sale, or distribution to physicians and surgeons,
19 optometrists, or dispensing opticians of lenses, frames, optical supplies, optometric appliances or
20 devices or kindred products. Defendant PEARLE, INC., serves as a holding company for defendant
21 Pearle Vision, Inc. Defendant PEARLE, INC., is not now, nor has it ever been, licensed to practice
22 optometry in the State of California. At all relevant times, defendant PEARLE, INC., did business in
23 San Diego County, and elsewhere in California.

24 8. Defendant PEARLE VISION, INC., (“PV”), also known as PEARLE VISION
25 CENTER, also known as PEARLE VISION EXPRESS, also known as PEARLE EXPRESS, is a
26 Delaware corporation, and is a wholly owned subsidiary of defendant CNC. Defendant PV advertises
27 in California as being “a world leading optical retailer” and “one of the strongest brands in the optical
28 industry.” Defendant PV is engaged in the business of retail optical sales, and is currently registered

1 with the State of California to do business as a dispensing optician at 24 locations throughout California.
2 Defendant PV is the successor corporation to Searle Optical, Inc., Pearle Vision Center, Inc., and
3 Pearle Health Services, Inc. Defendant PV is doing business in California under a variety of names,
4 including, but not limited to, “Pearle Vision Express,” “Pearle Vision,” “Pearle Vision Center,” and
5 “Pearle Express.” Defendant PV is not now, nor has it ever been, licensed to practice optometry in the
6 State of California. At all relevant times, defendant PV did business in San Diego County, and
7 elsewhere in California.

8 9. Defendant PEARLE VISIONCARE, INC., (“PVC”) is a California corporation, and is
9 a wholly owned subsidiary of defendant CNC. Defendant PVC is licensed as a specialized health care
10 service plan provider under the California Knox-Keene Health Care Service Plan Act of 1975,
11 California Health and Safety Code Sections 1340, et seq., and employs and/or contracts with
12 optometrists to provide vision care benefits to its plan members. PVC is not now, nor has it ever been,
13 licensed to practice optometry in the State of California. At all relevant times, PVC did business in San
14 Diego County, and elsewhere in California.

15 10. Defendant STANLEY C. PEARLE (“STANLEY PEARLE”), an individual and a
16 resident of Dallas, Texas, claims to have “pioneered the concept of one-stop, total eyecare” by an
17 optical retailer. Defendants advertise throughout California that defendant STANLEY PEARLE’s
18 “involvement in the company he founded has not diminished.” Defendant STANLEY PEARLE has
19 appeared in many of defendant PV’s advertisements aired in the California market, and has served as a
20 member of defendant PV’s executive committee and as a consultant for defendant PV. Defendant
21 STANLEY PEARLE’s recorded voice is used to answer consumer telephone calls to 1-800-YES-
22 EYES, the telephone number which Defendant PV advertises that consumers should call to schedule an
23 eye exam. Defendant STANLEY PEARLE personally guarantees “complete professional eye care at
24 all Pearle Vision Centers” to every

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27 consumer who calls 1-800-YES-EYES. Defendant STANLEY PEARLE is not now, nor has he ever
28 been, licensed to practice optometry in the State of California.

1 11. Defendant JEFFREY A. COLE (“COLE”), an individual and a resident of Lyndhurst,
2 Ohio, during the relevant time period was and/or is a member of the board of directors and/or an
3 executive officer of defendants CNC, CNG, CVC, CVS, PV, and PVC, and as such has directed,
4 managed, and/or controlled the operations of defendants CNC, CNG, CVC, CVS, PV, and PVC.
5 Defendant COLE is not now, nor has he ever been, licensed to practice optometry in the State of
6 California.

7 12. Defendant PEGGY DEAL (“DEAL”), an individual and a resident of Ohio, during the
8 relevant time period was and/or is a member of the board of directors and/or an executive officer of
9 defendants CVC and PVC, and as such, has directed, managed, and/or controlled the operations of
10 defendants CVC and PVC. Defendant DEAL is not now, nor has she ever been, licensed to practice
11 optometry in the State of California.

12 13. Defendant JOSEPH GAGLIOTI, also known as JOSEPH GAGLIOTTI
13 (“GAGLIOTTI”), an individual and a resident of Cleveland Heights, Ohio, during the relevant time
14 period was and/or is a member of the board of directors and/or an executive officer of defendants
15 CNC, CNG, CVC, CVS, PV, PEARLE, INC., and PVC, and as such has directed, managed, and/or
16 controlled the operations of defendants CNC, CNG, CVC, CVS, PV, PEARLE, INC., and PVC.
17 Defendant GAGLIOTTI is not now, nor has he ever been, licensed to practice optometry in the State of
18 California.

19 14. Defendant STEPHEN L. HOLDEN (“HOLDEN”), an individual and a resident of
20 Hudson, Ohio, during the relevant time period was and/or is a member of the board of directors and/or
21 an executive officer of defendants CVC, CVS, and PVC, and as such has directed, managed, and/or
22 controlled the operations of defendants CVC, CVS, and PVC. Defendant HOLDEN is not now, nor
23 has he ever been, licensed to practice optometry in the State of California.

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25 15. Defendant DENNIS C. OSGOOD (“OSGOOD”), an individual and a resident of
26 Cleveland Heights, Ohio, during the relevant time period was and/or is a member of the board of
27 directors and/or an executive officer of defendants CVC, CVS, PV, and PVC, and as such has
28 directed, managed, and/or controlled the operations of defendants CVC, CVS, PV, and PVC.

1 Defendant OSGOOD is not now, nor has he ever been, licensed to practice optometry in the State of
2 California.

3 16. Defendant LARRY POLLOCK, also known as LARRY POLLACK (“POLLOCK”),
4 an individual and a resident of Shaker Heights, Ohio, during the relevant time period was and/or is a
5 member of the board of directors and/or an executive officer of defendants CNC, CVC, CVS, PV,
6 and PVC and as such has directed, managed, and/or controlled
7 the operations of defendants CNC, CVC, CVS, PV, and PVC. Defendant POLLOCK is not now,
8 nor has he ever been, licensed to practice optometry in the State of California.

9 17. Defendant DAVID J. SHERRIFF (“SHERRIFF”), an individual and a resident of
10 Beachwood, Ohio, during the relevant time period was and/or is a member of the board of directors
11 and/or an executive officer of defendants CVC, CVS, PEARLE, INC., PV, and PVC, and as such has
12 directed, managed, and/or controlled the operations of defendants CVC, CVS, PEARLE, INC., PV,
13 and PVC. Defendant SHERRIFF is not now, nor has he ever been, licensed to practice optometry in
14 the State of California.

15 18. Defendant DAVID STEFKO (“STEFKO”), an individual and a resident of Ohio,
16 during the relevant time period was and/or is a member of the board of directors and/or an executive
17 officer of defendants PEARLE, INC., PV and PVC, and as such has directed, managed, and/or
18 controlled the operations of defendants PEARLE, INC., PV and PVC. Defendant STEFKO is not
19 now, nor has he ever been, licensed to practice optometry in the State of California.

20 19. The true names and capacities whether individual, corporate, or otherwise, of
21 defendants sued herein under the fictitious names of Does 1-550, inclusive, are unknown to
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23 plaintiff, who therefore sues said defendants by such fictitious names. Plaintiff will amend this complaint
24 to show the true names of each when the same has been ascertained.

25 20. Whenever in this complaint reference is made to any act of defendants CNC, CNG,
26 CVC, CVS, PEARLE, INC., PV, PVC, STANLEY PEARLE, COLE, DEAL, GAGLIOTI,
27 HOLDEN, OSGOOD, POLLOCK, SHERRIFF, STEFKO, and/or Does 1-550, such allegation shall
28 be deemed to mean that said defendant and its/his/her officers, directors, agents, employees or

1 representatives did or authorized such acts while actively engaged in the management, direction or
2 control of the affairs of said defendants and while acting within the scope and course of their duties.

3 21. Whenever in this complaint reference is made to any act of any individual defendant,
4 such allegation shall be deemed to mean that said defendant is and was acting (a) as a principal, (b)
5 under express or implied agency, or (c) with actual or ostensible authority to perform the acts so
6 alleged.

7 **CALIFORNIA'S PROSCRIPTION AGAINST**
8 **THE CORPORATE PRACTICE OF OPTOMETRY**

9 22. The State of California regards optometry as a learned profession. Optometrists in
10 California are licensed and regulated by the Board of Optometry. To become licensed as an
11 optometrist, an individual must have at least three years of undergraduate education in a scientific field
12 and four years of optometry school culminating in a doctor of optometry degree. Upon admission to
13 practice, optometrists are allowed to correct refractive errors, to detect eye disease, and to treat
14 certain limited eye diseases. Most optometrists also dispense ophthalmic products consisting of eye
15 glasses and contact lenses.

16 23. The practice of optometry includes performing any of the professional acts that a
17 licensed optometrist may do, and controlling anyone that performs any of the professional acts that a
18 licensed optometrist may do.

19 24. In contrast, a dispensing optician does not hold a professional license. A dispensing
20 optician registers with the Medical Board of California and receives a certificate of registration to do
21 business in the State of California. Registered Dispensing Opticians ("RDO") fill prescriptions for
22 glasses or contact lenses from optometrists and ophthalmologists (physicians or surgeons who
23 specialize in eye care and treatment). Registered Dispensing Opticians do not examine eyes, and may
24 only dispense ophthalmic goods on a valid prescription written by a doctor.

25 25. It is illegal to engage in the practice of optometry or in any way to advertise as an
26 optometrist without having first obtained a certificate of registration from the California Board of
27 Optometry.

28 26. California has a strong long-standing public policy against permitting lay persons to

1 practice any of the medical arts or to exercise control over the decisions made by healing art
2 practitioners.

3 27. Because a prescription for eyeglasses is not available without an eye examination, the
4 offer of a low cost eye examination - especially on site or near an optical retailer or registered
5 dispensing optician - could appear attractive to the public, and provide incentives for those in the
6 commercial optical industry (who provide lenses, frames, optical supplies, optometric appliances or
7 devices or kindred products) to enter into agreements with eye care professionals.

8 28. In order to protect the public, the State of California has enacted a number of laws
9 aimed at maintaining the professional integrity and true independence of optometrists from the
10 commercial optical industry:

11 A. It has long been illegal for anyone not licensed as an optometrist to control the
12 practice of an optometrist or to advertise as an optometrist. (See, Bus. & Prof. Code,
13 §§ 3040, 3128.);

14 B. It is illegal for an optical retailer and/or registered dispensing optician to have any
15 proprietary interest, co-ownership, landlord-tenant or profit-sharing arrangement “in
16 any form, directly or indirectly” with an optometrist. (Bus. & Prof. Code, § 655.); and

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18 C. A Registered Dispensing Optician is prohibited from maintaining an optometrist “on
19 or near the premises used for optical dispensing ... for the purpose of any examination
20 or treatment of the eyes.” (Bus. & Prof. Code, § 2556.)

21 The violation of any or all of these laws is subject to injunction and is punishable as a criminal offense.

22 29. Business and Professions Code section 655 is the basic legislative declaration
23 prohibiting control by non-optometrists over any facet of the practice of optometry. This law prohibits
24 all proprietary arrangements in any form - whether direct or indirect - between optometrists on the one
25 hand, and optical retailers and dispensing opticians on the other. Violation of this law is a criminal
26 offense. Business and Professions Code section 655 was enacted in 1969, and strengthened in 1979 in
27 response to an Attorney General task force report calling for even greater consumer protection.

28 30. On September 19, 1979, defendant STANLEY PEARLE wrote to then Governor

1 Jerry Brown and requested that he not sign the amendments to strengthen Business and Professions
2 Code section 655 into law since, if enacted:

3 *Opticians will be excluded from making available to their customers one-*
4 *stop shopping for both optometric services and optical goods... .*

5 31. In 1979, defendant CNC also opposed the amendments to Business and Professions
6 Code section 655, but later withdrew its opposition when the effective date of the new law was
7 changed. The amendments to Business and Professions Code section 655 were chaptered into law on
8 September 22, 1979.

9 **THE HISTORY OF DEFENDANT PV'S VIOLATIONS OF**
10 **SECTION 655 AND THE OPTOMETRY PRACTICE ACT**

11 32. About one month after the California Attorney General published an opinion concluding
12 that Business and Professions Code section 655 would prohibit a franchise between an optical retailer
13 and optometrists,^{2/} Pearle Vision Center, Inc., and Searle Optical, Inc., both
14 optical retailers, together with their then parent corporation, G.D. Searle, Inc., began soliciting
15 California optometrists with an eyewear-eye care franchise.^{3/}

16 33. At that time, Pearle proposed controlling a variety of the franchisee-optometrist's
17 decisions as a franchiser, including: where the optometric practice was located; how the optometric
18 practice was operated; what optometric equipment was used; how the optometric practice was
19 financed; and what treatment decisions the optometrist could make (i.e., only frames approved by the
20 optical retailer could be stocked, the franchisees were required to stock an inventory of optical goods
21 and supplies approved by the optical retailers, and the franchisees were permitted to only use a
22 laboratory approved by the optical retailer). Pearle intended to advertise the business under the name

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24 2. 64 Ops.Cal.Atty.Gen. 192 (1981).

25 3. See, *California Assn. of Dispensing Opticians v. Pearle Vision Center, Inc.* (1983) 143
26 Cal.App.3d 419, ("CADO"). In the CADO opinion, the appellate court referred to the three defendants
27 collectively as "Pearle." For that reason, they are likewise referred to as "Pearle" here. Pearle Vision
28 Center, Inc., and Searle Optical, Inc., later merged into and became defendant PV, which was later sold
to Grand Metropolitan Corporation. Grand Metropolitan then sold defendants PV, PEARLE, INC., and
PVC to defendant CNC for reportedly \$220 million in November 1996.

1 “the Pearle Vision Center” with franchisee doctors remitting a percentage of the income they received,
2 as well as an advertising contribution, back to Pearle.

3 34. The California Association of Dispensing Opticians, later joined by the California Board
4 of Optometry, sought a preliminary injunction to stop Pearle^{4/} from violating statutes
5 regulating the practice of dispensing opticians, optometrists and optical suppliers by its franchise,
6 including Business and Professions Code section 655.

7 35. On September 10, 1982, the San Diego Superior Court issued a preliminary injunction
8 enjoining defendant PV, inter alia:

9 From disseminating or causing to be made or disseminated in any type of advertising
10 statements stating or implying that defendants or any one of them is furnishing the
11 services of a refractionist or optometrist or is directly or indirectly employing or
12 maintaining on or near defendants' optical dispensing premises a

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12 refractionist or optometrist for the purpose of examining or treating the eyes; this
13 paragraph prohibits advertisements stating or implying that defendants furnish total eye care.^{5/}

14 36. On May 27, 1983, the Fourth District Court of Appeal, Division One, affirmed the
15 preliminary injunction holding that Pearle, by its proposed franchise and advertising, sought to unlawfully
16 engage in the corporate practice of a profession.^{6/} The appellate court held that the proposed
17 franchising agreement gave Pearle, a lay entity, authority to control many facets of the franchisee
18 optometrist’s practice in violation of public policy, Business and Professions Code sections 655, 2556,
19 and other laws. The appellate court determined that the proposed franchise agreement violated
20 Business and Professions Code section 655 in its profit-sharing and co-ownership arrangements
21 between the optometrist and Pearle.^{7/} The court determined that defendant PV’s advertisements,
22 which included the tag line “Nobody cares for eyes more than Pearle,” illegally advertised optometric

24 4. The injunction was sought against Pearle Vision Center, Inc., Searle Optical, Inc., G. D. Searle,
25 Inc., and three individuals. *Id.* at 423.

26 5. *Id.* at 422-423.

27 6. *Id.* at 434.

28 7. *Id.* at 427-30.

1 services.^{8/} The court concluded that defendant PV, through its franchise agreement and advertising,
2 sought to illegally engage in the unlicensed practice of a profession, stating:

3
4 The rules against such practice should not be circumvented by technical agreements
5 concerning the manner optometrists are engaged, designated or compensated by the
6 franchiser. *The confidential health care relationship requires the professional's*
7 *undivided responsibility and freedom from commercial exploitation. This*
8 *relationship is essential. The public would be jeopardized if a large corporation*
9 *with pecuniary profits as its principal goal were allowed to dominate the field.*^{9/}
10 37. On June 14, 1983, Pearle's petition for a rehearing was denied. Pearle's petition for a

11 hearing by the California Supreme Court was denied July 27, 1983.^{10/} Pearle then informally agreed
12 not to continue with its eyewear/eye care franchise in California. The preliminary injunction was
13 thereafter never perfected to a permanent injunction.^{11/}

14 38. In or about January 1986, during the pendency of the preliminary injunction, defendants
15 PEARLE, INC., and PVC were incorporated.^{12/} On or about November 4, 1986, defendant PVC
16 became licensed as a specialized health care plan provider in California.

17 **FIRST CAUSE OF ACTION**

18 (Violation of Bus. & Prof. Code, § 17500 et seq.)
19 (Untrue or Misleading Advertising as Against Defendants PV,
20 STANLEY PEARLE and DOES 1-100.)

21 39. Plaintiff realleges and incorporates by reference paragraphs 1 through 40, inclusive, as
22 though set forth fully herein.
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24 8. *Id.* at 425.

25 9. *Id.* at 434 (citing, *Painless Parker v. Board of Dental Exam.* (1932) 216 Cal. 285, 298,
26 emphasis added.)

27 10. *Id.* at 436.

28 11. According to court filings, the case was dismissed without prejudice in 1991 at defendant PV's
request.

12. Defendant PEARLE, INC., was incorporated as Pearle Health Two, Inc., a Delaware
corporation. Pearle Health Two, Inc., changed its name to Pearle Health Services, Inc. Pearle Health
Services, Inc., then changed its name to PEARLE, INC.

RELEVANT STATUTES

1
2 40. Business and Professions Code section 17500 provides, in pertinent part, as
3 follows:

4 It is unlawful for any person, firm, corporation or association, or any employee thereof
5 with intent directly or indirectly to dispose of real or personal property or to perform
6 services, professional or otherwise, or anything of any nature whatsoever or to induce
7 the public to enter into any obligation relating thereto, to make or disseminate or cause
8 to be made or disseminated before the public in this state, or to make or disseminate or
9 cause to be made or disseminated from this state before the public in any state, in any
10 newspaper or other publication, or any advertising device, or by public outcry or
11 proclamation, or in any other manner or means whatever, including over the Internet,
12 any statement, concerning that real or personal property or those services, professional
13 or otherwise, or concerning any circumstance or matter of fact connected with the
14 proposed performance or disposition thereof, which is untrue or misleading, and which
15 is known, or which by the exercise of reasonable care should be known, to be untrue
16 or misleading, or for any person, firm, or corporation to so make or disseminate or
17 cause to be so made or disseminated any such statement as part of a plan or scheme
18 with the intent not to sell that personal property or those services, professional or
19 otherwise, so advertised at the price stated therein, or as so advertised. Any violation
20 of the provisions of this section is a misdemeanor punishable by
21 imprisonment in the county jail not exceeding six months, or by a fine not exceeding two
22 thousand five hundred dollars (\$2,500), or by both that imprisonment and fine.

23 41. Business and Professions Code section 17535 provides, in pertinent part, as follows:

24 Any person, corporation, firm, ... which violates or proposes to violate this chapter may
25 be enjoined by any court of competent jurisdiction ...

26 42. Business and Professions Code section 17536 provides, in pertinent part, as follows:

27 (a) Any person who violates any provision of this chapter shall be liable for a civil
28 penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation ...

29 43. Beginning on an exact date unknown to plaintiff, and continuing to the present,
30 defendants PV, STANLEY PEARLE, and DOES 1-100, and each of them, with the intent to induce
31 members of the public to purchase their goods or services, have made, disseminated or caused to be
32 made or disseminated before the public in California, by defendants' use of marketing and advertising
33 materials, on the Internet, in newspapers, in yellow pages, on television, on radio, or by other manner
34 or means, statements concerning such goods or services or statements concerning circumstances or
35 matters of fact connected with the proposed provision or performance thereof, which are untrue or
36 misleading in violation of Business and Professions Code section 17500. The untrue or misleading
37 statements and representations made by these defendants include, but are not limited to, the following:
38

1 A. Defendants' marketing and advertising materials use words and images to state or
2 imply that they can and do provide optometric services, including but not limited to, eye
3 exams, eye care, professional eye care advice, and the services of an optometrist,
4 when, in fact, defendants do not provide optometric services, defendants are not
5 licensed to provide optometric services, defendants are prohibited by law from
6 providing optometric services, and defendants are prohibited by law from maintaining
7 an optometrist on or near its premises.

8 Examples of such untrue or misleading statements include, but are not limited to, the
9 following:

10 (1.) Defendant STANLEY PEARLE answers all telephone calls placed to the
11 telephone number advertised by defendant PV, 1-800-YES-EYES, with his
12 recorded voice stating: "Hello. This is Dr. Stanley Pearle, founder of Pearle
13 Vision. Providing complete professional eye care is something that I care deeply
14 about. Pearle Vision was started for that purpose and I guarantee that you will
15 still find it at every Pearle Vision Center today.";

16 (2.) "WE OFFER COMPLETE EYE EXAMS. Pearle Vision is a preferred
17 provider . . . , so schedule an appointment today by calling 1-800-YES-EYES."
18 (emphasis in original);

19 (3.) "See us for your next eye exam. Call 1-800-YES-EYES to schedule an eye
20 exam.";

21 (4.) "Call today to schedule a comprehensive eye exam with a licensed
22 Independent Doctor of Optometry at a Pearle Vision location near you.";

23 (5.) "Comprehensive eye exams from Independent Doctors of Optometry.";

24 (6.) "Schedule a complete eye exam today by calling 1-800-YES-EYES.";

25 (7.) "At Pearle Vision . . . That's why we offer professional eye exams, . . .";

26 (8.) "And remember, if you need an eye exam, at Pearle, the Doctor is **in**."
27 (emphasis in original);

28 (9.) EYE

E X A M S
A V A I L A B L E ;

(10.) Using images of a “doctor” in a white lab coat performing an eye exam.

The substance of such images includes, but is not limited to, a “doctor” in a white lab coat holding optometric equipment and “examining” the eyes of a “patient,” or a “doctor” in a white lab coat using optometric equipment to “examine” the eye of a “patient”;

(11.) “For nearly forty years, Dr. Stanley Pearle, our founder, has inspired us to provide quality eye care, products and advice for you and your family. Today, trained opticians and independent licensed Doctors of Optometry continue to help you see better by testing for glaucoma, cataracts, and retinal disorders utilizing state of the art technology.”;

(12.) “In 1961, Dr. Stanley Pearle founded Pearle Vision with the philosophy that eye care is serious business. And that quality eye care should be That’s why Pearle Vision offers comprehensive eye exams through licensed Independent Doctors of Optometry. Regular eye exams may help spot a variety of medical problems like glaucoma, cataracts, retinal disorders”;

(13.) “Eye care and eyewear as individual as you are.”;

(14.) “Another innovation from Pearle Vision, the eye care company founded by a doctor.”;

(15.) “The Doctor is *in*.” (emphasis in original);

(16.) “Nobody cares for eyes more than Pearle”;

(17.) “Nobody cares for eyes better than Pearle.”

B. Defendants’ marketing and advertising materials use words and images to directly or indirectly represent that defendant STANLEY PEARLE is an optometrist, and can provide professional eye care advice, when, in fact, defendant STANLEY PEARLE is not licensed as an optometrist in the State of California and is prohibited by law from advertising himself as an optometrist or that he can provide professional eye care

1 advice in California. Examples of such untrue or misleading marketing and advertising
2 statements include, but are not limited to, the following:

3 (1.) Defendant STANLEY PEARLE answers all telephone calls placed to the
4 telephone number advertised by defendant PV, 1-800-YES-EYES, with his
5 recorded voice stating: “Hello. This is Dr. Stanley Pearle, founder of Pearle
6 Vision. Providing complete professional eye care is something that I

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8 care deeply about. Pearle Vision was started for that purpose and I guarantee that you
9 will still find it at every Pearle Vision Center today.”

10 (2.) Defendant PV advertises using images of defendant STANLEY PEARLE
11 with the caption “Dr. Stanley Pearle, Optometrist, Founder of Pearle Vision.”
12 Directly above some of the images of defendant STANLEY PEARLE is the
13 caption “The Doctor is in.” (Emphasis in original.) In some of the images,
14 defendant STANLEY PEARLE is dressed in a white doctor’s lab coat with the
15 words the “Doctor is in” above the right breast pocket. Some of these images of
16 defendant STANLEY PEARLE are placed next to
17 an image of another “doctor” in a white lab coat, holding optometric equipment
18 and appearing to examine the eyes of a “patient”;

19 (3.) Professional optometric advice is provided by defendant STANLEY
20 PEARLE in defendant PV’s Internet website, including:

21 a. “Eye Care As You Age ... Dr. Stanley Pearle, founder and an older
22 adult himself, advises on eyecare-related issues. ‘While it’s true that certain
23 eye disorders and diseases occur more frequently as we age, a great deal
24 can be done to prevent or correct these conditions. That’s why, above all
25 else, I urge you to see a qualified eyecare professional annually for a
26 complete eye exam.’” (emphasis in original);

27 b. “Stanley C. Pearle, O.D., founder of Pearle Vision, recommends that
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1 parents pay close attention to their child's behavior. 'This is extremely
2 important in determining whether or not your child has a **vision disorder**,'
3 he says." (emphasis in original);

4 c. "As the founder of one of the nation's leading optical retail chains and an
5 older adult himself, Dr. Stanley C. Pearle, an optometrist, is uniquely
6 qualified to provide older individuals with advice on eyecare-related issues.
7 He says, 'While it's true that certain eye disorders and diseases occur more
8 frequently as we age, a great deal can be done to
9 prevent or correct these conditions. That's why, above all else, I urge you
10 to see a qualified eyecare professional annually for a complete **eye exam**.'" (emphasis in original);

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12 d. "When I became an optometrist over 50 years ago, there was basically
13 one option for vision correction - eyeglasses,' explains Dr. Stanley C.
14 Pearle, founder of Pearle Vision. Dr. Pearle adds, 'Today, consumers have
15 so many choices it can be difficult to determine the best treatment. Our goal
16 is to help our patients make educated decisions that best fit their specific
17 needs.'"

18 C. Defendants' marketing and advertising materials state or imply that there are
19 "Independent" optometrists located at or near defendant PV's optical retail stores,
20 when, in fact, the PVC optometrists who are maintained inside the PV stores are not
21 independent from defendant PV or from the parent corporations of both defendants PV
22 and PVC. Examples of the PVC optometrists' lack of independence include, but are
23 not limited to, the following:

- 24 (1.) The PVC optometrists' offices and examination rooms are inside PV stores;
- 25 (2.) The PVC optometrists help PV sell eyeglasses;
- 26 (3.) Defendant PV provides the PVC optometrists with all of their optometric
27 equipment and office space, and does so at little or no cost to defendant PVC

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1 and/or the PVC optometrists;

2 (4.) Defendant PV markets the professional services of the PVC optometrists,
3 and does so at little or no cost to defendant PVC and/or the PVC optometrists;

4 (5.) Defendant PV and the PVC optometrists share use of the Pearle trademark
5 and other trademarks;

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8 (6.) Defendants PV and PVC optometrists share telephone lines and personnel
9 responsible for answering said telephone lines, and do so at little or no cost to
10 defendant PVC and/or the PVC optometrists;

11 (7.) Defendants PV and PVC have interlocking officers and directors;

12 (8.) Defendants PVC and PV share the same parent corporations, including, but
13 not limited to, defendants PEARLE, INC., CNG and CNC. Defendant PVC and
14 the PVC optometrists receive financial, managerial and administrative support by
15 defendant PV and said parent corporations.

16 (9.) Defendants CNC, CNG, PEARLE, INC., and PV, have had, and continue
17 to have, proprietary interests in, co-ownership with, landlord tenant relationships
18 with, or profit sharing relationships with, directly or indirectly, defendant PVC and
19 the PVC optometrists, as alleged below in paragraphs 84 through 90, inclusive,
20 which are incorporated herein by this reference.

21 D. Defendants' marketing and advertising materials state or imply that there are
22 optometrists located "next door," "next to," or "near" defendant PV's optical retail
23 stores, when, in fact, the referenced PVC optometrists are not located next door, next
24 to, or near the PV stores. In fact, the PVC optometrists' examination rooms and
25 offices are located inside the PV stores.

26 44. The misrepresentations set forth in paragraph 45 above, were known, or by the
27 exercise of reasonable care should have been known, to defendants to be untrue or misleading when
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1 made.

2 **SECOND CAUSE OF ACTION**

(Violation of Bus. & Prof. Code, § 17500 et seq.)

3 (Untrue or Misleading Advertising as Against
4 Defendants PVC and DOES 101-150.)

45. Plaintiff realleges and incorporates by reference paragraphs 1 through 46, inclusive, as

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6 though set forth fully herein.

7 46. Beginning on an exact date unknown to plaintiff, and continuing to the present,
8 defendant PVC and DOES 101-150, and each of them, with the intent to induce members of the public
9 to purchase their goods or services, have made, disseminated or caused to be made or disseminated
10 before the public in California, by defendants' use of marketing and advertising materials, on the
11 Internet, in newspapers, in yellow pages, on television, on radio, or by other manner or means,
12 statements concerning such goods or services or statements concerning circumstances or matters of fact
13 connected with the proposed provision or performance thereof, which are untrue or misleading in
14 violation of Business and Professions Code section 17500. The untrue or misleading statements and
15 representations made by defendants include, but are not limited to, the following:

16 A. Defendants advertise that there are "Independent" optometrists located at or near
17 defendant PV's optical retail stores, when, in fact, the referenced PVC optometrists are
18 not independent from defendant PV or from the parent corporations of both defendant
19 PV and PVC. Examples of the PVC optometrists' lack of independence include, but
20 are not limited to, the following:

21 (1.) PVC optometrists are employees of defendant PVC;

22 (2.) PVC optometrists' offices and examination rooms are all inside defendant
23 PV's stores;

24 (3.) PVC optometrists help defendant PV sell eyeglasses;

25 (4.) Defendant PV provides the PVC optometrists with all their optometric
26 equipment, and office space, and does so at little or no cost to defendant PVC
27 and/or the PVC optometrists;

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1 (5.) Defendant PV markets the professional services of the PVC optometrists,
2 and does so at little or no cost to defendant PVC and/or the PVC optometrists;

3 (6.) Defendant PV and the PVC optometrists share use of the Pearle trademark
4 and other trademarks;

5 (7.) Defendant PV and PVC optometrists share telephone lines and personnel
6 responsible for answering said telephone lines, and do so at little or no cost to
7 defendant PVC and/or the PVC optometrists;

8 (8.) Defendants PV and PVC have interlocking officers and directors;

9 (9.) Defendants PVC and PV share the same parent corporations, including, but
10 not limited to, defendants PEARLE, INC., CNG and CNC. Defendant PVC and
11 PVC optometrists receive financial, managerial and administrative support by
12 defendant PV and said parent corporations;

13 (10.) Defendants CNC, CNG, PEARLE, INC., and PV have had and continue
14 to have proprietary interests in, co-ownership with, landlord tenant relationships
15 with, or profit sharing relationships with, directly or indirectly, defendant PVC and
16 PVC optometrists, as alleged below in paragraphs 84 through 90, inclusive, which
17 are incorporated herein by this reference; and

18 B. Defendants advertise that there are optometrists located “next door,” “next to,” or
19 “near” PV’s optical retail stores, to reference the PVC optometrists who work inside
20 the PV store, when, in fact, the referenced PVC optometrists are not located next
21 door, next to, or near PV locations. In fact, the PVC optometrists’ examination rooms
22 and offices are located inside the PV stores.

23 47. The misrepresentations set forth in paragraph 48 above, were known, or by the
24 exercise of reasonable care should have been known, to defendants to be untrue or misleading when
25 made.

1 **THIRD CAUSE OF ACTION**

2 (Violation of Bus. & Prof. Code, § 17500 et seq.)
3 (Untrue or Misleading Advertising as Against Defendants CNC
4 and DOES 151-200.)

5 48. Plaintiff realleges and incorporates by reference paragraphs 1 through 49, inclusive, as
6 though set forth fully herein.

7 49. Beginning on an exact date unknown to plaintiff, and continuing to the present,
8 defendants CNC and DOES 151-200, and each of them, with the intent to induce members of the
9 public to purchase their goods or services, have made, disseminated or caused to be disseminated
10 before the public of California, by defendants' use of marketing and advertising materials on the
11 Internet, or by other manner or means, statements concerning such goods or services or statement
12 concerning circumstances or matters of fact connected with the proposed provision or performance
13 thereof, which are untrue or misleading and in violation of Business and Professions Code section
14 17500. The untrue or misleading statements and representations made by these defendants include, but
15 are not limited to, the following:

16 A. Defendants' advertising and marketing materials state or imply that defendant PV
17 can and does provide optometric services, including, but not limited to, eye care, eye
18 care professionals, and other services of an optometrist, when, in fact, defendant PV
19 does not provide optometric services, defendant PV is not licensed to provide
20 optometric services, and defendant PV is prohibited by law from providing optometric
21 services and/or maintaining an optometrist e.g., an eye care professional, on or near
22 PV's premises for the purposes of providing eye examinations. Examples of these
23 untrue and/or misleading statements, include but are not limited to the following:

24 (1.) **'Pearle Vision**, one of the strongest brands in the optical industry. ... The
25 Pearle Brand is positioned as the eye care specialist. The focus is on the
26 competency of our eye care professionals. ..."; and

27 (2.) "Our new advertising campaign, 'The Doctor Is In,' focuses on the vast
28 network of independent Doctors of Optometry, reinforcing our brand positioning

1 and is supported with an aggressive print campaign.”

2 B. Defendants’ marketing and advertising materials state or imply that there are
3 “Independent” optometrists located at or near defendant PV’s optical retail stores,
4 when, in fact, the PVC optometrists who work inside the PV stores are not
5 independent from defendant PV or from the parent corporations of both defendants PV
6 and PVC. Examples of the PVC optometrists’ lack of independence include, but are
7 not limited to, the following:

8 (1.) Defendant PVC optometrists’ offices and examination rooms are inside
9 defendant PV’s stores;

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11 (2.) Defendant PVC optometrists help defendant PV sell eyeglasses;

12 (3.) Defendant PV provides the PVC optometrists with all of their optometric
13 equipment and office space, and does so for little or no cost to defendant PVC
14 and/or the PVC optometrists;

15 (4.) Defendant PV markets the professional services of the PVC optometrists,
16 and does so at little or no cost to defendant PVC and/or the PVC optometrists;

17 (5.) Defendant PV and the PVC optometrists share use of the Pearle trademark
18 and other trademarks;

19 (6.) Defendant PV and the PVC optometrists share telephone lines and personnel
20 responsible for answering said telephone lines;

21 (7.) Defendants PV and PVC have interlocking officers and directors;

22 (8.) Defendants PVC and PV share the same parent corporations, including, but
23 not limited to, defendants PEARLE, INC., CNG and CNC. Defendant PVC and
24 the PVC optometrists receive financial, managerial and administrative support by
25 defendant PV and said parent corporations;

26 (9.) Defendants CNC, CNG, PEARLE, INC., and PV have had and continue to
27 have proprietary interests in, co-ownership with, landlord tenant relationships
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with, or profit sharing relationships with, directly or indirectly, defendant PVC and the PVC optometrists, as alleged below in paragraphs 84 through 90, inclusive, which are incorporated herein by this reference.

50. The misrepresentations set forth in paragraph 51 above, were known, or by the exercise of reasonable care should have been known, to defendants to be untrue or misleading when made.

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FOURTH CAUSE OF ACTION
(Violations of Bus. & Prof. Code, §§ 17200, 3041(h))
(Illegal Dilation Fees as Against Defendants PVC and DOES 201 through 300.)

51. Plaintiff realleges and incorporates by reference paragraphs 1 through 52, inclusive, as though set forth fully herein.

RELEVANT STATUTES

52. Business and Professions Code section 17200 provides, in pertinent part, that:

[U]nfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice ...

53. Business and Professions Code section 17203 provides, in pertinent part, as follows:

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

54. Business and Professions Code section 3041(h) provides, as follows:

(h) Any dispensing of a therapeutic pharmaceutical agent by an optometrist shall be without charge.

55. Business and Professions Code section 4024(b) provides, as follows:

1 (b) 'Dispense' also means and refers to the furnishing of drugs or devices directly to a
2 patient by a[n] ... optometrist ... acting within the scope of his or her practice.

3 56. Title 16, California Code of Regulations, section 1567(f) provides, in pertinent part, as
4 follows:

5 (f) 'Therapeutic Pharmaceutical Agents' includes mydriatics, ...^{13/}
6 57. Beginning on an exact date unknown to plaintiff but within four (4) years preceding the
7 filing of this complaint, defendants PVC and DOES 201-300, and each of them,
8 have engaged in acts of unfair competition, as defined in Business and Professions Code section 17200,
9 in that their business practices have violated and continue to violate Business and Professions Code
10 section 3041(h) in that defendant PVC has charged or received, and continues to charge or receive,
11 "dilation fees" for the dispensing of therapeutic pharmaceutical agents, specifically, mydriatics also
12 known as dilation drops.

13 **FIFTH CAUSE OF ACTION**

14 (Violations of Bus. & Prof. Code, §§ 17200, 2556
15 and Cal. Code Regs., tit. 16, § 13399.251)

16 (Unlawful Advertising of Eye Exams and Maintaining an Optometrist on or
17 Near the Premises by an RDO Against Defendants PV and DOES 301 through 350.)

18 58. Plaintiff realleges and incorporates by reference paragraphs 1 through 59, inclusive, as
19 though set forth fully herein.

20 **RELEVANT STATUTES**

21 59. Business and Professions Code section 17200 provides, in pertinent part, as follows:

22 [U]nfair competition shall mean and include any unlawful, unfair or fraudulent business
23 act or practice ...

24 60. Business and Professions Code section 17203 provides, in pertinent part, as follows:

25 Any person who engages, has engaged, or proposes to engage in unfair competition
26 may be enjoined in any court of competent jurisdiction. The court may make such
27 orders or judgments, including the appointment of a receiver, as may be necessary to
28 prevent the use or employment by any person of any practice which constitutes unfair
29 competition, as defined in this chapter, or as may be necessary to restore to any person
30 in interest any money or property, real or personal, which may have been acquired by

13. Mydriatic is defined as "... 2. An agent that dilates the pupil." T. Stedman, Stedman's Medical
Dictionary (24 ed. 1982) at page 916.

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means of such unfair competition.

61. Business and Professions Code section 2556 provides, in pertinent part, as follows:

It is unlawful [for a registered dispensing optician (RDO)] to do any of the following: to advertise the furnishing of, or to furnish, the services of ... an optometrist ...; to directly or indirectly ... maintain on or near the premises used for optical dispensing, ..., an optometrist, or a physician and surgeon; ... for the purpose of any examination or treatment of the eyes; ...

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62. Business and Professions Code section 3041 provides, in pertinent part, as follows:

(a) The practice of optometry ... is the doing of any or all of the following:

(1) The examination of the human eye or eyes, or its or their appendages, and the analysis of the human vision system, either subjectively or objectively ...

63. Business and Professions Code section 2540 provides, in pertinent part, as follows:

No person other than a physician and surgeon or optometrist may measure the powers or range of human vision or determine the accommodative and refractive status of the human eye or the scope of its functions in general or prescribe ophthalmic or contact lenses, or plano contact lenses.

64. Title 16, California Code of Regulations, section 1399.251, provides as follows:

It is unprofessional conduct for a registered dispensing optician to advertise a price or fee for a visual eye examination or a complete medical eye examination or to otherwise advertise the furnishing of the services of an optometrist or a physician and surgeon.

65. Beginning on an exact date unknown to plaintiff but within four (4) years preceding the

filing of this complaint, defendants PV and DOES 301-350, and each of them, have engaged in acts of unfair competition, as defined in Business and Professions Code section 17200, in that their business practices have violated and continue to violate Business and Professions Code section 2556 and Title 16, California Code of Regulations, section 1399.251, in that these defendants have advertised and continue to advertise the furnishing of the services of an optometrist for the purpose of examination, diagnosis, or treatment of the eyes. Examples of these defendants' unlawful advertisements include, but are not limited to, the following:

A. Their marketing and advertising materials use words and images to state or imply

1 that they can and do provide optometric services, including but not limited to, eye
2 exams, eye care, professional eye care advice, and other services of an optometrist,
3 when, in fact, defendant PV does not provide optometric services, defendant PV is not
4 licensed to provide optometric services, defendant PV is prohibited by law from
5 providing optometric services, and defendant PV is prohibited by law from maintaining
6 an optometrist on or near its optical dispensing premises. Examples of such untrue or
7 misleading statements include, but are not limited to, the following:

8 (1.) Defendant STANLEY PEARLE answers all telephone calls placed to the
9 telephone number advertised by defendant PV, 1-800-YES-EYES, with his
10 recorded voice stating: “Hello. This is Dr. Stanley Pearle, founder of Pearle
11 Vision, providing complete professional eye care is something that I care deeply
12 about. Pearle Vision was started for that purpose and I guarantee that you will
13 still find it at every Pearle Vision Center today.”

14 (2.) “WE OFFER COMPLETE EYE EXAMS. Pearle Vision is a preferred
15 provider . . . , so schedule an appointment today by calling 1-800-YES-EYES.”
16 (emphasis in original);

17 (3.) “See us for your next eye exam. Call 1-800-YES-EYES to schedule an eye
18 exam.”;

19 (4.) “Call today to schedule a comprehensive eye exam with a licensed
20 Independent Doctor of Optometry at a Pearle Vision location near you.”;

21 (5.) “Comprehensive eye exams from Independent Doctors of Optometry.”;

22 (6.) “Schedule a complete eye exam today by calling 1-800-YES-EYES.”;

23 (7.) “At Pearle Vision . . . That’s why we offer professional eye exams, . . .”;

24 (8.) “And remember, if you need an eye exam, at Pearle, the Doctor is *in*.”
25 (emphasis in original);

26 (9.) EYE
27 EXAMS
28 AVAILABLE;

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(10.) Using images of a “doctor” in a white lab coat performing an eye exam. The substance of such images includes, but is not limited to, a “doctor” in a white lab coat holding optometric equipment and “examining” the eyes of a casually dressed “patient,” or a “doctor” in a white lab coat using optometric equipment to “examine” the eye of a “patient”;

(11.) “For nearly forty years, Dr. Stanley Pearle, our founder, has inspired us to provide quality eye care, products and advice for you and your family. Today, trained opticians and independent licensed Doctors of Optometry continue to help you see better by testing for glaucoma, cataracts, and retinal disorders utilizing state of the art technology.”;

(12.) “In 1961, Dr. Stanley Pearle founded Pearle Vision with the philosophy that eye care is serious business. And that quality eye care should be . . . That’s why Pearle Vision offers comprehensive eye exams through licensed Independent Doctors of Optometry. Regular eye exams may help spot a variety of medical problems like glaucoma, cataracts, retinal disorders . . .”;

(13.) “Eye care and eyewear as individual as you are.”;

(14.) “Another innovation from Pearle Vision, the eye care company founded by a doctor.”;

(15.) “The Doctor is *in*.” (emphasis in original);

(16.) “Nobody cares for eyes more than Pearle”;

(17.) “Nobody cares for eyes better than Pearle.”

66. Beginning on an exact date unknown to plaintiff, but within four (4) years preceding the filing of this complaint, defendants PV and DOES 301-350, and each of them, have engaged in acts of unfair competition, as defined in Business and Professions Code section 17200, in that their business practices have violated and continue to violate Business and Professions Code section 2556 in that defendant PV maintains and continues to maintain optometrists for the purpose of examination and/or treatment of the eyes on or near the premises used for optical dispensing.

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SIXTH CAUSE OF ACTION

(Violations of Bus. & Prof. Code, §§ 17200, 3040, and 3128
(Unlawful Advertising as Optometrist by Non-Optometrists as Against Defendants PV, STANLEY
PEARLE and DOES 351 through 400.)

67. Plaintiff realleges and incorporates by reference paragraphs 1 through 68, inclusive, as
though set forth fully herein.

RELEVANT STATUTES

68. Business and Professions Code section 17200 provides, in pertinent part, as
follows:

[U]nfair competition shall mean and include any unlawful, unfair or fraudulent business
act or practice ...

69. Business and Professions Code section 17203 provides, in pertinent part, as follows:

Any person who engages, has engaged, or proposes to engage in unfair competition
may be enjoined in any court of competent jurisdiction. The court may make such
orders or judgments, including the appointment of a receiver, as may be necessary to
prevent the use or employment by any person of any practice which constitutes unfair
competition, as defined in this chapter, or as may be necessary to restore to any person
in interest any money or property, real or personal, which may have been acquired by
means of such unfair competition.

70. Business and Professions Code section 3041 provides, in pertinent part, as follows:

(a) The practice of optometry includes the prevention and diagnosis of disorders and
dysfunctions of the visual system, ... and is the doing of any or all of the following:

(1) The examination of the human eye or eyes, or its or their appendages, and the analysis of
the human vision system, either subjectively or objectively.

71. Business and Professions Code section 3040 provides, as follows:

It is unlawful for any person to engage in the practice of optometry or to display a sign or in
any other way to advertise or hold himself out as an optometrist without having first obtained
a certificate of registration from the board under the provisions of this chapter or under the
provisions of any former act relating to the practice of optometry. In any prosecution for a
violation of this section, the use of test cards, test lenses, or of trial frames is prima facie

1 evidence of the practice of optometry.

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4 72. Business and Professions Code section 3128 provides as follows:

5 It is unlawful to advertise by displaying a sign or otherwise or hold himself out to be an
6 optometrist without having at the time of so doing a valid unrevoked certificate of
7 registration from the board.

8 73. Beginning on an exact date unknown to plaintiff, but within four (4) years preceding the
9 filing of this complaint, defendants PV, STANLEY PEARLE and Does 351-400, and each of them,
10 have engaged in acts of unfair competition, as defined in Business and Professions Code section 17200,
11 in that their business practices have violated and continue to violate Business and Professions Code
12 sections 3040 and 3128 in that these defendants have advertised and continue to advertise or hold
13 defendant STANLEY PEARLE out to be an optometrist, when, in fact, defendant STANLEY
14 PEARLE is not, and has never been, a licensed optometrist in the State of California. Examples of
15 these advertisements, include, but are not limited to, the following:

16 A. Defendant STANLEY PEARLE answers all telephone calls placed to the
17 telephone number advertised by defendant PV, 1-800-YES-EYES, with his recorded
18 voice stating: "Hello. This is Dr. Stanley Pearle, founder of Pearle Vision. Providing
19 complete professional eye care is something that I care deeply about. Pearle Vision
20 was started for that purpose and I guarantee that you will still find it at every Pearle
21 Vision Center today."

22 B. Professional optometric advice is provided by defendant STANLEY PEARLE on
23 defendant PV's Internet website, including statements such as:

24 (1.) "Eye Care As You Age ... Dr. Stanley Pearle, founder and an older adult
25 himself, advises on eyecare-related issues. "While it's true that certain eye
26 disorders and diseases occur more frequently as we age, a great deal can be done
27 to prevent or correct these conditions. That's why, above all else, I urge you to
28 see a qualified eyecare professional annually for a complete **eye exam**."

(emphasis in original);

1 (2.) “Stanley C. Pearle, O.D., founder of Pearle Vision, recommends that parents
2 pay close attention to their child’s behavior. ‘This is extremely important in
3 determining whether or not your child has a **vision disorder**,’ he says.” (emphasis
4 in original);

5 (3.) “As the founder of one of the nation’s leading optical retail chains and an
6 older adult himself, Dr. Stanley C. Pearle, an optometrist, is uniquely qualified to
7 provide older individuals with advice on eyecare-related issues. He says, ‘While
8 it’s true that certain eye disorders and diseases occur more frequently as we age,
9 a great deal can be done to prevent or correct these conditions. That’s why,
10 above all else, I urge you to see a qualified eyecare professional annually for a
11 complete **eye exam**.’” (emphasis in original);

12 (4.) “‘When I became an optometrist over 50 years ago, there was basically one
13 option for vision correction - eyeglasses,’ explains Dr. Stanley C. Pearle, founder
14 of Pearle Vision. Dr. Pearle adds, ‘Today, consumers have so many choices it
15 can be difficult to determine the best treatment. Our goal is to help our patients
16 make educated decisions that best fit their specific needs.’”

17 C. Defendant STANLEY PEARLE’s appearance in these defendants’ advertising and
18 marketing materials as a doctor and optometrist, including using the caption “Dr.
19 Stanley Pearle, Optometrist, Founder of Pearle Vision.” Directly above some of the
20 images of defendant STANLEY PEARLE in these advertising and marketing materials
21 is the caption “The Doctor is in.” In some of the images, defendant STANLEY
22 PEARLE is dressed in a white doctor’s lab coat with the words the “Doctor is in”
23 above the right breast pocket. Some of these images of defendant STANLEY
24 PEARLE are placed next to an image of another “doctor” in a white lab coat, holding
25 optometric equipment and appearing to examine the eyes of a “patient.”

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SEVENTH CAUSE OF ACTION
(Violations of Bus. & Prof. Code, §§ 17200, 3040, and 3127)
(Unlicensed Practice of Optometry Against Defendants PV,
STANLEY PEARLE, and DOES 401 through 450.)

74. Plaintiff realleges and incorporates by reference paragraphs 1 through 75, inclusive, as though set forth fully herein.

RELEVANT STATUTES

75. Business and Professions Code section 17200 provides, in pertinent part, that:

[U]nfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice ...

76. Business and Professions Code section 17203 provides, in pertinent part, as follows:

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

77. Business and Professions Code section 3040 provides, as follows:

It is unlawful for any person to engage in the practice of optometry or to display a sign or in any other way to advertise or hold himself out as an optometrist without having first obtained a certificate of registration from the board under the provisions of this chapter or under the provisions of any former act relating to the practice of optometry. In any prosecution for a violation of this section, the use of test cards, test lenses, or of trial frames is prima facie evidence of the practice of optometry.

78. Business and Professions Code section 3127 provides, as follows:

It is unlawful to practice optometry in this State without having at the time of so doing a valid, unrevoked, and unexpired certificate of registration as an optometrist.

79. Business and Professions Code section 3070 provides, inter alia, as follows:

... The practice of optometry is the performing *or the controlling of* any of the acts set forth in section 3041... . (Emphasis added.)

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2 80. Business and Professions Code section 3041 provides, inter alia, as follows:

3 (a) The practice of optometry ... is the doing of any or all of the following:

4 (1) The examination of the human eye or eyes, or its or their appendages, and the
5 analysis of the human vision system, either subjectively or objectively.

6 (2) The determination of the powers or range of human vision and the accommodative
7 and refractive states of the human eye or eyes, including the scope of its or their
8 functions and general condition.

8 81. Beginning on an exact date unknown to plaintiff, but within four (4) years preceding the
9 filing of this complaint, defendants PV, STANLEY PEARLE, and DOES 401- 450, and each of them,
10 have engaged in and are still engaged in the following, among other, acts of unfair competition, as
11 defined in Business and Professions Code section 17200, in that their business practices have violated
12 and continue to violate Business and Professions Code section 3127 in that defendants PV, STANLEY
13 PEARLE, and DOES 401-450, and each of them, have practiced optometry and continue to practice
14 optometry when, at the time of so doing, none of said defendants had or have a valid certificate of
15 registration from the Board of Optometry. Examples of defendants engaging in the practice of
16 optometry, include, but are not limited to the following:

17 A. Defendant PV exercises control over the practice of optometry by the PVC
18 optometrists by providing PVC and PVC optometrists with all of the optometric
19 equipment used during an eye examination by a PVC optometrist;

20 B. Professional optometric advice is provided by defendant STANLEY PEARLE on
21 defendant PV's Internet website, including statements such as:

22 (1.) "Eye Care As You Age ... Dr. Stanley Pearle, founder and an older adult
23 himself, advises on eyecare-related issues. 'While it's true that certain eye
24 disorders and diseases occur more frequently as we age, a great deal can be done
25 to prevent or correct these conditions. That's why, above all else, I urge you to
26 see a qualified eyecare professional annually for a complete **eye exam.**'"

27 (emphasis in original);
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(2.) “Stanley C. Pearle, O.D., founder of Pearle Vision, recommends that parents pay close attention to their child’s behavior. ‘This is extremely important in determining whether or not your child has a **vision disorder**,’ he says.” (emphasis in original);

(3.) “As the founder of one of the nation’s leading optical retail chains and an older adult himself, Dr. Stanley C. Pearle, an optometrist, is uniquely qualified to provide older individuals with advice on eyecare-related issues. He says, ‘While it’s true that certain eye disorders and diseases occur more frequently as we age, a great deal can be done to prevent or correct these conditions. That’s why, above all else, I urge you to see a qualified eyecare professional annually for a complete **eye exam**.’” (emphasis in original);

(4.) “‘When I became an optometrist over 50 years ago, there was basically one option for vision correction - eyeglasses,’ explains Dr. Stanley C. Pearle, founder of Pearle Vision. Dr. Pearle adds, ‘Today, consumers have so many choices it can be difficult to determine the best treatment. Our goal is to help our patients make educated decisions that best fit their specific needs.’”

EIGHTH CAUSE OF ACTION
(Violations of Bus. & Prof. Code, §§ 17200 and 655)
(Illegal Relationships between Dispensing Opticians, Optical Retailers
& Optometrists as Against Defendants CNC, CNG, CVC, CVS,
PEARLE, INC., PV, PVC and DOES 451 through 500.)

82. Plaintiff realleges and incorporates by reference paragraphs 1 through 83, inclusive, as though set forth fully herein.

RELEVANT STATUTES

83. Business and Professions Code section 17200 provides, in pertinent part, that:

[U]nfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice ...

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84. Business and Professions Code section 17203 provides, in pertinent part, as follows:

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

85. Business and Professions Code section 655 provides, in pertinent part, that

(a) No person licensed under Chapter 7 (commencing with Section 3000) [e.g. an optometrist] of this division may have any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, *directly or indirectly*, with any person licensed under Chapter 5.5 (commencing with Section 2550) [e.g., a registered dispensing optician] of this division.

(b) No person licensed under Chapter 5.5 (commencing with Section 2550) [e.g., a registered dispensing optician] of this division may have any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit sharing arrangement in any form *directly or indirectly* with any person licensed under Chapter 7 (commencing with Section 3000) [e.g., an optometrist] of this division.

(c) No person licensed under Chapter 7 (commencing with Section 3000) [e.g., an optometrist] of this division may have any membership, proprietary interest, coownership, landlord-tenant relationship, or any profit-sharing arrangement in any form, *directly or indirectly*, either by stock ownership, interlocking directors, trusteeship, mortgage, trust deed, or otherwise with any person who is engaged in the manufacture, sale, or distribution to physicians and surgeons, optometrists, or dispensing opticians of lenses, frames, optical supplies, optometric appliances or devices or kindred products.

Any violation of this section constitutes a misdemeanor as to such person licensed under Chapter 7 (commencing with Section 3000) of this division and as to *any and all persons, whether or not so licensed under this division, who participate with such licensed person in a violation of any provision of this section.* [Emphasis added].

86. Beginning on an exact date unknown to plaintiff, but within four (4) years preceding the filing of this complaint and continuing to the present, defendants CNC, CNG, CVC, CVS, PEARLE, INC., PV, PVC and DOES 451-500, and each of them, have engaged in and are still engaged in the following, among other, acts of unfair competition, as defined in Business and Professions Code section 17200, in that their business practices have violated and continue to violate Business and Professions Code section 655 in that defendants CNC, CNG, CVC, CVS, PEARLE, INC., PV, and DOES 451-

1 500, and each of them, have had and continue to have proprietary interests in, co-ownership with,
2 landlord tenant relationships with, or profit sharing relationships with, directly or indirectly, defendant
3 PVC and PVC optometrists.

4 Examples of the defendants' violations of Business and Professions Code section 655 include, but are
5 not limited to, the following:

6 A. PVC and PV stock is 100% owned by Defendant PEARLE, INC.; PEARLE,
7 INC., stock is 100% owned by CNG; CNG stock is 100% owned by CNC.

8 B. Defendant PVC is included in the consolidated federal income tax return of
9 defendant CNC in which income tax credits are allocated to PVC from defendant
10 CNC, and its subsidiaries. Examples of such allocations include, but are not limited to:

11 (1.) CNG allocated \$520,064 in income tax credits to PVC in the year ending
12 January 2001, \$533,638 in income tax credits to PVC in the year ending January
13 2000, \$461,714 in income tax credits in the year ending January 1998, and
14 \$104,687 in income tax credits in the year ending February 1997;

15 (2.) Defendant CNG allocated a total of \$4,217,362 in income tax credits to
16 PVC between 1993 and 2001.

17 C. Defendant CNG has also agreed to allocate certain tax benefits resulting from
18 defendant PEARLE, INC.'s tax deductions by other defendant CNC subsidiaries.
19 Defendant PEARLE, INC., has a similar agreement with its subsidiaries, including
20 defendant PVC, whereby any benefit allocated by defendant CNG to defendant
21 PEARLE, INC., is in turn allocated to defendant PEARLE, INC.'s subsidiaries,
22 including defendant PVC.

23 D. All cash balances of defendants PVC and PV are maintained by defendant
24 PEARLE, INC.

25 E. Defendant PVC receives financial support from defendants CNC, CNG, CVC,
26 CVS, PEARLE, INC., and PV in the form of capital contributions, loans, cash
27 advances, management and administrative services, and/or rent subsidies. Examples of
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1 capital contributions by defendant PEARLE, INC., to defendant PVC include but are
2 not limited to the following:

3 (1.) Defendant PEARLE, INC., made a capital contribution to defendant PVC in
4 the amount of \$502,466 in the quarter ending May 2001; \$850,000 in the year
5 ending January 2001, \$1,161,139, in the year ending January 1999; \$650,000 in
6 the year ending January 1998; and \$4,187,000 in the year ending September
7 1992.

8 (2.) Notwithstanding capital contributions from defendant PEARLE, INC.,
9 defendant PVC's operating losses total \$20,040,738 from September 1993 to
10 May 2001.

11 F. Defendant PVC and the PVC optometrists are dependent on defendants CNG,
12 CVC, CVS, PEARLE, INC., and DOES 451-500 for operational and fiscal
13 management, and administrative functioning. Examples of this dependence, include, but
14 are not limited to the following:

15 (1.) Defendant CNG provides a full spectrum of "services" to defendant PVC
16 and the PVC optometrists. These services include, but are not limited to:
17 "Treasury Services" including establishing bank accounts, providing corporate tax
18 services, including remitting payroll taxes, preparing tax returns, and investing
19 funds; "Risk Management" including obtaining all necessary insurance and
20 overseeing any litigation in which PVC is a party; "Benefit Administration"
21 including negotiating benefit packages on behalf of defendant CNC and all its
22 subsidiaries, offering such benefits to PVC on behalf of PVC employees, and
23 performing enrollment functions; "Information Services" including maintaining and
24 programming computer systems that provide interfaces to CNG, CVS, PV and
25 "other affiliates as necessary"; "Accounts Payable Processing" including
26 processing PVC

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1 accounts payable; and "Processing Payroll" including producing employee payroll
2 checks.

3 (2.) The cost of administrative services provided by defendant CNG on behalf of
4 defendant PVC is allocated among defendant PEARLE, INC., and its
5 subsidiaries, including defendant PVC, according to formulas, including the
6 allocation of expenses based primarily on the net revenue of these subsidiaries.
7 Defendant PVC has not had a positive net revenue during 1997 through 2001.
8 Accordingly, defendant PEARLE, INC., and its subsidiaries with positive net
9 revenue, including defendant PV, subsidize the cost of defendant PVC's
10 administrative and management services.

11 (3.) Defendants PV, PEARLE, INC., CVC and CVS also contract with
12 defendant PVC to provide additional services to defendant PVC. Examples of
13 these additional services include, but are not limited to, the following:

- 14 a. The Vice President for Professional Relations of PEARLE, INC., has
15 served as a member of defendant PVC's Quality Assurance Committee
16 which, among other things, changed the quality assurance protocols for
17 scheduling eye examinations with the PVC optometrists from thirty minute
18 intervals to twenty minute intervals;
- 19 b. Defendant PV funds defendant PVC's payroll which includes paying the
20 salaries of all PVC optometrists;
- 21 c. Defendant PV contracts with defendant PVC to furnish administrative
22 services that defendant PVC "reasonably requests";
- 23 d. Defendants PEARLE, INC., CVC, and CVS also contract with
24 defendant PVC to provide accounting, accounts payable, data processing,
25 financial reporting, legal, payroll, billing and collection of accounts, legal
26 services, marketing, purchasing, preparation of real property leases, and tax
27 services. Defendant PVC pays defendant PEARLE, INC., for these
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1 services on an “as needed” basis.

2 (4.) Defendant CNC provides employee benefit plans to employees of its
3 subsidiaries, including defendant PVC. Defendant CNC’s pension plan is funded
4 solely by defendant CNC and requires no contributions by employees of its
5 subsidiaries. The pensions provided to employees of defendants PEARLE, INC.,
6 PV and PVC, including the PVC optometrists, are provided by defendant CNC
7 at no expense to the employees of these subsidiaries.

8 (5.) The marketing expenses for defendant PVC and the PVC optometrists are
9 subsidized or paid by defendants CNC, CNG, CVC, CVS, PV, PEARLE, INC.,
10 and/or another wholly owned subsidiary of defendant CNC. Defendant PV also
11 directly markets and advertises the optometric services provided by the PVC
12 optometrists.

13 G. Defendant PV subleases to PVC, at minimal or no cost, the office space, office
14 equipment and optometric equipment used by the PVC optometrists.

15 H. Defendant PVC and the PVC optometrists use trademarks owned by defendants
16 PEARLE, INC., and PV, including, but not limited, to the name “Pearle.”

17 I. Defendants PV, PVC and PVC optometrists share telephone numbers, including,
18 but not limited to (800) YES-EYES.

19 J. Defendants CNC, CNG, CVS, CVC, PV, and PEARLE, INC., have and/or have
20 had interlocking directors and/or interlocking officers with PVC as set forth below in
21 paragraph 90 which is incorporated herein by this reference.

22 **NINTH CAUSE OF ACTION**

23 (Violations of Bus. & Prof. Code, §§ 17200 and 655)
24 (Illegal Relationships between Dispensing Opticians, Optical Retailers
& Optometrists as Against Defendants COLE, DEAL, GAGLIOTI, HOLDEN, OSGOOD,
POLLOCK, SHERRIFF, STEFKO, AND DOES 501-550.)

25 87. Plaintiff realleges and incorporates by reference paragraphs 1 through 88, inclusive, as
26 though set forth fully herein.

27 88. Beginning on an exact date unknown to plaintiff but within four (4) years preceding the
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1 filing of this and continuing to the present, defendants COLE, DEAL, GAGLIOTI, HOLDEN,
2 OSGOOD, POLLOCK, SHERRIFF, STEFKO, and DOES 501-550, and each of them, have
3 engaged in and are still engaged in the following, among other, acts of unfair competition, as defined in
4 Business and Professions Code section 17200, in that their business practices have violated and
5 continue to violate Business and Professions Code section 655 in that they are or have been
6 interlocking directors or interlocking officers among defendants CNC, CNG, CVC, CVS, PEARLE,
7 INC., PV, DOES 501-550, and PVC.

8 Examples of the defendants' violations of Business and Professions Code section 655 include, but are
9 not limited to, the following:

10 A. Defendant COLE was CNC Chairman of the Board, Chief Executive Officer,
11 Director, Principal Financial Officer and Principal Executive Officer in 1998. He was
12 CNC Chairman of the Board, Chief Executive Officer, Director, Chief Financial
13 Officer, and Principal Executive Officer in 1999. He was CNC Chairman of the
14 Board, Chief Executive Officer, Director, Principal Executive Officer, Chief Financial
15 Officer, and Principal Financial Officer in 2000. He was CNC Chairman of the Board,
16 Chief Executive Officer, Director, and Principal Executive Officer in 2001. He was
17 CNG Chairman of the Board, Director, Chief Executive Officer, and Chief Financial
18 Officer in 1999. He was CNG Chairman of the Board, Director, Chief Executive
19 Officer, Chief Financial Officer, Principal Financial Officer, and Principal Executive
20 Officer in 2000. He was a CVC Director and Chief Executive Officer in 1998. He was
21 a CVC Director in 1999. He was a CVC Director and Chairman of the Board in
22 2000. He was a CVC Director in 2001. He was a CVS Director in 1998 and 1999.
23 He was a CVS Director, President, and Chairman of the Board in 2000. He was CVS
24 President and Director in 2001. He was a PEARLE, INC. director in 2001. He was
25 PV Chairman of the Board and Director in 1998 and Director in 1999. He was PV
26 Chairman of the Board and Director in 2000 and 2001. He was PVC Assistant
27 Treasurer in 1998 and 1999.

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B. Defendant DEAL was CVC Senior Vice President of Operations in 2000 and PVC Director in 1999 and 2000.

C. Defendant GAGLIOTI was CNC Vice President and Treasurer in 1998, 1999, 2000, and 2001. He was CNG Vice President and Treasurer in 1999 and 2000. He was CVC Chief Financial Officer, Treasurer, Vice President, and Director in 1998. He was CVC Treasurer, Director, Vice President, and Assistant Secretary in 1999. He was CVC Treasurer, Assistant Secretary, Vice President and Director in 2000. He was CVC Vice President, Treasurer and Assistant Secretary in 2001. He was CVS Treasurer and Director in 1998. He was CVS Treasurer, Director, Vice President and Assistant Secretary in 1999. He was CVS Vice President, Treasurer and Assistant Secretary in 2000. He was CVS Treasurer and Assistant Secretary in 2001. He was PEARLE, INC. Vice President and Treasurer in 1998. He was PEARLE, INC. Treasurer in 1999. He was PEARLE, INC. Vice President, Treasurer, and Assistant Secretary in 2000. He was PV Vice President, Treasurer, Assistant Secretary, and Director in 1998. He was PV Treasurer in 1999. He was PV Vice President, Treasurer, Assistant Secretary, and Director in 2000. He was PV Vice President, Treasurer, Assistant Secretary, and Chief Financial Officer in 2001. He was PVC Vice President, Treasurer, and Director in 1998. He was PVC Vice President and Treasurer in 1999. He was PVC Vice President and Treasurer in 2000. He was PVC Vice President, and Treasurer in 2001.

D. Defendant HOLDEN was CVC Vice President, Executive Vice President, and Senior Vice President in 2001. He was CVS Vice President and Executive Vice President in 2001. He was PVC Vice President, Chairman of the Board, and Director in 2000. He was Vice President, Chairman of the Board, and Director in 2001.

E. Defendant OSGOOD was CVC Executive Vice President in 1999. He was CVC Executive Vice President in 2000. He was CVS Vice President in 1998. He was

1 CVS Vice President and Executive Vice President in 1999. He was CVS Vice
2 President and Executive Vice President in 2000. He was PV Executive Vice President
3 in 1998. He was PV Executive Vice President and Vice President in 2000. He was
4 PVC Chairman of the Board and Director in 1998. He was PVC Chairman of the
5 Board and Vice President in 1999. He was PVC Vice President, Chairman of the
6 Board, and Director in 2000.

7 F. Defendant POLLOCK was CNC President, Chief Operating Officer, and Director
8 in 2000. He was CNC President, Chief Operating Officer, and Director in 2001. He
9 was CVC Director in 1999. He was CVC President and Director in 2001. He was
10 CVS officer and Director in 2000 and Director in 2001. He was PV Director in 2000
11 and 2001. He was PVC Director in 2000 and 2001.

12 G. Defendant SHERRIFF was CVC Secretary in 1998. He was CVC Secretary,
13 General Counsel, and Vice President in 1999. He was CVC Vice President,
14 Secretary, and General Counsel in 2000. He was CVC Vice President, Secretary and
15 General Counsel in 2001. He was CVS Secretary in 1998. He was CVS Secretary
16 and General Counsel in 1999. He was CVS Secretary, General Counsel, and Director
17 in 2000. He was CVS Secretary and General Counsel in 2001. He was PEARLE,
18 INC. Vice President, Secretary and General Counsel in 2000 and Vice President,
19 Secretary and General Counsel in 2001. He was PV Vice President, Secretary and
20 General Counsel in 1998. He was PV Vice President, Secretary and General Counsel
21 in 1999. He was PV Vice President, Secretary and General Counsel in 2000. He was
22 PV Secretary and General Counsel in 2001. He was PVC Secretary in 1998 and
23 1999. He was a PVC Director and Secretary in 2000 and Secretary in 2001.

24 H. Defendant STEFKO was PEARLE, INC. Director, Vice President, Finance, in
25 2001. He was PV Vice President, Finance in 2001. He was PVC Vice President,
26 Finance, and Director in 2001.

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1 **TENTH CAUSE OF ACTION**

2 (Violation of Bus. & Prof. Code, §§ 17200 and 17500)
3 (Untrue or Misleading Advertising as Against Defendants
4 CNC, PV, PVC, STANLEY PEARLE and DOES 1-200.)

5 89. Plaintiff realleges and incorporates by reference paragraphs 1 through 90, inclusive, as
6 though set forth fully herein.

7 90. The untrue or misleading advertising by defendants CNC, PV, PVC, STANLEY
8 PEARLE, and DOES 1-200, as described above in paragraphs 41 through 48, which paragraphs are
9 incorporated herein by reference as though set forth in full, violated and continue to violate
10 Business and Professions Code section 17500 and constitute unlawful business acts and practices
11 within the meaning of Cal. Bus. & Prof. Code section 17200, et seq.

12 WHEREFORE, Plaintiff prays for judgment as follows:

13 1. That pursuant to Business and Professions Code sections 17203 and 17535, all
14 defendants, their officers, directors, principals, assignees, successors, agents, representatives,
15 employees, and all persons, corporations and other entities acting by, through, under, or on behalf of
16 said defendants, or acting in concert or participation with them, be permanently enjoined from directly
17 or indirectly making any untrue or misleading statements in violation of Business and Professions Codes
18 sections 17200 and 17500, including, but not limited to, the untrue or misleading statements alleged in
19 the First Cause of Action, Second Cause of Action, Third Cause of Action and Tenth Cause of Action;

20 2. That pursuant to Business and Professions Code sections 17203, that all defendants,
21 their officers, directors, principals, assignees, successors, agents, representatives, employees, and all
22 persons, corporations and other entities acting by, through, under, or on behalf of said defendants, or
23 acting in concert or participation with them, be permanently enjoined from directly or indirectly
24 committing any violations of Business and Professions Code section 17200, et seq., including but not
25 limited to, the violations alleged in the Fourth Cause of Action, Fifth Cause of Action, Sixth Cause of
26 Action, Seventh Cause of Action, Eighth Cause of Action, and Ninth Cause of Action; including,
27 directly or indirectly, doing any of the following:

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7. That the People recover their costs of suit.

Dated: February 14, 2002

Respectfully submitted,
BILL LOCKYER
Attorney General of the State of California
ALBERT NORMAN SHELDEN
Supervising Deputy Attorney General
ANTOINETTE CINCOTTA
Deputy Attorney General
LORETTA A. NICKERSON
Deputy Attorney General
DIANE DE KERVOR
Deputy Attorney General
RON ESPINOZA
Deputy Attorney General

By: **ANTOINETTE CINCOTTA**
Deputy Attorney General
Attorneys for Plaintiff