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ALAMEDA COUNTY

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA  
11

12 PEOPLE OF THE STATE OF CALIFORNIA,  
13 *ex rel.* BILL LOCKYER, Attorney General,

14 Plaintiff,  
15

16 v.

17 BURLINGTON COAT FACTORY  
WAREHOUSE CORPORATION, *et al.*,

18 Defendants.  
19

20 \_\_\_\_\_  
And Consolidated Cases.  
21 \_\_\_\_\_  
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) Lead Case No.: RG 04-162075

) [Consolidated with Case Nos.: RG 06-  
269531; RG 04-162037; and RG 04-  
169511]

) **[PROPOSED] FIRST AMENDED**  
) **COMPLAINT -- CENTER FOR**  
) **ENVIRONMENTAL HEALTH V.**  
) **NADRI, INC.; CASE NO. RG 06-269531**

) Health & Safety Code §25249.6 et seq.

) (Other)

1 Plaintiff Center for Environmental Health, in the public interest, based on  
2 information and belief and investigation of counsel, except for information based on personal  
3 knowledge, hereby makes the following allegations:

#### 4 INTRODUCTION

5 1. This First Amended Complaint seeks to remedy defendants' continuing  
6 failure to warn individuals in California that they are being exposed to lead and lead compounds  
7 (collectively, "Lead"), chemicals known to the State of California to cause cancer, birth defects  
8 and other reproductive harm. Such exposures have occurred, and continue to occur, through the  
9 manufacture, distribution, sale and use of defendants' jewelry, such as bracelets, necklaces, and  
10 earrings, made of materials containing Lead (the "Products"). Lead is present in both the metallic  
11 and non-metallic parts of the Products. The route of exposure for the violations is direct  
12 ingestion when consumers place the Products in their mouths, ingestion via hand to mouth contact  
13 after consumers wear, touch or handle the Products or eat after coming into contact with the  
14 Products, and dermal absorption directly through the skin when consumers wear, touch or handle  
15 the Products. Many of the Products are designed for and marketed to young children and teens,  
16 who are particularly likely to place the Products in their mouths and who are also particularly  
17 susceptible to lead poisoning. These exposures occur in homes, workplaces and everywhere else  
18 throughout California where people wear, touch or handle the Products. Clear and reasonable  
19 warnings are not provided to users of the Products regarding the carcinogenic or reproductive  
20 hazards of Lead. Consequently, defendants have violated and continue to violate the warning  
21 provision of Proposition 65. Health & Safety Code §25249.6.

#### 22 PARTIES

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

1 prosecuted a large number of Proposition 65 cases in the public interest. These cases have  
2 resulted in significant public benefit, including reformulation of toxic products to make them safer  
3 and the provision of clear and reasonable warnings on hundreds of products sold throughout  
4 California.

5           3. Defendant 99¢ ONLY STORES is a person in the course of doing business  
6 within the meaning of Health & Safety Code §25249.11. 99¢ ONLY STORES manufactures,  
7 distributes and/or sells the Products for sale and use in California.

8           4. Defendant ABERCROMBIE & FITCH CO. is a person in the course of  
9 doing business within the meaning of Health & Safety Code §25249.11. ABERCROMBIE &  
10 FITCH CO. manufactures, distributes and/or sells the Products for sale and use in California.

11           5. Defendant ALDO GROUP, INC. is a person in the course of doing  
12 business within the meaning of Health & Safety Code §25249.11. ALDO GROUP, INC.  
13 manufactures, distributes and/or sells the Products for sale and use in California.

14           6. Defendant ALDO US, INC. is a person in the course of doing business  
15 within the meaning of Health & Safety Code §25249.11. ALDO US, INC. manufactures,  
16 distributes and/or sells the Products for sale and use in California.

17           7. Defendant ANN TAYLOR STORES, INC. is a person in the course of  
18 doing business within the meaning of Health & Safety Code §25249.11. ANN TAYLOR  
19 STORES, INC. manufactures, distributes and/or sells the Products for sale and use in California.

20           8. Defendant BENJAMIN INTERNATIONAL, INC. is a person in the  
21 course of doing business within the meaning of Health & Safety Code §25249.11. BENJAMIN  
22 INTERNATIONAL, INC. manufactures, distributes and/or sells the Products for sale and use in  
23 California.

24           9. Defendant BEVERLY FABRICS, INC. is a person in the course of doing  
25 business within the meaning of Health & Safety Code §25249.11. BEVERLY FABRICS, INC.  
26 manufactures, distributes and/or sells the Products for sale and use in California.

27           10. Defendant BIG LOTS STORES, INC. is a person in the course of doing  
28 business within the meaning of Health & Safety Code §25249.11. BIG LOTS STORES, INC.

1 manufactures, distributes and/or sells the Products for sale and use in California.

2 11. Defendant BUFFALO EXCHANGE, LTD. is a person in the course of  
3 doing business within the meaning of Health & Safety Code §25249.11. BUFFALO  
4 EXCHANGE, LTD. manufactures, distributes and/or sells the Products for sale and use in  
5 California.

6 12. Defendant ELEMENT SKATEBOARDS, INC. is a person in the course  
7 of doing business within the meaning of Health & Safety Code §25249.11. ELEMENT  
8 SKATEBOARDS, INC. manufactures, distributes and/or sells the Products for sale and use in  
9 California.

10 13. Defendant HENNES & MAURITZ, LP is a person in the course of doing  
11 business within the meaning of Health & Safety Code §25249.11. HENNES & MAURITZ, LP  
12 manufactures, distributes and/or sells the Products for sale and use in California.

13 14. Defendant HOME SHOPPING NETWORK, INC. is a person in the  
14 course of doing business within the meaning of Health & Safety Code §25249.11. HOME  
15 SHOPPING NETWORK, INC. manufactures, distributes and/or sells the Products for sale and  
16 use in California.

17 15. Defendant J. DEW COLLECTION, INC. is a person in the course of doing  
18 business within the meaning of Health & Safety Code §25249.11. J. DEW COLLECTION, INC.  
19 manufactures, distributes and/or sells the Products for sale and use in California.

20 16. Defendant JIMMY Z SURF CO., INC. is a person in the course of doing  
21 business within the meaning of Health & Safety Code §25249.11. JIMMY Z SURF CO., INC.  
22 manufactures, distributes and/or sells the Products for sale and use in California.

23 17. Defendant LONG RAP, INC. is a person in the course of doing business  
24 within the meaning of Health & Safety Code §25249.11. LONG RAP, INC. manufactures,  
25 distributes and/or sells the Products for sale and use in California.

26 18. Defendant MEL BERNIE & COMPANY, INC. is a person in the course  
27 of doing business within the meaning of Health & Safety Code §25249.11. MEL, BERNIE &  
28 COMPANY, INC. manufactures, distributes and/or sells the Products for sale and use in

1 California.

2 19. Defendant PACIFIC SUNWEAR OF CALIFORNIA, INC. is a person in  
3 the course of doing business within the meaning of Health & Safety Code §25249.11. PACIFIC  
4 SUNWEAR OF CALIFORNIA, INC. manufactures, distributes and/or sells the Products for sale  
5 and use in California.

6 20. Defendant PAYLESS SHOESOURCE, INC. is a person in the course of  
7 doing business within the meaning of Health & Safety Code §25249.11. PAYLESS  
8 SHOESOURCE, INC. manufactures, distributes and/or sells the Products for sale and use in  
9 California.

10 21. Defendant SHOP AT HOME, LLC is a person in the course of doing  
11 business within the meaning of Health & Safety Code §25249.11. SHOP AT HOME, LLC  
12 manufactures, distributes and/or sells the Products for sale and use in California.

13 22. Defendant SHOP AT HOME NETWORK, LLC is a person in the course  
14 of doing business within the meaning of Health & Safety Code §25249.11. SHOP AT HOME  
15 NETWORK, LLC manufactures, distributes and/or sells the Products for sale and use in  
16 California.

17 23. Defendant TALBOTS, INC. is a person in the course of doing business  
18 within the meaning of Health & Safety Code §25249.11. TALBOTS, INC. manufactures,  
19 distributes and/or sells the Products for sale and use in California.

20 24. Defendant VALUE VISION MEDIA, INC. is a person in the course of  
21 doing business within the meaning of Health & Safety Code §25249.11. VALUE VISION  
22 MEDIA, INC. manufactures, distributes and/or sells the Products for sale and use in California.

23 25. DOES 1-200 are each a person in the course of doing business within the  
24 meaning of Health & Safety Code §25249.11. DOES 1 through 200 manufacture, distribute  
25 and/or sell the Products for sale or use in California.

26 26. The true names of DOES 1 through 200 are unknown to plaintiff at this  
27 time. When their identities are ascertained, the complaint shall be amended to reflect their true  
28 names.



1           33.     On February 27, 1987, the State of California officially listed lead as a  
2 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive  
3 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to  
4 the developing fetus, “female reproductive toxicity,” which means harm to the female  
5 reproductive system, and “male reproductive toxicity,” which means harm to the male  
6 reproductive system. 22 California Code of Regulations (“CCR”) §12000(c). On February 27,  
7 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead became  
8 subject to the clear and reasonable warning requirement regarding reproductive toxicants under  
9 Proposition 65. 22 CCR §12000(c); Health & Safety Code §25249.10(b).

10           34.     On October 1, 1992, the State of California officially listed lead and lead  
11 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were  
12 listed as a chemicals known to cause cancer, lead and lead compounds became subject to the clear  
13 and reasonable warning requirement regarding carcinogens under Proposition 65. 22 CCR  
14 §12000(c); Health & Safety Code §25249.10(b).

15           35.     Under Proposition 65, an exposure is “knowing” where the party  
16 responsible for such exposure has:

17                   knowledge of the fact that a[n] . . . exposure to a chemical listed  
18                   pursuant to Health and Safety Code §25249.8(a) is occurring. No  
19                   knowledge that the . . . exposure is unlawful is required.

20           22 CCR §12201(d).

21           36.     Defendants know that individuals, including children, wear, touch and  
22 handle the Products, thus exposing them to Lead without prior clear and reasonable warning  
23 regarding the carcinogenic or reproductive hazards of Lead.

24           37.     Defendants intend that individuals, including children, through the  
25 reasonably foreseeable use of the Products, wear, touch and handle the Products, thus exposing  
26 them to Lead without prior clear and reasonable warning regarding the carcinogenic or  
27 reproductive hazards of Lead.

28           38.     The Products contain sufficient quantities of Lead such that consumers  
who wear, touch or handle the Products are exposed to Lead through the reasonably foreseeable

1 use of the Products. These exposures occur when people who wear, touch or handle the  
2 Products ingest the Lead by placing the Products directly in their mouths, ingest the Lead by hand  
3 to mouth contact, ingest the Lead by eating or drinking after coming into contact with the  
4 Products, and absorb the Lead through directly the skin. No clear and reasonable warning is  
5 provided with the Products regarding the carcinogenic or reproductive hazards of Lead.

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

10           40. More than sixty days before naming each Defendant in this suit, CEH  
11 provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General,  
12 the District Attorneys of every county in California, the City Attorneys of every California city  
13 with a population greater than 750,000, and to each named Defendant. In compliance with  
14 Health & Safety Code §25249.7(d) and 22 CCR §12903(b), each Notice of Violation included the  
15 following information: the name and address of the violator; the statute violated; the time period  
16 during which violations occurred; specific descriptions of the violations, including the routes of  
17 exposure to Lead from the Products, and the specific type of product with specific non-exclusive  
18 examples of Products sold and used in violation of Proposition 65; and the name of the specific  
19 Proposition 65-listed chemical that is the subject of the violation described in the Notice (Lead).

20           41. CEH also sent a Certificate of Merit relating to each of the Notices to the  
21 California Attorney General, the District Attorneys of every county in California, the City  
22 Attorneys of every California city with a population greater than 750,000, and to each named  
23 Defendant. In compliance with Health & Safety Code §25249.7(d) and 11 CCR §3101, each of  
24 these Certificates certified that CEH's counsel: (1) has consulted with one or more persons with  
25 relevant and appropriate experience or expertise who reviewed facts, studies or other data  
26 regarding the exposures to Lead alleged in the Notice; and (2) based on the information obtained  
27 through such consultations, believes that there is a reasonable and meritorious case for a citizen  
28 enforcement action based on the facts alleged in the attached Notice. In compliance with Health

1 & Safety Code §25249.7(d) and 11 CCR §3102, each of the Certificates served on the Attorney  
2 General included factual information – provided on a confidential basis – sufficient to establish the  
3 basis for the Certificate, including the identity of the person(s) consulted by CEH’s counsel and  
4 the facts, studies or other data reviewed by such persons.

5 42. None of the public prosecutors with the authority to prosecute violations of  
6 Proposition 65 has commenced and/or is diligently prosecuting a cause of action against the  
7 Proposition 65 Defendants under Health & Safety Code §25249.5 *et seq.* based on the claims  
8 asserted in the Notices.

9 43. Any person “violating or threatening to violate” the Proposition 65 may be  
10 enjoined in any court of competent jurisdiction. Health & Safety Code §25249.7. To “threaten to  
11 violate” is defined to mean “to create a condition in which there is a substantial probability that a  
12 violation will occur.” Health & Safety Code §25249.11(e). Proposition 65 provides for civil  
13 penalties not to exceed \$2,500 per day for each violation of Proposition 65.

#### 14 **FIRST CAUSE OF ACTION**

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

16 44. Plaintiff realleges and incorporates by reference as if specifically set forth  
17 herein Paragraphs 1 through 43 inclusive.

18 45. By placing the Products into the stream of commerce, Defendants are  
19 persons in the course of doing business within the meaning of Health & Safety Code §25249.11.

20 46. Defendants know that through the reasonably foreseeable use of the  
21 Products, users of the Products are exposed to Lead. Defendants intend that the Products be  
22 used in a manner that results in users of the Products being exposed to Lead contained in the  
23 Products.

24 47. Defendants have failed, and continue to fail, to provide clear and  
25 reasonable warning regarding the carcinogenicity and reproductive toxicity of Lead to users of the  
26 Products.

27 48. Lead is a chemical listed by the State of California as known to cause  
28 cancer, birth defects and other reproductive harm.

