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OF ORIGINAL FILED
Los Angeles Superior Court

MAY 24 2006

John A. Clarke, Executive Officer/Clerk
By D. Giles Deputy
D. Giles

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

11 VICKY HAMILTON, an individual,
12 Plaintiff,

13 v.

14 HOT TOPIC, INC., a CALIFORNIA corporation;
15 and DEFENDANT DOES 1 through 100,
inclusive,

16 Defendants.

Case No. BC352903

**COMPLAINT FOR INJUNCTIVE
RELIEF, RESTITUTION, DAMAGES
AND PUNITIVE DAMAGES;
DEMANDS FOR JURY TRIAL**

Bus. & Prof. Code § 17200 *et seq.*;
Bus. & Prof. Code § 17500 *et seq.*;
Civil Code § 1709;
Civil Code § 1710;
Civil Code § 1750 *et seq.*; and
Health & Safety Code § 25249.5 *et seq.*

Environmental/Toxic Tort (30)

1 Plaintiff, by and through its counsel, hereby alleges the following on information and
2 belief:

3 **INTRODUCTION AND SUMMARY**

4 1. This complaint seeks to hold the defendants HOT TOPIC, INC., a California
5 corporation (“Hot Topic” or “Defendant”), and DEFENDANT DOES 1 through 100, inclusive,
6 (collectively “Defendants”) accountable for their continuing violation of California state laws.

7 2. Each Defendant offers for sale and sells certain cosmetic products, including but
8 not limited to Hot Topic® Neon Skull green glitter pencil, Hot Topic® 4 Skull GLS with bagset
9 (lip gloss/color) – Lime, Hot Topic® 4 Skull GLS with bagset (lip gloss/color) – Vanilla,
10 RAW® Funky Fushcia Color - brilliant demi-permanent hair color, RAW® Pitch Black Color -
11 brilliant demi-permanent hair color, RAW® Multi Glitter - Temporary Hair Color Spray and
12 RAW® Pitch Black Spiking Gel - Temporary Color Spiking Gel and similar products
13 (“Products”).

14 3. The Products contain Lead, a chemical listed pursuant to the Safe Drinking Water
15 and Toxic Enforcement Act of 1986, an initiative statute commonly known as “Proposition 65”
16 after its ballot designation and codified at California Health & Safety Code § 25249.5 *et seq.*
17 Lead has been listed for more than twelve months by the Governor of the State of California as a
18 chemical known by the State of California to cause cancer and reproductive toxicity pursuant to
19 Proposition 65. Each Defendant has failed to give each individual that purchases a Product a
20 clear and reasonable warning that the Lead in each Product is a chemical known to the State of
21 Chemical to be a carcinogen and/or a reproductive toxin in violation of California Health &
22 Safety Code § 25249.6.

23 4. Lead, even in small doses, is well known to cause damage to both the male and
24 female reproductive systems. Agency For Toxic Substances and Disease Registry (“ATSDR”),
25 *ToxFAQs: Lead, 1993* and *Toxicological Profile, 1999*. Prenatal exposure to Lead can have
26 harmful developmental effects, including premature births, smaller babies, decreased mental
27 ability in the infant, learning difficulties, and reduced growth in young children, as well as
28

1 teratogenic effects including brain damage and abortion. *Id.* Childhood exposure to Lead can
2 also have harmful effects, including neurological damage and cancer. *Id.*

3 5. Defendant's conduct in selling these Products violates California law, including
4 Proposition 65, the Consumer Legal Remedies Act, the Unlawful Competition Law, and the
5 False Advertising Law.

6 **FACTUAL BACKGROUND**

7 6. Defendants' Products are distributed to and for the use of California consumers,
8 including Plaintiff, amongst others. Defendants have each sold and distributed their respective
9 Products in California continuously over the four years preceding the filing of this action.

10 7. The Products contain Lead, which comes into contact with a consumers' skin
11 when the Product is applied to the consumer's skin using Defendants' Products as recommended
12 by the Products' directions for use as supplied by Defendants.

13 8. Defendants know that their respective Products contain Lead and that individuals,
14 including Ms. Hamilton, will be exposed to Lead through the intended and foreseeable use of
15 their respective Products.

16 9. The Products' directions for use state the manner in which each Defendant intends
17 its respective Products to be used. The use of the Products in this manner results in exposing
18 consumers in California to the Lead contained in each of the Products.

19 10. Since May 24, 2002, each Defendant has failed to provide a clear and reasonable
20 warning regarding the reproductive toxicity or the carcinogenicity caused by exposure to Lead
21 from use of its Products sold after that date.

22 11. Each Defendant fails to provide any disclosure that its Products contains Lead,
23 any disclosure or warning as to the potential adverse health effects from contact with Lead, or
24 any disclosure or warning that the State of California has officially determined Lead to be
25 known to cause cancer and/or reproductive toxicity.

26 12. Each Defendant knows or should reasonably know that its failure to disclose the
27 presence of Lead in its respective Products, while at the same time promoting its respective
28 Products in a fashion likely to create expectations of safety and well-being among the users of its

1 respective Products, is likely to deceive, and is deceiving, the Plaintiff and similarly situated
2 consumers regarding the nature and safety of Defendants' respective Products.

3 **PARTIES**

4 13. Plaintiff VICKY HAMILTON ("Plaintiff" or "Ms. Hamilton") is a natural person
5 and a resident of Los Angeles County.

6 14. The term "Plaintiff" as used herein is defined to mean Ms. Hamilton.

7 15. Ms. Hamilton is a "person" within the meaning of California Health & Safety
8 ("H&S") Code § 25249.11(a) and Business & Professions ("B&P") Code §§ 17201 and 17204,
9 respectively. Ms. Hamilton is also a "consumer" within the meaning of California Civil Code
10 ("Civil Code") § 1761(d). She personally purchased each of Defendants' respective Products in
11 reliance upon the respective Product's labeling, packaging, advertising and/or marketing.

12 16. Defendant HOT TOPIC, INC. is a California corporation whose headquarters is
13 located at 18305 East San Jose Avenue in Industry, California 91748.

14 17. The true names of DEFENDANT DOES 1 through 100 are unknown to Plaintiff
15 at this time. When their identities are ascertained, the complaint shall be amended to reflect their
16 true names.

17 18. The term "Defendants" as used herein includes individually and collectively Hot
18 Topic and all DOE DEFENDANTS.

19 **STATUTORY AND REGULATORY BACKGROUND**

20 **PROPOSITION 65**

21 19. The People of the State of California declared, in adopting Proposition 65 in 1986
22 as an initiative statute, their right "[t]o be informed about exposures to chemicals that cause
23 cancer, birth defects and other reproductive harm." Proposition 65, § 1(b).

24 20. To effectuate this goal, Proposition 65 requires that individuals be provided with a
25 clear and reasonable warning before being exposed to chemicals listed by the State of California
26 as causing cancer or birth defects and other reproductive harm, unless the person (including
27 businesses) responsible for the exposure can prove that such exposure is otherwise lawful, as
28 follows:

1 No person in the course of doing business shall knowingly and
2 intentionally expose any individual to a chemical known to the state
3 and reasonable warning to such individual....H&S Code § 25249.6

4 21. On February 27, 1987, the Governor of the State of California officially listed
5 Lead as a chemical known to cause reproductive toxicity. Lead became subject to the
6 Proposition 65 “clear and reasonable” reproductive toxicity warning requirement one year later,
7 beginning on February 27, 1988. Title 22 of the California Code of Regulations (“CCR”)
8 § 12000; H&S Code § 25249.5 *et seq.*

9 22. On October 1, 1992, the State of California officially listed lead and lead
10 compounds (collectively referred to herein as “Lead”) as chemicals known to cause cancer.
11 Lead became subject to the Proposition 65 “clear and reasonable” carcinogen warning one year
12 later beginning on October 1, 1993. 22 CCR § 12000; H&S Code § 25249.5 *et seq.*

13 23. Since May 24, 2002, each Defendant has failed to provide a clear and reasonable
14 warning regarding the reproductive toxicity and/or the carcinogenicity caused by exposure to
15 each Toxic Metal from use of its Products sold after that date.

16 24. Each Defendant also fails to provide any disclosure that its Product contains Lead,
17 any disclosure or warning as to the potential adverse health effects from contact with Lead, or
18 any disclosure or warning that the State of California has officially determined Lead to be
19 known to cause cancer and/or reproductive toxicity.

20 25. Each Defendant knows or should reasonably know that its failure to disclose the
21 presence of Lead in its respective Products, while at the same time promoting its respective
22 Products in a fashion likely to create expectations of safety and well-being among the users of its
23 respective Products, is likely to deceive, and is deceiving, Ms. Hamilton and similarly situated
24 consumers in California regarding the nature and safety of each Defendants’ respective Products.

25 26. Any person, including Ms. Hamilton, has standing to enforce violations of
26 Proposition 65, provided that such person has supplied the requisite public enforcers with a
27 Sixty-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
28 within their respective jurisdictions within such time. H&S Code § 25249.7(d). On or about

1 February 9, 2006, Ms. Hamilton served a Sixty-Day “Notice of Violation of Proposition 65” (the
2 “Notice”) on the California Attorney General, the District Attorneys of every county in
3 California, the City Attorneys of every California city with a population greater than 750,000,
4 and on each Defendant. Ms. Hamilton accomplished service of the Notice on each Defendant in
5 full and complete compliance with each specific requirement of 22 CCR § 12903, including but
6 not limited to the inclusion of the following information in the Notice: Ms. Hamilton’s name
7 and contact address; Ms. Hamilton’s attorney of record; the name and address of the violator; the
8 statute violated; the time period during which violations occurred; the routes of exposure to the
9 Lead in the Products and specific descriptions of the violations, including product categories and
10 specific illustrative examples of Products sold and used in violation of Proposition 65, as well as
11 identifying Lead and Lead compounds as the specific Proposition 65-listed chemicals that are
12 the subject of the violation described in the Notice. None of the public prosecutors has
13 subsequently commenced or prosecuted an action based on Ms. Hamilton’s Notice.
14 Ms. Hamilton’s Notice was sent at least sixty-days prior to the filing of this Complaint.
15 Ms. Hamilton also complied fully and completely with H&S Code § 25249.7 as amended, in that
16 Ms. Hamilton provided the required certificate of merit.

17 27. Proposition 65 provides for injunctive relief and civil penalties up to \$2,500 per
18 day for each violation of Proposition 65.

19 28. Selling a Product in violation of H&S Code § 25249.6, as well as omitting the
20 material facts that the Product (1) contains Lead, (2) which has known adverse human health
21 side effects, constitutes individually and collectively unlawful, unfair and fraudulent business
22 practices pursuant to the California Unlawful Competition Law at B&P Code § 17200 *et seq.*; a
23 violation of the California False Advertising Law at B&P Code § 17500 *et seq.*; a violation of
24 the California Legal Remedies Act at Civil Code §§ 1750 and 1770; and constitutes a fraud by
25 concealment and misrepresentation pursuant to Civil Code §§ 1709 and 1710.

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1 **CALIFORNIA CONSUMER LEGAL REMEDIES ACT**

2 29. On or about February 9, 2006, Ms. Hamilton served pursuant to the California
3 Consumer Legal Remedies Act (“CLRA” – Civil Code § 1750 *et seq.*), specifically Civil Code
4 § 1782, each Defendant with a notice letter via certified mail, return receipt requested, stating
5 *inter alia* as follows:

6 These Hot Topic facial, skin and hair treatment consumer products
7 have been sold to California consumers without your company
8 disclosing the presence of Lead and/or Lead and lead compounds in
9 these products, nor has your company disclosed the potential
10 adverse health effect risks posed by exposure to either Lead or Lead
11 and lead compounds in these facial, skin and hair treatment
12 consumer products. These omissions of material facts constitute
13 deceptive representations in violation of § 1770 of the CLRA.

14 30. The CLRA provides, *inter alia*, a statutory remedy for unfair methods of
15 competition as well as unfair or deceptive acts or practices undertaken by any person in a
16 transaction intended to result, or which results, in the sale or lease of goods or services to any
17 consumer. The declared purposes of the CLRA are to protect consumers against unfair and
18 deceptive business practices and to provide efficient and economical procedures to secure such
19 protection. Remedies under the CLRA include injunctive relief, damages and punitive damages,
20 as well as attorneys’ fees and costs. The facts underlying each Defendant’s violation of the
21 CRLA, as well as each Defendants’ omission of the material facts, are that (1) Lead is present in
22 each Product and that fact is not disclosed to purchasers of the Products, (2) each Defendant has
23 made false and/or misleading claims regarding its respective Products; and/or (3) Lead has
24 known adverse human health side effects and yet each Defendant has failed to disclose these
25 material facts to its customers regarding these adverse human health side effects in the sale of
26 their respective Products, each of which individually and all collectively constitute violations of
27 the CLRA.

28 **UNLAWFUL COMPETITION LAW**

31. The Unlawful Competition Law (“UCL” – B&P Code § 17200 *et seq.*) defines
“unfair competition” as any unlawful, unfair or fraudulent business act or practice and unfair,
deceptive, untrue or misleading advertising. The UCL works by borrowing violations of other

1 laws and treating those transgressions, when committed as a business activity, as “unlawful
2 business practices.” Such unlawful business practices are independently actionable under
3 B&P Code § 17200 *et seq.* and subject to the distinct remedies provided there under.

4 32. The facts underlying each Defendant’s violation of Proposition 65 and the CRLA,
5 as well as each Defendants’ omission of the material facts, are that (1) Lead is present in each
6 Product and that fact is not disclosed to purchasers of the Products; (2) each Defendant has made
7 false and/or misleading claims regarding its respective Products; and/or (3) Lead has known
8 adverse human health side effects and yet each Defendant has failed to disclose these material
9 facts to its customers regarding these adverse human health side effects in the sale of their
10 respective Products, all of which constitutes the violation of these other laws and is a *per se*
11 violation of the UCL as an unlawful business practice, as well as unfair and fraudulent business
12 practices committed by each Defendant in the sale of their respective Products, thereby
13 constituting acts of unfair competition that may be enjoined by the Court pursuant to B&P Code
14 § 17203.

15 **FALSE ADVERTISING LAW**

16 33. The False Advertising Law (“FAL” – Business and Professions Code
17 § 17500 *et seq.*) prohibits not only advertising which is false, but also advertising which,
18 although true, is either actually misleading or which has a capacity, likelihood or tendency to
19 deceive or confuse the public; thus, it is necessary only to show that members of the public are
20 likely to be deceived. Ms. Hamilton relied on each Defendant’s representation that she was
21 buying a safe product in purchasing each Defendant’s respective Product, and she relied upon
22 the Product’s labeling, advertising and marketing in making her product selection.

23 34. The facts underlying each Defendant’s violation of Proposition 65, the CRLA and
24 the UCL, as well as each Defendants’ omission of the material facts, are that (1) Lead is present
25 in each Product and that fact is not disclosed to purchasers of the Products; (2) each Defendant
26 has made false and/or misleading claims regarding its respective Products; (3) Lead has known
27 adverse human health side effects; and yet (4) each Defendant has failed to disclose these
28 material facts to its customers regarding these adverse human health side effects in the sale of

1 their respective Products, in violation of the FAL in the sale of their respective Products, all of
2 which constitute acts of false advertising and unfair competition that may be enjoined by the
3 Court pursuant to B&P Code § 17535.

4 35. Each Defendant's failure to provide warnings regarding the potentially adverse
5 health effects of taking Lead also constitutes an act of unfair competition as well as false
6 advertising that may be enjoined by the Court pursuant to B&P Code §§ 17203 and 17535.

7 **CIVIL CODE §§ 1709 AND 1710**

8 36. Under California law, the elements of a claim of fraud by concealment are
9 "(1) suppression of a material fact; (2) by one who is bound to disclose it, or who gives
10 information of other facts which are likely to mislead for want of communication of that fact;
11 (3) with intent to deceive a person unaware of the concealed fact and who would not have acted
12 had he known of the fact."

13 37. All Defendants suppress certain material facts in their labels and other marketing
14 statements which they are bound to disclose to consumers, like Ms. Hamilton, thereby
15 intentionally deceiving Ms. Hamilton and other consumers, who are unaware that each
16 Defendant has concealed these facts, which are that (1) Lead is present in each Product and that
17 fact is not disclosed to purchasers of the Products; (2) each Defendant has made false and/or
18 misleading claims regarding its respective Products; and (3) Lead has known adverse human
19 health side effects. Each Defendant has failed to disclose these material facts to its customers
20 regarding these adverse human health side effects in the sale of their respective Products.
21 Because each Defendant is also subject to Proposition 65 in the sale of their respective Products,
22 each Defendant has a legal duty to give a clear and reasonable warning regarding the Lead in its
23 Products to purchasers of its Product. No consumer, including Ms. Hamilton, relying upon the
24 marketing statements of each Defendant for their respective Product, would have purchased each
25 Defendant's respective Product had he or she known of these facts, before deciding to take the
26 risk posed by exposure to each of these Defendants' respective Products.

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1 **REMEDIES SOUGHT**

2 38. Ms. Hamilton seeks from each Defendant penalties as provided at
3 H&S § 25249.7(b), restitution and other remedies as provided by B&P Code §§ 17203 and
4 17535, as well as actual damages and punitive damages according to proof as provided by Civil
5 Code §§ 1709, 1710, 1780, including at least the purchase price she paid for each Product she
6 personally purchased.

7 39. Ms. Hamilton seeks injunctive relief to compel each Defendant to cease violating
8 Proposition 65, the CLRA, UCL, Civil Code §§ 1709 and 1710 and to provide clear and
9 reasonable warnings regarding the presence and known health hazards of exposure to each of the
10 Lead contained in each of their respective Products.

11 **JURISDICTION AND VENUE**

12 40. The Court has jurisdiction over this action pursuant to Civil Code §§ 1709, 1710
13 and 1780; H&S Code § 25249.7; B&P Code §§ 17203, 17204 and 17535, which individually
14 and collectively allow enforcement in any court of competent jurisdiction. The California
15 Superior Court has jurisdiction over this action pursuant to California Constitution Article VI,
16 Section 10, which grants the Superior Court “original jurisdiction in all cases except those given
17 by statute to other trial courts.” The statutes under which this action is brought do not grant
18 jurisdiction to any other trial court.

19 41. This Court has jurisdiction over each Defendant because, based on information
20 and belief, each Defendant is a corporation or business entity that has sufficient minimum
21 contacts in California, is a citizen of California, or otherwise intentionally avails itself of the
22 California market either through the distribution or sale of its Products in the State of California
23 or by having a manufacturing, distribution or other facility located in California so as to render
24 the exercise of jurisdiction over it by the California courts consistent with traditional notions of
25 fair play and substantial justice.

26 42. Venue is proper in the Los Angeles Superior Court because numerous violations
27 alleged above have occurred and are occurring in the County of Los Angeles.

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1 **FIRST CAUSE OF ACTION**

2 **(Unlawful Acts of Knowingly and Intentionally Exposing Individuals to Lead as a**
3 **Carcinogen in Violation of H&S Code § 25249.6 *et seq.*,**
4 **By All Defendants)**

5 43. Plaintiff realleges and incorporates by reference as if specifically set forth herein
6 Paragraphs 1 through 42 inclusive.

7 44. From May 24, 2005 and continuing to the present, each Defendant has sold its
8 Products in California in the year preceding the filing of this action. Each Defendant has failed,
9 and continues to fail, to provide clear and reasonable warnings regarding the carcinogenicity of
10 Lead to consumers and/or users of its Products, as required by Proposition 65.

11 45. By committing the acts alleged above, each Defendant has, since or after
12 May 24, 2005, violated Proposition 65, by knowingly and intentionally exposing individuals to
13 Lead without first giving them clear and reasonable warning regarding the carcinogenicity of
14 Lead. On information and belief, Plaintiff alleges that within the statutory period each
15 Defendant has engaged in multiple sales of its Products in California in violation of the statute.
16 Each of those sales is subject to the statutorily authorized penalty of up to \$2500 per violation.

17 Wherefore, Plaintiff prays for judgment against each Defendant, as set forth hereafter.

18 **SECOND CAUSE OF ACTION**

19 **(Unlawful Acts of Knowingly and Intentionally Exposing Individuals to Lead as a**
20 **Reproductive Toxin in Violation of H&S Code § 25249.6 *et seq.*,**
21 **By All Defendants)**

22 46. Plaintiff realleges and incorporates by reference as if specifically set forth herein
23 Paragraphs 1 through 45 inclusive.

24 47. From May 24, 2005, and continuing to the present, each Defendant has sold its
25 Products in California in the year preceding the filing of this action. Each Defendant has failed,
26 and continues to fail, to provide clear and reasonable warnings regarding the reproductive
27 toxicity of Lead to consumers and/or users of its Products, as required by Proposition 65.

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1 separate and cumulative acts of unlawful, unfair and/or fraudulent business practices pursuant to
2 B&P Code § 17200 *et seq.*

3 Wherefore Ms. Hamilton prays judgment against each Defendant, as set forth hereafter.

4 **FOURTH CAUSE OF ACTION**

5 **(Violations of B&P Code § 17200 *et seq.* Based on Unfair Acts of Knowingly and**
6 **Intentionally Exposing Individuals to Lead in Violation of**
7 **Civil Code §§ 1709 and 1710, H&S Code § 25249.6,**
8 **and B&P Code § 17500, By All Defendants)**

9 56. Ms. Hamilton realleges and incorporates by reference as if specifically set forth
10 herein Paragraphs 1 through 55 inclusive.

11 57. Each Defendant's product contains Lead, and Ms. Hamilton purchased each
12 Defendant's Product in reliance upon each Defendant's marketing of that Product.

13 58. Each Defendant's failure to disclose the presence of Lead, as well as each
14 Defendant's failure to disclose the potentially adverse health risks Lead poses in their Products'
15 packaging, advertising and promotional materials, was and is deceptive, a fraud by concealment
16 and negligent misrepresentation in violation of Civil Code §§ 1709 and 1710.

17 59. Since, or after, May 24, 2002, each Defendant has engaged in conduct that
18 violates Proposition 65, H&S Code § 25249.5 *et seq.*

19 60. By committing the acts alleged above, each Defendant has engaged in unfair
20 business practices within the meaning of B&P Code § 17200 *et seq.*

21 61. As a result, each Defendant has also committed violations of B&P Code
22 § 17500 *et seq.* by knowingly disseminating false and misleading advertising, which constitute
23 separate and cumulative acts of unlawful, unfair and/or fraudulent business practices pursuant to
24 B&P Code § 17200 *et seq.*

25 Wherefore Ms. Hamilton prays judgment against each Defendant, as set forth hereafter.

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1 **FIFTH CAUSE OF ACTION**

2 **(Violations of B&P Code § 17200 *et seq.* Based on Fraudulent Acts of Knowingly and**
3 **Intentionally Exposing Individuals to Lead in Violation of**
4 **Civil Code §§ 1709 and 1710, H&S Code § 25249.6,**
5 **and B&P Code § 17500, By All Defendants)**

6 62. Ms. Hamilton realleges and incorporates by reference as if specifically set forth
7 herein Paragraphs 1 through 61 inclusive.

8 63. Each Defendant's product contains Lead, and Ms. Hamilton purchased each
9 Defendant's Product in reliance upon each Defendant's marketing of that Product.

10 64. Each Defendant's failure to disclose the presence of Lead, as well as each
11 Defendant's failure to disclose the potentially adverse health risks Lead poses in their Products'
12 packaging, advertising and promotional materials, was and is deceptive, a fraud by concealment
13 and negligent misrepresentation in violation of Civil Code §§ 1709 and 1710.

14 65. Since, or after, May 24, 2002, each Defendant has engaged in conduct that
15 violates Proposition 65, H&S Code § 25249.5 *et seq.*

16 66. By committing the acts alleged above, each Defendant has engaged in fraudulent
17 business practices within the meaning of B&P Code § 17200 *et seq.*

18 67. As a result, each Defendant has also committed violations of B&P Code
19 § 17500 *et seq.* by knowingly disseminating false and misleading advertising, which constitute
20 separate and cumulative acts of unlawful, unfair and/or fraudulent business practices pursuant to
21 B&P Code § 17200 *et seq.*

22 Wherefore Ms. Hamilton prays judgment against each Defendant, as set forth hereafter.

23 **SIXTH CAUSE OF ACTION**

24 **(Violations of B&P Code § 17500 *et seq.* Based on the Commission of**
25 **Unlawful, Unfair and/or Fraudulent Business Practices, By All Defendants)**

26 68. Ms. Hamilton realleges and incorporates by reference as if specifically set forth
27 herein Paragraphs 1 through 67 inclusive.

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1 84. Each Defendant’s failure to disclose to Ms. Hamilton the presence of Lead in their
2 respective Products, or the health risks Lead poses, in their Products’ packaging, advertising and
3 promotional materials, was and is a violation of Civil Code § 1770 (5) and/or (7) because each
4 Defendant’s failure to disclose the presence of Lead or the potentially adverse health risks Lead
5 poses in their Products’ packaging, advertising and promotional materials, was and is deceptive,
6 a fraud by concealment and negligent misrepresentation in violation of Civil Code §§ 1709 and
7 1710.

8 85. As a result, each Defendant has represented that its respective Products have
9 characteristics, ingredients, uses, or benefits which they do not have; and they have represented
10 that their respective Products are of a particular standard, quality, or grade, in violation of Civil
11 Code § 1770(a)(5) and (7), respectively.

12 86. Each Defendant’s failure to disclose the presence of Lead, or the health risks Lead
13 poses, in their Products’ packaging, advertising and promotional materials, was and is a
14 violation of Civil Code § 1770 (5) and/or (7), respectively, because since, or after,
15 May 24, 2002, each Defendant has engaged in conduct that violates Proposition 65, H&S Code
16 § 25249.5 *et seq.*

17 87. Each Defendant’s failure to disclose the presence of Lead was and is a violation of
18 Civil Code § 1770 (5) and/or (7) because by committing the acts alleged above, each Defendant
19 has engaged in unlawful, unfair and fraudulent business practices within the meaning of
20 B&P Code § 17200 *et seq.*

21 88. Each Defendant’s failure to disclose the health risks Lead poses in their Products’
22 packaging, advertising and promotional materials, was and is a violation of Civil Code § 1770
23 (5) and/or (7) because by committing the acts alleged above, each Defendant has engaged in
24 unlawful, unfair and fraudulent business practices within the meaning of B&P Code
25 § 17200 *et seq.*

26 89. Each Defendant’s failure to disclose the presence of Lead, or the health risks Lead
27 poses, in their Products’ packaging, advertising and promotional materials, was and is a
28 violation of Civil Code § 1770 (5) and/or (7) because each Defendant has also committed

1 violations of B&P Code § 17500 *et seq.* by knowingly disseminating false and misleading
2 advertising, which constitute separate and cumulative acts of unlawful, unfair and/or fraudulent
3 business practices pursuant to B&P Code § 17200 *et seq.*

4 90. Purchasers, including Ms. Hamilton, of each Defendant's respective Product have
5 been damaged by each Defendant's conduct in selling Products containing Lead and the non-
6 disclosure of that Lead in their respective Products, as well as by each Defendant's statements
7 that portray their respective Products as safe and healthful, when the Products are in fact
8 potentially dangerous to consumers, including Ms. Hamilton.

9 Wherefore, Ms. Hamilton prays for judgment against each Defendant, as set forth
10 hereafter.

11 **THE NEED FOR INJUNCTIVE RELIEF**

12 91. Ms. Hamilton realleges and incorporates by reference as if specifically set forth
13 herein Paragraphs 1 through 90 inclusive.

14 92. By committing the acts alleged herein, each Defendant has caused irreparable
15 harm to Ms. Hamilton for which there is no plain, speedy or adequate remedy at law. In the
16 absence of equitable relief, Ms. Hamilton and other similarly situated consumers will continue to
17 be involuntarily exposed to Lead in these Products, creating substantial risk of irreparable
18 physical injury, without a clear and reasonable warning, creating a clear and present danger to
19 public health and welfare.

20 **PRAYERS FOR RELIEF**

21 Plaintiff Ms. Hamilton prays for judgment against each Defendant as follows:

22 **On The First and Second Causes of Action (Proposition 65):**

23 1. That the Court, pursuant to H&S Code § 25249.7(a), preliminarily and
24 permanently enjoin each Defendant from offering its respective Products for sale without
25 disclosing the presence of Lead in its respective Products in a manner that complies with the
26 Proposition 65 statutory disclosure requirements, as Ms. Hamilton shall specify in further
27 application to the Court;

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1 **On The First and Second Causes of Action (Proposition 65):**

2 2. That the Court, pursuant to H&S Code § 25249.7(b), assess civil penalties against
3 each Defendant in an amount to be determined by the court for each violation of Proposition 65
4 alleged herein since May 24, 2005.

5 **On The Third Through Fifth Causes of Action (Unlawful Competition Law):**

6 3. That the Court, pursuant to B&P Code § 17203, preliminarily and permanently
7 enjoin each Defendant from offering its respective Products for sale without disclosing the
8 presence of Lead in its respective Products in a manner that complies with these statutory
9 requirements, as Ms. Hamilton shall specify in further application to the Court;

10 **On The Sixth Cause of Action (False Advertising Law):**

11 4. That the Court, pursuant to B&P Code § 17535, preliminarily and permanently
12 enjoin each Defendant from offering its respective Products for sale without disclosing the
13 presence of Lead in its respective Products in a manner that complies with these statutory
14 requirements, as Ms. Hamilton shall specify in further application to the Court;

15 **On the Seventh Cause of Action (Consumer Legal Remedies Act):**

16 5. That the Court, pursuant to Civil Code § 1780(2) and (5), preliminarily and
17 permanently enjoin each Defendant from offering its respective Products for sale without
18 disclosing the presence of Lead in its respective Products in a manner that complies with these
19 statutory requirements, as Ms. Hamilton shall specify in further application to the Court;

20 6. That the Court, pursuant to Civil Code § 1780(2) and (5), order each Defendant to
21 label, advertise and market each of its Products in a manner that complies with the Consumer
22 Legal Remedies Act, as Ms. Hamilton shall specify in further application to the Court; and

23 7. That the Court order each Defendant to notify each and every customer of such
24 Defendant who purchased its respective Products since May 24, 2002, and thereby give such
25 customers an opportunity to obtain restitution from each Defendant.

26 **On The Third through Fifth Causes of Action (Unfair Competition Law):**

27 8. That the Court order each Defendant to pay restitution and be subject to such other
28 relief as may be necessary to restore to Ms. Hamilton any money or property, real or personal,

1 which may have been acquired by means of the acts alleged herein that occurred since
2 May 24, 2002;

3 **On The Sixth Cause of Action (False Advertising Law):**

4 9. That the Court order each Defendant to pay Ms. Hamilton restitution and be
5 subject to such other relief as may be necessary to restore to him any money or property, real or
6 personal, which may have been acquired by means of the acts alleged herein that occurred since
7 May 24, 2002;

8 **On The Seventh Cause of Action (Civil Code §§ 1709 and 1710):**

9 10. That each Defendant be held liable for damages and punitive or exemplary
10 damages based upon the amounts paid for their Products, in an amount to be determined at trial.

11 11. That each Defendant be held liable for punitive damages based upon the amounts
12 paid for their Products, in an amount to be determined at trial.

13 **On The Eighth Cause of Action (Consumer Legal Remedies Act):**

14 12. That, pursuant to Civil Code § 1780(1), each Defendant be held liable for actual
15 damages based upon the amounts paid for their Products, in an amount to be determined at trial.

16 13. That each Defendant be held liable for punitive damages based upon the amounts
17 paid for their Products, in an amount to be determined at trial.

18 14. That, pursuant to Civil Code § 1780(3), the Court order each Defendant to notify
19 each and every customer of such Defendant who purchased its respective Products since
20 May 24, 2003, and thereby give such customers an opportunity to obtain restitution from each
21 Defendant, and that the Court order each Defendant to pay restitution and be subject to such
22 other relief as may be necessary to restore to any end user and/or purchaser of its respective
23 Products any money or property, real or personal, which may have been acquired by means of
24 the acts alleged herein that occurred since May 24, 2003;

25 15. That, pursuant to Civil Code § 1780(4), each Defendant be held liable for punitive
26 damages based upon the amounts paid for their Products, in an amount to be determined at trial.

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