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6 CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED
FILED
ALAMEDA COUNTY

NOV 08 2007

CLERK OF THE SUPERIOR COURT
By KMEL DHILLON, Deputy

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8
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 v.)

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

18 Defendants.)

19
20 And Consolidated Cases.
21

Lead Case No.: RG 04-162075

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

**FOURTH 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 Fourth 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
11 metallic 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
13 contact after consumers wear, touch or handle the Products or eat after coming into contact with
14 the Products, and dermal absorption directly through the skin when consumers wear, touch or
15 handle the Products. Many of the Products are designed for and marketed to young children and
16 teens, who are particularly likely to place the Products in their mouths and who are also
17 particularly susceptible to lead poisoning. These exposures occur in homes, workplaces and
18 everywhere else throughout California where people wear, touch or handle the Products. Clear
19 and reasonable warnings are not provided to users of the Products regarding the carcinogenic or
20 reproductive hazards of Lead. Consequently, defendants have violated and continue to violate
21 the warning 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
27 §25249.11(a) and brings this enforcement action in the public interest pursuant to Health &
28 Safety Code §25249.7(d). CEH is a nationally recognized non-profit environmental advocacy

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

5 3. Defendant 21ST CENTURY GIRL, INC. is a person in the course of doing
6 business within the meaning of Health & Safety Code §25249.11. 21ST CENTURY GIRL, INC.
7 manufactures, distributes and/or sells the Products for sale and use in California.

8 4. Defendant 99¢ ONLY STORES is a person in the course of doing business
9 within the meaning of Health & Safety Code §25249.11. 99¢ ONLY STORES manufactures,
10 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 A-LIST, INC. dba KITSON is a person in the course of doing
18 business within the meaning of Health & Safety Code §25249.11. A-LIST, INC. dba KITSON
19 manufactures, distributes and/or sells the Products for sale and use in California.

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

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

26 10. Defendant ALMART RETAIL DEVELOPMENT COMPANY, INC. is a
27 person in the course of doing business within the meaning of Health & Safety Code §25249.11.
28 ALMART RETAIL DEVELOPMENT COMPANY, INC. manufactures, distributes and/or sells

1 the Products for sale and use in California.

2 11. Defendant AMERICA'S COLLECTIBLES NETWORK, INC. is a person
3 in the course of doing business within the meaning of Health & Safety Code §25249.11.

4 AMERICA'S COLLECTIBLES NETWORK, INC. manufactures, distributes and/or sells the
5 Products for sale and use in California.

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

9 13. Defendant AMINCO INTERNATIONAL (USA), INC. is a person in the
10 course of doing business within the meaning of Health & Safety Code §25249.11. AMINCO
11 INTERNATIONAL (USA), INC. manufactures, distributes and/or sells the Products for sale and
12 use in California.

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

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

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

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

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

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

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

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

9 21. Defendant BIG LOTS STORES, INC. is a person in the course of doing
10 business within the meaning of Health & Safety Code §25249.11. BIG LOTS STORES, INC.
11 manufactures, distributes and/or sells the Products for sale and use in California.

12 22. Defendant BUSCH ENTERTAINMENT CORPORATION is a person in
13 the course of doing business within the meaning of Health & Safety Code §25249.11. BUSCH
14 ENTERTAINMENT CORPORATION manufactures, distributes and/or sells the Products for
15 sale and use in California.

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

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

22 25. Defendant CHARMS BY THE BAY is a person in the course of doing
23 business within the meaning of Health & Safety Code §25249.11. CHARMS BY THE BAY
24 manufactures, distributes and/or sells the Products for sale and use in California.

25 26. Defendant CHICO'S FAS, INC. is a person in the course of doing
26 business within the meaning of Health & Safety Code §25249.11. CHICO'S FAS INC.
27 manufactures, distributes and/or sells the Products for sale and use in California.

28 27. Defendant COLDWATER CREEK, INC. is a person in the course of

1 doing business within the meaning of Health & Safety Code §25249.11. COLDWATER
2 CREEK, INC. manufactures, distributes and/or sells the Products for sale and use in California.

3 28. Defendant COUSIN CORPORATION OF AMERICA is a person in the
4 course of doing business within the meaning of Health & Safety Code §25249.11. COUSIN
5 CORPORATION OF AMERICA manufactures, distributes and/or sells the Products for sale and
6 use in California.

7 29. Defendant CREATIVE CO-OP, INC. is a person in the course of doing
8 business within the meaning of Health & Safety Code §25249.11. CREATIVE CO-OP, INC.
9 manufactures, distributes and/or sells the Products for sale and use in California.

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

13 31. Defendant DAISO CALIFORNIA LLC is a person in the course of doing
14 business within the meaning of Health & Safety Code §25249.11. DAISO CALIFORNIA LLC
15 manufactures, distributes and/or sells the Products for sale and use in California.

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

20 33. Defendant DONKIE, LLC dba AMBIANCE is a person in the course of
21 doing business within the meaning of Health & Safety Code §25249.11. DONKIE, LLC dba
22 AMBIANCE manufactures, distributes and/or sells the Products for sale and use in California.

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

26 35. Defendant ESTÉE LAUDER COMPANIES, INC. is a person in the
27 course of doing business within the meaning of Health & Safety Code §25249.11. ESTÉE
28 LAUDER COMPANIES, INC. manufactures, distributes and/or sells the Products for sale and

1 use in California.

2 36. Defendant ETHEL & MYRTLE, INC. is a person in the course of doing
3 business within the meaning of Health & Safety Code §25249.11. ETHEL & MYRTLE, INC.
4 manufactures, distributes and/or sells the Products for sale and use in California.

5 37. Defendant FURLA (U.S.A.) INCORPORATED is a person in the course
6 of doing business within the meaning of Health & Safety Code §25249.11. FURLA (U.S.A.)
7 INCORPORATED manufactures, distributes and/or sells the Products for sale and use in
8 California.

9 38. Defendant GANZ, INC. is a person in the course of doing business within
10 the meaning of Health & Safety Code §25249.11. GANZ, INC. manufactures, distributes and/or
11 sells the Products for sale and use in California.

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

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

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

21 42. Defendant HARD ROCK CAFE INTERNATIONAL (USA), INC. is a
22 person in the course of doing business within the meaning of Health & Safety Code §25249.11.
23 HARD ROCK CAFE INTERNATIONAL (USA), INC. manufactures, distributes and/or sells the
24 Products for sale and use in California.

25 43. Defendant HAYUN FASHION INVESTMENTS CORPORATION dba
26 PLANET FUNK is a person in the course of doing business within the meaning of Health &
27 Safety Code §25249.11. HAYUN FASHION INVESTMENTS CORPORATION dba PLANET
28 FUNK manufactures, distributes and/or sells the Products for sale and use in California.

1 44. Defendant HELEN OF TROY LTD. is a person in the course of doing
2 business within the meaning of Health & Safety Code §25249.11. HELEN OF TROY LTD.
3 manufactures, distributes and/or sells the Products for sale and use in California.

4 45. Defendant HOME SHOPPING NETWORK, INC. is a person in the
5 course of doing business within the meaning of Health & Safety Code §25249.11. HOME
6 SHOPPING NETWORK, INC. manufactures, distributes and/or sells the Products for sale and
7 use in California.

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

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

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

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

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

24 51. Defendant IVORETTE-TEXAS, INC. dba UPSTART CROW TRADING
25 COMPANY is a person in the course of doing business within the meaning of Health & Safety
26 Code §25249.11. IVORETTE-TEXAS, INC. dba UPSTART CROW TRADING COMPANY
27 manufactures, distributes and/or sells the Products for sale and use in California.

28 52. Defendant JACADI USA, INC. is a person in the course of doing business

1 within the meaning of Health & Safety Code §25249.11. JACADI USA, INC. manufactures,
2 distributes and/or sells the Products for sale and use in California.

3 53. Defendant JEST JEWELS, INC. is a person in the course of doing
4 business within the meaning of Health & Safety Code §25249.11. JEST JEWELS, INC.
5 manufactures, distributes and/or sells the Products for sale and use in California.

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

9 55. Defendant JIMMY Z SURF COMPANY, INC. is a person in the course of
10 doing business within the meaning of Health & Safety Code §25249.11. JIMMY Z SURF
11 COMPANY, INC. manufactures, distributes and/or sells the Products for sale and use in
12 California.

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

16 57. Defendant KATE SPADE, LLC is a person in the course of doing business
17 within the meaning of Health & Safety Code §25249.11. KATE SPADE, LLC manufactures,
18 distributes and/or sells the Products for sale and use in California.

19 58. Defendant KINGS ARCO ARENA LIMITED PARTNERSHIP LP is a
20 person in the course of doing business within the meaning of Health & Safety Code §25249.11.
21 KINGS ARCO ARENA LIMITED PARTNERSHIP LP manufactures, distributes and/or sells the
22 Products for sale and use in California.

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

26 60. Defendant LESILU PRODUCTIONS, INC. dba HEY DOLL is a person in
27 the course of doing business within the meaning of Health & Safety Code §25249.11. LESILU
28 PRODUCTIONS, INC. dba HEY DOLL manufactures, distributes and/or sells the Products for

1 sale and use in California.

2 61. Defendant LISA KLINE, INC. is a person in the course of doing business
3 within the meaning of Health & Safety Code §25249.11. LISA KLINE, INC. manufactures,
4 distributes and/or sells the Products for sale and use in California.

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

8 63. Defendant LUCAS DESIGN INTERNATIONAL is a person in the course
9 of doing business within the meaning of Health & Safety Code §25249.11. LUCAS DESIGN
10 INTERNATIONAL manufactures, distributes and/or sells the Products for sale and use in
11 California.

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

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

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

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

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

28 69. Defendant METROPARK USA, INC. is a person in the course of doing

1 business within the meaning of Health & Safety Code §25249.11. METROPARK USA, INC.
2 manufactures, distributes and/or sells the Products for sale and use in California.

3 70. Defendant NAKAJIMA USA, INC. is a person in the course of doing
4 business within the meaning of Health & Safety Code §25249.11. NAKAJIMA USA, INC.
5 manufactures, distributes and/or sells the Products for sale and use in California.

6 71. Defendant NO FEAR, INC. is a person in the course of doing business
7 within the meaning of Health & Safety Code §25249.11. NO FEAR, INC. manufactures,
8 distributes and/or sells the Products for sale and use in California.

9 72. Defendant NO FEAR RETAIL STORES, INC. is a person in the course of
10 doing business within the meaning of Health & Safety Code §25249.11. NO FEAR RETAIL
11 STORES, INC. manufactures, distributes and/or sells the Products for sale and use in California.

12 73. Defendant OAK PATCH GIFTS, LLC is a person in the course of doing
13 business within the meaning of Health & Safety Code §25249.11. OAK PATCH GIFTS, LLC
14 manufactures, distributes and/or sells the Products for sale and use in California.

15 74. Defendant ONLY IN SAN FRANCISCO, LLC is a person in the course of
16 doing business within the meaning of Health & Safety Code §25249.11. ONLY IN SAN
17 FRANCISCO, LLC manufactures, distributes and/or sells the Products for sale and use in
18 California.

19 75. Defendant PA ACQUISITION CORP. is a person in the course of doing
20 business within the meaning of Health & Safety Code §25249.11. PA ACQUISITION CORP.
21 manufactures, distributes and/or sells the Products for sale and use in California.

22 76. Defendant PACIFIC SUNWEAR OF CALIFORNIA, INC. is a person in
23 the course of doing business within the meaning of Health & Safety Code §25249.11. PACIFIC
24 SUNWEAR OF CALIFORNIA, INC. manufactures, distributes and/or sells the Products for sale
25 and use in California.

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

1 78. Defendant PARTY CITY CORPORATION is a person in the course of
2 doing business within the meaning of Health & Safety Code §25249.11. PARTY CITY
3 CORPORATION manufactures, distributes and/or sells the Products for sale and use in
4 California.

5 79. Defendant PENINSULA BEAUTY SUPPLY INC. is a person in the
6 course of doing business within the meaning of Health & Safety Code §25249.11. PENINSULA
7 BEAUTY SUPPLY INC. manufactures, distributes and/or sells the Products for sale and use in
8 California.

9 80. Defendant PETER DAVID, INC. is a person in the course of doing
10 business within the meaning of Health & Safety Code §25249.11. PETER DAVID, INC.
11 manufactures, distributes and/or sells the Products for sale and use in California.

12 81. Defendant PHILLIPS-VAN HEUSEN CORPORATION is a person in the
13 course of doing business within the meaning of Health & Safety Code §25249.11. PHILLIPS-
14 VAN HEUSEN COPORATION manufactures, distributes and/or sells the Products for sale and
15 use in California.

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

19 83. Defendant PUMPKIN PATCH LLC is a person in the course of doing
20 business within the meaning of Health & Safety Code §25249.11. PUMPKIN PATCH LLC
21 manufactures, distributes and/or sells the Products for sale and use in California.

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

25 85. Defendant RALEY'S is a person in the course of doing business within the
26 meaning of Health & Safety Code §25249.11. RALEY'S manufactures, distributes and/or sells
27 the Products for sale and use in California.

28 86. Defendant REGIS CORPORATION is a person in the course of doing

1 business within the meaning of Health & Safety Code §25249.11. REGIS CORPORATION
2 manufactures, distributes and/or sells the Products for sale and use in California.

3 87. Defendant ROC APPAREL GROUP, LLC is a person in the course of
4 doing business within the meaning of Health & Safety Code §25249.11. ROC APPAREL
5 GROUP, LLC manufactures, distributes and/or sells the Products for sale and use in California.

6 88. Defendant RUE21, INC. is a person in the course of doing business within
7 the meaning of Health & Safety Code §25249.11. RUE21, INC. manufactures, distributes and/or
8 sells the Products for sale and use in California.

9 89. Defendant SAFEWAY INC. is a person in the course of doing business
10 within the meaning of Health & Safety Code §25249.11. SAFEWAY INC. manufactures,
11 distributes and/or sells the Products for sale and use in California.

12 90. Defendant SALLY BEAUTY HOLDINGS, INC. is a person in the course
13 of doing business within the meaning of Health & Safety Code §25249.11. SALLY BEAUTY
14 HOLDINGS, INC. manufactures, distributes and/or sells the Products for sale and use in
15 California.

16 91. Defendant SALLY BEAUTY SUPPLY, LLC is a person in the course of
17 doing business within the meaning of Health & Safety Code §25249.11. SALLY BEAUTY
18 SUPPLY, LLC manufactures, distributes and/or sells the Products for sale and use in California.

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

23 93. Defendant SAVE MART SUPERMARKETS is a person in the course of
24 doing business within the meaning of Health & Safety Code §25249.11. SAVE MART
25 SUPERMARKETS manufactures, distributes and/or sells the Products for sale and use in
26 California.

27 94. Defendant SHAMROCK CORPORATION, dba INNISBROOK WRAPS
28 is a person in the course of doing business within the meaning of Health & Safety Code

1 §25249.11. SHAMROCK CORPORATION, dba INNISBROOK WRAPS manufactures,
2 distributes and/or sells the Products for sale and use in California.

3 95. Defendant SHOE PAVILION CORPORATION is a person in the course
4 of doing business within the meaning of Health & Safety Code §25249.11. SHOE PAVILION
5 CORPORATION manufactures, distributes and/or sells the Products for sale and use in
6 California.

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

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

14 98. Defendant SOLSTICE MARKETING CORPORATION is a person in the
15 course of doing business within the meaning of Health & Safety Code §25249.11. SOLSTICE
16 MARKETING CORPORATION manufactures, distributes and/or sells the Products for sale and
17 use in California.

18 99. Defendant SPENCER GIFTS, LLC is a person in the course of doing
19 business within the meaning of Health & Safety Code §25249.11. SPENCER GIFTS, LLC
20 manufactures, distributes and/or sells the Products for sale and use in California.

21 100. Defendant STRASBURG-JARVIS, INC. dba STRASBURG CHILDREN
22 is a person in the course of doing business within the meaning of Health & Safety Code
23 §25249.11. STRASBURG-JARVIS, INC. dba STRASBURG CHILDREN manufactures,
24 distributes and/or sells the Products for sale and use in California.

25 101. Defendant THE RAIDER IMAGE, LLC is a person in the course of doing
26 business within the meaning of Health & Safety Code §25249.11. THE RAIDER IMAGE, LLC
27 manufactures, distributes and/or sells the Products for sale and use in California.

28 102. Defendant THE TALBOTS, INC. is a person in the course of doing

1 business within the meaning of Health & Safety Code §25249.11. THE TALBOTS, INC.
2 manufactures, distributes and/or sells the Products for sale and use in California.

3 103. Defendant THE TJX COMPANIES, INC. is a person in the course of
4 doing business within the meaning of Health & Safety Code §25249.11. THE TJX
5 COMPANIES, INC. manufactures, distributes and/or sells the Products for sale and use in
6 California.

7 104. Defendant T.J. MAXX OF CALIFORNIA, LLC is a person in the course
8 of doing business within the meaning of Health & Safety Code §25249.11. T.J. MAXX OF
9 CALIFORNIA, LLC manufactures, distributes and/or sells the Products for sale and use in
10 California.

11 105. Defendant TRAVEL TRADERS HOTEL STORES, INC. is a person in
12 the course of doing business within the meaning of Health & Safety Code §25249.11. TRAVEL
13 TRADERS HOTEL STORES, INC. manufactures, distributes and/or sells the Products for sale
14 and use in California.

15 106. Defendant TRAVEL TRADERS, LLC is a person in the course of doing
16 business within the meaning of Health & Safety Code TRAVEL TRADERS, LLC manufactures,
17 distributes and/or sells the Products for sale and use in California.

18 107. Defendant ULTA SALON COSMETICS & FRAGRANCE, INC. is a
19 person in the course of doing business within the meaning of Health & Safety Code §25249.11.
20 ULTA SALON COSMETICS & FRAGRANCE, INC. manufactures, distributes and/or sells the
21 Products for sale and use in California.

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

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

1 California.

2 110. Defendant URBAN OUTFITTERS WEST LLC is a person in the course
3 of doing business within the meaning of Health & Safety Code §25249.11. URBAN
4 OUTFITTERS WEST LLC manufactures, distributes and/or sells the Products for sale and use in
5 California.

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

9 112. Defendant WHOLE FOODS MARKET, INC. is a person in the course of
10 doing business within the meaning of Health & Safety Code §25249.11. WHOLE FOODS
11 MARKET, INC. manufactures, distributes and/or sells the Products for sale and use in
12 California.

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

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

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

22 116. The true names of DOES 1 through 200 are unknown to plaintiff at this
23 time. When their identities are ascertained, the complaint shall be amended to reflect their true
24 names.

25 117. The defendants identified in Paragraphs 3 through 114 and DOES 1
26 through 200 are collectively referred to herein as "Defendants."

27 **JURISDICTION**

28 118. The Court has jurisdiction over this action pursuant to Health & Safety

1 Code §25249.7, which allows enforcement in any court of competent jurisdiction. The
2 California Superior Court has jurisdiction over this action pursuant to California Constitution
3 Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except
4 those given by statute to other trial courts.” The statute under which this action is brought does
5 not grant jurisdiction to any other trial court.

6 119. This Court has jurisdiction over the Defendants because, each is a business
7 entity that does sufficient business, has sufficient minimum contacts in California, or otherwise
8 intentionally avails itself of the California market, through the sale, marketing or use of the
9 Products in California, to render the exercise of jurisdiction over it by the California courts
10 consistent with traditional notions of fair play and substantial justice.

11 120. Venue is proper in the Alameda Superior Court because one or more of the
12 violations arise in the County of Alameda.

13 **BACKGROUND FACTS**

14 121. The People of the State of California have declared by initiative under
15 Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth
16 defects, or other reproductive harm.” Proposition 65, §1(b).

17 122. To effectuate this goal, Proposition 65 requires that individuals be
18 provided with a “clear and reasonable warning” before being exposed to chemicals listed by the
19 State of California as known to cause cancer, birth defects and other reproductive harm unless
20 the business responsible for the exposure can prove that it fits within a statutory exemption.
21 Health & Safety Code §25249.6 states, in pertinent part:

22 No person in the course of doing business shall knowingly and
23 intentionally expose any individual to a chemical known to the
24 state to cause cancer or reproductive toxicity without first giving
clear and reasonable warning to such individual....

25 123. On February 27, 1987, the State of California officially listed lead as a
26 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive
27 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to
28 the developing fetus, “female reproductive toxicity,” which means harm to the female

1 reproductive system, and “male reproductive toxicity,” which means harm to the male
2 reproductive system. 22 California Code of Regulations (“CCR”) §12000(c). On February 27,
3 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead
4 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
5 under Proposition 65. 22 CCR §12000(c); Health & Safety Code §25249.10(b).

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

11 125. Under Proposition 65, an exposure is “knowing” where the party
12 responsible for such exposure has:

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

16 22 CCR §12201(d).

17 126. Defendants know that individuals, including children, wear, touch and
18 handle the Products, thus exposing them to Lead without prior clear and reasonable warning
19 regarding the carcinogenic or reproductive hazards of Lead.

20 127. Defendants intend that individuals, including children, through the
21 reasonably foreseeable use of the Products, wear, touch and handle the Products, thus exposing
22 them to Lead without prior clear and reasonable warning regarding the carcinogenic or
23 reproductive hazards of Lead.

24 128. The Products contain sufficient quantities of Lead such that consumers
25 who wear, touch or handle the Products are exposed to Lead through the reasonably foreseeable
26 use of the Products. These exposures occur when people who wear, touch or handle the Products
27 ingest the Lead by placing the Products directly in their mouths, ingest the Lead by hand to
28 mouth contact, ingest the Lead by eating or drinking after coming into contact with the Products,
and absorb the Lead through directly the skin. No clear and reasonable warning is provided with

1 the Products regarding the carcinogenic or reproductive hazards of Lead.

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

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

17 131. CEH also sent a Certificate of Merit relating to each of the Notices to the
18 California Attorney General, the District Attorneys of every county in California, the City
19 Attorneys of every California city with a population greater than 750,000, and to each named
20 Defendant. In compliance with Health & Safety Code §25249.7(d) and 11 CCR §3101, each of
21 these Certificates certified that CEH’s counsel: (1) has consulted with one or more persons with
22 relevant and appropriate experience or expertise who reviewed facts, studies or other data
23 regarding the exposures to Lead alleged in the Notice; and (2) based on the information obtained
24 through such consultations, believes that there is a reasonable and meritorious case for a citizen
25 enforcement action based on the facts alleged in the attached Notice. In compliance with Health
26 & Safety Code §25249.7(d) and 11 CCR §3102, each of the Certificates served on the Attorney
27 General included factual information – provided on a confidential basis – sufficient to establish
28 the basis for the Certificate, including the identity of the person(s) consulted by CEH’s counsel

1 and the facts, studies or other data reviewed by such persons.

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

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

11 **FIRST CAUSE OF ACTION**

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

13 134. Plaintiff realleges and incorporates by reference as if specifically set forth
14 herein Paragraphs 1 through 133 inclusive.

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

17 136. Defendants know that through the reasonably foreseeable use of the
18 Products, users of the Products are exposed to Lead. Defendants intend that the Products be used
19 in a manner that results in users of the Products being exposed to Lead contained in the Products.

20 137. Defendants have failed, and continue to fail, to provide clear and
21 reasonable warning regarding the carcinogenicity and reproductive toxicity of Lead to users of
22 the Products.

23 138. Lead is a chemical listed by the State of California as known to cause
24 cancer, birth defects and other reproductive harm.

25 139. By committing the acts alleged above, Defendants have at all times
26 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing
27 individuals to Lead without first giving clear and reasonable warning to such individuals
28 regarding the carcinogenicity and reproductive toxicity of Lead.

1 Wherefore, plaintiff prays judgment against Defendants, as set forth hereafter.

2 **PRAYER FOR RELIEF**

3 Wherefore, plaintiff prays for judgment against defendants as follows:

4 1. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil
5 penalties against each of the Defendants in the amount of \$2,500 per day for each violation of
6 Proposition 65 according to proof;

7 2. That the Court, pursuant to Health & Safety Code §25249.7(a),
8 preliminarily and permanently enjoin Defendants from offering the Products for sale in
9 California without providing clear and reasonable warnings, as plaintiff shall specify in further
10 application to the Court;

11 3. That the Court, pursuant to Health & Safety Code §25249.7(a), order
12 Defendants to take action to stop ongoing unwarned exposures to Lead resulting from use of
13 Products sold by Defendants, as CEH shall specify in further application to the Court;

14 4. That the Court, pursuant to Code of Civil Procedure §1021.5 and any other
15 applicable theory, grant Plaintiff its reasonable attorneys' fees and costs of suit; and

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

18 Dated: November 8, 2007.

Respectfully submitted,

19 LEXINGTON LAW GROUP, LLP

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21 

22 Eric S. Somers
23 Attorneys for Plaintiff
24 CENTER FOR ENVIRONMENTAL
25 HEALTH
26
27
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