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CENTER FOR ENVIRONMENTAL HEALTH
7
8

ENDORSED
FILED
ALAMEDA COUNTY

JUL 19 2007

CLERK OF THE SUPERIOR COURT
By E. BAKER
Deputy

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]

**THIRD 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 Third 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 ALMAR SALES CO., INC. is a person in the course of doing
18 business within the meaning of Health & Safety Code §25249.11. ALMAR SALES CO., INC.
19 manufactures, distributes and/or sells the Products for sale and use in California.

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

24 9. Defendant AMERICA'S COLLECTIBLES NETWORK, INC. dba
25 JEWELRY TELEVISION is a person in the course of doing business within the meaning of
26 Health & Safety Code §25249.11. AMERICA'S COLLECTIBLES NETWORK, INC. dba
27 JEWELRY TELEVISION manufactures, distributes and/or sells the Products for sale and use in
28 California.

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

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

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

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

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

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

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

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

28 18. Defendant BJB, INC. is a person in the course of doing business within the

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

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

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

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

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

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

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

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

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

28 27. Defendant D.M. MERCHANDISING, INC. is a person in the course of

1 doing business within the meaning of Health & Safety Code §25249.11. D.M.

2 MERCHANDISING, INC. manufactures, distributes and/or sells the Products for sale and use in
3 California.

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

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

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

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

17 32. Defendant FURLA (U.S.A.) INCORPORATED is a person in the course
18 of doing business within the meaning of Health & Safety Code §25249.11. FURLA (U.S.A.)
19 INCORPORATED manufactures, distributes and/or sells the Products for sale and use in
20 California.

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

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

27 35. Defendant HAND & MIND, INC. is a person in the course of doing
28 business within the meaning of Health & Safety Code §25249.11. HAND & MIND, INC.

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

2 36. Defendant HARD ROCK CAFE INTERNATIONAL (USA), INC. is a
3 person in the course of doing business within the meaning of Health & Safety Code §25249.11.
4 HARD ROCK CAFE INTERNATIONAL (USA), INC. manufactures, distributes and/or sells the
5 Products for sale and use in California.

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

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

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

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

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

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

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

28 44. 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 45. 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 46. 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 47. Defendant JIMMY Z SURF CO., INC. is a person in the course of doing
10 business within the meaning of Health & Safety Code §25249.11. JIMMY Z SURF CO., INC.
11 manufactures, distributes and/or sells the Products for sale and use in California.

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

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

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

21 51. Defendant LESILU PRODUCTIONS, INC. dba HEY DOLL is a person in
22 the course of doing business within the meaning of Health & Safety Code §25249.11. LESILU
23 PRODUCTIONS, INC. dba HEY DOLL manufactures, distributes and/or sells the Products for
24 sale and use in California.

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

28 53. Defendant LUCAS DESIGN INTERNATIONAL, INC. is a person in the

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

4 54. Defendant MALOOF SPORTS & ENTERTAINMENT, LLC is a person
5 in the course of doing business within the meaning of Health & Safety Code §25249.11.
6 MALOOF SPORTS & ENTERTAINMENT, LLC manufactures, distributes and/or sells the
7 Products for sale and use in California.

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

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

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

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

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

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

27 61. Defendant NO FEAR RETAIL STORES, INC. is a person in the course of
28 doing business within the meaning of Health & Safety Code §25249.11. NO FEAR RETAIL

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

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

5 63. Defendant ONLY IN SAN FRANCISCO, LLC is a person in the course of
6 doing business within the meaning of Health & Safety Code §25249.11. ONLY IN SAN
7 FRANCISCO, LLC manufactures, distributes and/or sells the Products for sale and use in
8 California.

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

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

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

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

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

27 69. Defendant PETER DAVID, INC. is a person in the course of doing
28 business within the meaning of Health & Safety Code §25249.11. PETER DAVID, INC.

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

2 70. Defendant PHILLIPS-VAN HEUSEN CORPORATION is a person in the
3 course of doing business within the meaning of Health & Safety Code §25249.11. PHILLIPS-
4 VAN HEUSEN COPORATION manufactures, distributes and/or sells the Products for sale and
5 use in California.

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

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

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

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

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

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

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

27 78. Defendant SAUSALITO ACCESSORIES, INC. is a person in the course
28 of doing business within the meaning of Health & Safety Code §25249.11. SAUSALITO

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

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

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

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

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

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

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

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

28 86. Defendant STRASBURG-JARVIS, INC. dba STRASBURG CHILDREN

1 is a person in the course of doing business within the meaning of Health & Safety Code
2 §25249.11. STRASBURG-JARVIS, INC. dba STRASBURG CHILDREN manufactures,
3 distributes and/or sells the Products for sale and use in California.

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

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

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

14 90. Defendant T.J. MAXX OF CALIFORNIA, LLC is a person in the course
15 of doing business within the meaning of Health & Safety Code §25249.11. T.J. MAXX OF
16 CALIFORNIA, LLC manufactures, distributes and/or sells the Products for sale and use in
17 California.

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

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

25 93. Defendant ULTA SALON, COSMETICS & FRAGRANCE, INC. is a
26 person in the course of doing business within the meaning of Health & Safety Code §25249.11.
27 ULTA SALON, COSMETICS & FRAGRANCE, INC. manufactures, distributes and/or sells the
28 Products for sale and use in California.

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

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

9 96. Defendant URBAN OUTFITTERS WEST, LLC is a person in the course
10 of doing business within the meaning of Health & Safety Code §25249.11. URBAN
11 OUTFITTERS WEST, LLC manufactures, distributes and/or sells the Products for sale and use
12 in California.

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

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

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

23 100. Defendant WORLD OF JEANS & TOPS dba TILLY'S is a person in the
24 course of doing business within the meaning of Health & Safety Code §25249.11. WORLD OF
25 JEANS & TOPS dba TILLY'S manufactures, distributes and/or sells the Products for sale and
26 use in California.

27 101. DOES 1-200 are each a person in the course of doing business within the
28 meaning of Health & Safety Code §25249.11. DOES 1 through 200 manufacture, distribute

1 and/or sell the Products for sale or use in California.

2 102. The true names of DOES 1 through 200 are unknown to plaintiff at this
3 time. When their identities are ascertained, the complaint shall be amended to reflect their true
4 names.

5 103. The defendants identified in Paragraphs 3 through 100 and DOES 1
6 through 200 are collectively referred to herein as “Defendants.”

7 **JURISDICTION**

8 104. The Court has jurisdiction over this action pursuant to Health & Safety
9 Code §25249.7, which allows enforcement in any court of competent jurisdiction. The
10 California Superior Court has jurisdiction over this action pursuant to California Constitution
11 Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except
12 those given by statute to other trial courts.” The statute under which this action is brought does
13 not grant jurisdiction to any other trial court.

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

19 106. Venue is proper in the Alameda Superior Court because one or more of the
20 violations arise in the County of Alameda.

21 **BACKGROUND FACTS**

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

25 108. To effectuate this goal, Proposition 65 requires that individuals be
26 provided with a “clear and reasonable warning” before being exposed to chemicals listed by the
27 State of California as known to cause cancer, birth defects and other reproductive harm unless
28 the business responsible for the exposure can prove that it fits within a statutory exemption.

1 Health & Safety Code §25249.6 states, in pertinent part:

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

6 109. On February 27, 1987, the State of California officially listed lead as a
7 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive
8 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to
9 the developing fetus, “female reproductive toxicity,” which means harm to the female
10 reproductive system, and “male reproductive toxicity,” which means harm to the male
11 reproductive system. 22 California Code of Regulations (“CCR”) §12000(c). On February 27,
12 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead
13 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
14 under Proposition 65. 22 CCR §12000(c); Health & Safety Code §25249.10(b).

15 110. On October 1, 1992, the State of California officially listed lead and lead
16 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
17 listed as a chemicals known to cause cancer, lead and lead compounds became subject to the
18 clear and reasonable warning requirement regarding carcinogens under Proposition 65. 22 CCR
19 §12000(c); Health & Safety Code §25249.10(b).

20 111. Under Proposition 65, an exposure is “knowing” where the party
21 responsible for such exposure has:

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

25 22 CCR §12201(d).

26 112. Defendants know that individuals, including children, wear, touch and
27 handle the Products, thus exposing them to Lead without prior clear and reasonable warning
28 regarding the carcinogenic or reproductive hazards of Lead.

113. Defendants intend that individuals, including children, through the
reasonably foreseeable use of the Products, wear, touch and handle the Products, thus exposing

1 them to Lead without prior clear and reasonable warning regarding the carcinogenic or
2 reproductive hazards of Lead.

3 114. The Products contain sufficient quantities of Lead such that consumers
4 who wear, touch or handle the Products are exposed to Lead through the reasonably foreseeable
5 use of the Products. These exposures occur when people who wear, touch or handle the Products
6 ingest the Lead by placing the Products directly in their mouths, ingest the Lead by hand to
7 mouth contact, ingest the Lead by eating or drinking after coming into contact with the Products,
8 and absorb the Lead through directly the skin. No clear and reasonable warning is provided with
9 the Products regarding the carcinogenic or reproductive hazards of Lead.

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

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

25 117. CEH also sent a Certificate of Merit relating to each of the Notices to the
26 California Attorney General, the District Attorneys of every county in California, the City
27 Attorneys of every California city with a population greater than 750,000, and to each named
28 Defendant. In compliance with Health & Safety Code §25249.7(d) and 11 CCR §3101, each of

1 these Certificates certified that CEH's counsel: (1) has consulted with one or more persons with
2 relevant and appropriate experience or expertise who reviewed facts, studies or other data
3 regarding the exposures to Lead alleged in the Notice; and (2) based on the information obtained
4 through such consultations, believes that there is a reasonable and meritorious case for a citizen
5 enforcement action based on the facts alleged in the attached Notice. In compliance with Health
6 & Safety Code §25249.7(d) and 11 CCR §3102, each of the Certificates served on the Attorney
7 General included factual information – provided on a confidential basis – sufficient to establish
8 the basis for the Certificate, including the identity of the person(s) consulted by CEH's counsel
9 and the facts, studies or other data reviewed by such persons.

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

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

19 **FIRST CAUSE OF ACTION**

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

21 120. Plaintiff realleges and incorporates by reference as if specifically set forth
22 herein Paragraphs 1 through 119 inclusive.

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

25 122. Defendants know that through the reasonably foreseeable use of the
26 Products, users of the Products are exposed to Lead. Defendants intend that the Products be used
27 in a manner that results in users of the Products being exposed to Lead contained in the Products.

28 123. Defendants have failed, and continue to fail, to provide clear and

1 reasonable warning regarding the carcinogenicity and reproductive toxicity of Lead to users of
2 the Products.

3 124. Lead is a chemical listed by the State of California as known to cause
4 cancer, birth defects and other reproductive harm.

5 125. By committing the acts alleged above, Defendants have at all times
6 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing
7 individuals to Lead without first giving clear and reasonable warning to such individuals
8 regarding the carcinogenicity and reproductive toxicity of Lead.

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

10 **PRAYER FOR RELIEF**

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

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

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

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

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

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

Dated: July 19, 2007

Respectfully submitted,
LEXINGTON LAW GROUP, LLP



Eric S. Somers
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL
HEALTH