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7 *Attorneys for Plaintiff, Evelyn Wimberley*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**
10 **UNLIMITED CIVIL JURISDICTION**

11
12
13 **EVELYN WIMBERLEY,**)

14 **Plaintiff,**)

15 **and**)

16 **CVS/PHARMACY; BED BATH &**)
17 **BEYOND, INC.**)
18)
19)

20 **AND DOES 1-250 INCLUSIVE**)

21 **Defendants.**)
22)

CASE NO.: 37-2011-00094008-CU-NP-CTL

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Cal. Health & Safety Code § 25249.6 et seq.)

23 **NATURE OF THE ACTION**

24 1. This Complaint is a representative action brought by plaintiff Evelyn Wimberley,
25 in the public interest of the citizens of the State of California, to enforce the people's right to be
26 informed of the presence of lead, a toxic chemical found in Telebrands Corp, Jupiter Jack sold in
27 California.
28

1 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failures to
2 warn California citizens about their exposure to lead present in or on certain Jupiter Jack
3 products that defendants manufacture, distribute and/or offer for sale to consumers throughout
4 the State of California.

5 3. High levels of lead are commonly found in Jupiter Jack's that defendants
6 manufacture, distribute and/or offer for sale to consumers throughout the State of California.

7 4. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,
8 California Health & Safety Code § 25249.6 et seq. (Proposition 65), "No person in the course of
9 doing business shall knowingly and intentionally expose any individual to a chemical known to
10 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
11 warning to such individual..." (*Cal. Health & Safety Code § 25249.6.*)

12 5. California identified and listed Lead as a chemical known to cause birth defects
13 and other reproductive harm. Lead became subject to the warning requirements of Proposition 65
14 for developmental toxicity beginning on February 27, 1987 and for cancer toxicity on October 1,
15 1992. (*27 CCR § 27002; Cal. Health & Safety Code § 25249.6.*)

16 6. Lead shall hereinafter be referred to as the "LISTED CHEMICAL."

17 7. Defendants manufacture, distribute and/or sell Jupiter Jack containing excessive
18 levels of the LISTED CHEMICAL including, but not limited to, Jupiter Jack (UPC# 0
19 97298021329). All such Jupiter Jack's containing the LISTED CHEMICAL shall hereinafter be
20 referred to as the "PRODUCTS."

21 8. Defendants' failures to warn consumers and/or other individuals in the State of
22 California about their exposure to the LISTED CHEMICAL in conjunction with defendant's
23 sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder of
24 such conduct as well as civil penalties for each such violation.

25 9. For defendants' violations of Proposition 65, plaintiff seeks preliminary
26 injunctive and permanent injunctive relief to compel defendants to provide purchasers or users of
27 the PRODUCTS with the required warning regarding the health hazards of the LISTED
28 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

1 19. The California Superior Court has jurisdiction over DEFENDANTS based on
2 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or
3 association that either are citizens of the State of California, have sufficient minimum contacts in
4 the State of California, or otherwise purposefully avail themselves of the California market.
5 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
6 courts consistent with traditional notions of fair play and substantial justice.

7 **FIRST CAUSE OF ACTION**

8 **(Violation of Proposition 65 – Against Defendant)**

9 20. Plaintiff realleges and incorporates by reference, as if full reference, as if full set
10 forth herein, Paragraphs 1 through 18, inclusive.

11 21. The citizens of the State of California have expressly stated in the Safe Drinking
12 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, et seq.
13 (Proposition 65) that they must be informed “about exposures to chemicals that cause cancer,
14 birth defects and order reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

15 22. Proposition 65 states, “No person in the course of doing business shall knowingly
16 and intentionally expose any individual to a chemical known to the state to cause cancer or
17 productive toxicity without first giving clear and reasonable warning to such individual...
18 (*Id.*)”

19 23. On February 7, 2011 a sixty-day notice violation, together with the requisite
20 certificate of merit, was provided to DEFENDANTS., and various public enforcement agencies
21 stating that as a result of the DEFENDANTS' sales of the PRODUCTS, purchasers and users in
22 the State of California were being exposed to the LISTED CHEMICAL resulting from the
23 reasonably foreseeable users of the PRODUCTS, without the individual purchasers and users
24 first having been provided with a “clear and reasonable warning” regarding such toxic exposures.

25 24. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
26 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
27 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in
28 violation of California Health & Safety Code § 25249.6 has continued to occur beyond

1 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and
2 believes that such violations will continue to occur into the future.

3 25. After receipt of the claims asserted in the sixty-day notices of violation, the
4 appropriate public enforcement agencies have failed to commence and diligently prosecute a
5 cause of action against DEFENDANTS under Proposition 65.

6 26. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
7 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
8 limits.

9 27. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
10 distributed, and/or for sale or use by DEFENDANTS in California contained the LISTED
11 CHEMICAL.

12 28. The LISTED CHEMICAL was present in or on the PRODUCTS in such away as
13 to expose individuals to the LISTED CHEMICAL through dermal contact, hand to mouth
14 contact, and/or ingestion etc. during the reasonably foreseeable use of the PRODUCTS.

15 29. The normal and reasonably foreseeable use of he PRODUCTS has caused and
16 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined
17 by 27 CCR§ 25602(b).

18 30. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
19 the PRODUCTS would expose individuals to the LISTED CHEMICAL through dermal contact,
20 hand to mouth contact and/or ingestion.

21 31. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
22 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
23 accidental participation in the manufacture, distribution and/or offer for sale or use of
24 PRODUCTS to individuals in the State of California.

25 32. DEFENDANTS failed to provide a "clear and reasonable warning" to those
26 consumers and/or other individuals in the State of California who were or who could become
27 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
28 reasonably foreseeable use of the PRODUCTS.

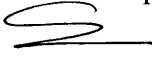
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and cost of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: June 29, 2011

Respectfully Submitted,

Law Offices of Stephen Ure, PC.

By:  _____

Stephen Ure, Esq.
Attorney for Plaintiff
EVELYN WIMBERLEY

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

CVS/Pharmacy; Bed Bath & Beyond, Inc. et al

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Evelyn Wimberley

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

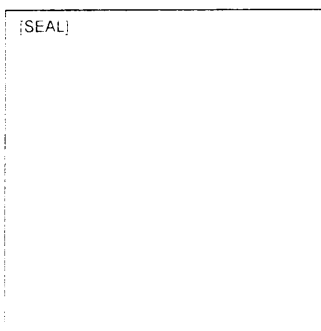
The name and address of the court is:
(El nombre y dirección de la corte es): Hall of Justice
330 West Broadway, San Diego, CA 92101-3827

CASE NUMBER
(Número del Caso)
37-2011-00094008-CU-NP-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Stephen Ure, SBC#188244, Law Offices of Stephen Ure, PC., 1518 Sixth Avenue, San Diego, CA 92101, Tel (619) 235-5400

DATE: JUL 06 2011 Clerk, by A. RACELIS, Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Stephen Ure (CSB#188244) Law Offices of Stephen Ure, PC. 1518 Sixth Avenue, San Diego, CA 92101 TELEPHONE NO.: (619) 235-5400 FAX NO.: (619) 235-5404 ATTORNEY FOR (Name): Plaintiff, Evelyn Wimberley	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 West Broadway MAILING ADDRESS: Same CITY AND ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Hall of Justice	
CASE NAME: Evelyn Wimberley v. CVS/Pharmacy; Bed Bath and Beyond, Inc. <i>Does 1-250</i>	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
	CASE NUMBER: _____ JUDGE: 37-2011-00094008-CU-NP-CTL DEPT: _____

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input checked="" type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): One (1)
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 7/16/2011 Stephen Ure, Esq.  _____

(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.