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EDMUND G. BROWN JR.
Attorney General of California
EDWARD G. WEIL
Supervising Deputy Attorney General
State Bar No. 88302
LAURA J. ZUCKERMAN
Deputy Attorney General
State Bar No. 161896
1515 Clay Street, 20th Floor
Oakland, CA 94612-0550
Telephone: (510) 622-2149
Fax: (510) 622-2270
E-mail: Ed.Weil@doj.ca.gov
Attorneys for the People of the State of California

FILED
ALAMEDA COUNTY

DEC 28 2008

CLERK OF THE SUPERIOR COURT
By *John [Signature]* Deputy

Names of Additional Counsel Appear on Following Page

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff,

v.

**21ST CENTURY HEALTHCARE, INC.,
APEX FITNESS GROUP, A DIVISION OF
24 HOUR FITNESS USA, INC., BIOSAN
LABORATORIES, INC., BLUEBONNET
NUTRITION CORPORATION, BRONSON
NUTRITIONALS, LLC, BURIED
TREASURE, A DIVISION OF LIFE LINE
FOOD INC., CLINICIAN'S CHOICE INC.,
D&E PHARMACEUTICALS, INC.,
DAVINCI LABORATORIES OF
VERMONT, DELAWARE NATROL, INC.,
DESIGNS FOR HEALTH, INC., DOUGLAS
LABORATORIES, DYNAMIC HEALTH
LABORATORIES, INC., ENZYMATIC
THERAPY, INC., ESTEEM PRODUCTS,
LTD., FAIRHAVEN HEALTH, LLC,
FOODSCIENCE CORPORATION,
FOODSCIENCE OF VERMONT,
FUTUREBIOTICS, LLC, GENSPEC LABS,
LLC, HEALTH AUTHORITY, LLC, HXN
CORPORATION, INTEGRATIVE
THERAPEUTICS, INC., IRWIN
NATURALS, J.R. CARLSON**

PE 08426937

**COMPLAINT FOR CIVIL PENALTY
AND INJUNCTIVE RELIEF**

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**LABORATORIES, INC., KIRKMAN,
KORDIAL NUTRIENTS, METABOLIC
MAINTENANCE PRODUCTS, INC.,
METAGENICS, INC., MOUNTAIN
NATURALS OF VERMONT, NATURAL
ORGANICS, INC., NATURE'S SECRET,
NATURE'S WAY PRODUCTS, INC.,
NBTY, INC., NEW CHAPTER, INC.,
NEXGEN PHARMA, INC., NF
FORMULAS, INC., NOW FOODS,
NUTRITION RESOURCES, INC.,
NUTRITIONAL SPECIALTIES, INC.,
NUTRI-WEST, OLYMPIAN LABS, INC.,
ONLY NATURAL, INC., OPTIMAL
NUTRIENTS, INC. USA, PIONEER
NUTRITIONAL FORMULAS, INC., PURE
ESSENCE LABORATORIES, INC.,
RAINBOW LIGHT NUTRITIONAL
SYSTEMS, INC., SOLGAR, INC., SPRING
VALLEY HERBS & NATURAL FOODS,
SUPERNUTRITION LIFE-EXTENSION
RESEARCH, INC., THE DAILY
WELLNESS COMPANY, THE VITAMIN
SHOPPE INDUSTRIES, INC.,
THRESHOLD ENTERPRISES, LTD.,
TRUE FIT VITAMINS, UNIVERSAL
NUTRITION, WYETH LABORATORIES,
DOES 1 THROUGH 500,**

Defendants.

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(List of Counsel continued from first page)

THOMAS ORLOFF, Alameda County District Attorney
LAWRENCE C. BLAZER, Assistant District Attorney, State Bar Number 95598
SCOTT D. PATTON, Deputy District Attorney, State Bar Number 148468
Consumer & Environmental Protection Division
7677 Oakport Street, Suite 650
Oakland, CA 94621
Tel:(510) 569-9281
Fax (510) 569-0505

EDWARD S. BERBERIAN, Marin County District Attorney
ROBERT E. NICHOLS, Deputy District Attorney, State Bar Number 100028
3501 Civic Center Drive, Room 130
San Rafael, CA 94903-4196
Tel: (415) 499-6450
Fax: (415) 499-3719

DEAN D. FLIPPO, Monterey County District Attorney
STEVEN HOLETT, Deputy District Attorney, State Bar Number 170635
Monterey County District Attorney
1200 Aguajito Road, Room 301
Monterey, CA 93950
Tel: (831) 647-7705
Fax: (831) 647-7762

GARY LIEBERSTEIN, County of Napa District Attorney,
DARYL ROBERTS, Deputy District Attorney, State Bar Number 111981
931 Parkway Mall
Napa, CA 94559
Tel: (707) 253-4211
Fax: (707) 299-4322

TONY RACKAUCKAS, Orange County District Attorney
JOSEPH D'AGOSTINO, Senior Assistant District Attorney
STEVE YONEMURA, Assistant District Attorney
TRACY HUGHES, Deputy District Attorney, State Bar Number 180494
Consumer and Environmental Protection Unit
401 Civic Center Drive West
Santa Ana, CA 92701-4575
Tel: (714) 648-3600
Fax: (714) 648-3636

BOB LEE, Santa Cruz County District Attorney
KELLY J. WALKER, Assistant District Attorney, State Bar Number 95538
701 Ocean St., Room 200
Santa Cruz, California 95060
Tel: (831) 454-2559
Fax: (831) 454-2227

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GERALD C. BENITO, County of Shasta District Attorney
ERIN M. DERVIN, Deputy District Attorney, State Bar Number 188426
1515 Court Street, 3rd Floor
Redding, CA 96001
Tel: (530) 245-6300
Fax: (530) 245-6345

DAVID W. PAULSON, County of Solano District Attorney
CRISELDA B. GONZALEZ, Senior Deputy District Attorney, State Bar No. 146493
DANI JO HANDELL, Deputy District Attorney, State Bar No. 130346
County Administration Center
675 Texas Street, Suite 4500
Fairfield, CA 94533
Tel: (707) 784-6859
Fax: (707) 784-9001

STEPHAN R. PASSALACQUA, District Attorney, County of Sonoma
MATTHEW T. CHBEVER, Deputy District Attorney, State Bar Number 191783
2300 County Center Drive, Suite B170
Santa Rosa, CA 95403
Tel: (707) 565-3161
Fax: (707) 565-3499

1 Plaintiff, the People of the State of California, ex. rel Edmund G. Brown Jr., Attorney
2 General, Thomas Orloff, District Attorney for the County of Alameda, Edward S. Berberian,
3 District Attorney for the County of Marin, Dean D. Flippo, District Attorney for the County of
4 Monterey, Gary Lieberstein, District Attorney for the County of Napa, Tony Rackauckas, District
5 Attorney for the County of Orange, Bob Lee, District Attorney for the County of Santa Cruz,
6 Gerald C. Benito, District Attorney for the County of Shasta, David W. Paulson, District Attorney
7 for the County of Solano, and Stephan R. Passalacqua, District Attorney for the County of
8 Sonoma, hereby alleges:

9 **I. PRELIMINARY STATEMENT**

10 1. This complaint seeks to remedy the failure of defendants to warn persons of exposure
11 to lead, which is a chemical known to the State of California to cause birth defects, or other
12 reproductive harm, and cancer. Under the Safe Drinking Water and Toxic Enforcement Act of
13 1986, Health and Safety Code section 25249.6, also known as "Proposition 65," businesses must
14 provide persons with a "clear and reasonable warning" before exposing individuals to chemicals
15 known to the state to cause cancer or reproductive harm. In this case, exposure to lead occurs
16 when individuals ingest vitamin supplements that contain lead. "Vitamin Supplements" are
17 products sold for the purpose of supplementing the intake of various vitamins, minerals, and
18 nutrients over and above that obtained from food.

19 **II. PARTIES**

20 2. Plaintiff is the People of the State of California, ex. rel Edmund G. Brown Jr.,
21 Attorney General, Thomas Orloff, District Attorney for the County of Alameda, Edward S.
22 Berberian, District Attorney for the County of Marin, Dean D. Flippo, District Attorney for the
23 County of Monterey, Gary Lieberstein, District Attorney for the County of Napa, Tony
24 Rackauckas, District Attorney for the County of Orange, Bob Lee, District Attorney for the
25 County of Santa Cruz, Gerald C. Benito, District Attorney for the County of Shasta, David W.
26 Paulson, District Attorney for the County of Solano, and Stephan R. Passalacqua, District
27 Attorney for the County of Sonoma. Health and Safety Code section 25249.7, subdivision (c)
28 provides that actions to enforce Proposition 65 may be brought by the Attorney General or a

1 District Attorney in the name of the People of the State of California. Business and Professions
2 Code sections 17200 et seq. provide that actions to enforce that statute may be brought by the
3 Attorney General in the name of the People of the State of California, or by a District Attorney.

4 3. Defendant 21st CENTURY HEALTHCARE, INC. is a business entity that sells, or
5 has, at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements
6 that contain lead within the State of California, or made vitamin supplements available for sale in
7 California, without first giving clear and reasonable warning.

8 4. Defendant APEX FITNESS GROUP, A DIVISION OF 24 HOUR FITNESS USA,
9 INC. is a business entity that sells, or has, at times relevant to this complaint, manufactured,
10 distributed, or sold vitamin supplements that contain lead within the State of California, or made
11 vitamin supplements available for sale in California, without first giving clear and reasonable
12 warning.

13 5. Defendant BIOSAN LABORATORIES, INC., which does business as INNATE
14 RESPONSE, INC., and MEGAFOOD, INC., is a business entity that sells, or has, at times
15 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain
16 lead within the State of California, or made vitamin supplements available for sale in California,
17 without first giving clear and reasonable warning.

18 6. Defendant BLUEBONNET NUTRITION CORPORATION is a business entity that
19 sells, or has, at times relevant to this complaint, manufactured, distributed, or sold vitamin
20 supplements that contain lead within the State of California, or made vitamin supplements
21 available for sale in California, without first giving clear and reasonable warning.

22 7. Defendant BRONSON NUTRITIONALS, LLC, which does business as BRONSON
23 LABORATORIES is a business entity that sells, or has, at times relevant to this complaint,
24 manufactured, distributed, or sold vitamin supplements that contain lead within the State of
25 California, or made vitamin supplements available for sale in California, without first giving clear
26 and reasonable warning.

27 8. Defendant BURIED TREASURE, A DIVISION OF LIFE LINE FOOD INC., is a
28 business entity that sells, or has, at times relevant to this complaint, manufactured, distributed, or

1 sold vitamin supplements that contain lead within the State of California, or made vitamin
2 supplements available for sale in California, without first giving clear and reasonable warning.

3 9. Defendant CLINICIAN'S CHOICE, INC. is a business entity that sells, or has, at
4 times relevant to this complaint, manufactured, distributed, or sold vitamin supplements that
5 contain lead within the State of California, or made vitamin supplements available for sale in
6 California, without first giving clear and reasonable warning.

7 10. Defendant D&E PHARMACEUTICALS, INC. is a business entity that sells, or has,
8 at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements that
9 contain lead within the State of California, or made vitamin supplements available for sale in
10 California, without first giving clear and reasonable warning.

11 11. Defendant DAVINCI LABORATORIES OF VERMONT (a subsidiary of
12 FOODSCIENCE CORP.), is a business entity that sells, or has, at times relevant to this
13 complaint, manufactured, distributed, or sold vitamin supplements that contain lead within the
14 State of California, or made vitamin supplements available for sale in California, without first
15 giving clear and reasonable warning.

16 12. Defendant DELAWARE NATROL, INC. is a business entity that sells, or has, at
17 times relevant to this complaint, manufactured, distributed, or sold vitamin supplements that
18 contain lead within the State of California, or made vitamin supplements available for sale in
19 California, without first giving clear and reasonable warning.

20 13. Defendant DESIGNS FOR HEALTH, INC. is a business entity that sells, or has, at
21 times relevant to this complaint, manufactured, distributed, or sold vitamin supplements that
22 contain lead within the State of California, or made vitamin supplements available for sale in
23 California, without first giving clear and reasonable warning.

24 14. Defendant DOUGLAS LABORATORIES is a business entity that sells, or has, at
25 times relevant to this complaint, manufactured, distributed, or sold vitamin supplements that
26 contain lead within the State of California, or made vitamin supplements available for sale in
27 California, without first giving clear and reasonable warning.

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1 15. Defendant DYNAMIC HEALTH LABORATORIES, INC. is a business entity that
2 sells, or has, at times relevant to this complaint, manufactured, distributed, or sold vitamin
3 supplements that contain lead within the State of California, or made vitamin supplements
4 available for sale in California, without first giving clear and reasonable warning.

5 16. Defendant ENZYMATIC THERAPY, INC., including its division
6 PHYTOPHARMICA, is a business entity that sells, or has, at times relevant to this complaint,
7 manufactured, distributed, or sold vitamin supplements that contain lead within the State of
8 California, or made vitamin supplements available for sale in California, without first giving clear
9 and reasonable warning.

10 17. Defendant ESTEEM PRODUCTS, LTD. is a business entity that sells, or has, at
11 times relevant to this complaint, manufactured, distributed, or sold vitamin supplements that
12 contain lead within the State of California, or made vitamin supplements available for sale in
13 California, without first giving clear and reasonable warning.

14 18. Defendant FAIRHAVEN HEALTH, LLC is a business entity that sells, or has, at
15 times relevant to this complaint, manufactured, distributed, or sold vitamin supplements that
16 contain lead within the State of California, or made vitamin supplements available for sale in
17 California, without first giving clear and reasonable warning.

18 19. Defendant FOODSCIENCE CORPORATION is a business entity that sells, or has, at
19 times relevant to this complaint, manufactured, distributed, or sold, vitamin supplements that
20 contain lead within the State of California, or made vitamin supplements available for sale in
21 California, without first giving clear and reasonable warning.

22 20. Defendant FOODSCIENCE OF VERMONT (a subsidiary of FOODSCIENCE
23 CORP.), is a business entity that sells, or has, at times relevant to this complaint, manufactured,
24 distributed, or sold vitamin supplements that contain lead within the State of California, or made
25 vitamin supplements available for sale in California, without first giving clear and reasonable
26 warning.

27 21. Defendant FUTUREBIOTICS, LLC is a business entity that sells, or has, at times
28 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain

1 lead within the State of California, or made vitamin supplements available for sale in California,
2 without first giving clear and reasonable warning.

3 22. Defendant GENSPEC LABS, LLC is a business entity that sells, or has, at times
4 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain
5 lead within the State of California, or made vitamin supplements available for sale in California,
6 without first giving clear and reasonable warning.

7 23. Defendant HEALTH AUTHORITY, LLC, doing business as DOCTOR'S TRUST
8 VITAMINS, is a business entity that sells, or has, at times relevant to this complaint,
9 manufactured, distributed, or sold vitamin supplements that contain lead within the State of
10 California, or made vitamin supplements available for sale in California, without first giving clear
11 and reasonable warning.

12 24. Defendant HXN CORPORATION, doing business as HEALTH XPRESS, is a
13 business entity that sells, or has, at times relevant to this complaint, manufactured, distributed, or
14 sold vitamin supplements that contain lead within the State of California, or made vitamin
15 supplements available for sale in California, without first giving clear and reasonable warning.

16 25. Defendant INTEGRATIVE THERAPEUTICS, INC. is a business entity that sells, or
17 has, at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements
18 that contain lead within the State of California, or made vitamin supplements available for sale in
19 California, without first giving clear and reasonable warning.

20 26. Defendant IRWIN NATURALS is a business entity that sells, or has, at times
21 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain
22 lead within the State of California, or made vitamin supplements available for sale in California,
23 without first giving clear and reasonable warning.

24 27. Defendant J.R. CARLSON LABORATORIES, INC. is a business entity that sells, or
25 has, at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements
26 that contain lead within the State of California, or made vitamin supplements available for sale in
27 California, without first giving clear and reasonable warning.

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1 28. Defendant KIRKMAN is a business entity that sells, or has, at times relevant to this
2 complaint, manufactured, distributed, or sold vitamin supplements that contain lead within the
3 State of California, or made vitamin supplements available for sale in California, without first
4 giving clear and reasonable warning.

5 29. Defendant KORDIAL NUTRIENTS is a business entity that sells, or has, at times
6 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain
7 lead within the State of California, or made vitamin supplements available for sale in California,
8 without first giving clear and reasonable warning.

9 30. Defendant METABOLIC MAINTENANCE PRODUCTS, INC. is a business entity
10 that sells, or has, at times relevant to this complaint, manufactured, distributed, or sold vitamin
11 supplements that contain lead within the State of California, or made vitamin supplements
12 available for sale in California, without first giving clear and reasonable warning.

13 31. Defendant METAGENICS, INC. is a business entity that sells, or has, at times
14 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain
15 lead within the State of California, or made vitamin supplements available for sale in California,
16 without first giving clear and reasonable warning.

17 32. Defendant MOUNTAIN NATURALS OF VERMONT (a subsidiary of
18 FOODSCIENCE CORP.) is a business entity that sells, or has, at times relevant to this complaint,
19 manufactured, distributed, or sold vitamin supplements that contain lead within the State of
20 California, or made vitamin supplements available for sale in California, without first giving clear
21 and reasonable warning.

22 33. Defendant NATURAL ORGANICS, INC. is a business entity that sells, or has, at
23 times relevant to this complaint, manufactured, distributed, or sold vitamin supplements that
24 contain lead within the State of California, or made vitamin supplements available for sale in
25 California, without first giving clear and reasonable warning.

26 34. Defendant NATURE'S SECRET is a business entity that sells, or has, at times
27 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain
28

1 lead within the State of California, or made vitamin supplements available for sale in California,
2 without first giving clear and reasonable warning.

3 35. Defendant NATURE'S WAY PRODUCTS, INC. is a business entity that sells, or
4 has, at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements
5 that contain lead within the State of California, or made vitamin supplements available for sale in
6 California, without first giving clear and reasonable warning.

7 36. Defendant NBTY, INC. is a business entity that, through control and direction of its
8 subsidiaries, which include but are not limited to AMERICAN HEALTH, INC., GOOD 'N
9 NATURAL, NATURE'S BOUNTY, PURITAN'S PRIDE, SUNDOWN, VITAMIN WORLD
10 ONLINE, INC., and SOLGAR, INC., sells, or has, at times relevant to this complaint,
11 manufactured, distributed, or sold vitamin supplements that contain lead within the State of
12 California, or made vitamin supplements available for sale in California, without first giving clear
13 and reasonable warning. Plaintiff is informed and believes, and based on such information and
14 belief alleges, that NBTY, INC., exercises sufficient control over the operations and activities of
15 its identified subsidiaries that it is responsible for the actions of the subsidiaries, and that it has
16 itself caused exposures in the course of doing business under Health & Safety Code section
17 25249.6.

18 37. Defendant NEW CHAPTER, INC. is a business entity that sells, or has, at times
19 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain
20 lead within the State of California, or made vitamin supplements available for sale in California,
21 without first giving clear and reasonable warning, including but not limited to products sold under
22 the name Newmark.

23 38. Defendant NEXGEN PHARMA, INC., including but not limited to activities
24 undertaken through its VITAMER LABORATORIES division, is a business entity that sells, or
25 has, at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements
26 that contain lead within the State of California, or made vitamin supplements available for sale in
27 California, without first giving clear and reasonable warning.

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1 39. Defendant NF FORMULAS, INC. is a business entity that sells, or has, at times
2 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain
3 lead within the State of California, or made vitamin supplements available for sale in California,
4 without first giving clear and reasonable warning.

5 40. Defendant NOW FOODS is a business entity that sells, or has, at times relevant to
6 this complaint, manufactured, distributed, or sold vitamin supplements that contain lead within
7 the State of California, or made vitamin supplements available for sale in California, without first
8 giving clear and reasonable warning.

9 41. Defendant NUTRITION RESOURCES, INC., doing business as NUTRIBIOTIC is a
10 business entity that sells, or has, at times relevant to this complaint, manufactured, distributed, or
11 sold vitamin supplements that contain lead within the State of California, or made vitamin
12 supplements available for sale in California, without first giving clear and reasonable warning.

13 42. Defendant NUTRITIONAL SPECIALTIES, INC. is a business entity that sells, or
14 has, at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements
15 that contain lead within the State of California, or made vitamin supplements available for sale in
16 California, without first giving clear and reasonable warning.

17 43. Defendant NUTRI-WEST is a business entity that sells, or has, at times relevant to
18 this complaint, manufactured, distributed, or sold vitamin supplements that contain lead within
19 the State of California, or made vitamin supplements available for sale in California, without first
20 giving clear and reasonable warning.

21 44. Defendant OLYMPIAN LABS, INC. is a business entity that sells, or has, at times
22 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain
23 lead within the State of California, or made vitamin supplements available for sale in California,
24 without first giving clear and reasonable warning.

25 45. Defendant ONLY NATURAL, INC. is a business entity that sells, or has, at times
26 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain
27 lead within the State of California, or made vitamin supplements available for sale in California,
28 without first giving clear and reasonable warning.

1 46. Defendant OPTIMAL NUTRIENTS, INC. USA, A DIVISION OF PEGASUS PLUS,
2 INC., is a business entity that sells, or has, at times relevant to this complaint, manufactured,
3 distributed, or sold vitamin supplements that contain lead within the State of California, or made
4 vitamin supplements available for sale in California, without first giving clear and reasonable
5 warning.

6 47. Defendant PIONEER NUTRITIONAL FORMULAS, INC. is a business entity that
7 sells, or has, at times relevant to this complaint, manufactured, distributed, or sold vitamin
8 supplements that contain lead within the State of California, or made vitamin supplements
9 available for sale in California, without first giving clear and reasonable warning.

10 48. Defendant PURE ESSENCE LABORATORIES, INC. is a business entity that sells,
11 or has, at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements
12 that contain lead within the State of California, or made vitamin supplements available for sale in
13 California, without first giving clear and reasonable warning.

14 49. Defendant RAINBOW LIGHT NUTRITIONAL SYSTEMS, INC. is a business entity
15 that sells, or has, at times relevant to this complaint, manufactured, distributed, or sold vitamin
16 supplements that contain lead within the State of California, or made vitamin supplements
17 available for sale in California, without first giving clear and reasonable warning.

18 50. Defendant SOLGAR, INC., (a subsidiary of NBTY, Inc.), is a business entity that
19 sells, or has, at times relevant to this complaint, manufactured, distributed, or sold vitamin
20 supplements that contain lead within the State of California, or made vitamin supplements
21 available for sale in California, without first giving clear and reasonable warning.

22 51. SPRING VALLEY HERBS & NATURAL FOODS is a business entity that sells, or
23 has, at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements
24 that contain lead within the State of California, or made vitamin supplements available for sale in
25 California, without first giving clear and reasonable warning.

26 52. Defendant SUPERNUTRITION LIFE-EXTENSION RESEARCH, INC. is a business
27 entity that sells, or has, at times relevant to this complaint, manufactured, distributed, or sold
28

1 vitamin supplements that contain lead within the State of California, or made vitamin
2 supplements available for sale in California, without first giving clear and reasonable warning.

3 53. Defendant THE DAILY WELLNESS COMPANY is a business entity that sells, or
4 has, at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements
5 that contain lead within the State of California, or made vitamin supplements available for sale in
6 California, without first giving clear and reasonable warning.

7 54. Defendant THE VITAMIN SHOPPE INDUSTRIES, INC. is a business entity that
8 sells, or has, at times relevant to this complaint, manufactured, distributed, or sold vitamin
9 supplements that contain lead within the State of California, or made vitamin supplements
10 available for sale in California, without first giving clear and reasonable warning. This defendant
11 is also a retailer of the Vitamin Supplements made by other defendants, both in its retail stores
12 (including a location within the County of Alameda), and over the internet.

13 55. Defendant THRESHOLD ENTERPRISES, LTD. is a business entity that sells, or
14 has, at times relevant to this complaint, manufactured, distributed, or sold vitamin supplements
15 that contain lead within the State of California, or made vitamin supplements available for sale in
16 California, without first giving clear and reasonable warning.

17 56. Defendant TRUE FIT VITAMINS™ is a business entity that sells, or has, at times
18 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain
19 lead within the State of California, or made vitamin supplements available for sale in California,
20 without first giving clear and reasonable warning.

21 57. Defendant UNIVERSAL NUTRITION is a business entity that sells, or has, at times
22 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain
23 lead within the State of California, or made vitamin supplements available for sale in California,
24 without first giving clear and reasonable warning.

25 58. Defendant WYETH LABORATORIES, through its prior ownership of Solgar, Inc.,
26 has in the past manufactured, distributed, or sold vitamin supplements that contain lead within the
27 State of California, or made vitamin supplements available for sale in California, without first
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1 giving clear and reasonable warning. On a date less than four years prior to the filing of this
2 complaint, WYETH LABORATORIES sold Solgar, Inc., to defendant NBTY, INC.

3 59. Defendants DOES 1 THROUGH 500 are business entities that sell, or have, at times
4 relevant to this complaint, manufactured, distributed, or sold vitamin supplements that contain
5 lead within the State of California, or made vitamin supplements available for sale in California,
6 without first giving clear and reasonable warning, but whose identities are unknown to Plaintiff.

7 **III. JURISDICTION AND VENUE**

8 60. This Court has jurisdiction pursuant to California Constitution Article VI, section 10,
9 because this case is a cause not given by statute to other trial courts.

10 61. This Court has jurisdiction over each defendant named above, because each is a
11 business entity that does sufficient business, has sufficient minimum contacts in California, or
12 otherwise intentionally avails itself of the California market, through the sale, marketing, and use
13 of its products in California, to render the exercise of jurisdiction over it by the California courts
14 consistent with traditional notions of fair play and substantial justice.

15 62. Venue is proper in this Court because the cause, or part thereof, arises in Alameda
16 County because defendants' products are sold, consumed, and are available for sale, in this
17 county.

18 **IV. STATUTORY BACKGROUND**

19 **A. Proposition 65**

20 63. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
21 passed as "Proposition 65" by a vote of the people in November of 1986.

22 64. The warning requirement of Proposition 65 is contained in Health and Safety Code
23 section 25249.6, which provides:

24 No person in the course of doing business shall knowingly and intentionally expose any
25 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
26 giving clear and reasonable warning to such individual, except as provided in Section 25249.10.

27 65. An exposure to a chemical in a consumer product is one "which results from a
28 person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a

1 consumer good, or any exposure that results from receiving a consumer service.” (Cal. Code
2 Regs., tit. 27, § 25601, subd. (b).)

3 66. Proposition 65 establishes a procedure by which the state is to develop a list of
4 chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Saf. Code, §
5 25249.8.) No warning need be given concerning a listed chemical until one year after the
6 chemical first appears on the list. (*Id.*, § 25249.10, subd. (b).)

7 67. Any person “violating or threatening to violate” the statute may be enjoined in any
8 court of competent jurisdiction. (Health & Saf. Code, § 25249.7.) To “threaten to violate” is
9 defined to mean “to create a condition in which there is a substantial probability that a violation
10 will occur.” (*Id.*, § 25249.11, subd. (e).) In addition, violators are liable for civil penalties of up
11 to \$2,500 per day for each violation, recoverable in a civil action. (*Id.*, § 25249.7, subd. (b).)

12 68. Actions to enforce the law “may be brought by the Attorney General in the name of
13 the People of the State of California or by any district attorney.” (*Id.*, § 25249.7, subd. (c).)
14 Private parties are given authority to enforce Proposition 65 “in the public interest,” but only if
15 the private party first provides written notice of a violation to the alleged violator, the Attorney
16 General, and every District Attorney in whose jurisdiction the alleged violation occurs. If no
17 public prosecutors commence enforcement within sixty days, then the private party may sue.
18 (Health & Saf. Code, § 25249.7, subdivision (d).)

19 69. In an action by the Attorney General, the Attorney General may “seek and recover
20 costs and attorney’s fees on behalf of any party who provides a notice pursuant to subdivision (d)
21 and who renders assistance in that action.” (*Id.*, § 25249.7, subd. (j).)

22 **B. The Unfair Competition Law**

23 70. California Business and Professions Code section 17200 provides that “unfair
24 competition shall mean and include unlawful, unfair or fraudulent business practice.” Section
25 17203 of the Business and Professions Code provides that “(a)ny person performing or proposing
26 to perform an act of unfair competition within this state may be enjoined in any court of
27 competent jurisdiction.”

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1 71. Unlawful acts under the statute include any act that is unlawful that is conducted as
2 part of business activity, and therefore include violations of Proposition 65.

3 72. Business and Professions Code section 17206, subdivision (a), provides that any
4 person violating section 17200 "shall be liable for a civil penalty not to exceed two thousand five
5 hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil
6 action brought in the name of the people of the State of California by the Attorney General or by
7 any district attorney." Under section 17205, these penalties are "cumulative to each other and to
8 the remedies or penalties available under all other laws of this state."

9 **V. FACTS**

10 73. "Lead" was placed on the Governor's list of chemicals known to the State of
11 California to cause reproductive toxicity on February 27, 1987. It is specifically identified under
12 three subcategories: "developmental reproductive toxicity," which means harm to the developing
13 fetus, "female reproductive toxicity," which means harm to the female reproductive system, and
14 "male reproductive toxicity," which means harm to the male reproductive system. (Cal. Code
15 Regs., tit. 27, § 27001.)

16 74. "Lead and lead compounds" was added to the list of chemicals known to the state to
17 cause cancer on October 1, 1992. (*Id.*)

18 75. Vitamin Supplements made by defendants contain lead, which is ingested by
19 consumers when they use the products for their intended purpose.

20 76. Each defendant either knows that its vitamin supplements contain lead, and that
21 persons using the products as intended will be exposed to lead thereby, or the People are informed
22 and believe that the defendant has such knowledge, and based on such information and belief, the
23 People allege that each defendant has such knowledge; or the fact of such knowledge is likely to
24 have evidentiary support after a reasonable opportunity for further investigation or discovery.

25 77. Each defendant has manufactured, distributed, or sold Vitamin Supplements that
26 contain lead in California, or has made such Vitamin Supplements available for sale in California.

27 78. The People are informed and believe, and based on such information and belief,
28 allege, that each defendant has failed to provide clear and reasonable warnings that the use of the

1 products in question results in exposure to a chemical known to the State of California to cause
2 birth defects or other reproductive harm, and cancer, and that no such warning was provided to
3 those individuals by any other person.

4 **VI. FIRST CAUSE OF ACTION**

5 (Against Each Defendant for Violation of Proposition 65)

6 79. Paragraphs 1 through 78 are realleged as if fully set forth herein.

7 80. The People are informed and believe, and based on such information and belief,
8 allege, that each defendant employs ten or more persons.

9 81. By committing the acts alleged above, each defendant has, in the course of doing
10 business, knowingly and intentionally exposed individuals to chemicals known to the State of
11 California to cause cancer or reproductive toxicity without first giving clear and reasonable
12 warning to such individuals, within the meaning of Health and Safety Code section 25249.6, or
13 threatened to violate Section 25249.6, within the meaning of Health and Safety Code section
14 25249.7, subdivision (a).

15 82. Said violations render each defendant liable to Plaintiff for civil penalties not to
16 exceed \$2,500 per day for each violation, as well as other remedies.

17 **VII. SECOND CAUSE OF ACTION**

18 (Against Each Defendant for Unlawful Business Practices)

19 83. Paragraphs 1 through 78 are realleged as if fully set forth herein.

20 84. By committing the acts alleged above, each defendant has engaged in unlawful
21 business practices which constitute unfair competition within the meaning of Business and
22 Professions Code section 17200.

23 85. Said violations render each defendant liable to Plaintiff for civil penalties not to
24 exceed \$2,500 per day for each violation.

25 **VIII. PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff prays that the Court:

- 27 1. Pursuant to the First and Second Causes of Action, grant civil penalties
28 according to proof;

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2. Pursuant to Health and Safety Code section 25249.7 and Business and Professions Code section 17203, enter such temporary restraining orders, preliminary injunctions, permanent injunctions, or other orders prohibiting defendants from exposing persons within the State of California to lead caused by the use of their products without providing clear and reasonable warnings, as Plaintiff shall specify in further application to the Court;

3. Enter such orders as "may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of" these unlawful acts, as provided in Business and Professions Code section 17203 and other applicable laws;

4. Award Plaintiff its costs of suit;

5. Grant such other and further relief as the court deems just and proper.

