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[Exempt from fees pursuant to
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17 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF STANISLAUS**
19

20 **PEOPLE OF THE STATE OF CALIFORNIA,**
21 Plaintiff,
22 **v.**
23 **PRO'S CHOICE BEAUTY CARE, INC.; RITE**
24 **AID CORPORATION; LONGS DRUG**
25 **STORES CALIFORNIA, INC.; LONGS**
26 **DRUG STORES CORPORATION;**
27 **WALGREEN COMPANY; RALPHS**
28 **GROCERY COMPANY; TARGET**
CORPORATION; KMART CORPORATION;
MARCY J. BLICK, Individually; and DOES
Nos. 1 through 50, inclusive,
Defendants.

CASE NO. 623625
FIRST AMENDED COMPLAINT
FOR PERMANENT INJUNCTION,
CIVIL PENALTIES, AND OTHER
EQUITABLE RELIEF

Initial filing date: February 13, 2008

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17 **Attorneys for Plaintiff, People of the State of California**

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19 **PLAINTIFF, THE PEOPLE OF THE STATE OF CALIFORNIA**, based on
20 information and belief, alleges as follows:

21 **PLAINTIFF**

22 1. Plaintiff, PEOPLE OF THE STATE OF CALIFORNIA (the "People"), brings its
23 actions by and through Edmund G. Brown Jr., Attorney General of the State of California
24 ("Attorney General"), and by and through the District Attorneys in the Counties of Stanislaus,
25 Sacramento, San Bernardino, Solano and San Joaquin (collectively, the "Local Prosecutors").

26 2. The Attorney General and the Local Prosecutors, acting in the public interest to
27 protect the general public and the environment against violation of California's air pollution
28

1 specializing in the sale of products from manufacturers' (un)authorized distributors and/or
2 excess inventories from professional hair care salons to other distributors or retailers for public
3 use and consumption.

4 7. Defendant RITE AID CORPORATION, is now, and was at all times relevant
5 herein, a corporation organized under the laws of the State of Delaware, and licensed to do
6 business in the State of California, including but not limited to Stanislaus County. Defendant
7 RITE AID CORPORATION owns and/or operates stores throughout the State of California,
8 including but not limited to Stanislaus County, and sells, supplies, offers for sale or otherwise
9 distributes hair sprays, gels, mousses and styling products, amongst many other products, to the
10 public for use or consumption.

11 8. Defendant LONGS DRUG STORES CALIFORNIA, INC., is now, and was at all
12 times relevant herein, a corporation organized under the laws of the State of California, and
13 licensed to do business in the State of California, including but not limited to Stanislaus County.
14 Defendant LONGS DRUG STORES CALIFORNIA, INC. owns and/or operates stores
15 throughout the State of California, including but not limited to Stanislaus County, and sells,
16 supplies, offers for sale or otherwise distributes hair sprays, gels, mousses and styling products,
17 amongst many other products, to the public for use or consumption.

18 9. Defendant LONGS DRUG STORES CORPORATION, is now, and was at all
19 times relevant herein, a corporation organized under the laws of the State of Maryland, and
20 licensed to do business in the State of California, including but not limited to Stanislaus County.
21 Defendant LONGS DRUG STORES CORPORATION owns and/or operates stores throughout
22 the State of California, including but not limited to Stanislaus County, and sells, supplies, offers
23 for sale or otherwise distributes hair sprays, gels, mousses and styling products, amongst many
24 other products, to the public for use or consumption.

25 10. Defendant WALGREEN COMPANY, is now, and was at all times relevant
26 herein, a corporation organized under the laws of the State of Illinois, and licensed to do
27 business in the State of California, including but not limited to Stanislaus County. Defendant
28 WALGREEN COMPANY owns and/or operates stores throughout the State of California,

1 including but not limited to Stanislaus County, and sells, retails or otherwise distributes hair
2 sprays, gels, mousses and styling products, amongst many other products, to the public for use or
3 consumption.

4 11. Defendant RALPHS GROCERY COMPANY, is now, and was at all times
5 relevant herein, a corporation organized under the laws of the State of Ohio, and licensed to do
6 business in the State of California, including but not limited to Stanislaus County. Defendant
7 RALPHS GROCERY COMPANY, owns and/or operates stores throughout the State of
8 California, including but not limited to Stanislaus County, and sells, supplies, offers for sale or
9 otherwise distributes hair sprays, gels, mousses and styling products, amongst many other
10 products, to the public for use or consumption.

11 12. Defendant TARGET CORPORATION, is now, and was at all times relevant
12 herein, a corporation organized under the laws of the State of Minnesota, and licensed to do
13 business in the State of California, including but not limited to Stanislaus County. Defendant
14 TARGET CORPORATION owns and/or operates stores throughout the State of California,
15 including but not limited to Stanislaus County, and sells, supplies, offers for sale or otherwise
16 distributes hair sprays, gels, mousses and styling products, amongst many other products, to the
17 public for use or consumption.

18 13. Defendant K-MART CORPORATION, is now, and was at all times relevant
19 herein, a corporation organized under the laws of the State of Delaware, and licensed to do
20 business in the State of California, including but not limited to Stanislaus County. Defendant
21 K-MART CORPORATION owns and /or operates stores throughout the State of California,
22 including but not limited to Stanislaus County, and sells supplies, offers for sale or otherwise
23 distributes hair sprays, gels, mousses and styling products, amongst many other products, to the
24 public for use or consumption.

25 14. Defendant MARCY J. BLICK, individually, was at all times relevant herein, the
26 president and/or chief executive officer of Defendant PRO'S CHOICE BEAUTY CARE, INC.
27 and was personally responsible for management, direction, supervision and/or decisions relative
28 to the management of the sale or distribution of the hair care products throughout the United

1 States, and the State of California in particular. Defendant MARCY J. BLICK was personally
2 responsible for decisions, and/or controlled, managed or supervised operations related to the
3 distribution of hair care products for public use and consumption to retail stores, distributors and
4 agents in the State of California. Any act of Defendant MARCY J. BLICK alleged herein to
5 have constituted a violation of California law was carried out personally by Defendant MARCY
6 J. BLICK, or at her direction, or with her knowledge, supervision, ratification or acquiescence.
7 Any failure to act alleged herein to have constituted a violation of California law resulted from
8 Defendant MARCY J. BLICK'S failure to act, or failure to direct or authorize others to act.
9 Defendant MARCY J. BLICK failed to exercise reasonable business judgments, and failed to
10 inquire and perform due diligence regarding corporate activities, including but not limited to
11 compliance program(s) meant to ensure that consumer hair care products sold and distributed in
12 California complied with state laws and regulations governing the VOC-content of each
13 consumer product.

14 15. Defendants, separately and each of them, are or were, at all times relevant to the
15 claims in this Complaint and continuing through the present, legally responsible for compliance
16 with the provisions of the California Health and Safety Code. Whenever an allegation regarding
17 any act of a Defendant is made herein, such allegation shall be deemed to mean that Defendant,
18 or its agent or an employee of said Defendant, did or so authorized such acts while actively
19 engaged in the affairs of the Defendant's business operations and while acting within the course
20 and scope of their employment or while conducting business for a commercial purpose.

21 16. In this Complaint, when reference is made to any act of a Defendant, such
22 allegation shall mean that the owners, officers, directors, agents, employees, contractors, or
23 representatives of Defendant did or authorized such acts, or negligently failed and omitted to act
24 or adequately and properly supervise, control or direct its employees and agents while engaged
25 in the management, direction, operation or control of the affairs of the business organization.
26 Whenever in this complaint reference is made to any act of any Defendant, such allegation shall
27 be deemed to mean the act of each Defendant acting individually, jointly and severally as
28 defined by Civil Code Section 1430 *et seq.*

1 21. Hair sprays initially had no VOC-content limit until January 1, 1993, when the
2 hair spray VOC-content limit (by weight) became 80%. On June 1, 1999, CARB reduced the
3 hair spray VOC-content limit (by weight) to 55%, where it remains today. Hair mousses initially
4 had no VOC-content limit until January 1, 1994, when the hair mousse VOC-content limit (by
5 weight) became 16%. On January 1, 2003, CARB reduced the hair mousse VOC-content limit
6 (by weight) to 6%, where it remains today. Hair gels had no VOC-content limit set before
7 January 1, 1994, when the VOC-content limit (by weight) of 6% became effective. Any hair gel
8 manufactured after December 31, 2006 is now categorized as a Hair Styling Product (All Other
9 Forms). Hair Styling Products, which is broken into two subcategories consisting of one for
10 Aerosols and Pumps and the other for All Other Forms, had no VOC-content limit set before
11 December 31, 2006, when the VOC-content limit (by weight) of 6% for Hair Styling Products
12 (Aerosols and Pumps) and 2% for Hair Styling Product (All Other Forms) both became effective.
13 (*Title 17, California Code of Regulations, sections 94507-94517, inclusive*).

14 22. The following allegations are likely to have evidentiary support after a reasonable
15 opportunity for further investigation or discovery: At all times relevant herein, Defendants were
16 engaged in the business of selling, supplying, offering for sale, purchasing, manufacturing,
17 marketing or otherwise distributing consumer hair care products throughout the State of
18 California. California law uniformly requires wholesalers, distributors and retailers to comply
19 with all relevant environmental regulations, and meet applicable environmental standards.
20 Defendants' competitors included any costs associated with this required compliance in their
21 competing prices for the same or similar products, thereby placing Defendants, separately and
22 each of them, at a competitive advantage over competing companies that followed, abided or
23 complied with environmental laws at issue herein.

24 23. The following allegations are likely to have evidentiary support after a reasonable
25 opportunity for further investigation or discovery: Defendants, separately and each of them,
26 sold, supplied, offered for sale, purchased, manufactured, marketed or otherwise distributed
27 thousands of consumer hair care products that failed to comply with California's regulations
28 concerning the allowable percentages of volatile organic compounds in consumer products.

1 Defendants' selling, supplying, offering for sale, purchasing, manufacturing, marketing or
2 otherwise distributing consumer hair care products that did not comply with California law
3 occurred throughout the State. In the course of business, Defendants purchased for resale
4 products exceeding VOC-content limitations set by the California Legislature and/or CARB.
5 Defendants knew and/or should have known that the sale, offer to sell, and subsequent consumer
6 use of these hair care products, including but not limited to hair sprays, gels, mousses or styling
7 products, would cause emissions of air contaminants, including VOCs.

8 24. The following allegations are likely to have evidentiary support after a reasonable
9 opportunity for further investigation or discovery: Defendants, separately and each of them,
10 sold, supplied, offered for sale, purchased, manufactured, marketed or otherwise distributed
11 consumer hair care products, including but not limited to hair sprays, gels, mousses or styling
12 products, at stores throughout California despite the fact that Defendants knew, should have
13 known, or otherwise failed to determine that such consumer products contained excessively high
14 levels of VOCs, in violation of California law as more fully alleged herein. The pertinent laws,
15 statutes, rules, standards, or regulations include, but are not limited to: California Health &
16 Safety Code sections 41700 *et seq.*, and section 42400 *et seq.*, and Title 17 of the California
17 Code of Regulations, sections 94507 through 94517.

18 25. The following allegations are likely to have evidentiary support after a reasonable
19 opportunity for further investigation or discovery: Defendants also willfully, intentionally,
20 knowingly, or negligently continued to purchase, sell, supply, offer for sale, purchase,
21 manufacture, market or otherwise distribute non-compliant consumer hair care products in
22 California despite receiving notice from governmental agencies that such products exceeded
23 California's limits on VOC-content for consumer hair care products. Defendants PRO'S
24 CHOICE BEAUTY CARE, INC., RITE AID CORPORATION, WALGREEN COMPANY,
25 LONGS DRUG STORES CALIFORNIA, INC., LONGS DRUG STORES CORPORATION,
26 and RALPHS GROCERY COMPANY each received a minimum of two Notices of Violation
27 from CARB relating to the sale, supply or distribution of consumer hair care products exceeding
28 VOC-content limitations. Defendants TARGET CORPORATION and KMART

1 CORPORATION each received a minimum of one Notice of Violation from CARB relating to
2 the sale, supply or distribution of consumer hair care products exceeding VOC-content
3 limitations. By selling, offering for sale, or continuing to sell consumer hair care products
4 before and after Defendants received notice of violation from governmental agencies concerning
5 noncompliance, Defendants, separately and each of them, caused and continue to cause VOC
6 emissions that degrade air quality, increase greenhouse gases, and harm human health.

7 26. To comply with regulations promulgated by CARB, manufacturers altered
8 formulations of the consumer products. Because of the multiple formulations generated by
9 manufacturers, there was, and continues to be, the inherent probability that products formulated
10 and intended for sale in other states or countries were intentionally, willfully, knowingly and/or
11 negligently sold by Defendants in California.

12 INSPECTIONS AND NOTIFICATIONS

13 27. Since 2005, Defendant PRO'S CHOICE BEAUTY CARE, INC., has received
14 three Notices of Violation ("NOVs") from CARB. On August 18, 2005, CARB notified
15 Defendant PRO'S CHOICE BEAUTY CARE, INC., that during inspections, occurring from
16 June 1, 2001 through May 19, 2005, related to the supply, distribution, sale or offering for sale
17 of non-compliant consumer hair care products, numerous consumer hair care products supplied,
18 distributed, sold or offered for sale by this Defendant were found to contain VOCs exceeding
19 California's limits. (NOV, dated August 16, 2005, and related correspondence from CARB,
20 dated August 18, 2005, to Defendant are cumulatively attached hereto as **Exhibit A**).

21 28. On September 21, 2006, CARB again notified Defendant PRO'S CHOICE
22 BEAUTY CARE, INC., that during inspections occurring from November 14, 2005 through
23 November 17, 2005, related to the supply, distribution, sale or offering for sale of non-compliant
24 consumer hair care products, numerous consumer hair care products supplied, distributed, sold
25 or offered for sale by this Defendant were found to contain excessive VOCs and/or displayed
26 improper dating information. (NOV, dated September 25, 2006, and related correspondence
27 from CARB, dated September 21, 2006, to Defendant are cumulatively attached hereto as
28 **Exhibit B**).

1 29. On May 18, 2007, CARB notified Defendant PRO’S CHOICE BEAUTY CARE,
2 INC., for a third time that during inspections, occurring from November 15-16, 2005; April 18,
3 2006; June 20 and 23, 2006; August 3, 2006; September 28, 2006, November 9 and 28, 2006;
4 and February 21, 2007, related to the supply, distribution, sale or offering for sale of non-
5 compliant consumer hair care products, numerous consumer hair care products supplied,
6 distributed, sold or offered for sale by this Defendant were found to contain excessive VOCs
7 and/or displayed improper dating information. (NOV, dated May 17, 2007, and related
8 correspondence from CARB, dated May 18, 2007, to Defendant are cumulatively attached hereto
9 as **Exhibit C**).

10 30. Since 2005, Defendant RIDE AID CORPORATION has received four Notices of
11 Violation (“NOVs”) from CARB. On April 12, 2005, CARB notified Defendant RITE AID
12 CORPORATION that during inspections of its stores, occurring on July 3, 2002, December 18,
13 2002, March 26, 2003, and June 23, 2003, related to the supply, distribution, sale or offering for
14 sale of non-compliant consumer hair care products, numerous consumer hair care products
15 supplied, distributed, sold or offered for sale by this Defendant were found to contain excessive
16 VOCs in addition to a violation for failure to report to CARB, as required pursuant to 17 C.C.R.
17 94513(a). (NOV, dated May 30, 2005, and related correspondence from CARB, dated April 12,
18 2005, to Defendant are cumulatively attached hereto as **Exhibit D**).

19 31. On September 22, 2005, CARB again notified Defendant RITE AID
20 CORPORATION that during inspections of its stores, occurring on May 12, 19, and 25, 2005,
21 related to the supply, distribution, sale or offering for sale of non-compliant consumer hair care
22 products, numerous consumer hair care products supplied, distributed, sold or offered for sale by
23 this Defendant were found to contain excessive VOCs. (NOV, dated September 22, 2005, and
24 related correspondence from CARB, dated September 19, 2005, to Defendant are cumulatively
25 attached hereto as **Exhibit E**).

26 32. On September 11, 2006, CARB again notified Defendant RITE AID
27 CORPORATION that during inspections of its stores, occurring on November 14, 15, and 16,
28 2005, related to the supply, distribution, sale or offering for sale of non-compliant consumer

1 hair care products, numerous consumer hair care products supplied, distributed, sold or offered
2 for sale by this Defendant were found to contain excessive VOCs. (NOV, dated September 11,
3 2006, and related correspondence from CARB, dated September 11, 2006, to Defendant are
4 cumulatively attached hereto as **Exhibit F**).

5 33. On April 4, 2007, CARB notified Defendant RITE AID CORPORATION for a
6 fourth time that during inspections of its stores, occurring on November 15 and 16, 2005, June
7 20 and 23, 2006, and August 3, 2006, related to the supply, distribution, sale or offering for sale
8 of consumer hair care products, numerous consumer hair care products supplied, distributed,
9 sold or offered for sale by this Defendant were found to contain excessive VOCs. (NOV, dated
10 April 4, 2007, and related correspondence from CARB, dated April 30, 2007, to Defendant are
11 cumulatively attached hereto as **Exhibit G**).

12 34. Since 2005, Defendant LONGS DRUG STORES CALIFORNIA, INC. has
13 received two Notices of Violation (“NOVs”) from CARB. On November 8, 2005, CARB notified
14 Defendant LONGS DRUG STORES CALIFORNIA, INC. that during inspections of its stores,
15 occurring on May 15 and 29, 2002, and on May 19, 2005, related to the supply, distribution, sale
16 or offering for sale of non-compliant consumer hair care products, numerous consumer hair care
17 products supplied, distributed, sold or offered for sale by this Defendant were found to contain
18 excessive VOCs in addition to there being a violation for failure to report to CARB, as required
19 pursuant to 17 C.C.R. 94513(a). (NOV, dated November 4, 2005, and related correspondence
20 from CARB, dated November 8, 2005, to Defendant are cumulatively attached hereto as **Exhibit**
21 **H**).

22 35. On September 5, 2006, CARB again notified Defendant LONGS DRUG STORES
23 CALIFORNIA, INC. that during inspections of its stores, occurring November 14, 15, 16 and 17,
24 2005, related to the supply, distribution, sale or offering for sale of non-compliant consumer hair
25 care products, numerous consumer hair care products supplied, distributed, sold or offered for
26 sale by this Defendant were found to contain excessive VOCs. (NOV, dated August 21, 2006,
27 and related correspondence from CARB, dated September 5, 2006, to Defendant are
28 cumulatively attached hereto as **Exhibit I**).

1 36. Since 2003, Defendant WALGREEN COMPANY has received two Notices of
2 Violation (“NOVs”) from CARB. On July 28, 2003, CARB notified Defendant WALGREEN
3 COMPANY that during inspections of its stores, occurring on February 6 and 20, 2003, and on
4 March 25, 26, and 28, 2003, related to the supply, distribution, sale or offering for sale of non-
5 compliant consumer hair care products, numerous consumer hair care products supplied,
6 distributed, sold or offered for sale by this Defendant were found to contain excessive VOCs.
7 (NOV, dated July 28, 2003, and related correspondence from CARB, dated July 28, 2003, to
8 Defendant are cumulatively attached hereto as **Exhibit J**).

9 37. On August 16, 2006, CARB again notified Defendant WALGREEN COMPANY
10 that during inspections of its stores that occurred between November 14, 2005 and November
11 17, 2005, related to the supply, distribution, sale or offering for sale of non-compliant consumer
12 hair care products, numerous consumer hair care products supplied, distributed, sold or offered
13 for sale by this Defendant were found to contain excessive VOCs. (NOV, dated August 9, 2006,
14 and related correspondence from CARB, dated August 16, 2006, to Defendant are cumulatively
15 attached hereto as **Exhibit K**).

16 38. Since 2002, Defendant RALPHS GROCERY COMPANY has received two
17 Notices of Violation (“NOVs”) from CARB. On May 9, 2002 and December 23, 2002, CARB
18 notified Defendant RALPHS GROCERY COMPANY that during inspections of its stores,
19 occurring on June 6, 2001 and October 16, 2002, related to the supply, distribution, sale or
20 offering for sale of non-compliant consumer hair care products, numerous consumer hair care
21 products supplied, distributed, sold or offered for sale by this Defendant were found to contain
22 excessive VOCs. (NOVs, dated May 9, 2002 and December 23, 2002 and related
23 correspondence from CARB, dated May 9, 2002 and December 23, 2002, to Defendant are
24 cumulatively attached hereto as **Exhibit L**).

25 39. On August 21, 2006, CARB again notified Defendant RALPHS GROCERY
26 COMPANY, that during inspections of its stores, occurring on November 15 and 16, 2005,
27 related to the supply, distribution, sale or offering for sale of non-compliant consumer hair care
28 products, numerous consumer hair care

1 products supplied, distributed, sold or offered for sale by this Defendant were found to contain
2 excessive VOCs. (NOV, dated August 21, 2006, and related correspondence from CARB, dated
3 August 21, 2006, to Defendant are cumulatively attached hereto as **Exhibit M**).

4 40. On October 25, 2006, CARB notified Defendant TARGET CORPORATION
5 that during inspections of its stores, occurring on April 18, 2006, related to the supply,
6 distribution, sale or offering for sale of non-compliant consumer hair care products, numerous
7 consumer hair care products supplied, distributed, sold or offered for sale by this Defendant
8 were found to contain excessive VOCs. (NOV, dated October 25, 2006, and related
9 correspondence from CARB, dated October 25, 2006, to Defendant are cumulatively attached
10 hereto as **Exhibit N**).

11 41. On February 9, 2007, CARB notified Defendant KMART CORPORATION,
12 that during inspections of its stores, occurring on September 28, 2006 and November 28, 2006,
13 related to the supply, distribution, sale or offering for sale of non-compliant consumer hair care
14 products, numerous consumer hair care products supplied, distributed, sold or offered for sale by
15 this Defendant were found to contain excessive VOCs. (NOV, dated January 29, 2006, and
16 related correspondence from CARB, dated February 9, 2007, to Defendant are cumulatively
17 attached hereto as **Exhibit O**).

18 42. In October 2008 and February 2009, CARB inspectors performed additional
19 inspection of products supplied by PRO'S CHOICE BEAUTY CARE, INC. to Defendants RITE
20 AID CORPORATION, LONGS DRUG STORES CALIFORNIA, INC., LONGS DRUG
21 STORES CORPORATION, WALGREEN COMPANY, RALPHS GROCERY COMPANY,
22 TARGET CORPORATION, KMART CORPORATION, which included surveying and
23 recording codes appearing on containers of products distributed by Defendant PRO'S CHOICE
24 BEAUTY CARE, INC. to retailers, and purchasing of representative samples of products to have
25 tested for compliance with VOC-content regulations, 17 C.C.R. 94509. As a result of these
26 inspections, additional VOC and date code violations were found.

27 43. In May 2009, investigators for the People performed inspections of retail
28 Defendants', RITE AID CORPORATION, LONGS DRUG STORES CALIFORNIA, INC.,

1 LONGS DRUG STORES CORPORATION, WALGREEN COMPANY, RALPHS GROCERY
2 COMPANY, TARGET CORPORATION, KMART CORPORATION, stores to determine
3 compliance with VOC-content limits and date code regulations for products supplied by
4 Defendant PRO'S CHOICE BEAUTY CARE, INC. and previously inspected or tested by
5 CARB. Additional VOC-content and date code violations were found.

6 **TOLLING OF STATUTES OF LIMITATIONS**

7 44. During the investigation of this case, the People agreed to tolling agreements with
8 Defendants preserving the People's right to pursue violations beyond the typical limitations
9 period provided by statute. These tolling agreements were reached through negotiation with
10 counsel for each Defendant and on behalf of each Defendant.

11 45. The People and Defendant PRO'S CHOICE BEAUTY CARE, INC., entered into
12 a series of agreements to toll any applicable statutes of limitation. As a result of these
13 agreements, these parties agreed that the time period from June 16, 2006, through May 31, 2007,
14 inclusive ("Tolling Period"), will not be included in computing the time limits created by any
15 statutory limitation period for pursuing causes of action against Defendant PRO'S CHOICE
16 BEAUTY CARE, INC., that may arise out of claims covered by the tolling agreement. Those
17 claims include the causes of action alleged herein against Defendant PRO'S CHOICE BEAUTY
18 CARE, INC.

19 46. The People and Defendant RITE AID CORPORATION entered into a series of
20 agreements to toll any applicable statutes of limitation. As a result of these agreements, these
21 parties agreed that the time period from June 16, 2006, through April 30, 2007, inclusive
22 ("Tolling Period"), will not be included in computing the time limits created by any statutory
23 limitation period for pursuing causes of action against Defendant RITE AID CORPORATION
24 that may arise out of claims covered by the tolling agreement. Those claims include the causes
25 of action alleged herein against Defendant RITE AID CORPORATION.

26 47. The People and Defendant LONGS DRUG STORES CALIFORNIA, INC. and/or
27 LONGS DRUG STORES CORPORATION entered into a series of agreements to toll any
28 applicable statutes of limitation. As a result of these agreements, these parties agreed that the

1 time period from July 17, 2006, through December 31, 2006, inclusive (“Tolling Period”), will
2 not be included in computing the time limits created by any statutory limitation period for
3 pursuing causes of action against Defendant LONGS DRUG STORES CALIFORNIA, INC.
4 and/or LONGS DRUG STORES CORPORATION that may arise out of claims covered by the
5 tolling agreement. Those claims include the causes of action alleged herein against Defendant
6 LONGS DRUG STORES CALIFORNIA, INC. and/or LONGS DRUG STORES
7 CORPORATION.

8 48. The People and Defendant WALGREEN COMPANY entered into a series of
9 agreements to toll any applicable statutes of limitation. As a result of these agreements, these
10 parties agreed that the time period from July 17, 2006, through June 30, 2007, inclusive
11 (“Tolling Period”), will not be included in computing the time limits created by any statutory
12 limitation period for pursuing causes of action against Defendant WALGREEN COMPANY that
13 may arise out of claims covered by the tolling agreement. Those claims include the causes of
14 action alleged herein against Defendant WALGREEN COMPANY.

15 49. The People and Defendant RALPHS GROCERY COMPANY, entered into a
16 series of agreements to toll any applicable statutes of limitation. As a result of these agreements,
17 these parties agreed that the time period from July 17, 2006, through June 30, 2007, inclusive
18 (“Tolling Period”), will not be included in computing the time limits created by any statutory
19 limitation period for pursuing causes of action against Defendant RALPHS GROCERY
20 COMPANY, that may arise out of claims covered by the tolling agreement. Those claims
21 include the causes of action alleged herein against Defendant RALPHS GROCERY
22 COMPANY.

23 **ADDITIONAL ALLEGATIONS**

24 50. The following allegations are likely to have evidentiary support after a reasonable
25 opportunity for further investigation or discovery: From the nature of the conduct alleged
26 herein, the discovery of violations may not be readily apparent from ordinary inspection of the
27 consumer hair care product that is sold, supplied, offered for sale, purchased, manufactured, or
28 marketed. The consumer hair care product may need to be cross-referenced with manufacturer

1 codes, sampled, or otherwise verified for VOC compliance to determine conformity with
2 statutes, regulations, rules, or standards. The VOC-content of a consumer hair care product also
3 may be concealed by allowing defaced products to be sold, supplied, offered for sale, purchased,
4 manufactured, or marketed.

5 51. The following allegations are likely to have evidentiary support after a reasonable
6 opportunity for further investigation or discovery: Defendants, separately and each of them
7 failed to examine the VOC-content of consumer hair care products sold, supplied, offered for
8 sale, purchased, manufactured, or marketed in California and withhold non-compliant products
9 from California markets, as required, and even after notice of violation. Consequently,
10 determining with precision the exact quantity of non-compliant VOC consumer products sold,
11 supplied, offered for sale, purchased, manufactured, or marketed, or each day or location that
12 these quantities of non-compliant VOC consumer products were sold, supplied, offered for sale,
13 purchased, manufactured, or marketed, is complex.

14 52. The following allegations are likely to have evidentiary support after a reasonable
15 opportunity for further investigation or discovery: Distributors and retailers of consumer
16 products, like Defendants herein, are required to prevent the sale of non-compliant consumer
17 hair care products in California. Defendants are entitled to pass on that cost to California
18 consumers. California consumers may pay a bit more for clean or healthful air than be forced to
19 unwillingly breath the air overly polluted by Defendants' negligent, knowing and/or intentional
20 conduct.

21 53. The following allegations are likely to have evidentiary support after a
22 reasonable opportunity for further investigation or discovery: Because of each Defendant's
23 continuing and on-going violations, as described above, Defendants, separately and each of
24 them, have continued to engage in the unlawful or unfair business practice of selling, supplying,
25 offering for sale, purchasing, manufacturing, or marketing consumer hair care products in
26 violation of California's air pollution statutes, laws, regulations, rules, and standards.
27 Defendants' unlawful conduct continued after notice of violation from CARB. The continuing
28 nature of these violations for all Defendants indicates that non-compliant consumer hair care

1 products were sold, supplied, offered for sale, purchased, manufactured, or marketed prior to the
2 first notice of violation and continued after notice(s) of violation by CARB.

3 54. The following allegations are likely to have evidentiary support after a reasonable
4 opportunity for further investigation and response to outstanding discovery: Defendant PRO'S
5 CHOICE BEAUTY CARE, INC. has entered into contracts, insurance contracts and/or
6 indemnification agreements with TARGET CORPORATION, RITE AID CORPORATION,
7 LONGS DRUG STORES CALIFORNIA, INC., LONGS DRUG STORES CORPORATION, K-
8 MART CORPORATION, WALGREEN COMPANY, RALPHS GROCERY COMPANY and
9 MARCY J. BLICK. In relevant part, these contracts, insurance contracts and/or indemnification
10 agreements guarantee that Defendant PRO'S CHOICE BEAUTY CARE, INC. shall be obligated
11 to cover, indemnify, defend and hold harmless named retailer Defendants from and against all
12 liability arising out of any and all claims against the retailers seeking civil penalties for
13 violations of state, federal and local laws and regulations, in addition to claims of unfair
14 competition or unlawful business practices. (Indemnification Agreement between PRO'S
15 CHOICE BEAUTY CARE, INC. and WALGREEN COMPANY is attached hereto as **Exhibit**
16 **V**). Additional contracts, insurance contracts and/or indemnification agreements by and
17 between any named Defendants have been requested in discovery, but executed agreements have
18 been produced thus far. Moreover, some, if not all, of the publicly-traded named retailer
19 Defendants herein have relied on these Indemnification Agreements in filings with the federal
20 Securities Exchange Commission requiring the listing of potential liabilities facing such
21 retailers. (TARGET CORPORATION'S Securities Exchange Commission 2009 Form 10-K is
22 attached hereto as **Exhibit W**)

23 PRODUCT RECALL NOTICES

24 55. On August 9, 2006, Defendant PRO'S CHOICE BEAUTY CARE, INC.'s
25 President, Defendant MARCY J. BLICK, sent two letters to Defendant RITE AID
26 CORPORATION regarding "Selected Recall Items in California". (Recall Notices from PRO'S
27 CHOICE to RITE AID are cumulatively attached hereto as **Exhibit P**)

28 56. On August 9, 2006, Defendant PRO'S CHOICE BEAUTY CARE, INC.'s

1 President, Defendant MARCY J. BLICK, sent two letters to Defendant LONGS DRUG STORES
2 CORPORATION and/or Defendant LONGS DRUG STORES CALIFORNIA, INC. regarding
3 “Selected Recall Items in California”. (Recall Notices from PRO’S CHOICE to LONGS
4 DRUGS are cumulatively attached hereto as **Exhibit Q**).

5 57. On August 10, 2006, Defendant PRO’S CHOICE BEAUTY CARE, INC.’s
6 President, Defendant MARCY J. BLICK, sent one letter to Defendant WALGREEN COMPANY
7 regarding “Selected Recall Items in California”. (Recall Notices from PRO’S CHOICE to
8 WALGREEN COMPANY is attached hereto as **Exhibit R**).

9 58. On August 10, 2006, Defendant PRO’S CHOICE BEAUTY CARE, INC.’s
10 President, Defendant MARCY J. BLICK, sent two letters to Defendant RALPHS GROCERY
11 COMPANY, regarding “Selected Recall Items in California”. (Recall Notice from PRO’S
12 CHOICE to RALPHS GROCERY COMPANY, is attached hereto as **Exhibit S**).

13 59. On August 10, 2006, Defendant PRO’S CHOICE BEAUTY CARE, INC.’s
14 President, Defendant MARCY J. BLICK, sent two letters to Defendant TARGET
15 CORPORATION regarding “Selected Recall Items in California”. (Recall Notices from PRO’S
16 CHOICE to TARGET CORPORATION are cumulatively attached hereto as **Exhibit T**).

17 60. On August 9, 2006, Defendant PRO’S CHOICE BEAUTY CARE, INC.’s
18 President, Defendant MARCY J. BLICK, sent two letters to Defendant KMART
19 CORPORATION, regarding “Selected Recall Items in California”. (Recall Notices from PRO’S
20 CHOICE to KMART CORPORATION, are cumulatively attached hereto as **Exhibit U**).

21 **FIRST CAUSE OF ACTION**
22 **Injunction to Protect Natural Resources;**
Government Code Section 12607

23 **Defendants PRO’S CHOICE BEAUTY CARE, INC.; RITE AID CORPORATION;**
24 **LONGS DRUG STORES CALIFORNIA, INC.; LONGS DRUG STORES**
25 **CORPORATION; WALGREEN COMPANY; RALPHS GROCERY COMPANY;**
TARGET CORPORATION; KMART CORPORATION; MARCY BLICK, Individually

26 61. Plaintiff re-alleges and incorporates by reference herein paragraphs 1 through 60,
27 inclusive, as though fully set forth herein.

28 62. California Government Code section 12607 provides: “[T]he Attorney General

1 may maintain an action for equitable relief in the name of the People of the State of California
2 against any person for the protection of the natural resources of the state from pollution,
3 impairment or destruction.”

4 63. Defendants, through the actions, omissions, or negligence alleged in this
5 complaint, have impaired California air quality and environmental resources by allowing excess
6 emissions of VOCs, an air pollutant, from consumer products sold, supplied, offered for sale,
7 purchased, manufactured, or marketed, or otherwise injected into the stream of commerce by
8 Defendants.

9 64. In order to protect California’s natural resources, the Attorney General is entitled
10 to an order requiring Defendants, separately and each of them, to undertake any steps necessary
11 to prevent further harm to air quality and environmental resources, including an order that
12 Defendants, and each of them, cease selling, supplying, offering for sale, purchasing,
13 manufacturing, or marketing consumer hair care products with VOC-content that exceeds
14 permissible limits allowed in California.

15 **SECOND CAUSE OF ACTION**
16 **Wilful and Intentional Emissions of Air Contaminants;**
Health & Safety Code section 42402.3, subdivision (a)

17 **Defendants PRO’S CHOICE BEAUTY CARE, INC.; RITE AID CORPORATION;**
18 **LONGS DRUG STORES CALIFORNIA, INC.; LONGS DRUG STORES**
19 **CORPORATION; WALGREEN COMPANY; RALPHS GROCERY COMPANY;**
TARGET CORPORATION; KMART CORPORATION; MARCY BLICK, Individually

20 65. Plaintiff re-alleges and incorporates by reference herein paragraphs 1 through 64,
21 inclusive, as though fully set forth herein.

22 66. Within the last three (3) years from the filing of the original complaint and
23 continuing through the present, subject to any relevant tolling agreements referenced above and
24 after reasonable inquiry and due diligence in attempting to discover additional violations,
25 Defendants, separately and each of them, have engaged in acts and omissions in violation of
26 Title 17 of the California Code of Regulations, sections 94507 through 94517, and California
27 Health & Safety Code section 42402.3, subdivision (a), by willfully and intentionally emitting
28 impermissible VOCs or by willfully and intentionally selling, supplying, offering for sale,

1 manufacturing, or marketing consumer hair care products that emit air contaminants, including
2 but not limited to VOCs, in violation of an order, rule, regulation(s) or permit of the California
3 Air Resources Board, and knowing of the inevitable emissions of impermissible VOCs from the
4 consumer hair care products it sold, offered for sale, supplied or distributed and failing to take
5 corrective action within a reasonable time under the circumstances. Specifically, Defendants
6 knowingly sold, or offered for sale, in California hundreds, if not thousands, of units of
7 consumer hair care products, including but not limited to hair sprays, gels, mousses or styling
8 products, that exceeded permissible limits set on the VOC content of such products.
9 Defendants' violative conduct occurred on hundreds, if not thousands, of days.

10 70. The unlawful conduct, acts, and/or omissions of Defendants in violation of Title
11 17 of the California Code of Regulations, sections 94507 through 94517, and Health & Safety
12 Code section 42402.2, subdivision (a), as alleged herein, demonstrate the necessity and legal
13 basis for the imposition of a \$40,000.00 civil penalty pursuant to Health & Safety Code section
14 42403 for each non-compliant consumer product sold, supplied, offered for sale, purchased,
15 manufactured, or marketed in California, on a per day basis.

16 **FOURTH CAUSE OF ACTION**
17 **Negligent Emissions of Air Contaminants;**
Health & Safety Code section 42402.1, subdivision (a)

18 **Defendants PRO'S CHOICE BEAUTY CARE, INC.; RITE AID CORPORATION;**
19 **LONGS DRUG STORES CALIFORNIA, INC.; LONGS DRUG STORES**
20 **CORPORATION; WALGREEN COMPANY; RALPHS GROCERY COMPANY;**
TARGET CORPORATION; KMART CORPORATION; MARCY BLICK, Individually

21 71. Plaintiff re-alleges and incorporates by reference herein paragraphs 1 through 70,
22 inclusive, as though fully set forth herein.

23 72. Within the last three (3) years from the filing of the original complaint and
24 continuing through the present, subject to relevant tolling agreements mentioned above and after
25 reasonable inquiry and due diligence in attempting to discover the violations, Plaintiff
26 discovered that Defendants, separately and each of them, have engaged in acts and omissions in
27 violation of Title 17 of the California Code of Regulations, sections 94507 through 94517 and
28 California Health & Safety Code section 42402.1, subdivision (a), by negligently emitting

1 impermissible VOCs or by negligently selling, supplying, offering for sale, purchasing,
2 manufacturing, or marketing consumer hair care products that emit air contaminants, including
3 but not limited to VOCs, in violation of an order, rule, regulation(s) or permit of the California
4 Air Resources Board. Specifically, Defendants sold, or offered for sale, in California hundreds,
5 if not thousands, of units of consumer hair care products, including but not limited to hair
6 sprays, gels, mousses or styling products, that exceeded permissible limits set on the VOC
7 content of such products. Defendants' violative conduct occurred on hundreds, if not thousands,
8 of days.

9 73. The unlawful conduct, acts, and/or omissions of Defendants in violation of Title
10 17 of the California Code of Regulations, sections 94507 through 94517, and Health & Safety
11 Code section 42402.1, subdivision (a), as alleged herein, demonstrate the necessity and legal
12 basis for the imposition of a \$25,000.00 civil penalty pursuant to Health & Safety Code section
13 42403 for each non-compliant consumer product sold, supplied, offered for sale, purchased,
14 manufactured, or marketed in California, on a per day basis.

15
16 **FIFTH CAUSE OF ACTION**
17 **Strict Liability Violations of Air Board Rules;**
Health & Safety Code section 42402, subdivision (a)

18 **Defendants PRO'S CHOICE BEAUTY CARE, INC.; RITE AID CORPORATION;**
19 **LONGS DRUG STORES CALIFORNIA, INC.; LONGS DRUG STORES**
20 **CORPORATION; WALGREEN COMPANY; RALPHS GROCERY COMPANY;**
TARGET CORPORATION; KMART CORPORATION; MARCY BLICK, Individually

21 74. Plaintiff re-alleges and incorporates by reference herein paragraphs 1 through 73,
22 inclusive, as though fully set forth herein.

23 75. Within the last three (3) years from the filing of the original complaint and
24 continuing through the present, subject to relevant tolling agreements mentioned above and
25 after reasonable inquiry and due diligence in attempting to discover the violations, Plaintiff
26 discovered that Defendants, separately and each of them, have engaged in acts and omissions in
27 violation of Title 17 of the California Code of Regulations, sections 94507 through 94517, and
28 California Health & Safety Code section 42402, subdivision (a), by violating an order, rule,

1 regulation or permit of the California Air Resources Board. Specifically, Defendants sold, or
2 offered for sale, in California hundreds, if not thousands, of units of consumer hair care
3 products, including but not limited to hair sprays, gels, mousses or styling products, that
4 exceeded permissible limits set on the VOC content of such products. Defendants' violative
5 conduct occurred on hundreds, if not thousands, of days.

6 76. The unlawful conduct, acts, and/or omissions of Defendants in violation of Title
7 17 of the California Code of Regulations, sections 94507 through 94517, and Health & Safety
8 Code section 42402, subdivision (a), as alleged herein, demonstrate the necessity and legal basis
9 for the imposition of a \$1,000.00 strict liability civil penalty pursuant to Health & Safety Code
10 section 42403 for each non-compliant consumer product sold, supplied, offered for sale,
11 purchased, manufactured, or marketed in California, on a per day basis.

12
13 **SIXTH CAUSE OF ACTION**
14 **Strict Liability Violations of Air Board Rules;**
Health & Safety Code section 42402, subdivision (b)(1)

15 **Defendants PRO'S CHOICE BEAUTY CARE, INC.; RITE AID CORPORATION;**
16 **LONGS DRUG STORES CALIFORNIA, INC.; LONGS DRUG STORES**
17 **CORPORATION; WALGREEN COMPANY; RALPHS GROCERY COMPANY;**
TARGET CORPORATION; KMART CORPORATION; MARCY BLICK, Individually

18 77. Plaintiff re-alleges and incorporates by reference herein paragraphs 1 through 76,
19 inclusive, as though fully set forth herein.

20 78. Within the last three (3) years from the filing of the original complaint and
21 continuing through the present, subject to relevant tolling agreements mentioned
22 above and after reasonable inquiry and due diligence in attempting to discover the violations,
23 Plaintiff discovered that Defendants, separately and each of them, have engaged in acts and
24 omissions in violation of violation of Title 17 of the California Code of Regulations, sections
25 94507 through 94517 and California Health & Safety Code section 42402, subdivision (b)(1), by
26 violating an order, rule, regulation or permit of the California Air Resources Board.
27 Specifically, Defendants sold, or offered for sale, in California hundreds, if not thousands, of
28 units of consumer hair care products, including but not limited to hair sprays, gels, mousses or

1 styling products, that exceeded permissible limits set on the VOC content of such products.
2 Defendants' violative conduct occurred on hundreds, if not thousands, of days.

3 79. The unlawful conduct, acts, and/or omissions of Defendants in violation of Title
4 17 of the California Code of Regulations, sections 94507 through 94517 and Health & Safety
5 Code section 42402, subdivision (b)(1), as alleged herein, demonstrate the necessity and legal
6 basis for the imposition of a \$10,000.00 strict liability civil penalty pursuant to Health & Safety
7 Code section 42403 for each non-compliant consumer product sold, supplied, offered for sale,
8 purchased, manufactured, or marketed in California, on a per day basis.

9
10
11 **SEVENTH CAUSE OF ACTION**
Unfair Competition and/or Unlawful Conduct or Practices;
Business & Professions Code section 17200 *et seq.*

12 **Defendants PRO'S CHOICE BEAUTY CARE, INC.; RITE AID CORPORATION;**
13 **LONGS DRUG STORES CALIFORNIA, INC.; LONGS DRUG STORES**
14 **CORPORATION; WALGREEN COMPANY; RALPHS GROCERY COMPANY;**
TARGET CORPORATION; KMART CORPORATION; MARCY BLICK, Individually

15 80. Plaintiff re-alleges and incorporates by reference herein paragraphs 1 through 79,
16 inclusive, as though fully set forth herein.

17 81. Within the last four (4) years from the filing of the original complaint and
18 continuing through the present, subject to relevant tolling agreements mentioned
19 above and after reasonable inquiry and due diligence in attempting to discover the violations,
20 Plaintiff discovered that Defendants, separately and each of them, have engaged in unlawful,
21 fraudulent or unfair business acts or practices, which constitute unfair competition within the
22 meaning of section 17200 *et seq.* of the Business & Professions Code. Such business acts,
23 practices, or conduct include, but are not limited to the following:

- 24 a. Violating Title 17 of the California Code of Regulations, sections 94507
25 through 94517 and Health & Safety Code section 42403.3, subdivision (a),
26 by willfully and intentionally emitting, or intentionally selling or offering
27 to sell consumer products that would emit air contaminants, including
28 VOCs, in violation of an order, rule, regulation or permit of the California

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- Air Resources Board pertaining to emission limitations;
- b. Violating Title 17 of the California Code of Regulations, sections 94507 through 94517 and Health & Safety Code section 42403.2, subdivision (a), by knowingly emitting, or by knowingly selling and/or offering to sell consumer products that would emit air contaminants, including VOCs, and failing to take corrective action in violation of an order, rule, regulation or permit of the California Air Resources Board pertaining to emission limitations;
 - c. Violating Title 17 of the California Code of Regulations, sections 94507 through 94517 and Health & Safety Code section 42403.1, subdivision (a), by negligently emitting, or negligently selling and/or offering to sell consumer products that would emit air contaminants, including VOCs, in violation of an order, rule, regulation or permit of the California Air Resources Board pertaining to emission limitations;
 - d. Violating Title 17 of the California Code of Regulations, sections 94507 through 94517 and Health & Safety Code section 42402, subdivision (a), by emitting, or by selling or offering to sell consumer products that would emit air contaminants, including VOCs, in violation of an order, rule, regulation or permit of the California Air Resources Board pertaining to emission limitations; and,
 - e. Violating Health & Safety Code section 42402, subdivision (b)(1), by emitting, or by selling or offering to sell consumer products that would emit air contaminants, including VOCs, in violation of an order, rule, regulation or permit of the California Air Resources Board pertaining to emission limitations.
 - f. Violating Insurance Code section 533.5, subdivisions (a), (b) and (d), by providing any coverage, duty to defend or indemnity for the payment of any fine, penalty or restitution in this proceeding brought pursuant to

1 Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the
2 Business and Professions Code by the Attorney General and District
3 Attorneys.

4 g. Violating Civil Code section 1668 by entering into contract(s) which have
5 for their object, directly or indirectly, to exempt Defendant(s) from the
6 responsibility for each's own fraud, willful injury, or violation of law,
7 whether willful or negligent.

8 h. Violating Civil Code section 2773 by entering into indemnity agreements
9 with prior knowledge of compliance problems and a history of violations
10 concerning the same or similar products supplied by Defendants PRO'S
11 CHOICE and BLICK to retailers.

12 82. The unlawful conduct, acts and omissions of Defendants, separately and each of
13 them, in violation of section 17200 *et seq.* of the Business & Professions Code, as
14 set forth herein, demonstrate the necessity and legal basis for granting injunctive
15 relief, disgorgement, and restitution to victims, and for imposing civil penalties
16 pursuant to sections 17203 and 17206 for each violation by each Defendant, in
17 addition to any other imposed civil penalties.

18
19 **EIGHTH CAUSE OF ACTION**
20 **Declaratory Relief**

21 **Code of Civil Procedure section 1060, Business & Professions Code section 17200 *et seq.*,**
22 **Insurance Code section 533.5, and Civil Code sections 1668 and 2773**

23 **Defendants PRO'S CHOICE BEAUTY CARE, INC.; RITE AID CORPORATION;**
24 **LONGS DRUG STORES CALIFORNIA, INC.; LONGS DRUG STORES**
25 **CORPORATION; WALGREEN COMPANY; RALPHS GROCERY COMPANY;**
26 **TARGET CORPORATION; KMART CORPORATION; MARCY BLICK, Individually**

27 83. Plaintiff re-alleges and incorporates by reference herein paragraphs 1 through 82,
28 inclusive, as though fully set forth herein.

84. An actual controversy has arisen and now exists between Plaintiff THE PEOPLE
OF THE STATE OF CALIFORNIA and Defendants, each of them, concerning the respective

1 rights and duties in that Defendants RITE AID CORPORATION, LONGS DRUG STORES
2 CALIFORNIA, INC., LONG DRUGS STORES CORPORATION, WALGREEN COMPANY,
3 RALPHS GROCERY COMPANY, TARGET CORPORATION, KMART CORPORATION and
4 MARCY BLICK, and each of them, claim to be entitled to indemnification and defense by and
5 from Defendant PRO’S CHOICE BEAUTY CARE, INC. should Plaintiff recover by way of
6 judgment, settlement, injunction, civil penalties or other relief requested in this action.

7 85. Plaintiff THE PEOPLE OF THE STATE OF CALIFORNIA contend that the
8 Court, as trier of fact in the instant case, should declare that any contracts, insurance contracts
9 and/or indemnification agreements by and between Defendant PRO’S CHOICE BEAUTY
10 CARE, INC. and any entity or person, including named Defendants, providing coverage for,
11 indemnity for or a duty to defend actions or claims seeking civil penalties under the Unfair
12 Business Practices Act (Business & Professions Code 17200 *et seq.* (“Unfair Competition
13 Law”)) or for violations of state or federal laws or regulations, are contrary to statutory law
14 (Civil Code sections 1668 and 2773, and Insurance Code section 533.5) and public policy, and
15 therefore void.

16 86. Plaintiff has no other existing speedy, accurate or proper remedy other than that
17 prayed for by which the rights of the parties hereto may be determined. The Plaintiff desires a
18 judicial determination of the respective rights and duties of the parties, and such declaration is
19 necessary and appropriate at this time so that the parties may ascertain their rights and duties
20 with respect to the unlawful and unfair business practices and environmental (Health & Safety
21 Code) claims made by the People in this instant action brought pursuant to Chapter 5
22 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code
23 by the Attorney General and District Attorneys.

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1 PRAYER

2 **WHEREFORE, THE PEOPLE OF THE STATE OF CALIFORNIA PRAY FOR**
3 **THE FOLLOWING RELIEF:**

- 4 1. A preliminary and permanent injunction against Defendants, separately and each
5 of them, requiring each Defendant to comply with the specific requirements of
6 California Health and Safety Code, Division 26, Part 4, Chapters 3 and 4, and
7 Title 17 of the California Code of Regulations, sections 94507 through 94517,
8 inclusive, as alleged in the Complaint.
- 9 2. A preliminary and permanent injunction prohibiting each Defendant from
10 engaging in activity that violates Chapters 3 and 4 of Division 26 of the
11 California Health and Safety Code, which also thereby constitutes unfair and/or
12 unlawful business practices and competition within the meaning of the California
13 Business and Professions Code section 17200 *et seq.*
- 14 3. That pursuant to Government Code section 12607, Defendants be permanently
15 restrained and enjoined, and preliminarily enjoined pending trial of this matter,
16 from selling, offering to sell, marketing, or advertising any hair care product that
17 the VOC content has not been verified as allowable in California by Defendants
18 and corroborated by CARB.
- 19 4. Civil Penalties according to proof against each Defendant pursuant to Health &
20 Safety Code sections 42402.3, subdivision (a), 42402.3, subdivision (d), and
21 42403 in the amount of SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00)
22 for each product sold, offered for sale, and for each day a product was sold or
23 offered for sale in violation of the law, in an amount no less than SEVEN
24 MILLION FIVE HUNDRED THOUSAND DOLLARS (\$7,500,000.00).
- 25 5. Civil Penalties according to proof against each Defendant pursuant to Health &
26 Safety Code sections 42402.2, subdivision (a), 42402.2, subdivision (c), and
27 42403 in the amount of FORTY THOUSAND DOLLARS (\$40,000.00) for each
28 product sold, offered for sale, and for each day a product was sold or offered for

1 sale in violation of the law, in an amount no less than FOUR MILLION
2 DOLLARS (\$4,000,000.00).

3 6. Civil Penalties according to proof against each Defendant pursuant to Health &
4 Safety Code sections 42402.1, subdivision (a), 42402.1 subdivision (c), and
5 42403 in the amount of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00)
6 for each product sold, offered for sale, and for each day a product was sold or
7 offered for sale in violation of the law, in an amount no less than TWO MILLION
8 FIVE HUNDRED THOUSAND DOLLARS (\$2,500,000.00).

9 7. Civil Penalties according to proof against each Defendant pursuant to Health &
10 Safety Code sections 42402, subdivision (a), and 42403 in an amount of ONE
11 THOUSAND DOLLARS (\$1,000.00) for each product sold, offered for sale, and
12 for each day a product was sold or offered for sale in violation of the law, in an
13 amount no less than ONE HUNDRED THOUSAND DOLLARS (\$100,000.00).

14 8. Civil Penalties according to proof against each Defendant pursuant to Health &
15 Safety Code sections 42402, subdivision (b)(1), and 42403 in an amount of TEN
16 THOUSAND DOLLARS (\$10,000.00) for each product sold, offered for sale, and
17 for each day a product was sold or offered for sale in violation of the law, in an
18 amount no less than ONE MILLION DOLLARS (\$1,000,000.00).

19 9. Civil Penalties according to proof against each Defendant pursuant to Business &
20 Professions Code section 17200 *et seq.* in an amount of TWO THOUSAND FIVE
21 HUNDRED DOLLARS (\$2,500.00) for each unlawful act, omission or act of
22 unfair competition engaged in by each Defendant, in addition to any other civil
23 penalties imposed, in an amount no less than TWO MILLION FIVE HUNDRED
24 THOUSAND DOLLARS (\$2,500,000.00).

25 10. For a judicial declaration that contracts, insurance contracts or indemnification
26 agreement(s) by and between Defendant PRO'S CHOICE BEAUTY CARE, INC.
27 and any entity or person, including named Defendants, providing coverage,
28 indemnity or duty to defend actions or claims seeking civil penalties under the

1 Unfair Business Practices Act (Business & Professions Code 17200 *et seq.*
2 (“Unfair Competition Law”)) or for violations of state or federal laws or
3 regulations, are contrary to statutory law (Civil Code sections 1668 and 2773, and
4 Insurance Code section 533.5) and public policy, and therefore void.

- 5 11. The People further seek a judicial declaration that the contracts, insurance
6 contracts or indemnification agreement(s) by and between Defendants, and each
7 of them, providing for any coverage, indemnity or a duty to defend against actions
8 or claims alleging violations of state or federal laws or regulations seeking any
9 criminal fine, civil penalties, disgorgement or restitution in this proceeding,
10 including unfair competition and unlawful business practices claims alleged
11 under Business & Professions Code section 17200 *et seq.*, constitute an unfair
12 and/or unlawful business practice under California’s Unfair Competition Law.
- 13 12. Grant the People its costs of inspection, investigation, attorneys fees,
14 enforcement, prosecution and suit herein, pursuant to Code of Civil Procedure
15 section 1021.8, or any and all other authority; and
- 16 13. Grant such other and further relief as the Court deems just and proper.

17
18 **RESPECTFULLY REQUESTED:**

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20 Dated: _____

EDMUND G. BROWN JR., Attorney General
of the State of California
J. MATTHEW RODRIQUEZ
Chief Assistant Attorney General
KEN ALEX
Senior Assistant Attorney General

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BRETT J. MORRIS
Deputy Attorney General
Attorneys for Plaintiff
People of the State of California

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BIRGIT FLADAGER
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