

1 THE BRANDI LAW FIRM
2 THOMAS J. BRANDI #53208
3 TERENCE D. EDWARDS #168095
4 354 Pine Street, Third Floor
5 San Francisco, CA 94104
6 Telephone: (415) 989-1800
7 Facsimile: (415) 989-1800

SUMMONS ISSUED
FILED
in Francisco County Superior Court

JAN - 7 2010

GORDON PARRY, Clerk
P. Natt
Deputy Clerk
P. NATT

5 Attorneys for Plaintiffs
6 MIMI LOWE, et al.

CASE MANAGEMENT CONFERENCE SET BY:
JUN 11 2010 9⁰⁰ AM
DEPARTMENT 212

7 COURT OF UNLIMITED JURISDICTION OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN FRANCISCO

9 MIMI LOWE, individually and on behalf
10 of all those similarly situated,
11 Plaintiffs,

No. CGC - 10 - 495868
CLASS ACTION
COMPLAINT FOR DAMAGES,
DECLARATORY AND INJUNCTIVE
RELIEF

12 v.

13 MACY'S, INC.; MACY'S WEST
14 STORES, INC. and DOES 1 through 50,
15 inclusive,
16 Defendants.

- 1. Bus. & Prof. Code § 17200 *et seq.*
- 2. Bus. & Prof. Code § 17500 *et seq.*
- 3. Civil Code § 1750, *et seq.*
- 4. Intentional Misrepresentation
- 5. Negligent Misrepresentation
- 6. Breach of Implied Warranty
- 7. Breach of Express Warranty
- 8. Concealment
- 9. Unjust Enrichment

17 AMOUNT DEMANDED EXCEEDS
18 \$25,000

19 **JURY TRIAL DEMANDED**

20 **INTRODUCTION**

21 Plaintiff MIMI LOWE by her attorneys brings this action on behalf of herself and classes of
22 others similarly situated to challenge Defendants' unlawful and unfair practice of selling
23 counterfeit, flawed, and artificially altered gems, stones and jewelry while misrepresenting to the
24 true nature of the products to the public. Plaintiff seeks compensatory and punitive damages,

1 restitution, declaratory and injunctive relief, and attorneys' fees, costs and expenses.

2 **THE PARTIES**

3 1. Plaintiff MIMI LOWE is an individual and is a resident of San Francisco, California.

4 2. Defendant MACY'S INC. is a Delaware corporation doing business in the State of
5 California, including the County of San Francisco. MACY'S, INC. is the owner of Macy's retail
6 stores with an office at Macy's West Fine Jewelry Center, 170 O'Farrell Street, San Francisco,
7 California.

8 3. Until February 2009, Defendant MACY'S WEST STORES, INC. was a division
9 MACY'S, INC.

10 4. MACY'S, INC. and MACY'S WEST STORES, INC. are referred to collectively
11 herein as "MACY'S" or "Defendants."

12 5. At all times herein mentioned, MACY'S was the purveyor and retailer of stones,
13 gems, and/or jewelry containing stones and/or gems that were represented as fine jewelry meeting
14 the industry standards.

15 6. Plaintiff does not know the true names of Defendants DOES 1 through 50,
16 inclusive, and therefore sues them by those fictitious names. Plaintiff is informed and believes, and
17 on the basis of that information and belief alleges, that each of those Defendants was in some
18 manner legally responsible for the events, happenings, injuries and damages alleged in this
19 complaint.

20 7. Plaintiff is informed and believes, and on the basis of that information alleges, that
21 in committing the acts alleged in this complaint, each Defendant was the agent, employer,
22 employee, servant, principal or subsidiary of the other Defendants and was acting within the scope
23 of that agency and capacity. The conduct of each Defendant was ratified by each codefendant.

24 8. Plaintiff is informed and believes, and on the basis of that information alleges, that

1 Defendants' conduct was carried out by a managing agent, or by an officer or director of
2 Defendants, or by an employee or agent in the course and scope of employment.

3 **CLASS ACTION ALLEGATIONS**
4 **AND FACTS COMMON TO ALL PLAINTIFFS**

5 Plaintiff re-alleges and incorporates herein by reference the allegations set forth in
6 paragraphs 1 through 8 above as if fully alleged herein.

7 9. Pursuant to California Civil Code § 382 and California Civil Code § 1781, named
8 Plaintiff brings this action on her own behalf, and on behalf of all others similarly situated. The
9 first class that Plaintiff represents (hereafter the "Plaintiff Class") is composed of people and
10 entities who reside in California and who have purchased gems, stones and/or jewelry containing
11 gems and/or stones from MACY's within the time permitted by the relevant statutes of limitation.
12 The second class the Plaintiff represents (hereafter the "National Plaintiff Class") is composed of
13 people and entities who reside in the United States and who have purchased gems, stones and/or
14 jewelry containing gems and/or stones from MACY's within the time permitted by the relevant
15 statutes of limitation. Plaintiff MIMI LOWE, the Plaintiff Class and the National Plaintiff Class are
16 referred to jointly as "Plaintiffs" and/or the "Classes" in this complaint.

17 10. At all times herein mentioned, each of the Defendants, including the Doe
18 Defendants, was the agent, servant, and employee of the other Defendants and was acting at all
19 times within the scope of his/her agency and employment, and with the knowledge and consent of
20 his/her employer. Defendants, and each of them, at all times herein mentioned acted jointly and in
21 concert and conspired and agreed to do the things hereinafter specified; and each and all of the
22 things hereinafter alleged to have been done by Defendants of any of them, were done as co-
23 conspirators and thus, as agents for each other, as well as in their respective individual capacities, to
24 advance their own individual interests.

11. Within the statute of limitations period, and specifically in July and November of

1 2009, plaintiff MIMI LOWE purchased jewelry from MACY'S. Starting in approximately 2007
2 and continuing to the present:

- 3 • Gems that were represented to be natural "rubies" were in fact heavily glass filled
4 and often heavily lead glass treated. This was not disclosed to plaintiffs and violated
5 various U.S. regulations regarding the disclosure of lead contained in jewelry. Other rubies
6 arriving from wholesalers were a mixture of ruby and composite ruby which in turn created
7 a treatment and care issue in that a composite ruby could not be re-polished or re-cut for
8 restoration purposes, and is damaged by a variety of cleaning solvents. Thus, if passed onto
9 a Macy's customer, needed to be disclosed;
- 10 • Other rubies improperly indicated their source of origin, when in fact it appeared
11 that these stones were from a banned source;
- 12 • Stones were being passed as untreated "green amethyst" when in fact this stone is in
13 reality Praseolite (a heated form of quartz) while only purple amethyst is in fact real
14 amethyst, natural and therefore of a much higher value;
- 15 • Sapphires were fracture filled with glass;
- 16 • Black sapphires were being passed off as "black diamonds";
- 17 • Many diamonds were enhanced by laser drilling or filling of surface cavities and
18 fractures with a hardened substance;
- 19 • Diamonds were irradiated or heated to induce color and then represented to be
20 natural black diamonds;
- 21 • Various stones and gems were filled with so much lead that they violated California
22 laws.

23 12. MACY'S employees and consultants warned MACY'S that it had a duty to disclose
24 the treatment and value of the stones compared to the traditionally enhanced or natural stones to the

1 consumer and that failure to make such disclosures was considered a fraud. MACY'S had a duty to
2 clearly disclose to the buyer:

- 3 • Whether the gemstone was natural or not;
- 4 • All information pertinent to any enhancement process done to a natural gemstone
5 when:
 - 6 a. The treatment was not permanent and its effects are lost over time; or
 - 7 b. The treatment created special care requirements for the gemstone to retain
8 the benefit of treatment; or
 - 9 c. The treatment had a significant effect on the value of the stone.

10 13. MACY'S employees and consultants noticed that certain gems that were being
11 returned for repair and/or sizing, were some of the very stones they had rejected to be returned to
12 the wholesaler/vendor and had in fact been passed onto the unsuspecting public, with no disclosure
13 as to the inaccuracy in their description and/or the content of the stone that was purchased. For
14 example, an irradiated green quartz had been sold by MACY'S as a green amethyst. These
15 instances were brought to MACY'S attention yet MACY's did nothing.

16 14. Plaintiffs are unable to state the precise number of potential members of the Plaintiff
17 Classes. Plaintiffs are informed and believe and thereon allege that the Plaintiff Classes number in
18 the thousands and are so numerous that the joinder of each member of the class would be
19 impracticable. The exact size of the Plaintiff Classes and the identity of the members thereof,
20 would be readily ascertainable from the business records of Defendants.

21 15. There is a well defined community of interest in the questions of law and fact
22 affecting the Plaintiff Classes. The class members' claims against Defendants involve questions of
23 common or general interest. The questions of law and fact common to the Plaintiff Classes exist
24 that predominate over questions affecting only individual members include, *inter alia*, the

1 following:

2 a. Whether the actions of Defendants as herein described were fraudulent;

3 b. Whether the actions of Defendants as herein described were misleading;

4 c. Whether the actions of Defendants as herein described violated the Consumer Legal
5 Remedies Act, California Civil Code § 1750 *et seq.*;

6 d. Whether Plaintiffs or other members of the Plaintiff Classes were injured by reason
7 of the unlawful, unfair and/or fraudulent conduct of Defendants and the class-wide measure of
8 damages;

9 e. Whether the actions of Defendants as herein described violated the False
10 Advertising Act, California Business and Professions Code § 17500 *et seq.*;

11 f. Whether Defendants breached an express warranty.

12 g. Whether Defendants breached an implied warranty.

13 h. whether the gems or stones were in fact artificially enhanced to show colors that they did
14 not originally have;

15 i. whether the artificially enhanced gems or stones have the same value as gems or stones
16 that authentically and originally have the color qualities;

17 j. whether Defendants used false, misleading, and/or deceptive statements or representations
18 in selling the gems or stones;

19 k. whether Defendants' actions with respect to the sale and marketing of the gems or stones
20 were unconscionable;

21 l. whether Defendants represented on gems or stones' advertising that gems or stones had a
22 characteristics, ingredients, uses, or benefits that they did not have, in violation of California Civil
23 Code § 1770(a)(5);

24 m. whether Defendants represented that gems or stones were of a particular standard,

1 quality, or grade that they were not, in violation of California Civil Code § 1770(a)(7);

2 n. whether Defendants advertised gems or stones with the intent not to sell it as advertised
3 in violation of California Civil Code § 1770(a)(9);

4 o. whether Defendants have been unjustly enriched as a result of the unlawful, fraudulent,
5 and unfair conduct alleged herein, such that it would be inequitable for Defendants to retain the
6 benefits conferred upon it by Plaintiffs; and

7 p. Whether Plaintiffs are entitled to injunctive relief, restitution, compensatory and/or
8 punitive damages, or other statutory relief and restitution.

9 16. These questions are such that proof of a state of facts common to the members of the
10 Classes will entitle each member of the Classes to the relief requested in this complaint. Due to
11 this, both the members of the Classes and the court will substantially benefit from a class action.

12 17. A class action is superior to other methods for the fair and efficient adjudication of
13 this controversy, since joinder of all members is impracticable and common questions of law and
14 fact predominate. Furthermore, the Plaintiffs have no plain, speedy, or adequate remedy at law
15 against Defendants, other than by maintenance of this class action, because Plaintiffs are informed
16 and believe, and on the basis of that information and belief allege, that the damage to each member
17 of the class is relatively small, and that it would be economically infeasible to seek recovery against
18 Defendants other than by a class action. There will be no real difficulty in the management of this
19 litigation as a class action.

20 18. Named Plaintiff will fairly and adequately represent the interests of the Classes,
21 because the named Plaintiff is a member of the Classes and named Plaintiff's claims are typical of
22 those in the Classes.

23 19. Named Plaintiff has incurred, and will continue to incur, expenses for costs and
24 attorney fees necessary for the investigation and prosecution of this action. Those attorney fees and

1 other expenditures will result in a benefit to all members of the Classes.

2 **FIRST CAUSE OF ACTION**
3 **(Unfair Competition Law: Bus. & Prof. Code § 17200 *et seq.*)**
4 **(Brought by Plaintiffs against All Defendants)**

5 Plaintiffs hereby incorporate by reference Paragraphs 1 through 19 above, and make them a
6 part of this, the first cause of action as though fully set out herein.

7 20. The Unfair Competition Law, Business and Professions Code § 17200, provides that
8 “unfair competition shall mean and include any unlawful, unfair or fraudulent business act or
9 practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by” the False
10 Advertising Act, Business and Professions Code § 17500. The Unfair Competition Law provides
11 that a Court may order injunctive relief and restitution as remedies for any violation of the Act.

12 21. Named Plaintiff may pursue a representative claim on behalf of others in that
13 Plaintiff meets the standing requirements of California Business and Professions Code §§ 17204
14 and complies with Section 382 of the Code of Civil Procedure.

15 22. The business acts and practices of Defendants, as hereinabove and hereinafter
16 described, constitute an unlawful business practice in violation of the Unfair Competition Law for
17 the reasons set forth below, without limitation:

18 a. The acts and practices violate California Civil Code §§ 1709 and 1710 for the
19 reasons set forth in the 4th, 5th, and 8th Causes of Action, and are therefore unlawful;

20 b. The acts and practices violate California Civil Code § 1750 *et seq.*, for the reasons
21 set forth in the 3rd Cause of Action, and are therefore unlawful;

22 c. The acts and practices violate California Business and Professions Code § 17500 for
23 the reasons set forth in the 2nd Cause of Action, and are therefore unlawful.

24 23. The business acts and practices of Defendants as herein described also constitute an
unfair business practice in violation of the Unfair Competition Law in that such acts and practices

1 are substantially injurious to consumers and offensive to established California public policy.

2 24. The business acts and practices of Defendants as herein described constitute a
3 fraudulent business practice in violation of the Unfair Competition Law in that such acts and
4 practices are likely to deceive California consumers as to their legal rights and obligations with
5 respect to the purchase of gems, stones and jewelry from Defendants.

6 25. The business acts and practices of Defendants as herein described constitute a
7 fraudulent business practice in violation of the Unfair Competition Law in that such acts and
8 practices violate the Federal Trade Commission Guide for the Jewelry, Precious Metals, and Pewter
9 Industries, §§23.22 et seq.

10 26. Plaintiffs have suffered harm as a proximate result of the wrongful conduct of the
11 Defendants alleged herein, and therefore bring this claim for relief for restitution and
12 disgorgement. Plaintiffs have suffered injury in fact and have suffered an economic loss by, *inter*
13 *alia*, 1) purchasing an inferior products whose characteristics render them of a lesser value than
14 represented, 2) incurring costs for diminished resale value of the products purchased, and 3)
15 incurring increased costs to repair the products purchased. Named Plaintiff is a person who has
16 suffered injury in fact and has lost money as a result of such unfair competition.

17 27. In purchasing the jewelry, stones and gems from Defendants, Plaintiffs reasonably
18 believed and/or depended on the material false and/or misleading information provided by
19 Defendants with respect to the value, quality, and gemological make-up of the jewelry, stones and
20 gems. In other words, Defendants induced Plaintiffs to purchase the jewelry, stones and gems
21 through the acts and omissions alleged herein.

22 28. Unless restrained and enjoined, Defendants will continue in the acts and practices
23 alleged above. Accordingly, the Court must issue an injunction restraining and enjoining
24 Defendants from advertising, selling, or otherwise disseminating false and misleading information

1 about their products or failing to disclose relevant information. Plaintiffs further request an order
2 restoring to Plaintiffs any money or property, real or personal, which may have been lost by means
3 of Defendants' unfair and deceptive business practices.

4 29. In addition, pursuant to California Code of Civil Procedure § 1021.5, Plaintiffs are
5 entitled to recover their reasonable attorneys' fees, costs and expenses incurred in bringing this
6 action.

7 **SECOND CAUSE OF ACTION**
8 **(False Advertising Act: Bus. & Prof. Code § 17500 *et seq.*)**
9 **(Brought by Plaintiffs against All Defendants)**

10 Plaintiffs hereby incorporate by reference Paragraphs 1 through 29 above, and make them a
11 part of this, the second cause of action as though fully set out herein.

12 30. Business and Professions Code § 17500 *et seq.*, the False Advertising Act, prohibits
13 any person, firm, corporation or association, or any employee thereof, with the intent to dispose of
14 real or personal property, from performing services or inducing the public to enter into any
15 obligation relating to property or services, disseminating an untrue or misleading statement
16 concerning such property or services which the Defendant knew, or in the exercise of reasonable
17 care should have known, was untrue or misleading. A Court may order injunctive relief and
18 restitution to affected members as remedies for any violations of Business and Professions Code §
19 17500 as part of the Unfair Competition Law.

20 31. At all times herein, Defendants have engaged in disseminating false and misleading
21 communications which misrepresent the characteristics and durability of their jewelry products, and
22 have failed to disclose the true nature of the products. Defendants' business practices include,
23 without limitation, those described in paragraphs 11-13 above.

24 32. Defendants engaged in the advertising and the failure to disclose the treatment of its
products herein alleged with the intent to induce Plaintiffs to purchase Defendants' products.

1 33. Defendants caused to be made or disseminated throughout California and the United
2 States, through advertising, marketing and other publications, statements that are untrue or
3 misleading, and which were known, or which by the exercise of reasonable care should have been
4 known to Defendants, to be untrue, misleading to consumers and Plaintiffs. Defendants'
5 advertising was untrue or misleading and likely to deceive the public in that the MACY'S products
6 were not as advertised.

7 34. In purchasing the jewelry, stones and gems from Defendants, Plaintiffs reasonably
8 believed and/or depended on the material false and/or misleading information provided by
9 Defendants with respect to the value, quality, and gemological make-up of the jewelry, stones and
10 gems. In other words, Defendants induced Plaintiffs to purchase the jewelry, stones and gems
11 through the acts and omissions alleged herein.

12 35. In making and disseminating the statements herein alleged, Defendants knew, or by
13 the exercise of reasonable care should have known, that the statements were and are untrue or
14 misleading and so acted in violation of California Business and Professions Code § 17500.
15 Moreover, Plaintiffs were exposed to Defendants' advertising and its false and misleading
16 statements and were affected by the advertising in that they believed it to be true and/or relied on it
17 when making purchasing decisions.

18 36. The business acts and practices of Defendants herein described also constitute an
19 unfair business practice in violation of the Unfair Competition Law in that such acts and practices
20 are substantially injurious to consumers and offensive to established California public policy.

21 37. In addition, the business acts and practices of Defendants as herein described
22 constitute a fraudulent business practice in violation of the Unfair Competition Law in that such
23 acts and practices are likely to deceive consumers as to their legal rights and obligations with
24 respect to purchases of advertising in Defendants' publications and the purported establishment of a

1 contract for the purchase of advertisement with Defendants.

2 38. Plaintiffs have suffered injury in fact and have suffered an economic loss by,
3 *inter alia*, 1) purchasing inferior products whose characteristics render them of a lesser value than
4 represented, 2) incurring costs for diminished resale value of the products purchased, and 3)
5 incurring increased costs to repair the products purchased. Unless restrained and enjoined,
6 Defendants will continue in the policies and practices alleged above. Accordingly, the Court must
7 issue an injunction restraining and enjoining Defendants from sending or transmitting false and
8 misleading advertising to individuals or entities concerning the purported purchase of jewelry from
9 Defendants. Plaintiffs further request an order restoring to Plaintiffs any money or property, real or
10 personal, which may have been lost by means of Defendants' false advertising.

11 39. In addition, pursuant to California Code of Civil Procedure § 1021.5, Plaintiffs are
12 entitled to recover their reasonable attorneys' fees, costs and expenses incurred in bringing this
13 action.

14 **THIRD CAUSE OF ACTION**
15 **(Consumer Legal Remedy Act: Civil Code § 1750, *et seq.*)**
16 **(Brought by Plaintiffs against All Defendants)**

17 Plaintiffs hereby incorporate by reference Paragraphs 1 through 39 above, and make them a
18 part of this, the third cause of action as though fully set out herein.

19 40. The Consumer Legal Remedies Act, California Civil Code § 1750, *et seq.*, (hereafter
20 "CLRA"), was designed to protect consumers from unfair and deceptive business practices. To this
21 end, the CLRA sets forth a list of unfair and deceptive acts and practices that are specifically
22 prohibited in any transaction intended to result in the sale or lease of goods or services to a
23 consumer.

24 41. Defendants are "persons" within the meaning of Civil Code §§761(c) and 1770, and
sell "goods" within the meaning of Civil Code §§1761(b) and 1770.

1 42. Plaintiffs are consumers within the meaning of Civil Code §1761(d).

2 43. The subject jewelry, stones and gems constitute “goods” under California Civil
3 Code § 1761(a).

4 44. Plaintiffs’ purchase of jewelry, stones and gems from Defendants constitutes a
5 transaction within the meaning of Civil Code §§1761(e) and 1770.

6 45. California Civil Code § 1770(a) provides that “[t]he following unfair methods of
7 competition and unfair or deceptive acts or practices undertaken by any person in a transaction
8 intended to result or which results in the sale or lease of goods or services to any consumer are
9 unlawful,” including:

10 a. In violation of §1770(a)(2) of the CLRA, Defendant “misrepresent[ed] the source,
11 sponsorship, approval, or certification of goods.”

12 b. In violation of § 1770(a)(3) of the CLRA, Defendant “misrepresent[ed] the
13 affiliation, connection, or association with, or certification by, another.”

14 c. In violation of §1770(a)(4) of the CLRA, Defendant “us[ed] deceptive
15 representations or designations of geographic origin in connection with goods,

16 d. In violation of § 1770(a)(5) of the CLRA, Defendant “represent[ed] that goods...
17 have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which
18 they do not have,”

19 e. In violation of §1770(a)(7) of the CLRA, Defendant represented that goods are of a
20 particular standard, quality or grade when they are of another.

21 f. In violation of § 1770(a)(9) of the CLRA, Defendant advertised goods with the
22 intent not to sell them as advertised.

23 g. In violation of §1770(a)(14) of the CLRA, Defendant represented that the
24 transaction was supplied in accordance with a previous representation when it was not.

1 46. By reason of the acts and practices alleged herein, Defendants have engaged in
2 unfair methods of competition and unfair or deceptive acts or practices in a transaction intended to
3 result or which results in the sale of goods to any consumer, in violation of inter alia Civil Code §§
4 1770(a)(2), (3), (4), (5), (7), and (9).

5 47. Defendants engaged in these unfair and/or deceptive acts and practices with the
6 intent that they result, and which did result, in the sale of the jewelry, stones and gems to Plaintiffs
7 and the Classes.

8 48. In purchasing the jewelry, stones and gems from Defendants, Plaintiffs reasonably
9 believed and/or depended on the material false and/or misleading information provided by
10 Defendants with respect to the value, quality, and gemological make-up of the jewelry, stones and
11 gems. In other words, Defendants induced Plaintiffs to purchase the jewelry, stones and gems
12 through the acts and omissions alleged herein.

13 49. In engaging in unfair or deceptive conduct in violation of the CLRA, Defendants
14 actively concealed and failed to disclose material facts about the true characteristics of the jewelry,
15 stones and gems purchased by Plaintiffs.

16 50. As a result of the unfair and deceptive acts and practices of Defendants herein
17 described, Plaintiffs and members of the Plaintiff Classes have suffered damages in an amount to
18 be proven at trial.

19 51. Pursuant to California Civil Code §§ 1780 and 1781, Plaintiffs and the Plaintiff
20 Class hereby request certification of the Plaintiff Class, damages, injunctive relief, restitution and
21 attorneys' fees, costs and expenses pursuant to California Civil Code § 1780(d) and California
22 Code of Civil Procedure § 1021.5.

23 52. Notice Pursuant to Civil Code § 1782. As a direct and proximate result of
24 Defendants' violations of law, Plaintiffs have been injured. Pursuant to the provisions of California

1 Civil Code §1782, plaintiffs demand that within thirty (30) days from service of this Complaint,
2 Defendants correct the deceptive practices described in this Complaint, pursuant to California Civil
3 Code § 1770. This includes providing notice and full compensation to consumers who have
4 purchased jewelry from MACY's. If Defendants fail to do so, plaintiffs will amend this Complaint
5 to seek damages pursuant to Civil Code §1782.

6 **FOURTH CAUSE OF ACTION**
7 **(Intentional Misrepresentation: Civil Code §§ 1709, 1710)**
8 **(Brought by Plaintiffs against All Defendants)**

9 Plaintiffs hereby incorporate by reference Paragraphs 1 through 52 above, and make them a
10 part of this, the fourth cause of action as though fully set out herein.

11 53. At all times herein mentioned, Defendants were engaged in the business of, *inter*
12 *alia*, selling jewelry. At all times herein mentioned, Defendants represented to Plaintiffs that the
13 MACY'S products had characteristics and qualities that they did not have.

14 54. Defendants' representations herein alleged were untrue in that the products sold at
15 MACY'S did not have the characteristics and qualities stated.

16 55. Defendants made the representations herein alleged with the intention of inducing
17 Plaintiffs and the Plaintiff Classes to purchase MACY'S products.

18 56. Plaintiffs were aware of Defendants' representations herein alleged and reasonably
19 relied on Defendants' representations. At the time Defendants made the representations herein
20 alleged, Defendants knew the representations were false.

21 57. Defendants made the representations herein alleged with the intention of inducing
22 Plaintiffs to purchase their products. As a proximate result of Defendants' intentional
23 misrepresentations, Plaintiffs have suffered injury in fact and have suffered an economic loss by,
24 *inter alia*, 1) purchasing inferior products whose characteristics render them of a lesser value than
represented, 2) incurring costs for diminished resale value of the products purchased, and 3)

1 incurring increased costs to repair the products purchased.

2 58. The wrongful conduct of Defendants, as herein alleged, was intentional and was
3 done with malicious, oppressive or fraudulent intent. Plaintiffs are therefore entitled to recover
4 punitive damages.

5 **FIFTH CAUSE OF ACTION**
6 **(Negligent Misrepresentation: Civil Code §§ 1709, 1710)**
7 **(Brought by Plaintiffs against All Defendants)**

8 Plaintiffs hereby incorporate by reference Paragraphs 1 through 58 above, and make them a
9 part of this, the fifth cause of action as though fully set out herein.

10 59. At the time Defendants made the misrepresentations herein alleged, Defendants had
11 no reasonable grounds for believing the representations to be true and intended for consumers to
12 rely on the representations.

13 60. Plaintiffs have suffered injury in fact and have suffered an economic loss by,
14 *inter alia*, 1) purchasing inferior products whose characteristics render them of a lesser value than
15 represented, 2) incurring costs for diminished resale value of the products purchased, and 3)
16 incurring increased costs to repair the products purchased.

17 **SIXTH CAUSE OF ACTION**
18 **(Breach of Implied Warranty)**
19 **(Brought by Plaintiffs against All Defendants)**

20 Plaintiffs hereby incorporate by reference Paragraphs 1 through 60 above, and make them a
21 part of this, the sixth cause of action as though fully set out herein.

22 61. Defendants impliedly warranted to persons purchasing their products that the
23 products were what they were represented to be.

24 62. These implied warranties induced the community in general and the Plaintiffs in
particular to purchase the products from the Defendants. These implied warranties were both

1 directly and indirectly believed and relied upon by Plaintiffs and Plaintiffs' agents and induced
2 them to choose Defendants' product. This reliance was justified by Defendants' skill, expertise,
3 and judgment in the manufacturing, testing, labeling, distribution or sale of such products.

4 63. At the time of the sale, Defendants had knowledge of the purpose for which their
5 products were purchased and impliedly warranted the same to be, in all respects, fit and proper for
6 this purpose.

7 64. Defendants breached their aforesaid warranties in that the products were not safe
8 and fit for the purpose for which they were intended and used; rather Defendants sold to plaintiffs a
9 product which was not fit for use. The defect in the products existed prior to the delivery of the
10 products to Plaintiffs.

11 65. Plaintiffs notified Defendants of the breach of the implied warranties within a
12 reasonable time after it was discovered.

13 66. By Plaintiffs have suffered injury in fact and have suffered an economic loss by,
14 *inter alia*, 1) purchasing inferior products whose characteristics render them of a lesser value than
15 represented, 2) incurring costs for diminished resale value of the products purchased, and 3)
16 incurring increased costs to repair the products purchased.

17 **SEVENTH CAUSE OF ACTION**

18 **Breach of Express Warranty**

19 **(Brought by Plaintiffs against All Defendants)**

20 Plaintiffs hereby incorporate by reference Paragraphs 1 through 66 above, and make them a
21 part of this, the seventh cause of action, as though fully set out herein.

22 67. Defendants expressly warranted to persons purchasing their products that they were
23 what they were represented to be.

24 68. These express warranties induced the community in general and the plaintiffs in
particular to use and purchase Defendants' products. These express warranties were both directly

1 and indirectly believed and relied upon by plaintiffs and induced plaintiffs to choose Defendants'
2 product.

3 69. Defendants breached their aforesaid warranties in that their products were not fit for
4 use.

5 70. Defendants were notified of the breach of the express warranty within a reasonable
6 time after it was discovered.

7 71. Plaintiffs have suffered injury in fact and have suffered an economic loss by,
8 *inter alia*, 1) purchasing inferior products whose characteristics render them of a lesser value than
9 represented, 2) incurring costs for diminished resale value of the products purchased, and 3)
10 incurring increased costs to repair the products purchased.

11 **EIGHTH CAUSE OF ACTION**
12 **(Concealment)**
13 **(Brought by Plaintiffs against All Defendants)**

14 Plaintiffs hereby incorporate by reference Paragraphs 1 through 71 above, and make them a
15 part of this, the eighth cause of action, as though fully set out herein.

16 72. Although Defendants disclosed standard industry practices regarding the treatment
17 of certain pieces of jewelry, including the use of heat and oil, Defendants intentionally failed to
18 disclose, and thus concealed the fact that some of the pieces of jewelry were treated with lead.

19 73. Plaintiffs did not know, and had no way to knowing that certain pieces of jewelry
20 sold by Defendants were treated with lead, and instead relied on the Defendants' misrepresentations
21 and omissions. Furthermore, Plaintiffs would not have purchased Defendants' items had they
22 known all the relevant information.

23 74. At all relevant times, Defendants knew of the concealed fact, and intended to
24 mislead the buying public into thinking all the jewelry sold by Defendants were natural.

25 75. Plaintiffs have suffered injury in fact and have suffered an economic loss by,

1 *inter alia*, 1) purchasing inferior products whose characteristics render them of a lesser value than
2 represented, 2) incurring costs for diminished resale value of the products purchased, and 3)
3 incurring increased costs to repair the products purchased.

4 **NINTH CAUSE OF ACTION**
5 **(Unjust Enrichment)**
6 **(Brought by Plaintiffs against All Defendants)**

7 Plaintiffs hereby incorporate by reference Paragraphs 1 through 75 above, and make them a
8 part of this, the ninth cause of action, as though fully set out herein.

9 76. As a result of their continuous and systematic misrepresentations and failure to
10 disclose the true nature of jewelry sold by Defendants, the weight of some of the jewelry products
11 was artificially increased, commanding a higher price, which did not match the item's value. Based
12 on these practices, Defendants were unjustly enriched.

13 77. Defendants knew, or should have known of the benefit it was receiving due to their
14 misrepresentations and failure to disclose, and enjoyed the benefit of increased financial gains, to
15 the detriment of Plaintiffs, who paid a higher price for a product with a lower value. It would be
16 inequitable and unjust for Defendants to retain these profits.

17 78. Plaintiffs seek an order establishing Defendants as constructive trustees of the profits
18 unjustly obtained, plus interest.

19 **JURY DEMAND**

20 Plaintiffs hereby demand a trial by jury of this matter.

21 WHEREFORE, Plaintiffs demand a jury trial and demand judgment as follows:

- 22 1. That this Court certify this case as a class action;
23 2. That this Court find and declare Defendants' acts and practices as described herein
24 to be unlawful, unfair and fraudulent;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

3. That Plaintiffs be awarded compensatory damages according to proof;

4. That Plaintiffs be awarded punitive damages according to proof;

5. That Defendants be preliminarily and permanently enjoined from engaging in the unlawful, unfair and fraudulent acts and practices alleged herein;

6. That Defendants be ordered to make restitution to Plaintiffs;

7. That Plaintiffs be awarded attorney fees and expenses pursuant to California Code of Civil Procedure § 1021.5, California Civil Code § 1780 and pursuant to any other Statute which provides for award of such fees and expenses;

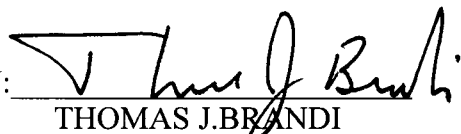
8. That Plaintiffs be awarded prejudgment interest on all sums collected;

9. For costs of suit herein incurred; and

10. Any other and further relief the court may deem proper.

DATED: January 7, 2010

THE BRANDI LAW FIRM

BY: 
THOMAS J. BRANDI
Attorney for Plaintiffs