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5 Attorneys for Defendants  
 FOREVER 21, INC., FOREVER 21  
 6 RETAIL, INC., FOREVER 21 LOGISTICS,  
 LLC, AND FOREVER XXI, INC.  
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10 UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 11 SAN FRANCISCO DIVISION

12 bebe stores, inc., a California corporation; and  
 13 bebe studio, inc. a California corporation,

14 Plaintiffs,

15 v.

16 forever 21, Inc., a Delaware corporation;  
 forever 21 Retail, Inc. a California corporation;  
 17 forever 21 Logistics, LLC, a Delaware limited  
 liability company; and forever XXI, Inc., a  
 18 California corporation,

19 Defendants.

**CASE NO. C 07 00035**

**JOINT CASE MANAGEMENT  
 STATEMENT**

Date: April 10, 2007  
 Time: 2:00 p.m.  
 Crtn.: 11, 19th Floor  
 Judge: Hon. Martin J. Jenkins

20  
 21 **I. JURISDICTION AND SERVICE**

22 This is an action for alleged infringement of United States Copyright Registrations  
 23 pursuant to 17 U.S.C. §§ 101 et seq, violations of Business and Professions Code section 17200 et  
 24 seq. and for tortuous interference with prospective economic advantage. The Court has original  
 25 subject matter jurisdiction of the copyright claims pursuant to 28 U.S.C. § 1331 and supplemental  
 26 jurisdiction of the state law claims pursuant to 28 U.S.C. § 1367. There are no issues regarding  
 27 personal jurisdiction or venue. There are no other parties to be served at this time.  
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1 **II. FACTS**

2 The complaint alleges defendants Forever 21, Inc., Forever 21 Retail, Inc., Forever  
3 21 Logistics, LLC, and Forever XXI, Inc. (collectively "Forever 21") infringed upon eight  
4 copyrighted women's dress designs owned by defendants bebe stores, inc. or bebe studios, inc  
5 (collectively "bebe"). bebe also alleges that Forever 21 "knocked-off" 20 other women's dress  
6 designs in violation of state law. Forever 21 filed its answer on February 22, 2007 denying the  
7 substantive allegations of each cause of action in the complaint. The principal factual issues in  
8 dispute will include the foundation of each of bebe's claims, including, the basis of each of the  
9 Copyright Registrations filed by bebe upon which Forever 21 allegedly infringed.

10 **III. LEGAL ISSUES**

11 A. Forever 21 contends the following legal issues are disputed:

12 1. Whether bebe's state law claims are preempted by federal law;

13 2. Whether the "extrinsic test" for similarity with respect to the copyright claims  
14 been or can be met. See *Sid & Marty Krofft Television v. McDonald's Corp.*, 562 F.2d 1157 (9<sup>th</sup>  
15 Cir. 1977);

16 3. Whether bebe's ownership of each of the Copyrights Registrations attached to  
17 the complaint is valid.

18 B. bebe has not identified any separate disputed legal issues:

19 **IV. MOTIONS**

20 There has been no motion practice to date. Forever 21 is evaluating a motion for  
21 summary judgment regarding the preemption of plaintiff's state law claims.

22 **V. AMENDMENT OF PLEADINGS**

23 bebe anticipates that it will amend its complaint and will move to do so no later than  
24 May 8, 2007.

25 **VI. EVIDENCE PRESERVATION**

26 The parties have discussed issues relating the preservation of all evidence, including  
27 electronically stored information. The parties have taken the necessary steps to ensure that no  
28 electronic evidence relevant to issues reasonably evident in this lawsuit will be destroyed.

1 **VII. DISCLOSURES**

2 The parties have generally discussed the content of these initial disclosures and have  
3 agreed to exchange their initial disclosures before the close of business on April 6, 2007.

4 **VIII. DISCOVERY**

5 No discovery has been taken to date.

6 The parties have agreed to exchange initial disclosures before the close of business  
7 on April 6, 2007.

8 Forever 21 will need to conduct discovery regarding the basis and validity of the  
9 Certificates of Registration attached to the complaint, the basis for plaintiffs' state law claims, the  
10 basis and extent of plaintiffs' claims for damages.

11 bebe will conduct discovery regarding Forever 21's intentional copyright  
12 infringement, violations of Business and Professions Code section 17200 et seq., tortious  
13 interference with prospective economic advantage, common law misappropriation and conspiracy to  
14 commit copyright infringement, unfair competition, tortious interference, and misappropriation.

15 The parties have agreed to first produce hard copies of documents and electronic  
16 documents in "petrified" form (i.e., .pdf or .tiff). Either party may, after reviewing the documents  
17 produced, request a copy of documents in its native format, including the production of metadata.

18 The parties have agreed that a protective order is necessary to prevent dissemination  
19 of proprietary and confidential information, including the identification of vendors and  
20 manufacturers. The parties are cognizant of this Court's standing order regarding protective orders  
21 and are in the process of drafting a "double-decker" protective order, including a provision that  
22 some of the information produced be for "Attorneys' Eyes Only."

23 At this time, neither party feels that a clawback agreement is necessary. Rather, the  
24 parties agree that if a privileged document is inadvertently produced, its return to the producing  
25 party shall be governed by controlling law. The parties have not identified the need to diverge from  
26 the limitations on discovery imposed by the Federal Rules of Civil Procedure; if such a need arises,  
27 the parties are confident that a resolution can be reached among the parties.

28 Forever 21 believes it can complete all of its discovery by December 31, 2007.

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1 bebe believes that it can complete discovery by May 2, 2008. bebe also believes that  
2 completing discovery prior to that time will be difficult in light of the anticipated need for discovery  
3 from foreign jurisdictions.

4 **IX. CLASS ACTIONS**

5 Not applicable.

6 **X. RELATED CASES**

7 There are no related cases at this time.

8 **XI. RELIEF**

9 In addition to its costs, attorneys' fees, expert witnesses' fees, and damages set forth in its  
10 Complaint, which are incorporated herein by reference, bebe continues its investigation of  
11 additional damages that it may have suffered or continues to suffer do to Forever 21's ongoing  
12 unlawful activities. Therefore, at the present time, bebe cannot compute its damages, which  
13 include, but are not limited to, the following:

14 **A. Copyright infringement**

15 1. An award of bebe's actual damages and any additional profits of forever 21. *See,*  
16 *e.g.,* 17 U.S.C. § 504; *Wall Data, Inc. v. Los Angeles County Sheriff's Dept.,* 447 F.3d 769, 786 (9th  
17 Cir. 2006).

18 2. An award of additional damages to bebe based on forever 21's willful infringement.  
19 *See, e.g.,* 17 U.S.C. § 504.

20 3. An award of statutory damages to bebe. *See, e.g.,* 17 U.S.C. § 504.

21 4. An award of bebe's attorneys' fees, expenses and costs, including, but not limited to,  
22 expert witnesses' fees. *See, e.g.,* 17 U.S.C. § 505.

23 **B. Unfair competition under California law**

24 1. An award of restitution to bebe. *See, e.g.,* Cal. Bus. & Prof. Code § 17203; *Korea*  
25 *Supply Co. v. Lockheed Martin Corp.,* 29 Cal. 4th 1134, 1151-52 (2003).

26 2. An award of bebe's attorneys' fees, expenses and costs, including, but not limited to,  
27 expert witnesses' fees. *See, e.g.,* Cal. Code Civ. Pro. § 1021.5; *Cel-Tech Commc'ns, Inc. v. Los*  
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1 *Angeles Cellular Tel. Co.*, 20 Cal 4th 163, 179 (1999).

2 **C. Tortious interference with prospective business advantage**

3 1. An award of compensatory damages to bebe. *See, e.g., Bardis v. Oates*, 119 Cal.  
4 App. 4th, 1, 17 (2004).

5 2. An award of punitive damages to bebe for forever 21's aggravated, malicious,  
6 fraudulent, willful, and/or wanton conduct. *See, e.g., Virtanen v. O'Connell*, 140 Cal. App. 4th 688,  
7 721 (2006).

8 **XII. SETTLEMENT AND ADR**

9 The parties have stipulated to a referral to Early-Neutral Evaluation. Forever 21  
10 believes that an immediate referral to Early Neutral Evaluation might help frame some of the issues  
11 set forth herein and lead to possible settlement of this action. Bebe is prepared to serve discovery  
12 within the next 7-10 days and believes that Forever 21's timely responses to that discovery will be  
13 essential to have a meaningful Early Neutral Evaluation.

14 **XIII. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

15 Neither of the parties consent to the assignment to a magistrate judge to conduct all  
16 further proceedings.

17 **XIV. OTHER REFERENCES**

18 Neither of the parties believe this action is suitable for referral to binding arbitration,  
19 a special master, or the Judicial Panel of Multidistrict Litigation.

20 **XV. NARROWING OF ISSUES:**

21 As discussed above, Forever 21's motion for summary judgment based upon the  
22 preemption of Plaintiffs' state law claims would significantly reduce the amount of discovery  
23 necessary.

24 **XVI. EXPEDITED SCHEDULE**

25 Forever 21 would like to resolve as many of Plaintiffs' copyright claims as possible  
26 short of full-blown litigation. It may well be that Forever 21 will agree to cease selling some of the  
27 allegedly copyrighted dress designs in exchange for a dismissal with prejudice of this action.

28

1 **XVII. SCHEDULING**

2 bebe believes that this matter will be ready for trial by September, 2008, and defers  
3 to this Court's scheduling practice to set deadlines that will be derived from that trial date. Forever  
4 21 believes this matter will be ready for trial by May 2008, and defers to this Court's scheduling  
5 practice to set deadlines that will be derived from that trial date.

6 **XVIII. TRIAL**

7 Plaintiffs have demanded a trial by jury.

8 **XIX. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

9 Forever 21 has filed its Certification in Interested Parties or Persons."

10 bebe avers that, to the best of its knowledge, there exist no non-party interested  
11 entities or persons.

12 **XX. OTHER MATTERS THAT MAY FACILITATE THE JUST, SPEEDY AND**  
13 **INEXPENSIVE DISPOSITION OF THIS MATTER**

14 Other than those issues discussed above, none at this time.

15  
16 DATED: April 3, 2007

JEFFER, MANGELS, BUTLER & MARMARO LLP  
PAUL L. WARNER  
J. T. WELLS BLAXTER

17  
18  
19 By: \_\_\_\_\_ /S/ \_\_\_\_\_

20 Attorneys for Defendant Forever 21, Inc.

21 DATED: April 3, 2007

BRYAN CAVE LLP  
SEAN K. MCELENNEY

22  
23  
24 By: \_\_\_\_\_ /S/ \_\_\_\_\_

25 Attorneys for Plaintiffs bebe stores, inc. and bebe  
26 studio, inc.  
27  
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