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 8 bebe stores, inc. and bebe studio, inc.

9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA

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

13 Plaintiffs,

14 vs.

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

21 Defendants.

Case No. C07 0035 MJJ

**AMENDED COMPLAINT FOR
 COPYRIGHT INFRINGEMENT,
 TORTIOUS INTERFERENCE
 WITH PROSPECTIVE
 ECONOMIC ADVANTAGE,
 MISAPPROPRIATION, LANHAM
 ACT VIOLATIONS, REVERSE
 PALMING OFF, UNFAIR
 COMPETITION, CONSPIRACY,
 TRADEMARK INFRINGEMENT,
 TRADEMARK DILUTION, AND
 BREACH OF CONTRACT**

DEMAND FOR JURY TRIAL

Judge: Hon. Martin J. Jenkins

Date:

Time:

Dept.:

Action Filed: 01/04/07

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1 Plaintiffs, bebe stores, inc. and bebe studio, inc. (collectively, “bebe”), for its
2 amended complaint against forever 21, Inc., forever 21 Retail, Inc., forever 21 Logistics,
3 LLC, forever XXI, Inc. and For Love 21, alleges as follows:

4 **PARTIES**

5 1. bebe stores, inc. is a corporation organized and existing under the laws of
6 the State of California, with its principal place of business at 400 Valley Drive, Brisbane,
7 California 94005.

8 2. bebe studio, inc. is a corporation organized and existing under the laws of
9 the State of California, with its principal place of business at 400 Valley Drive, Brisbane,
10 California 94005.

11 3. forever 21, Inc. is a Delaware corporation, with its principal place of
12 business and executive offices at 2001 South Alameda Street, Los Angeles, California
13 90058. forever 21, Inc. is doing business throughout the State of California through its
14 retail stores and web sites, with multiple retail store locations in this District.

15 4. forever 21 Retail, Inc. is a California corporation, with its principal place of
16 business and executive offices at 2001 South Alameda Street, Los Angeles, California
17 90058. forever 21 Retail, Inc. is doing business throughout the State of California
18 through its retail stores and web sites, with multiple retail store locations in this District.

19 5. forever 21 Logistics, LLC is a Delaware corporation, with its principal
20 place of business and executive offices at 9 East Lookerman Street, Dover, Delaware
21 19901. forever 21 Logistics, LLC is doing business throughout the State of California
22 and in this District.

23 6. forever XXI, LLC is a California corporation, with its principal place of
24 business and executive offices at 2001 South Alameda Street, Los Angeles, California
25 90058. forever XXI, LLC is doing business throughout the State of California through its
26 retail stores and web sites, with multiple retail store locations in this District.
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1 7. Upon information and belief, For Love 21 is either: (a) a California
2 corporation, with its principal place of business and executive offices at 2001 South
3 Alameda Street, Los Angeles, California 90058; or (b) a trade name or alias of forever
4 21, Inc. For Love 21 is doing business throughout the State of California through its
5 retail stores and web sites, with multiple retail store locations in this District.

6 8. forever 21, Inc., forever 21 Retail, Inc., forever 21 Logistics, LLC, forever
7 XXI, LLC and For Love 21 shall be referred to collectively in this complaint as “forever
8 21.”

9 **JURISDICTION AND VENUE**

10 9. This action is for: (a) the infringement of United States Copyright
11 Registrations, pursuant to the laws of the United States, 17 U.S.C. §§ 101 et seq.;
12 (b) tortious interference with prospective business advantage in violation of California
13 common law; (c) misappropriation of bebe’s designs in violation of California common
14 law; (d) violation of Section 43(a) of the Lanham Act; (e) common law reverse palming-off
15 in violation of California common law; (f) other misappropriation in violation of California
16 common law; (g) unfair competition in violation of Cal. Bus. & Prof. Code §§ 17200 et
17 seq.; (h) trademark infringement under Sections 32(1) and 34(d) of the Lanham Act; (i)
18 trademark dilution under Section 43(c) of the Lanham Act; (j) trademark and unfair
19 competition under California common law; (k) trademark dilution under Calif. Bus. &
20 Prof. Code § 14330; (l) breach of contract and violation of court order; and (m) civil
21 conspiracy in violation of California common law. Subject matter jurisdiction for the
22 claim of copyright and federal trademark infringement is proper in this Court pursuant to
23 28 U.S.C. §§ 1331 and 1338(a) and 15 U.S.C. § 1121(a). Supplemental jurisdiction for the
24 remaining claims is proper in this Court pursuant to 28 U.S.C. §§ 1338(b) and 1367
25 because these claims form part of the same case or controversy as the claim for copyright
26 infringement.

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1 10. General and specific personal jurisdiction are proper over forever 21 in this
2 District because of forever 21's (a) pervasive and systematic business activity within the
3 District, (b) sales of the infringing articles within the District, and (c) knowing harm of
4 bebe in this District by knowing placement of infringing articles into the stream of
5 commerce for sale within this District and by engaging in unlawful acts causing harm in
6 this District.

7 11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and 1400(a).

8 **INTRA-DISTRICT ASSIGNMENT**

9 12. Because this action is an Intellectual Property Action within the meaning of
10 Civil Local Rule 3-2(C), the action is to be assigned on a District-wide basis.

11 **FACTUAL BACKGROUND**

12 13. bebe owns United States Copyright Registration No. VA 1-385-194, which
13 is dated November 28, 2006, covers a print design on fabric, and is entitled "Tulip Field."
14 A copy of Registration No. VA 1-385-194, with deposit depicting the claimed design, is
15 attached to the Complaint (Docket No. 1) as Exhibit A and is incorporated herein by
16 reference.

17 14. bebe owns United States Copyright Registration No. VA 1-385-195, which
18 is dated November 28, 2006, covers a print design on fabric, and is entitled "Wavy
19 Tulip." A copy of Registration No. VA 1-385-195, with deposit depicting the claimed
20 design, is attached to the Complaint (Docket No. 1) as Exhibit B and is incorporated
21 herein by reference.

22 15. bebe owns United States Copyright Registration No. VA 1-385-192, which
23 is dated November 28, 2006, covers a print design on fabric, and is entitled "Conna." A
24 copy of Registration No. VA 1-385-192, with deposit depicting the claimed design, is
25 attached to the Complaint (Docket No. 1) as Exhibit C and is incorporated herein by
26 reference.

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1 16. bebe owns United States Copyright Registration No. VA 1-385-197, which
2 is dated November 28, 2006, covers a design utilized on clothing, and is entitled
3 “Eyelet.” A copy of Registration No. VA 1-385-197, with deposit depicting the claimed
4 design, is attached to the Complaint (Docket No. 1) as Exhibit D and is incorporated
5 herein by reference.

6 17. bebe owns United States Copyright Registration No. VA 1-363-651, which
7 is dated May 25, 2006, covers a design utilized on clothing and is entitled “Sequin Bead
8 Floral V-Neck Cami.” A copy of Registration No. VA 1-363-651, with deposit depicting
9 the claimed design, is attached to the Complaint (Docket No. 1) as Exhibit E and is
10 incorporated herein by reference.

11 18. bebe owns United States Copyright Registration No. VA 1-363-650, which
12 is dated May 25, 2006, covers a design utilized on clothing, and is entitled “Sequin Bead
13 Floral Front V-Neck Cami.” A copy of Registration No. VA 1-363-650, with deposit
14 depicting the claimed design, is attached to the Complaint (Docket No. 1) as Exhibit F
15 and is incorporated herein by reference.

16 19. bebe owns United States Copyright Registration No. VA 1-385-196, which
17 is dated November 28, 2006, covers a print design on fabric, and is entitled “Tilla.” A
18 copy of Registration No. VA 1-385-196, with deposit depicting the claimed design, is
19 attached to the Complaint (Docket No. 1) as Exhibit G and is incorporated herein by
20 reference.

21 20. bebe owns United States Copyright Registration No. VA 1-385-193, which
22 is dated November 28, 2006, covers a print design on fabric, and is entitled “Modern
23 Indochine.” A copy of Registration No. VA 1-385-193, with deposit depicting the
24 claimed design, is attached to the Complaint (Docket No. 1) as Exhibit H and is
25 incorporated herein by reference.

26 21. Founded in 1976, bebe designs, develops and produces a distinctive line of
27 contemporary women’s apparel and accessories, which it markets under the “bebe,”
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1 “BEBE SPORT,” and “bebe O” brand names. bebe currently operates 264 stores, of
2 which 191 are bebe stores, 20 are bebe outlet stores, 52 are BEBE SPORT stores, and 1 is
3 a bebe accessories store. These stores are located in the United States, Puerto Rico and
4 Canada, with additional licensed stores in Greece, Israel, Thailand and Singapore. In
5 addition, bebe operates an on-line store at www.bebe.com.

6 22. bebe’s target customers are women between the ages of 21 and 35 who seek
7 current fashion trends interpreted to suit their needs. The “bebe look” with that signature
8 hint of sensuality, appeals to the hip, sophisticated and body conscious woman who takes
9 pride in her appearance. Celebrities are among bebe’s fashionable clientele list. They
10 include Alicia Keys, Britney Spears, Destiny’s Child, Ciara, Eva Longoria, Paris Hilton,
11 Shakira, Virginia Madsen, Gabrielle Union, Jennifer Lopez and Mischa Barton. bebe
12 fashions have also been featured in numerous television shows, including: The O.C., Las
13 Vegas, Eve, One Tree Hill, Nip/Tuck, Desperate Housewives, American Idol, CSI
14 Miami, Will & Grace, Alias, Charmed, Entertainment Tonight, Access Hollywood, Extra,
15 MTV, and VH1.

16 23. Upon information and belief, forever 21 was originally founded as
17 “FASHION 21” many years after bebe had already established itself as a fashion
18 trendsetter. Eventually, “FASHION 21” changed its name to “forever 21,” and as part of
19 its name change, forever 21 even changed the look of its name by abandoning the use of
20 all capital letters and copying the hip and sophisticated, all lower case lettering that bebe
21 had been using since 1976. As an example, the upper left-hand corner of forever 21’s
22 website at www.forever21.com shows forever 21’s prominent use of all lower case letters
23 in its name.

24 24. Furthermore, as its name suggests, forever 21 targets the same young
25 customers that bebe targets. For example, forever 21’s website states on its “frequently
26 asked questions” or “FAQ’s” webpage at <http://www.forever21.com/forever/faq.asp> that
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1 its target customers are “young [female] shoppers” as well as those women who are
2 “young at heart.”

3 25. bebe sold the designs identified in paragraphs 13-20 above (“Copyrighted
4 Designs”) as part of its line of apparel in its retail stores. bebe’s Copyrighted Designs
5 were part of bebe-branded garments sold in bebe stores throughout the United States,
6 internationally, and at www.bebe.com.

7 26. Not only did forever 21 copy the hip and sophisticated, all lower case
8 lettering style of bebe’s name, but in or about 2006, bebe became aware of forever 21’s
9 sale of garments (“Infringing Garments”) bearing designs (“Knock-Off Designs”) that
10 were identical or virtually identical to bebe’s Copyrighted Designs on garments sold by
11 bebe.

12 27. forever 21’s Knock-Off Designs were placed on garments sold by forever
13 21 and are identical, virtually identical, substantially similar and/or strikingly similar to
14 bebe’s Copyrighted Designs that are the subject of bebe’s copyright registrations
15 identified in paragraphs 13-20 above. The following subparagraphs compare bebe’s
16 Copyrighted Designs on its garments to forever 21’s Knock-Off Designs on the
17 Infringing Garments:

18 a. As shown in Exhibit I to the Complaint (Docket No. 1) and
19 incorporated herein by reference, bebe sells a Smocked Tie Strap Dress with the
20 copyrighted and registered “Tulip Field” design, as identified previously in paragraph 13
21 above and in Exhibit A, and forever 21 sells a “DRESS/SHRT
22 LNGTH/DRS/SLVLS/N/A/” with an identical, virtually identical, substantially similar
23 and/or strikingly similar design.

24 b. As shown in Exhibit J to the Complaint (Docket No. 1) and
25 incorporated herein by reference, bebe sells a Kimono Dress with the copyrighted and
26 registered “Wavy Tulip” design, as identified previously in paragraph 14 above and in
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1 Exhibit B, and forever 21 sells a “SHIRT LNIGHT DRS/3/BLACK/WHITE” with an
2 identical, virtually identical, substantially similar and/or strikingly similar design.

3 c. As shown in Exhibit K to the Complaint (Docket No. 1) and
4 incorporated herein by reference, bebe sells a Cap Sleeve Amanda with the copyrighted
5 and registered “Conna” design, as identified previously in paragraph 15 above and in
6 Exhibit C, and forever 21 sells a “WOVEN TOP/WOVEN SHIRT/SSLV/N/A” with an
7 identical, virtually identical, substantially similar and/or strikingly similar design.

8 d. As shown in Exhibit L to the Complaint (Docket No. 1) and
9 incorporated herein by reference, bebe sells an Embroidered Eyelet Top With Belt with
10 the copyrighted “Eyelet” design, as identified previously in paragraph 16 above and in
11 Exhibit D, and forever 21 sells a “WOVEN TOP/SLVLS/RED/TAUPE” with an
12 identical, virtually identical, substantially similar and/or strikingly similar design.

13 e. As shown in Exhibit M to the Complaint (Docket No. 1) and
14 incorporated herein by reference, bebe sells a V Detailed Beaded Cami with the
15 copyrighted “Sequin Floral Front V Neck Cami” design, as identified previously in
16 paragraph 17 above and in Exhibit E, and forever 21 sells a “WOVEN TOP/WOVEN
17 TOP/SPAGHETTI/N/A” with an identical, virtually identical, substantially similar and/or
18 strikingly similar design.

19 f. As shown in Exhibit N to the Complaint (Docket No. 1) and
20 incorporated herein by reference, bebe sells a V Neck Beaded Cami Tank with the
21 copyrighted “Sequin Bead Floral V Neck Cami” design, as identified previously in
22 paragraph 18 above and in Exhibit F, and forever 21 sells a “WOVEN TOP/WOVEN
23 TOP/SPAGHETTI/N/A” with an identical, virtually identical, substantially similar and/or
24 strikingly similar design.

25 g. As shown in Exhibit O to the Complaint (Docket No. 1) and
26 incorporated herein by reference, bebe sells a Print Kimono With Solid Border with the
27 copyrighted “Tilla” design, as identified previously in paragraph 19 above and in Exhibit
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1 G, and forever 21 sells a “WOVEN TOP/HALTER/TAUPE/BLACK/RED” with an
2 identical, virtually identical, substantially similar and/or strikingly similar design.

3 h. As shown in Exhibit P to the Complaint (Docket No. 1) and
4 incorporated herein by reference, bebe sells a Print Kimono With Solid Border with the
5 copyrighted and registered “Modern Indochine” design, as identified previously in
6 paragraph 20 above and in Exhibit H, and forever 21 sells a “WOVEN
7 TOP/CAPSLV/BLACK./RED/ORANGE” with an identical, virtually identical,
8 substantially similar and/or strikingly similar design.

9 28. bebe also sold other garments having other custom designs (“Custom
10 Designs”) that were similarly part of bebe’s line of apparel in its retail stores throughout
11 the United States. bebe’s Custom Designs were part of bebe-branded garments sold in
12 bebe stores throughout the United States, internationally, and at www.bebe.com.

13 29. Also in or about 2006, bebe became aware of forever 21’s sale of additional
14 Infringing Garments bearing other Knock-Off Designs that were identical or virtually
15 identical to bebe’s Custom Designs on garments sold by bebe.

16 30. The Knock-Off Designs of the Infringing Garments sold by forever 21 were
17 placed on garments and are identical, virtually identical, substantially similar and/or
18 strikingly similar to bebe’s Custom Designs. The following subparagraphs compare
19 bebe’s Custom Designs to forever 21’s Knock-Off Designs on the Infringing Garments:

20 a. As shown in Exhibit Q to the Complaint (Docket No. 1) and
21 incorporated herein by reference, bebe sells a Printed Full Tie Skirt with the custom
22 “Vivienne” design, and forever 21 sells a “KNEE LNIGHT
23 SKIRT/BLACK/WHITE/AQUA” with an identical, virtually identical, substantially
24 similar and/or strikingly similar design.

25 b. As shown in Exhibit R to the Complaint (Docket No. 1) and
26 incorporated herein by reference, bebe sells a Panel Cut Out Zebra Cami with the custom
27 “Panel Cut Out Zebra” design, and forever 21 sells a “WOVEN
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1 TOP/SPAGHE/BLACK/WHITE” with an identical, virtually identical, substantially
2 similar and/or strikingly similar design.

3 c. As shown in Exhibit S to the Complaint (Docket No. 1) and
4 incorporated herein by reference, bebe sells a Smocked Tie Strap Dress with the custom
5 “Coba” design, and forever 21 sells a “DRESS KNEE LNGTH/DRS/SLVLS/N/A” with
6 an identical, virtually identical, substantially similar and/or strikingly similar design.

7 d. As shown in Exhibit T to the Complaint (Docket No. 1) and
8 incorporated herein by reference, bebe sells a Asprin Polka Dot Dress with the custom
9 “Polka Dot / Solid Style” design, and forever 21 sells a “DRESS KNEE
10 LNGTH/DRS/SSLVS/N/A” with an identical, virtually identical, substantially similar
11 and/or strikingly similar design.

12 e. As shown in Exhibit U to the Complaint (Docket No. 1) and
13 incorporated herein by reference, bebe sells a Lace Sleeve Pin Tuck Bib Shirt with the
14 custom “Bib” design, and forever 21 sells a “WOVEN TOP/CAPSLV” with an identical,
15 virtually identical, substantially similar and/or strikingly similar design.

16 f. As shown in Exhibit V to the Complaint (Docket No. 1) and
17 incorporated herein by reference, bebe sells a Stripe Shirt Vest Short Sleeve with the
18 custom “Stripe / Solid” design, and forever 21 sells a WOVEN TOP/WOVEN
19 TOP/3QSLV/N/A with an identical, virtually identical, substantially similar and/or
20 strikingly similar design.

21 g. As shown in Exhibit W to the Complaint (Docket No. 1) and
22 incorporated herein by reference, bebe sells a Ruched Bustier with Bows with the custom
23 “Ruched Bustier” design, and forever 21 sells a “WOVEN TOP/WOVEN
24 TOP/SLVLS/N/A” with an identical, virtually identical, substantially similar and/or
25 strikingly similar design.

26 h. As shown in Exhibit X to the Complaint (Docket No. 1) and
27 incorporated herein by reference, bebe sells a Smocked Rose Belt with the custom
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1 “Rose” design, and forever 21 sells a “BELT Black/Silver” with an identical, virtually
2 identical, substantially similar and/or strikingly similar design.

3 i. As shown in Exhibit Y to the Complaint (Docket No. 1) and
4 incorporated herein by reference, bebe sells a Crossover Cami with Panels with the
5 custom “Panel” design, and forever 21 sells a “WOVEN TOP/WOVEN
6 TOP/SPAGHETTI/N/A” with an identical, virtually identical, substantially similar and/or
7 strikingly similar design.

8 j. As shown in Exhibit Z to the Complaint (Docket No. 1) and
9 incorporated herein by reference, bebe sells a Matte/Shiny V-Neck Blouson with the
10 custom “Matte/Shiny V-Neck” design, and forever 21 sells a “WOVEN TOP/WOVEN
11 TOP/SPAGHETTI/N/A” with an identical, virtually identical, substantially similar and/or
12 strikingly similar design.

13 k. As shown in Exhibit AA to the Complaint (Docket No. 1) and
14 incorporated herein by reference, bebe sells a Twist Neck & Strap Top with the custom
15 “Twist Neck & Strap” design, and forever 21 sells a “WOVENTOP/SPAGHE/AQUA”
16 with an identical, virtually identical, substantially similar and/or strikingly similar design.

17 l. As shown in Exhibit BB to the Complaint (Docket No. 1) and
18 incorporated herein by reference, bebe sells a Cowl Neck Ruched Body Halter with the
19 custom “Cowl Neck Ruched Body” design, and forever 21 sells a KNIT
20 TOP/HALTER/CREAM with an identical, virtually identical, substantially similar and/or
21 strikingly similar design.

22 m. As shown in Exhibit CC to the Complaint (Docket No. 1) and
23 incorporated herein by reference, bebe sells a V-Neck Halter Top with Band with the
24 custom “V-Neck and Band” design, and forever 21 sells a “WOVEN
25 TOP/HALTER/BLACK/PINK” with an identical, virtually identical, substantially similar
26 and/or strikingly similar design.

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n. As shown in Exhibit DD to the Complaint (Docket No. 1) and incorporated herein by reference, bebe sells a Dip Dye Cami with the custom “Dip Dye” design, and forever 21 sells a “WOVENTOP/WOVEN TOP/SPAGHETTI/N/A/CREAM/PINK/HOT PINK” with an identical, virtually identical, substantially similar and/or strikingly similar design.

o. As shown in Exhibit EE to the Complaint (Docket No. 1) and incorporated herein by reference, bebe sells a Raw Trim X Front Halter with the custom “Raw Trim X” design, and forever 21 sells a “WOVEN TOP/WOVEN TOP/HALTER/N/A” with an identical, virtually identical, substantially similar and/or strikingly similar design.

p. As shown in Exhibit FF to the Complaint (Docket No. 1) and incorporated herein by reference, bebe sells a Fold Up Cuff 2Fer with the custom “Woven Basket” design, and forever 21 sells a “WOVEN TOP/3QSLV/BLACK/CREAM” with an identical, virtually identical, substantially similar and/or strikingly similar design.

q. As shown in Exhibit GG to the Complaint (Docket No. 1) and incorporated herein by reference, bebe sells a Cami with Charmeuse with the custom “Charmeuse” design, and forever 21 sells a “SWEATER/SWTR TOP/SPAGHETTI/N/A” with an identical, virtually identical, substantially similar and/or strikingly similar design.

r. As shown in Exhibit HH to the Complaint (Docket No. 1) and incorporated herein by reference, bebe sells a Knit Tank with Bow with the custom “Knit and Bow” design, and forever 21 sells a “KNIT TOP/KNI TOP/SPAGHETTI/N/A” with an identical, virtually identical, substantially similar and/or strikingly similar design.

s. As shown in Exhibit II to the Complaint (Docket No. 1) and incorporated herein by reference, bebe sells a Print Tube Top with the custom “Sunflower

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1 Peck” design, and forever 21 sells a “KNIT TOP/TUBE/BLACK/CRÈME” with an
2 identical, virtually identical, substantially similar and/or strikingly similar design.

3 t. As shown in Exhibit JJ to the Complaint (Docket No. 1) and
4 incorporated herein by reference, bebe sells a red Print Kimono With Print Border with
5 the custom “Modern Indochine” design and the custom “Tilla” design, and forever 21
6 sells a “WOVEN TOP/CAPSLV/BLACK/RED/ORANGE” with an identical, virtually
7 identical, substantially similar and/or strikingly similar design.

8 31. To date, bebe has discovered these Infringing Garments, and there may well
9 be others. Given the distinctiveness of bebe’s designs and that forever 21 seeks to
10 compete in bebe’s market niche by providing fashionable clothes for younger women, the
11 same demographic in which bebe has been extremely successful, it is evident that forever
12 21 has willfully copied the bebe Copyrighted Designs as well as the bebe Custom
13 Designs.

14 32. forever 21 obtained some or all of the Knock-Off Designs and Infringing
15 Garments by directly and systematically soliciting bebe’s Custom Designs and
16 Copyrighted Designs from those manufacturing bebe’s garments.

17 33. Upon information and belief, forever 21 regularly puts on a “sample fair” at
18 various locations throughout the world.

19 34. In connection with these “sample fairs,” forever 21 sends invitations to
20 numerous manufacturers who produce garments for designer labels, including bebe.

21 35. These invitations request that manufacturers bring samples of garments
22 produced under specific labels, including bebe.

23 36. These invitations further request that the manufacturers “present ‘any
24 available’ stock for immediate order.”

25 37. In 1976, bebe began business in San Francisco by distributing distinctive
26 contemporary women’s fashion apparel and accessories under its “bebe” mark. bebe has
27 spent tens of millions of dollars conducting advertising campaigns to develop brand
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1 recognition for its “bebe” mark by placing advertisements in fashion magazines and on
2 billboards, using celebrity endorsements or entertainment media promotions, and using
3 in-store advertisements, among other things. bebe’s advertisements prominently feature
4 the unique and distinctive “bebe” mark. bebe has also gained substantial recognition by
5 being the subject of fashion reviews and articles written in many publications. bebe’s
6 increased consumer brand awareness of the “bebe” mark has led to increased consumer
7 product demand.

8 38. As a result of bebe’s long use, successful sales, and substantial advertising
9 of the “bebe” mark, the “bebe” mark has become a famous and well-recognized source
10 indicator throughout the United States and the world for bebe’s products and services.

11 39. bebe is the owner of the “bebe” trademark that is the subject of United
12 States Trademark Registration No. 1,652,462, which issued on July 30, 1991 for men’s
13 and women’s apparel, namely, shirts, blouses, pants, jackets, coats, sweaters, suits and
14 dresses, and accessories, namely, belts, scarves and hats in international class 25, and
15 which claimed a date of first use at least as early as July 1976 and a date of first use in
16 interstate commerce at least as early as October 1976.

17 40. bebe is the owner of the “bebe SAN FRANCISCO” trademark that is the
18 subject of United States Trademark Registration No. 1,950,771, which issued on January
19 23, 1996 for men’s and women’s apparel, namely, shirts, blouses, pants, jackets, coats,
20 sweaters, suits and dresses; and accessories, namely, belts, scarves and hats in
21 international class 25, and which claimed a date of first use at least as early as November
22 1994 and a date of first use in interstate commerce at least as early as November 1994.

23 41. bebe is the owner of the “bebe” service mark that is the subject of United
24 States Service Mark Registration No. 2,038,435, which issued on February 18, 1997 for
25 retail store services for women’s clothing and accessories in international class 42, and
26 which claimed a date of first use at least as early as July 1976 and a date of first use in
27 interstate commerce at least as early as October 1976.

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1 42. bebe is the owner of the “bebe” trademark that is the subject of United
2 States Trademark Registration No. 2,289,914, which issued on November 2, 1999 for
3 eyewear in international class 9, and which claimed a date of first use at least as early as
4 December 1996 and a date of first use in interstate commerce at least as early as
5 December 1996. .

6 43. bebe is the owner of the “bebe” trademark that is the subject of United
7 States Trademark Registration No. 2,328,170, which issued on March 14, 2000 for
8 jewelry, namely, earrings, rings, necklaces, pendants and bracelets in international class
9 14, and which claimed a date of first use at least as early as July 1976 and a date of first
10 use in interstate commerce at least as early as October 1976.

11 44. bebe is the owner of the “bebe” trademark that is the subject of United
12 States Trademark Registration No. 2,496,624, which issued on October 9, 2001 for
13 footwear, namely, loafers, espadrilles, sandals, thongs, mules, and pumps in international
14 class 25, and which claimed a date of first use at least as early as April 1999 and a date of
15 first use in interstate commerce at least as early as June 1999.

16 45. bebe is the owner of the “bebe” trademark that is the subject of United
17 States Trademark Registration No. 2,494,865, which issued on October 2, 2001 for
18 clocks, watches and wristwatches in international class 14, and which claimed a date of
19 first use at least as early as May 1997 and a date of first use in interstate commerce at
20 least as early as May 1997.

21 46. bebe is the owner of the “bebe” trademark that is the subject of United
22 States Trademark Registration No. 2,520,418, which issued on December 18, 2001 for
23 perfume, cologne, and toilet water in international class 3, and which claimed a date of
24 first use at least as early as June 2001 and a date of first use in interstate commerce at
25 least as early as June 2001.

26 47. bebe is the owner of the “bebe” trademark that is the subject of United
27 States Trademark Registration No. 2,660,869, which issued on December 10, 2002 for
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1 shampoo, body wash, shower gel, bath oil, non-medicated bath salts, dusting power, skin
2 moisturizer, make-up for eyes, lips, and cheeks, and make-up remover in international
3 class 3, and which claimed a date of first use at least as early as June 2001 and a date of
4 first use in interstate commerce at least as early as June 2001.

5 48. bebe is the owner of the “bebe” trademark that is the subject of United
6 States Trademark Registration No. 2,690,952, which issued on February 25, 2003 for
7 bras, panties, pajamas, slips, robes, pantyhose, and camisoles in international class 25,
8 and which claimed a date of first use at least as early as September 1998 and a date of
9 first use in interstate commerce at least as early as September 1998.

10 49. bebe is the owner of the “bebe.com” service mark that is the subject of
11 United States Service Mark Registration No. 2,709,481, which issued on April 22, 2003
12 for on-line retail store services featuring women’s clothing, shoes, fragrances and
13 accessories in international class 35, and which claimed a date of first use at least as early
14 as September 1998 and a date of first use in interstate commerce at least as early as
15 September 1998.

16 50. bebe is the owner of the “bebesport.com” service mark that is the subject of
17 United States Service Mark Registration No. 2,870,497, which issued on August 3, 2004
18 for on-line retail store services feature clothing in international class 35, and which
19 claimed a date of first use at least as early as February 2004 and a date of first use in
20 interstate commerce at least as early as February 2004.

21 51. bebe is the owner of the “BEBE SPORT” trademark that is the subject of
22 United States Trade Mark Registration No. 2,906,864, which issued on November 30,
23 2004, (a) for on-line retail store services featuring women’s clothing and accessories, and
24 retail store services featuring clothing and accessories in international class 35, and
25 claiming a date of first use at least as early as November 2002 and a date of first use in
26 interstate commerce at least as early as November 2002, (b) for articles of clothing for
27 women, namely, shorts, blouses, pants, jackets, coats, sweaters, suits, dresses, slacks and
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1 trousers, accessories, namely, belts, scarves and hats, and footwear, namely, loafers,
2 espadrilles, sandals, thongs, mules and pumps in international class 25, and claiming a
3 date of first use at least as early as August 2002 and a date of first use in interstate
4 commerce at least as early as August 2002, and (c) for articles made of leather or
5 imitation leather, namely, handbags, purses, clutch bags, shoulder bags, tote bags,
6 backpacks and luggage of all types, and claiming a date of first use at least as early as
7 August 2002 and a date of first use in interstate commerce at least as early as August
8 2002.

9 52. bebe is the owner of the “bebe” trademark that is the subject of United
10 States Trademark Application Serial No. 78/935,123, which was filed on July 21, 2006
11 for purses, clutch bags, shoulder bags, tote bags and backpacks in international class 18,
12 and which claimed a date of first use at least as early as June 1994 and a date of first use
13 in interstate commerce at least as early as June 1994.

14 53. In or about 2007, bebe became aware of forever 21’s sales of sunglasses
15 having the “bebe” mark on them. Upon information and belief, forever 21 has sold and
16 continues to sell other products having the “bebe” mark on them, and forever 21 has used
17 and continues to use the “bebe” mark in its business.

18 54. No legitimate reason exists for forever 21’s conduct, such as its
19 unauthorized use of the “bebe” mark. Such conduct is not required for forever 21 to
20 compete effectively or efficiently in the clothing merchandise market. Upon information
21 and belief, forever 21 willfully engages in such conduct with full knowledge of, and
22 reckless disregard for, bebe’s rights. Upon information and belief, forever 21 also
23 willfully engages in such conduct with the intention of deceiving the public.

24 55. Upon information and belief, Fashion 21, Inc. was a California corporation
25 with its principal place of business in Los Angeles, California, and Fashion 21
26 Merchandising Corp. was a California corporation with its principal place of business in
27 Los Angeles, California. Upon information and belief, Fashion 21, Inc. and Fashion 21
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1 Merchandising Corp. are predecessors to at least one of Defendants forever 21, Inc.,
2 forever 21 Retail, Inc., forever 21 Logistics, LLC, forever XXI, LLC and For Love 21.

3 56. In 2001, bebe stores, inc. sued Fashion 21, Inc. and Fashion 21
4 Merchandising Corp. in United States District Court for the Northern District of
5 California, San Francisco Division, for infringement of the trademarks identified in
6 paragraphs 39-45 above (“the Previous Lawsuit”). The case number for the Previous
7 Lawsuit was C-01-1451 (MJJ).

8 57. In 2002, bebe stores, inc., Fashion 21, Inc. and Fashion 21 Merchandising
9 Corp. settled the Previous Lawsuit by entering into a settlement agreement and
10 stipulating and consenting to a Final Consent Judgment and Permanent Injunction against
11 Fashion 21, Inc. and Fashion 21 Merchandising Corp.

12 58. Later, on February 8, 2002, United States District Court for the Northern
13 District of California entered the Final Consent Judgment and Permanent Injunction
14 against Fashion 21, Inc. and Fashion 21 Merchandising Corp. in the Previous Lawsuit.

15 59. forever 21’s use of the “bebe” mark breaches the settlement agreement
16 between bebe stores, inc., Fashion 21, Inc. and Fashion 21 Merchandising Corp. for the
17 Previous Lawsuit and also violates the Final Consent Judgment and Permanent Injunction
18 in the Previous Lawsuit.

19 **FIRST CLAIM FOR RELIEF**

20 **(Copyright Infringement Against forever 21)**

21 60. The preceding paragraphs are incorporated by this reference.

22 61. Upon information and belief, some or all of the Infringing Garments
23 constitute garments actually designed by and manufactured for bebe.

24 62. forever 21 has infringed bebe’s registered copyrights identified in
25 paragraphs 13-20 above, through forever 21’s reproduction, preparation of derivative
26 works, and/or distribution of the virtually identical Knock-Off Designs on at least the
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1 Infringing Garments identified in paragraph 27 and sold throughout forever 21's stores,
2 including those stores found in this District.

3 63. As demonstrated by forever 21's desire to compete in bebe's market niche,
4 forever 21's infringement of bebe's registered copyrights is willful. In creating inventory
5 for its Infringing Garments, forever 21 had access to and even actively solicited samples
6 of the bebe lines of apparel. forever 21's Knock-Off Designs are identical or virtually
7 identical to bebe's registered copyrights, and forever 21's use of identical designs for
8 identical purposes on competing goods demonstrates its willful infringement.

9 64. bebe has been damaged by the willful infringement of forever 21 in an
10 amount to be determined at trial.

11 65. forever 21 has been unjustly enriched by the receipt of profits on its sale of
12 Infringing Garments in an amount to be determined at trial.

13 66. As a direct result of the infringement by forever 21, bebe has suffered, and
14 will continue to suffer, irreparable harm, including, but not limited to, harm to its
15 business reputation and goodwill.

16 67. forever 21 is presently engaged in the sale of Infringing Garments, and
17 unless immediately restrained and enjoined, will continue to do so. bebe's remedy at law
18 is not by itself adequate to compensate them for the harm inflicted and threatened by
19 forever 21.

20 **SECOND CLAIM FOR RELIEF**

21 **(Tortious Interference With Prospective Business Advantage Against Forever21)**

22 68. The preceding paragraphs are incorporated by this reference.

23 69. California common law defines the elements of tortious interference with
24 prospective economic advantage as: (1) an economic relationship between a first party
25 and its customers, with the probability of future economic benefit to the first party; (2) a
26 second party's knowledge of the economic relationship; (3) the second party's intentional
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1 act(s) to disrupt the economic relationship; (4) actual disruptions of the relationship; and
2 (5) economic harm to the first party proximately caused by the second party's acts.

3 70. bebe has an economic relationship with its customers, including but not
4 limited to its fashionable and famous clientele, and bebe reasonably expects future
5 economic benefit from such customers.

6 71. forever 21 has knowledge of bebe's economic relationships.

7 72. forever 21 competes in the market to provide fashionable clothes for younger
8 women and increase its market share and competitiveness by intentionally, illegally,
9 maliciously, fraudulently, and wantonly knocking off bebe's original creative designs,
10 including but not limited to its Custom Designs.

11 73. forever 21's acts have disrupted bebe's economic relationships.

12 74. forever 21's acts have proximately caused bebe's economic harm.

13 75. As a direct result of forever 21's acts, bebe has suffered, and will continue
14 to suffer, irreparable harm. Because of forever 21's unlawful, unfair, intentional,
15 malicious, wonton and fraudulent business acts and practices, once customers learn
16 forever 21 has a practice of pirating and reproducing bebe's garments, they will refrain
17 from purchasing bebe's more expensive garments. In some instances, bebe's customers
18 may even wait to purchase the knocked-off, less expensive garments sold by forever 21
19 with virtually identical designs.

20 76. As a direct result of forever 21's acts, bebe has suffered, and will continue
21 to suffer, irreparable harm, including, but not limited to, harm to its business reputation
22 and goodwill. Because of forever 21's unlawful, unfair, intentional, malicious, wonton
23 and fraudulent business acts and practices, once customers learn that forever 21 and bebe
24 produce apparently identical garments, bebe's reputation and goodwill will be irreparably
25 harmed.

26 77. forever 21 has been unjustly enriched by its unfair, unlawful, intentional,
27 malicious, wonton, fraudulent and deceptive practices in a sum to be determined at trial.
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1 78. bebe has been damaged by the unfair, unlawful, intentional, malicious,
2 wonton, fraudulent and deceptive practices of forever 21 in a sum to be determined at
3 trial.

4 79. forever 21 is presently engaged in the sale of Infringing Garments and
5 Knock-Off Designs, and unless immediately restrained and enjoined, will continue to do
6 so. bebe's remedy at law is not by itself adequate to compensate them for the harm
7 inflicted and threatened by forever 21.

8 **THIRD CLAIM FOR RELIEF**

9 **(Misappropriation of bebe's Designs Against forever 21)**

10 80. The preceding paragraphs are incorporated by this reference.

11 81. At great cost, expense, and effort, bebe generates and collects fashionable
12 and cutting edge garment designs, including, without limitation, the Copyrighted Designs
13 and Custom Designs.

14 82. The value of bebe's Custom Designs and Copyrighted Designs are time
15 sensitive in that bebe prides itself on producing the most fashionable and up-to-date
16 designs. bebe's clientele expects bebe's garments to represent the latest fashion trends
17 and designs. Once customers learn that forever 21 has pirated and reproduced bebe's
18 garments, customers refrain from purchasing bebe's garments.

19 83. forever 21 has engaged in the pattern and practice of directly and willfully
20 contacting those that manufacture bebe's garments, including, without limitation, the
21 Custom Designs and Copyrighted Designs.

22 84. forever 21's use of bebe's Copyrighted Designs and Custom Designs not
23 only constitutes free riding on bebe's costly and time-consuming efforts to generate the
24 Custom Designs and Copyrighted Designs, but also constitutes misappropriation of
25 bebe's costly and time-consuming efforts to locate, educate, prepare and engage
26 appropriate materials, sources and manufacturers to produce bebe's Copyrighted Designs
27 and Custom Designs.

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1 85. forever 21's use of the Copyrighted Designs and Custom Designs and/or
2 bebe's identified materials, sources and manufacturers is in direct competition with
3 bebe's business.

4 86. The ability of forever 21 and others to free ride on the time, energy and
5 effort bebe has expended in creating, developing, and collecting its hip, sophisticated, and
6 fashionable designs reduces the incentive that bebe and others have to collect and
7 produce the most up-to-date fashions.

8 87. As a result of forever 21's free riding, bebe has been damaged under
9 California common law in an amount to be proven at trial.

10 88. forever 21 is presently engaged in misappropriating bebe's Copyrighted
11 Designs and Custom Designs, and unless immediately restrained and enjoined, will
12 continue to do so. bebe's remedy at law is not by itself adequate to compensate them for
13 the harm inflicted and threatened by forever 21.

14 **FOURTH CLAIM FOR RELIEF**

15 **(Violation of Section 43(a) of the Lanham Act Against forever 21)**

16 89. The preceding paragraphs are incorporated by this reference.

17 90. Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) prohibits forever 21
18 from misleading the public by putting forth bebe's work as its own.

19 91. forever 21 has engaged in the pattern and practice of directly contacting
20 those that manufacture bebe's garments, including, without limitation, the Custom
21 Designs and Copyrighted Designs.

22 92. Through its solicitation, forever 21 has obtained garments reflecting the
23 Copyrighted Designs and Custom Designs.

24 93. forever 21 has improperly marketed as its own these bebe garments
25 reflecting the Custom Designs and Copyrighted Designs.

26 94. forever 21 has sold under its forever 21 name garments that were actually
27 designed by and manufactured for bebe.

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1 95. forever 21’s willful actions have misled the public by putting forth bebe’s
2 designs and work as its own.

3 96. As a result of forever 21’s wrongful conduct, bebe has been harmed in an
4 amount to be proven at trial.

5 97. Additionally, forever 21’s use in commerce of the counterfeit “bebe” mark,
6 which is a copy or colorable imitation of the “bebe” mark, constitutes a misappropriation
7 of bebe’s mark and a false designation of origin to the public of the character and quality
8 of forever 21’s goods. Such use is also likely to cause confusion, mistake, or deception
9 as to: (a) the affiliation, connection, or association of forever 21 with bebe, (b) the origin,
10 sponsorship, or approval of forever 21’s goods by bebe, and (c) source of forever 21’s
11 goods, all in violation of 15 U.S.C. § 1125(a) and to the great damage of bebe and the
12 public.

13 98. forever 21’s willful and unlawful use and misappropriation of the “bebe”
14 mark has and will continue to injure bebe’s business, goodwill, reputation, and profits.

15 99. forever 21 is presently engaged in violating Section 43(a) of the Lanham
16 Act, and unless immediately restrained and enjoined, will continue to do so. bebe’s
17 remedy at law is not by itself adequate to compensate them for the harm inflicted and
18 threatened by forever 21.

19 **FIFTH CLAIM FOR RELIEF**

20 **(Common Law Reverse Palming-Off Against forever 21)**

21 100. The preceding paragraphs are incorporated by this reference.

22 101. California common law prohibits forever 21 from misleading the public by
23 putting forth bebe’s work as its own.

24 102. forever 21 has engaged in the pattern and practice of directly contacting
25 those that manufacture bebe’s garments, including, without limitation, the Custom
26 Designs and Copyrighted Designs.
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1 103. Through its solicitation, forever 21 has obtained garments reflecting the
2 Copyrighted Designs and Custom Designs.

3 104. forever 21 has improperly marketed as its own these bebe garments
4 reflecting the Custom Designs and Copyrighted Designs.

5 105. forever 21 has sold under its forever 21 name garments that were actually
6 designed by and manufactured for bebe.

7 106. forever 21's actions have misled the public by putting forth bebe's designs
8 and work as its own.

9 107. As a result of forever 21's willful and wrongful conduct, bebe has been
10 damaged in an amount to be proven at trial.

11 108. forever 21 is presently engaged in reverse palming-off, and unless
12 immediately restrained and enjoined, will continue to do so. bebe's remedy at law is not
13 by itself adequate to compensate them for the harm inflicted and threatened by forever
14 21.

15 **SIXTH CLAIM FOR RELIEF**

16 **(Common Law Misappropriation Against forever 21)**

17 109. The preceding paragraphs are incorporated by this reference.

18 110. bebe has invested substantial time and money in the development of a pool
19 of manufacturers with the capacity and ability to manufacture its garments, including the
20 Custom Design and Copyrighted Designs.

21 111. forever 21 has willfully misappropriated bebe's pool of qualified
22 manufacturers at little or no cost by merely directly soliciting manufacturers currently
23 producing garments reflecting the Custom Designs and Copyrighted Designs.

24 112. bebe has been injured by forever 21's conduct in that bebe is at a market
25 disadvantage, having expended significant time and resources to identify manufacturers
26 with the capacity and expertise to properly produce bebe's Custom Designs and
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1 Copyrighted Designs. forever 21 does not have a similar burden and is merely utilizing
2 bebe’s manufacturers to produce forever 21’s Knock-Off Designs.

3 113. Additionally, bebe has used its distinctive “bebe” mark in connection with
4 clothing and personal accessories for a significant period of time, and in view of such
5 use, the “bebe” mark has become uniquely associated with bebe and identifies bebe as the
6 source of those goods. Bebe is the owner of the valuable “bebe” mark and the goodwill
7 associated therewith, which were created from the investment of substantial time, money,
8 and effort.

9 114. forever 21 has willfully misappropriated the “bebe” mark and the
10 associated goodwill for its own use, without bebe’s permission and without compensating
11 bebe. Forever 21 has reaped the benefits of bebe’s creativity and efforts without the same
12 cost that bebe incurred.

13 115. As a result of forever 21’s wrongful conduct, bebe has been damaged under
14 California common law in an amount to be proven at trial.

15 116. forever 21 is presently engaged in misappropriation, and unless
16 immediately restrained and enjoined, will continue to do so. bebe’s remedy at law is not
17 by itself adequate to compensate them for the harm inflicted and threatened by forever
18 21.

19 **SEVENTH CLAIM FOR RELIEF**

20 **(Unfair Competition Pursuant to Cal. Bus. & Prof. Code §§ 17200 et seq.**

21 **Against forever 21)**

22 117. The preceding paragraphs are incorporated by this reference.

23 118. The California Unfair Business Practices Act, Bus. & Prof. Code §§ 17200
24 et seq. (“Section 17200”), defines unfair competition as any “unlawful, unfair or fraudulent
25 business act or practice.” Section 17200 provides for injunctive relief and restitution to
26 persons harmed by unfair competition.

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1 119. forever 21 competes in the market to provide fashionable clothes for younger
2 women and increase its market share and competitiveness by engaging in the wrongful
3 conduct described herein.

4 120. forever 21 has engaged, and will continue to engage, in unfair competition as
5 defined by Section 17200. The acts and practices as alleged herein violate Section 17200.

6 121. As a direct result of the willful unfair competition by forever 21, bebe has
7 suffered, and will continue to suffer, irreparable harm, including, but not limited to, harm
8 to its business reputation and goodwill. Because of forever 21's unlawful, unfair,
9 intentional, and fraudulent business acts and practices, bebe has lost customers, and
10 bebe's reputation and goodwill have been and will be irreparably harmed.

11 122. forever 21 has been unjustly enriched by its unfair, unlawful, intentional,
12 and deceptive practices in a sum to be determined at trial.

13 123. bebe has been damaged by the unfair, unlawful, intentional, and deceptive
14 practices of forever 21 in a sum to be determined at trial.

15 124. bebe's remedy at law is not, by itself, adequate to compensate them for the
16 harm inflicted and threatened by forever 21.

17 125. forever 21 is presently engaged in unfair competition under Section 17200,
18 and unless immediately restrained and enjoined, will continue to do so. bebe's remedy at
19 law is not by itself adequate to compensate them for the harm inflicted and threatened by
20 forever 21.

21 **EIGHTH CLAIM FOR RELIEF**

22 **(Trademark Infringement under Sections 32(1) and 34(d) of the Lanham Act)**

23 126. The preceding paragraphs are incorporated by this reference.

24 127. forever 21's use of the "bebe" marks has injured bebe and, if permitted to
25 continue, will irreparably injure bebe, the "bebe" mark, the goodwill associated with bebe
26 and the "bebe" mark, and bebe's reputation for high-quality products.

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1 128. forever 21’s unauthorized use of a reproduction, counterfeit, copy, or
2 colorable imitation of the “bebe” mark is likely to cause confusion, cause mistake, or
3 deceive.

4 129. forever 21’s use of the “bebe” mark is unlawful and willful.

5 130. forever 21 is presently engaged in trademark infringement under 15 U.S.C.
6 § 1114(1), and unless immediately restrained and enjoined under 15 U.S.C. § 1116(d),
7 will continue to do so. bebe’s remedy at law is not by itself adequate to compensate them
8 for the harm inflicted and threatened by forever 21.

9 **NINTH CLAIM FOR RELIEF**

10 **(Trademark Dilution under Section 43(c) of the Lanham Act)**

11 131. The preceding paragraphs are incorporated by this reference.

12 132. The “bebe” mark has become famous, as that term is used in Section 43(c)
13 of the Lanham Act, 35 U.S.C. § 1125(c), due to: (a) the inherent and acquired
14 distinctiveness of the “bebe” mark; (b) the duration and extent of use of the “bebe” mark
15 in connection with bebe’s distinctive goods; (c) bebe’s duration and extent of advertising
16 featuring its mark; (d) the geographic area in which bebe has sold and advertised goods
17 featuring its mark; (e) the nature of the trade channels bebe uses to market goods
18 featuring its mark compared to the trade channels through which forever 21 sells and
19 intends to sell its goods; (f) the degree of wide-spread public recognition of the “bebe”
20 mark in the trade channel used by bebe and forever 21; and (g) the federal registrations of
21 bebe’s trademarks and service marks.

22 133. After the “bebe” mark had become famous, forever 21 willfully intended to
23 trade on bebe’s reputation and to cause dilution of bebe’s famous mark. Furthermore,
24 forever 21’s use of the “bebe” mark deprives bebe of its exclusive capacity to identify
25 and distinguish bebe from other sources of clothing and accessories. Such acts are likely
26 to cause dilution of the distinctive qualify of bebe’s famous mark in violation of Section
27 43(c) of the Lanham Act.

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1 134. forever 21 is presently engaged in trademark dilution under 15 U.S.C. §
2 1125(c), and unless immediately restrained and enjoined under 15 U.S.C. § 1116, will
3 continue to do so. bebe’s remedy at law is not by itself adequate to compensate them for
4 the harm inflicted and threatened by forever 21.

5 **TENTH CLAIM FOR RELIEF**

6 **(Trademark Infringement and Unfair Competition under California Common Law)**

7 135. The preceding paragraphs are incorporated by this reference.

8 136. bebe has used its distinctive “bebe” mark in connection with clothing and
9 personal accessories for a significant period of time, and in view of such use, the “bebe”
10 mark has become uniquely associated with bebe and identifies bebe as the source of those
11 goods.

12 137. forever 21’s unauthorized use in commerce of the “bebe” mark has caused
13 or is likely to cause confusion or mistake or to deceive customers, the general public, and
14 the retail trade as to: (a) the affiliation, connection, or association of forever 21 with bebe,
15 (b) the origin, sponsorship, or approval of forever 21’s goods by bebe, and (c) source of
16 forever 21’s goods, all in violation of California common law and to the great damage of
17 bebe and the public.

18 138. forever 21’s willful conduct of selling products labeled with the “bebe”
19 mark has and continues to deceived consumers, and forever 21 has received and
20 continues to receive profits from such deception. Such conduct constitutes trademark
21 infringement and unfair competition under California common law.

22 139. forever 21’s trademark infringement and unfair competition has been and
23 continues to be willful and knowing or with reason to know.

24 140. forever 21 is presently engaged in trademark infringement and unfair
25 competition under California common law, and unless immediately restrained and
26 enjoined, will continue to do so. bebe’s remedy at law is not by itself adequate to
27 compensate them for the harm inflicted and threatened by forever 21.
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ELEVENTH CLAIM FOR RELIEF

(Trademark Dilution Under Calif. Bus. & Prof. Code § 14330)

141. The preceding paragraphs are incorporated by this reference.

142. The “bebe” mark constitutes a valid trademark under California common law.

143. forever 21 willfully intended to trade on bebe’s reputation and to cause dilution of bebe’s famous mark. Furthermore, forever 21’s use of the “bebe” mark deprives bebe of its exclusive capacity to identify and distinguish bebe from other sources of clothing and accessories. Such acts are likely to cause dilution of the distinctive qualify of bebe’s famous mark in violation of Calif. Bus. & Prof. Code § 14330.

144. forever 21 is presently engaged in trademark dilution under Calif. Bus. & Prof. Code § 14330, and unless immediately restrained and enjoined, will continue to do so. bebe’s remedy at law is not by itself adequate to compensate them for the harm inflicted and threatened by forever 21.

TWELFTH CLAIM FOR RELIEF

(Breach of Contract)

145. The preceding paragraphs are incorporated by this reference.

146. forever 21’s use of the “bebe” mark breaches the settlement agreement identified in paragraphs 57 and 59 above.

147. forever 21’s use of the “bebe” mark violates the court order identified in paragraphs 58 and 59 above.

148. forever 21’s breach and violation are knowing and willful and injure bebe, the “bebe” mark, the goodwill associated with bebe and the “bebe” mark, and bebe’s reputation for high-quality products.

149. forever 21 is presently breaching the settlement agreement and violating the court order, and unless immediately restrained and enjoined, will continue to do so.

1 bebe's remedy at law is not by itself adequate to compensate them for the harm inflicted
2 and threatened by forever 21.

3 **THIRTEENTH CLAIM FOR RELIEF**

4 **(Civil Conspiracy)**

5 150. The preceding paragraphs are incorporated by this reference.

6 151. Defendants, and each of them, have agreed with each other and with non-
7 parties to a common plan or design to commit the wrongful conduct described in this
8 amended complaint.

9 152. Defendants, and each of them, have actual knowledge of the wrongful
10 conduct as planned and had a concurrent knowledge of its unlawful purpose.

11 153. Defendants, and each of them, have engaged in wrongful conduct in
12 furtherance of this conspiracy.

13 154. bebe has been damaged under California common law in an amount to be
14 proven at trial because of Defendants' conspiracy and wrongful conduct.

15 155. Defendants are presently engaged in civil conspiracy, and unless
16 immediately restrained and enjoined, will continue to do so. bebe's remedy at law is not
17 by itself adequate to compensate them for the harm inflicted and threatened by
18 Defendants.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, bebe prays for relief as follows:

21 A. For a judgment that forever 21 has infringed United States Copyright
22 Registration Nos. VA 1-385-194, VA 1-385-195, VA 1-385-192, VA 1-385-197, VA 1-
23 363-651, VA 1-363-650, VA 1-385-196, and VA 1-385-193 identified in paragraphs 13-
24 20, pursuant to 17 U.S.C. § 501;

25 B. For entry of a preliminary and permanent injunction enjoining and
26 restraining forever 21, its officers, directors, agents, servants, employees and all other
27 persons in privy or acting in concert with them from further infringement of Copyright
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1 Registration Nos. VA 1-385-194, VA 1-385-195, VA 1-385-192, VA 1-385-197, VA 1-
2 363-651, VA 1-363-650, VA 1-385-196, and VA 1-385-193 identified in paragraphs 13-
3 20, or any other copyrighted material owned by bebe, pursuant to 17 U.S.C. § 502;

4 C. For entry of relief immediately impounding all infringing articles, and
5 destruction thereof, pursuant to 17 U.S.C. § 503;

6 D. For an award to bebe of its actual damages and additional profits of the
7 infringers pursuant to 17 U.S.C. § 504;

8 E. For a finding that the infringement by forever 21 was willful, and for an
9 additional award to bebe for forever 21's willful infringement, pursuant to 17 U.S.C. § 504;

10 F. For an award of bebe's attorneys' fees, expenses and costs, including but not
11 limited to expert witnesses' fees, to bebe pursuant to 17 U.S.C. § 505;

12 G. For entry of a preliminary and permanent injunction enjoining and
13 restraining forever 21, its officers, directors, agents, servants, employees and all other
14 persons in privy or acting in concert with them from further engaging in unlawful, unfair,
15 and fraudulent business acts and practices, pursuant to Cal. Bus. & Prof. Code Section
16 17203;

17 H. For an award of restitution to bebe pursuant to Cal. Bus. & Prof. Code
18 Section 17203;

19 I. For an award of bebe's attorneys' fees, expenses and costs, including but not
20 limited to expert witnesses' fees, to bebe pursuant to Cal. Code Civ. Pro. Section 1021.5;

21 J. For entry of a preliminary and permanent injunction enjoining and
22 restraining forever 21, its officers, directors, agents, servants, employees and all other
23 persons in privy or acting in concert with them from further engaging in tortious
24 interference with prospective economic advantage, pursuant to California common law;

25 K. For an award of compensatory damages to bebe for forever 21's tortious
26 interference with prospective economic advantage, pursuant to California common law;
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1 L. For an award of punitive damages to bebe for forever 21’s aggravated,
2 malicious, fraudulent, willful, and/or wanton tortious interference with prospective
3 economic advantage, pursuant to California common law;

4 M. For an award of exemplary and punitive damages to bebe for forever 21’s
5 misappropriation of bebe’s designs, bebe’s pool of qualified manufacturers, and the “bebe”
6 trademark and associated goodwill, pursuant to California common law;

7 N. For entry of a preliminary and permanent injunction enjoining and
8 restraining forever 21, its officers, directors, agents, servants, employees and all other
9 persons in privy or acting in concert with them from further engaging in misappropriation
10 of bebe’s designs, bebe’s pool of qualified manufacturers, and the “bebe” trademark and
11 associated goodwill, pursuant to California common law;

12 O. For an award of damages to bebe for forever 21’s violation of Section 43(a)
13 of the Lanham Act with respect to bebe’s designs, pursuant to California common law;

14 P. For entry of a preliminary and permanent injunction enjoining and
15 restraining forever 21, its officers, directors, agents, servants, employees and all other
16 persons in privy or acting in concert with them from further violating Section 43(a) of the
17 Lanham Act with respect to bebe’s designs, pursuant to California common law;

18 Q. For an award of damages to bebe for forever 21’s reverse palming-off of
19 bebe’s designs, pursuant to California common law;

20 R. For entry of a preliminary and permanent injunction enjoining and
21 restraining forever 21, its officers, directors, agents, servants, employees and all other
22 persons in privy or acting in concert with them from further reverse palming-off of bebe’s
23 designs, pursuant to California common law;

24 S. For an award of exemplary and punitive damages to bebe for forever 21’s
25 civil conspiracy to commit the wrongful conduct described in this amended complaint,
26 pursuant to California common law;

27
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1 T. For entry of a preliminary and permanent injunction enjoining and
2 restraining forever 21, its officers, directors, agents, servants, employees and all other
3 persons in privy or acting in concert with them from further conspiracy to commit the
4 wrongful conduct described in this amended complaint, pursuant to California common
5 law;

6 U. For entry of a preliminary and permanent injunction enjoining and
7 restraining forever 21, its officers, directors, agents, servants, employees and all other
8 persons in privy or acting in concert with them from further infringement and dilution of
9 the trademarks identified in paragraphs 39-52 above and from committing further
10 violations of Section 43(a) of the Lanham Act, pursuant to 15 U.S.C. § 1116;

11 V. For an award to bebe of forever 21's profits unlawfully obtained by way of
12 its infringing and diluting trademark uses and its violations of Section 43(a) of the Lanham
13 Act, pursuant to 15 U.S.C. § 1117;

14 W. For an award to bebe of treble damages, statutory damages, prejudgment
15 interest, and reasonable attorneys' fees against forever 21 for its trademark infringement
16 and dilution and its violations of Section 43(a) of the Lanham Act, pursuant to 15 U.S.C. §
17 1117;

18 X. For entry of an order to destroy all of forever 21's products and other
19 unlawful uses of the "bebe" mark in the possession, custody, or control of forever 21 or its
20 officers, directors, agents, servants, employees and all other persons in privy or acting in
21 concert with them, pursuant to 15 U.S.C. § 1118;

22 Y. For entry of a preliminary and permanent injunction enjoining and
23 restraining forever 21, its officers, directors, agents, servants, employees and all other
24 persons in privy or acting in concert with them from further trademark infringement and
25 unfair competition, pursuant to California common law;

26 Z. For entry of a preliminary and permanent injunction enjoining and
27 restraining forever 21, its officers, directors, agents, servants, employees and all other
28

1 persons in privity or acting in concert with them from further trademark dilution, pursuant to
2 Calif. Bus. & Prof. Code § 14330;

3 AA. For an award of damages to bebe for forever 21's breach of a settlement
4 agreement between bebe stores, inc. and the predecessors-in-interest to forever 21 in bebe
5 stores, inc. v. Fashion 21, Inc. et al., Civ. No. C-01-1451 (MJJ);

6 BB. For an award of bebe's attorneys' fees, expenses and costs, including but not
7 limited to expert witnesses' fees, to bebe for forever 21's breach of the settlement
8 agreement in bebe stores, inc. v. Fashion 21, Inc. et al., Civ. No. C-01-1451 (MJJ);

9 CC. For an award of damages to bebe for forever 21's violation of the Final
10 Consent Judgment and Permanent Injunction entered by this Court on February 8, 2002 in
11 bebe stores, inc. v. Fashion 21, Inc. et al., Civ. No. C-01-1451 (MJJ);

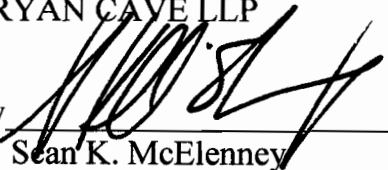
12 DD. For an award of bebe's attorneys' fees, expenses and costs, including but not
13 limited to expert witnesses' fees, to bebe for forever 21's violation of the Final Consent
14 Judgment and Permanent Injunction entered by this Court on February 8, 2002 in bebe
15 stores, inc. v. Fashion 21, Inc. et al., Civ. No. C-01-1451 (MJJ); and

16 EE. For an award to bebe of such other and further relief as this Court deems just
17 and proper.

18 DATED this 18th day of May, 2007.

19 BRYAN CAVE LLP

20
21 By



22 Sean K. McElenney
23 George C. Chen
24 Two N. Central Avenue, Suite 2200
25 Phoenix, AZ 85004-4406

26 Attorneys for Plaintiffs
27 bebe stores, inc. and bebe studio, inc.
28

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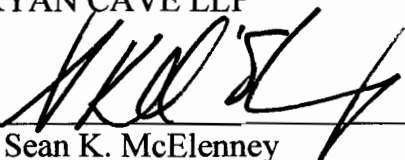
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DEMAND FOR JURY TRIAL

In accordance with Federal Rule of Civil Procedure 38(b), Plaintiffs bebe stores, inc. and bebe studio, inc. demand a trial by jury on all issues triable by a jury.

DATED this 18th day of May, 2007.

BRYAN CAVE LLP

By  _____

Sean K. McElenney
George C. Chen
Two N. Central Avenue, Suite 2200
Phoenix, AZ 85004-4406

Attorneys for Plaintiffs
bebe stores, inc. and bebe studio, inc.

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PROOF OF SERVICE

STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO

I am employed in the County of Maricopa, State of Arizona. I am over the age of 18 and not a party to the within action. My business address is Two N. Central Avenue, Suite 2200, Phoenix, AZ 85004-4406.

On May 18, 2007, I served the foregoing document, described as Amended Complaint for Copyright Infringement, Tortious Interference With Prospective Economic Advantage, Misappropriation, Lanham Act Violations, Reverse Palming Off, Unfair Competition, Conspiracy, Trademark Infringement, Trademark Dilution, and Breach of Contract on each interested party in this action, as follows:

Paul L. Warner, Esq.
J.T. Wells Blaxter, Esq.
Jeffer, Mangels, Butler & Marmaro LLP
Two Embarcadero Center, Fifth Floor
San Francisco, CA 94111-3824
Attorneys for Defendants

(BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

(BY MAIL) I placed a true copy of the foregoing document in a sealed envelope addressed to each interested party as set forth above. I placed each such envelope, with postage thereon fully prepaid, for collection and mailing at Bryan Cave LLP, Phoenix, AZ. I am readily familiar with Bryan Cave LLP's practice for collection and processing of correspondence for mailing with the United States Postal Service. Under that practice, the correspondence would be deposited in the United States Postal Service on that same day in the ordinary course of business.

(BY FEDERAL EXPRESS) I deposited in a box or other facility maintained by Federal Express, an express carrier service, or delivered to a courier or driver authorized by said express carrier service to receive documents, a true copy of the foregoing document, in an envelope designated by said express service carrier, with delivery fees paid or provided for.

(BY FAX) I caused a true copy of the foregoing document to be served by facsimile transmission at the time shown on each attached transmission report from sending facsimile machine telephone number (602) 364-7070 to each interested party at the facsimile number shown above. Each transmission was reported as complete and without error. A transmission report was properly issued by the sending facsimile machine for each interested party served. A true copy of each such transmission report is attached hereto.

Executed on May 18, 2007 at Phoenix, Arizona.

I declare under penalty of perjury under the laws of the United States of America and the state of California that the foregoing is true and correct.


Cathy Russell

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