

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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THE PEOPLE OF THE STATE OF NEW YORK,  
by BARBARA UNDERWOOD, Attorney General  
of the State of New York,  
  
Petitioners,  
  
- against -  
  
TARGET CORPORATION, WALMART INC.,  
and LAROSE INDUSTRIES LLC,  
  
Respondents.

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Index No. \_\_\_\_\_-2018  
**VERIFIED PETITION**

The People of the State of New York (the State), by their attorney, Barbara D. Underwood, Attorney General of the State of New York, respectfully allege upon information and belief:

**PRELIMINARY STATEMENT**

1. The State brings this special proceeding pursuant to Executive Law § 63(12) to protect children in New York from toys containing lead and to enforce the State’s laws governing the safety and marketing of toys. With this Verified Petition, the State seeks injunctive relief and penalties against the importers and retailers of a children’s toy that contained high levels of lead. Lead is a toxic heavy metal that, among other harms, impairs neurological development and physical growth in children.

2. Respondents LaRose Industries LLC (LaRose) and Target Corporation (Target) imported and distributed thousands of children’s “Cra-Z-Jewelz” jewelry-making kits (Kits) that included bracelets containing high levels of lead. Target as well as respondent Walmart Inc. (Walmart) distributed, sold, and held the Kits for sale. Respondents also marketed the toys as suitable for children when in fact the toys presented a significant lead exposure risk to children.

3. The Kits have now been recalled, but respondents have failed to take affirmative measures sufficient to ensure that they do not again import, distribute, and sell toys that place New York children at risk of adverse health consequences from lead exposure.

4. As more fully set forth below, the respondents have engaged in repeated illegality and fraud under Executive Law § 63(12) by committing thousands of violations of: (1) General Business Law (GBL) § 396-k, which prohibits the importation, distribution, and sale of hazardous toys; (2) GBL § 349, which prohibits deceiving consumers; (3) GBL § 350, which prohibits false advertising; and (4) Executive Law § 63(12), which prohibits fraud. The State seeks statutory penalties and injunctive relief to protect children from further risk of lead exposure from hazardous toys.

## **I. PARTIES AND JURISDICTION**

5. Petitioners are the People of the State of New York, by their attorney, Barbara D. Underwood, Attorney General of the State of New York.

6. Respondent Target Corporation is a retailer incorporated and headquartered in Minnesota. Target operates dozens of retail stores in New York, including in Albany County, and offers merchandise online for sale and shipment to New York consumers. Target imported, distributed, sold, and/or held for sale at least 3,397 Kits in New York.

7. Respondent Walmart Inc. is a retailer incorporated in Delaware and headquartered in Arkansas. Walmart operates dozens of retail stores in New York, including in Albany County, and offers merchandise online for sale and shipment to New York consumers. Walmart distributed, sold, and/or held for sale at least 1,239 Kits in New York.

8. Respondent LaRose Industries LLC is a toy and stationery company incorporated and based in New Jersey. LaRose develops and designs children's products under the brand "Cra-Z-Art," most of which are manufactured by contractors overseas and imported by LaRose for distribution to retailers, who then sell the products to consumers in New York and elsewhere. LaRose imported for sale and/or distributed in New York at least 9,296 Kits.

9. At all relevant times, the respondents have purposefully availed themselves of this forum.

10. This Court has jurisdiction over this proceeding pursuant to Executive Law § 63(12), which authorizes the Attorney General to commence a special proceeding for injunctive relief, damages, and other relief, including statutory

penalties, against any person or business entity that has engaged in repeated or persistent fraud or illegality in the conduct of business.

11. This Court also has jurisdiction pursuant to GBL § 396-k(2), which authorizes the Attorney General to seek injunctive relief and penalties for the importation, distribution, sale, and holding for sale of hazardous toys or other articles intended for use by children.

12. This Court also has jurisdiction pursuant to GBL § 349(b), which authorizes the Attorney General to enjoin deceptive acts and practices in the conduct of business, and pursuant to GBL § 350-d, which authorizes the Attorney General to seek civil penalties, up to \$5,000 per violation, for violations of Sections 349 and 350.

13. The State has timely served the respondents with a pre-litigation notice pursuant to General Business Law §§ 396-k(3), 349(c), and 350-c.

14. Venue is proper in Albany County pursuant to CPLR §§ 503(a) and 506(a) because the State has offices in Albany County and because a substantial part of the events giving rise to the claim occurred in Albany County, where a substantial number of the Kits were distributed, sold, and offered for sale.

## II. STATUTORY BACKGROUND

### A. Section 396-k of the General Business Law Prohibits the Importation, Distribution, Sale and Holding for Sale of Hazardous Toys.

15. Section 396-k of the General Business Law, titled “Hazardous toys and other articles primarily for use by children; prohibition and enforcement,”<sup>1</sup> makes it unlawful to import, distribute, sell, or hold for sale any “toy or other article intended for use by a child which presents an electrical, mechanical or thermal hazard.” GBL § 396-k(1).

16. The statute defines “child” as any person under fourteen years of age. GBL § 396-k(1)(a).

17. A toy presents a mechanical hazard if any aspect of the toy’s “design or manufacture presents an unreasonable risk of personal injury or illness,” including but not limited to hazards arising: from the toy’s “surfaces”; “because the article or any part or accessory thereof may be aspirated or ingested”; or “from stuffing material which is not free of dangerous or harmful substances.” Such risks may arise either “in normal use” or when the toy is “subjected to reasonably foreseeable damage or abuse.” GBL § 396-k(1)(c).

18. The federal Consumer Product Safety Act prohibits lead in any part of a children’s product in excess of 100 parts per million (ppm). 15 U.S.C. § 1278a(a)(2)(C).

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<sup>1</sup> There is a separate, unrelated enactment also codified as General Business Law § 396-k, titled “Sale of certain motor vehicles damaged by the ravages of natural disaster.”

19. A toy’s design or manufacture “presents an unreasonable risk of personal injury or illness” to a child under Section 396-k of the General Business Law if it contains lead in excess of 100 ppm.

20. A toy “presents” a “mechanical hazard” under Section 396-k if it contains lead in excess of 100 ppm.

21. The Attorney General may enforce Section 396-k in an action seeking injunctive relief and/or civil penalties. GBL § 396-k(2). The maximum penalty per violation is \$4,000 for a knowing and willful violation, and \$1,000 otherwise. *Id.*

**B. GBL §§ 349 and 350 Prohibit Deceptive Acts and Practices and False Advertising.**

22. GBL § 349(a) prohibits “[d]eceptive acts or practices in the conduct of any business, trade or commerce.”

23. GBL § 350 prohibits “[f]alse advertising in the conduct of any business, trade or commerce.”

24. GBL § 350-a defines false advertising as advertising which is “misleading in a material respect.” In determining whether advertising is misleading, GBL § 350-a provides that the court must take “into account (among other things) not only representations made by statement, word, design, device, sound or any combination thereof, but also the extent to which the advertising fails to reveal facts material in the light of such representations with respect to the commodity . . . to which the advertising relates under the conditions prescribed in said advertisement, or under such conditions as are customary and usual.”

25. GBL § 350-d authorizes the Attorney General to seek penalties in an

amount up to \$5,000 per violation of Sections 349 and 350. GBL § 349(b) also authorizes the Attorney General to seek injunctive relief.

**C. Executive Law § 63(12) Authorizes the Attorney General to Bring a Special Proceeding to Enjoin Repeated or Persistent Fraud or Illegality in the Transaction of Business.**

26. Executive Law § 63(12) authorizes the Attorney General to bring a special proceeding to enjoin “repeated fraudulent or illegal acts” and “persistent fraud or illegality” in “the carrying on, conducting or transaction of business.”

27. “Illegal” conduct under Executive Law § 63(12) includes the violation of any state, federal, or local law or regulation.

28. “Fraud” and “fraudulent” refer to “any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions.”

29. The test of fraudulent conduct under § 63(12) is whether the act or practice has the capacity or tendency to deceive, or creates an atmosphere conducive to fraud.

30. “Repeated” fraud or illegality under Executive Law § 63(12) includes the “repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person,” and “persistent” fraud or illegality includes “continuance or carrying on of any fraudulent or illegal act or conduct.”

31. In an action or proceeding pursuant to Executive Law § 63(12) to enjoin repeated or persistent illegality, the Attorney General may also seek penalties for underlying statutory violations.

32. In any action or proceeding pursuant to Executive Law § 63(12) or GBL §§ 349, 350, or 350-d, pursuant to CPLR § 8303(a)(6), the Attorney General is entitled to recover an additional allowance of \$2,000 against each defendant, whether or not other costs have been awarded.

### **III. FACTS**

#### **A. Lead Is Toxic, Especially to Children.**

33. Lead is a known neurotoxin that can cause significant harm to human health. Lead can affect almost every organ and system in the body. Children are especially vulnerable to these and other health risks posed by exposure to lead. Even low levels of lead in the blood of children can result in behavior and learning problems, lower IQ, hyperactivity, slowed growth, hearing problems and anemia.

34. The presence of lead in toys may poison children through multiple pathways, especially through oral contact, including hand-to-mouth contact. In particular, lead is added to plastic material in toys in order to soften it and make it more flexible, among other reasons. However, exposure to sunlight, air, and cleaners causes the bond between lead and plastic to break down into dust, which children can then ingest by placing lead-containing toys in their mouths, or by handling the toys and then placing their fingers in their mouths.

35. No amount of lead is safe for children. Any incremental exposure may contribute to the health risks described above.

36. A toy containing lead presents an unreasonable risk of personal injury or illness to a child because even small or incremental amounts of lead may

contribute to health issues such as impaired neurological development and physical growth.

**B. The Respondents Imported, Distributed, Sold, and/or Held for Sale Lead-Containing Kits in New York.**

**LaRose's development of the Kits**

37. As part of its Cra-Z-Art line of children's craft toys, LaRose developed the "Shimmer 'n Sparkle Ultimate Gem Machine" (Shimmer 'n Sparkle Base Kits). The Shimmer 'n Sparkle Base Kit included a "gem machine" that allowed a child to create pieces of jewelry. The Base Kit also included a plastic, fake leather band, which LaRose called a "slider bracelet," with holes and a buckle that resembled a watchband, with a tan underside that lies next to the child's skin and a colored material on the top side. The child attached colored "gems" to the slider bracelet to create a jewelry item. A photograph of a "slider bracelet" is below.



38. To supplement the Base Kit, LaRose created the "Shimmer 'n Sparkle Gem Charm and Slider Bracelets" (Shimmer 'n Sparkle Refill Kits) which contained four slider bracelets and additional gems.

39. LaRose also produced Base Kits branded “My Look Ultimate Gem Machine” (My Look Base Kits) for sale exclusively by Target.<sup>2</sup> The contents of the My Look Base Kits were identical to the Shimmer ’n Sparkle Base Kits in all material respects. LaRose did not produce and Target did not sell “My Look” branded Refill Kits.

40. LaRose contracted with Fairland Toy, a company located in China, to manufacture the Kits: the Shimmer ’n Sparkle Base Kit, the My Look Base Kit (which was identical in all material respects to the Shimmer ’n Sparkle Base Kit), and the Shimmer ’n Sparkle Refill Kit (which contained additional slider bracelets and gems). Fairland is one of LaRose’s primary vendors.

41. Fairland began producing the Kits on or around July 10, 2015.

42. The packaging of each Kit depicted a smiling child wearing jewelry produced using the Kit, along with pictures of the Kit components. The upper right corner on the front face of each Kit’s box contained a printed age designation indicating “6+”. The photographs below show the packaging of each type of Kit.

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<sup>2</sup> The three related Cra-Z-Jewelz Gem Creations products at issue here—the Shimmer ’n Sparkle Base Kits, the My Look Base Kits, and the Shimmer ’n Sparkle Refill Kits—are referred to collectively herein as the “Kits.”



*“Shimmer ‘n Sparkle” Base Kit sold by retailers other than Target*



*“My Look” Base Kit sold by Target*



*“Shimmer ’n Sparkle” Refill Kit sold by some retailers*

**Importation and sale of the Kits**

43. LaRose served as the importer of record for the Shimmer ’n Sparkle Base Kits and Refill Kits.

44. Target served as the importer of record for all or most of the My Look Base Kits. LaRose may have also served as the importer of components for My Look Base Kits that were fully assembled into Kits by LaRose in the United States prior to distribution to Target.

45. The federal Consumer Product Safety Act and implementing regulations promulgated by the Consumer Product Safety Commission (CPSC) require an importer of a children’s product to ensure and certify that the product is tested for compliance with the federal 100 ppm lead limit, among other safety requirements. See 15 U.S.C. § 2063(a); 16 C.F.R. §§ 1107.20–1107.26. Before

importing the product into the United States, the importer must issue a “certificate of compliance” verifying that the product has been tested for, and complies with, the federal 100 ppm lead limit and other safety requirements. The certificate of compliance must then “accompany” the product and a copy must be “furnished” to each distributor and retailer. 15 U.S.C. § 2063(a), (g).

46. In or around August 2015, LaRose arranged for one Shimmer ’n Sparkle Base Kit and one My Look Base Kit to be tested by SGS, a CPSC-accepted laboratory in Hong Kong. LaRose did not select the samples to be tested itself; rather, its practice was to request that its manufacturer in China select sample toys to be tested for safety compliance. The Shimmer ’n Sparkle Base Kit that was tested for compliance with federal regulations had been manufactured on July 13, 2015. The My Look Base Kit that was tested for compliance with federal regulations had been manufactured on July 30, 2015.

47. SGS issued the lead content testing results for the Shimmer ’n Sparkle Base Kit on September 14, 2015, and for the My Look Base Kit on September 2, 2015. According to the test results, the two Kits complied with the federal 100 ppm lead limit, but the laboratory did not report individual test results for the tan underside of the slider bracelet.

48. LaRose first shipped Kits to New York on approximately August 6, 2015.

49. From approximately August 2015 through April 2016, LaRose imported for sale in New York and/or distributed in New York at least 9,296 Kits, with most of the Kits being imported by mid-November 2015.

50. LaRose distributed Shimmer 'n Sparkle Kits (both Base Kits and Refill Kits) to distribution centers operated by Walmart, among other retailers but not Target.

51. From approximately October 2015 through April 2016, Walmart distributed, sold, and/or held for sale at least 1,239 Shimmer 'n Sparkle Kits in New York.

52. As a general matter, LaRose did not create a certificate of compliance to accompany an imported product; instead, it created the certificates only if and when a customer requested it.

53. In the case of the Kits, LaRose did not create the certificates until April 26 and May 2, 2016, in response to requests from the retailers after they were notified of the Attorney General's investigation.

54. As a result, a certificate of compliance did not accompany Kits when they were imported by LaRose and were not furnished to the retailers, as required by federal law.

55. From approximately October 2015 through April 2016, Walmart distributed, sold, and/or held for sale at least 1,239 Shimmer 'n Sparkle Kits in New York.

56. Target does not track which, if any, My Look Base Kits were imported by LaRose rather than Target itself, though LaRose has indicated that it imported and distributed some My Look Kits for Target.

57. Target distributed, sold, and/or held for sale in New York at least 3,397 My Look Kits, beginning in August 2015 through April 2015.

58. Target did not issue a certificate of compliance for the My Look Kits until September 9, 2015.

59. Walmart and Target sold the Kits in the toy aisles of their stores, or in other sections or aisles of their stores stocked primarily with children's products, and/or they sold the Kits in the toy sections of their websites and listed them as appropriate for children.

60. Walmart's website listed the Shimmer 'n Sparkle Base Kits under the category "Toys / Arts & Crafts for Kids / Craft Kits," with a listed "Age Range" of "5 to 7 Years" and a listed "Age Group" of "Child."

**C. The Attorney General Discovers High Lead Levels in the Kits and Prompts Their Recall.**

61. Between October 2015 and February 2016, as part of an investigation into lead in children's toys, the Attorney General purchased ten Kits, including Shimmer 'n Sparkle Base Kits, My Look Base Kits, and Shimmer 'n Sparkle Refill Kits, from different retailers at different locations around New York State, and submitted those Kits for testing at a CPSC-accepted laboratory, ANSECO.

62. The Attorney General asked ANSECO to individually test the tan underside of each slider bracelet. The test results showed that the tan underside of

each slider bracelet in each of the tested Kits contained lead at levels between 470 and 1,000 ppm or more, depending on the particular slider bracelet. These lead levels were nearly five to ten times more than the federal 100 ppm lead limit.

63. Four of the toys the Attorney General tested were manufactured on July 13, 2015, the same day as the Shimmer 'n Sparkle Base Kit that LaRose had tested in 2015.

64. In April 2016, the Attorney General informed the respondents and the CPSC of its findings.

65. In response to the Attorney General's investigation, and at the request of the CPSC, LaRose submitted twelve additional Kits for testing by an SGS laboratory in the United States. LaRose requested that the laboratory individually test the tan underside of each slider bracelet. The results showed that the tan material in each slider bracelet in each of the tested Kits contained lead at levels between 518 and 1,220 ppm, or roughly five to twelve times the 100 ppm limit.

66. On April 26, 2016, LaRose also received the test results for a sample Shimmer 'n Sparkle Refill Kit from MTS, another laboratory in Hong Kong. The purpose of testing this sample Refill Kit is unclear, because LaRose submitted the Refill Kit to MTS in late 2015 or early 2016, after the majority of the Kits had been imported, and this test was not the basis for any certificate of compliance. In addition, although the test results indicate that the Refill Kit tested by MTS complied with the federal 100 ppm lead limit, the tan undersides of the two slider bracelets sampled were not individually tested.

67. The CPSC also tested three additional Kits. The CPSC tests showed that the tan underside of each slider bracelet tested contained lead at levels between 574 and 1,001 ppm, or more than five to ten times the 100 ppm limit.

68. As a result of LaRose's and the CPSC's independent confirmations of the Attorney General's test results, LaRose recalled all the Kits on a nationwide basis on June 2, 2015.

69. The Attorney General subsequently obtained twenty additional My Look Base Kits from Target that had been held for sale in New York and tested those Kits. The tan underside of each slider bracelet in each of these Kits failed, with lead levels ranging from 870 ppm to 1000 ppm—more than eight to ten times the 100 ppm limit. One of the toys the Attorney General had tested was manufactured on the same day, July 30, 2015, as the My Look Base Kit that LaRose had tested in 2015.

70. All together, the Attorney General tested thirty Kits that were distributed, held for sale, or sold in New York, all of which showed lead levels far in excess of 100 ppm in the tan underside of every slider bracelet tested.

71. LaRose and CPSC tested a total of fifteen Kits, not including the three Kits LaRose had tested in Hong Kong, all of which also showed lead levels far in excess of 100 ppm in the tan underside of every slider bracelet tested.

72. Statistical analysis based on available test results shows, with 95% confidence, that at least 96% of Kits imported, distributed, sold, or held for sale in

New York had one or more slider bracelets with tan undersides containing lead in excess of 100 ppm.

73. This statistical estimate, that at least 96% of the Kits would fail, is supported regardless of whether it is based on: (1) the thirty Kits tested by the Attorney General, all of which are known to have been sold or held for sale in New York; (2) the Attorney General's thirty Kits plus the fifteen Kits tested by LaRose and the CPSC after the Attorney General notified them of its test results; (3) the Attorney General's thirty Kits plus the three Kits submitted for testing by LaRose before it learned about the Attorney General's investigation; or (4) all of the tested Kits.

74. These analyses of different groupings of Kits indicate that there was nothing anomalous about the toys distributed, sold, or held for sale in New York versus Kits distributed, sold, or held for sale elsewhere. They further demonstrate that the test results for the three Kits initially submitted for testing by LaRose do not materially change the likelihood that virtually all of the toys sold in New York contained lead in excess of 100 ppm.

75. Using this statistical extrapolation of 96%, the following are conservative estimates of the number of Kits imported, distributed, held for sale, or sold by each respondent in New York that violated the 100 ppm lead standard:

- LaRose: 8,924 (96% of the 9,296 or more Kits that LaRose imported for sale in New York and/or distributed in New York)

- Target: 3,261 (96% of the 3,397 or more Kits that Target imported for sale, distributed, sold, and/or held for sale in New York)
- Walmart: 1,189 (96% of the 1,239 or more Kits that Walmart distributed, sold, and/or held for sale in New York)

76. Kits with slider bracelet bands containing lead in excess of 100 ppm are not suitable for use by children due to the lead exposure hazard presented by the high lead content of the slider bracelets.

**FIRST CAUSE OF ACTION**  
**REPEATED ILLEGALITY PURSUANT TO EXECUTIVE LAW § 63(12)**  
**and GBL § 396-k (Hazardous Toys)**

77. The State repeats and realleges each of the foregoing paragraphs as if fully set forth herein.

78. Under Executive Law § 63(12), the Attorney General of New York may bring a special proceeding pursuant to Article 4 of the Civil Practice Law and Rules to seek injunctive and monetary relief against any person “engage[d] in repeated . . . illegal acts . . . in the carrying on, conducting or transaction of business.”

79. Respondents are persons engaged in carrying on, conducting, or transaction of business for purposes of Executive Law § 63(12).

80. Under the GBL, it is unlawful for any “person, firm, corporation, association or agent or employee thereof” to import, distribute, sell, or hold for sale any “toy or other article intended for use by a child which presents an electrical, mechanical or thermal hazard.” GBL § 396-k(1).

81. The Kits were “toys or other articles” intended for use by a child within the meaning of Section 396-k(1).

82. A toy presents a mechanical hazard if any aspect of that toy’s “design or manufacture presents an unreasonable risk of personal injury or illness.” GBL § 396-k(1)(c).

83. The federal Consumer Product Safety Act prohibits lead in children’s products in excess of 100 ppm. 15 U.S.C. § 1278a(a)(2)(C).

84. A toy’s “design or manufacture presents an unreasonable risk of personal injury or illness” to a child within the meaning Section 396-k(1)(c) if it contains lead in excess of 100 ppm.

85. A toy “presents” a “mechanical hazard” under Section 396-k(1) if it contains lead in excess of 100 ppm.

86. Respondents are persons, firms, and/or corporations for purposes of GBL § 396-k(1).

87. LaRose violated GBL § 396-k at least 8,924 times by importing and/or distributing at least 8,924 Kits in New York that presented a mechanical hazard.

88. Target violated GBL § 396-k at least 3,261 times by importing, distributing, selling, and/or holding for sale at least 3,261 Kits in New York that presented a mechanical hazard.

89. Walmart violated GBL § 396-k at least 1,189 times by distributing, selling, and/or holding for sale at least 1,189 Kits in New York that presented a mechanical hazard.

90. By way of the foregoing, each of the respondents engaged in repeated illegality under Executive Law § 63(12).

**SECOND CAUSE OF ACTION**  
**REPEATED ILLEGALITY PURSUANT TO EXECUTIVE LAW § 63(12)**  
**and GBL § 349 (Deceptive Acts and Practices)**

91. The State repeats and realleges each of the foregoing paragraphs as if fully set forth herein.

92. Under Executive Law § 63(12), the Attorney General of New York may bring a special proceeding pursuant to Article 4 of the Civil Practice Law and Rules to seek injunctive and monetary relief against any person “engage[d] in repeated . . . illegal acts . . . in the carrying on, conducting or transaction of business.”

93. Respondents are persons engaged in carrying on, conducting, or transaction of business for purposes of Executive Law § 63(12).

94. Section 349 of the General Business Law prohibits “[d]eceptive acts or practices in the conduct of any business, trade or commerce.” GBL § 349(a).

95. Respondents are persons engaged in business, trade, or commerce for purposes of GBL § 349.

96. By labeling, importing, and distributing Kits into New York with packaging that depicted a child and that displayed a “6+” age label, LaRose and Target represented to consumers that the Kits were suitable for use by children, and specifically, children as young as six.

97. By selling, displaying, and holding for sale Kits in New York bearing the above-described packaging in the toy aisle or equivalent sections of their retail

stores and websites, Target and Walmart represented to consumers that the Kits were suitable for use by children, and specifically, children as young as six.

98. Respondents' above-described conduct represented to consumers that the Kits were suitable for children.

99. The Kits were not suitable for children because they presented a lead exposure risk to children.

100. It is a violation of GBL § 349 where a representation or omission by the offending party is likely to mislead a reasonable consumer acting reasonably under the circumstances.

101. Respondents' representations that the Kits were suitable for children—and their omission to represent otherwise—were likely to mislead reasonable consumers because the Kits in fact presented a lead exposure risk to children.

102. By deceptively marketing each of the Kits it imported and/or distributed in New York as suitable for children, LaRose violated GBL § 349 at least 9,296 times.

103. By deceptively marketing each of the Kits it imported, distributed, sold, and/or held for sale in New York as suitable for children, Target violated GBL § 349 at least 3,397 times.

104. By deceptively marketing each of the Kits it distributed, sold, and/or held for sale in New York as suitable for children, Walmart violated GBL § 349 at least 1,239 times.

105. By way of the foregoing, each of the respondents engaged in repeated illegality under Executive Law § 63(12).

**THIRD CAUSE OF ACTION**  
**REPEATED ILLEGALITY PURSUANT TO EXECUTIVE LAW § 63(12)**  
**and GBL § 350 (False Advertising)**

106. The State repeats and realleges each of the foregoing paragraphs as if fully set forth herein.

107. Under Executive Law § 63(12), the Attorney General of New York may bring a special proceeding pursuant to Article 4 of the Civil Practice Law and Rules to seek injunctive and monetary relief against any person “engage[d] in repeated . . . illegal acts . . . in the carrying on, conducting or transaction of business.”

108. Respondents are persons engaged in carrying on, conducting, or transaction of business for purposes of Executive Law § 63(12).

109. Section 350 of the General Business Law prohibits “[f]alse advertising in the conduct of any business, trade or commerce.” GBL § 350.

110. Respondents are persons engaged in business, trade, or commerce for purposes of GBL § 350.

111. “Advertising” explicitly includes “labeling” and, more broadly, “representations made by statement, word, design, device, sound or any combination thereof.” GBL § 350-a(1).

112. False advertising under Section 350 is advertising that is “misleading in a material respect.” GBL § 350-a(1).

113. LaRose and Target engaged in advertising within the meaning of GBL § 350 by “labeling” the Kits with a “6+” age label and with depictions of children using the Kits.

114. Target and Walmart engaged in advertising within the meaning of GBL § 350 through “representations made by . . . device” by displaying the Kits with the above-described packaging on their store shelves and websites, specifically in sections of their stores and websites designated for toys and children’s products.

115. Respondents’ above-described advertising represented that the Kits were suitable for children.

116. The Kits were not suitable for children because they presented a lead exposure risk to children.

117. Respondents’ above-described advertising, which represented that the Kits were suitable for children, was false because the Kits presented a toxicity risk to children due to the high lead levels in the slider bracelets.

118. By falsely advertising each of the Kits it imported and/or distributed in New York as suitable for children, LaRose violated GBL § 350 at least 9,296 times.

119. By falsely advertising each of the Kits it imported, distributed, sold, and/or held for sale in New York as suitable for children, Target violated GBL § 350 at least 3,397 times.

120. By falsely advertising each of the Kits it distributed, sold, and/or held for sale in New York as suitable for children, Walmart violated GBL § 350 at least 1,239 times.

121. By way of the foregoing, each of the respondents engaged in repeated illegality under Executive Law § 63(12).

**FOURTH CAUSE OF ACTION**  
**REPEATED FRAUD PURSUANT TO EXECUTIVE LAW § 63(12)**

122. The State repeats and realleges each of the foregoing paragraphs as if fully set forth herein.

123. Under Executive Law § 63(12), the Attorney General of New York may bring a special proceeding pursuant to Article 4 of the Civil Practice Law and Rules to seek injunctive relief against any person “engage[d] in repeated fraudulent . . . acts . . . in the carrying on, conducting or transaction of business.”

124. Respondents are persons engaged in carrying on, conducting, or transaction of business for purposes of Executive Law § 63(12).

125. The terms “fraud” and “fraudulent” in Section 63(12) refer to “any device, scheme or artifice to defraud and any deception, misrepresentation, concealment, suppression, false pretense, false promise or unconscionable contractual provisions.”

126. Fraudulent acts under Section 63(12) are acts that have the capacity or tendency to deceive, or that create an atmosphere conducive to fraud.

127. By labeling, importing, and distributing Kits into New York with packaging that depicted a child and that displayed a “6+” age label, LaRose and Target represented to consumers that the Kits were suitable for use by children.

128. By selling, displaying, and holding for sale Kits in New York bearing the above-described packaging in the toy aisle or equivalent sections of their retail

stores and websites, Target and Walmart represented to consumers that the Kits were suitable for use by children.

129. Respondents' above-described conduct represented to consumers that the Kits were suitable for children.

130. The Kits were not suitable for children because they presented a lead exposure risk to children.

131. Respondents' representations had the capacity or tendency to deceive consumers because the Kits were hazardous to children due to the high lead levels in the slider bracelets.

132. By misrepresenting each of the Kits they imported, distributed, sold, or held for sale in New York as suitable for children, the respondents repeatedly engaged in fraudulent acts under Executive Law § 63(12).

### **PRAYER FOR RELIEF**

**WHEREFORE**, the State respectfully requests that a judgment and order be issued:

1. Permanently enjoining all respondents from engaging in fraud and illegality under Executive Law § 63(12) and from violating GBL §§ 396-k, 349, and 350;

2. Directing LaRose and Target, when it acts as an importer, within 90 days of this Court's order, to implement a quality control program that includes or maintains:

- a) A Director of Quality Control (or a similar title) whose responsibilities include supervising quality control in overseas manufacturing operations; evaluating vendors and sub-vendors, including those who provide components and raw materials;
  - b) Requiring vendors of finished products to obtain components and raw materials from pre-approved suppliers and to test samples of incoming components and raw materials;
  - c) A testing program pursuant to which the importer or a third-party, but not the manufacturer, randomly selects the toys to be tested for compliance with the permissible lead limit by a CPSC-accepted laboratory;
  - d) Unannounced quality control audits of vendors;
  - e) Timely issuance of certificates of compliance in accordance with 15 U.S.C. § 2063;
  - f) A written quality control manual that includes all of the above elements (a)–(e).
3. Directing Walmart and Target, when it acts as a retailer, to:
- a) Confirm that a valid certificate of compliance exists for each toy it receives from an importer for distribution and sale in New York;
  - b) Within 90 days of this Court’s order, develop and implement a program to randomly select three percent (3%) of the toys it receives from an importer for sale in New York to be tested for lead

by a CPSC-approved laboratory. Such testing will be done during the retailers' four (4) highest sales periods per year. The retailers shall provide the testing results to the Attorney General's office; and

c) Maintain the above testing program for a period of three years.

4. Directing LaRose to pay a civil penalty of up to \$1,000.00, and at least \$37.50, to the State for each Kit that it imported and/or distributed in violation of GBL § 396-k;

5. Directing Target to pay a civil penalty of up to \$1,000.00, and at least \$37.50, to the State for each Kit that it distributed, sold, and/or held for sale in violation of GBL § 396-k;

6. Directing Walmart to pay a civil penalty of up to \$1,000.00, and at least \$25.00, to the State for each Kit that it imported, distributed, sold, and/or held for sale in violation of GBL § 396-k;

7. Directing LaRose to pay a civil penalty of up to \$5,000.00, and at least \$37.50, to the State for each Kit that it marketed in violation of GBL §§ 349 and 350, pursuant to GBL § 350-d;

8. Directing Target to pay a civil penalty of up to \$5,000.00, and at least \$37.50, to the State for each Kit that it marketed in violation of GBL §§ 349 and 350, pursuant to GBL § 350-d;

9. Directing Walmart to pay a civil penalty of up to \$5,000.00, and at least \$25.00, to the State for each Kit that it marketed in violation of GBL §§ 349 and 350, pursuant to GBL § 350-d;

10. Ordering that no respondent may pay any penalty fixed by the Court in this action on behalf of another respondent;

11. Awarding the State costs plus an additional allowance of \$2,000 against each respondent pursuant to CPLR § 8303(a)(6); and

12. Granting such other relief as is just and proper.

Dated: December 13, 2018  
New York, New York

BARBARA D. UNDERWOOD  
Attorney General of the State of New York  
Attorney for Petitioners

By:

  
Channing Wistar-Jones  
Assistant Attorney General  
Environmental Protection Bureau  
28 Liberty Street  
New York, New York 10005  
212-416-8446

**VERIFICATION**

STATE OF NEW YORK            )  
COUNTY OF NEW YORK        ) ss.:

CHANNING WISTAR-JONES, being duly sworn, deposes and says:

1.     I am an Assistant Attorney General in the office of Barbara D.

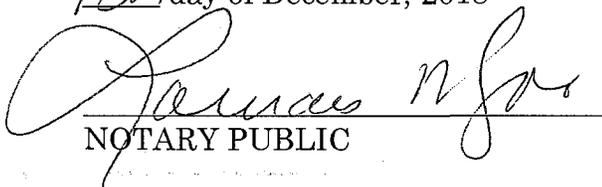
Underwood, Attorney General of the State of New York, and I am duly authorized to make this verification.

2.     The Attorney General is the statutory representative of petitioners the People of the State of New York.

3.     I have read the foregoing petition and assert, based upon personal knowledge and information and belief, that the contents thereof are true. The sources of my personal knowledge, information, and belief are my involvement in this matter for the Office of the Attorney General since in or about October 2016, and my review of the Attorney General's files concerning the allegations contained in this petition.

  
\_\_\_\_\_  
CHANNING WISTAR-JONES

Sworn to before me this  
13<sup>th</sup> day of December, 2018

  
\_\_\_\_\_  
NOTARY PUBLIC

ANDRES M. COTO  
NOTARY PUBLIC OF THE STATE OF NY  
NO. 01504612108  
COMMISSION EXPIRES 10/16/2022