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**ENDORSED  
FILED  
ALAMEDA COUNTY**

MAR - 6 2012 *ll*

CLERK OF THE SUPERIOR COURT  
By **Barbara LaMotte** Deputy

6 Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA

11 CENTER FOR ENVIRONMENTAL HEALTH, )  
12 a non-profit corporation, )

Case No. RE12620105

13 Plaintiff, )

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**

14 v. )

Health & Safety Code §25249.6, *et seq.*

15 GAGS AND GAMES, INC.; ABC ONLINE )  
16 RESOURCES, LLC; ANY TIME )  
17 COSTUMES.COM, INC.; ASADART, LLC; )  
18 BUYSEASONS, INC.; COSTUME CRAZE, )  
19 L.C.; COSTUME SUPERCENTER LLC; )  
20 COSTUME SUPERCENTER OF NJ L.L.C.; )  
21 FIRST FANTASIES - COSTUME CUZZINS, )  
INC.; HALLOWEEN EXPRESS; MORRIS )  
COSTUMES, INC.; SCREAMERS )  
22 COSTUMES; SHOP BLOC INC.; SPIRIT )  
23 HALLOWEEN SUPERSTORES, LLC; TOYNK )  
24 TOYS, LLC; UNBEATABLE SALE.COM, )  
25 INC. and Defendant DOES 1 through 200, )  
26 inclusive, )

(Other)

27 Defendants. )  
28

1 Plaintiff Center for Environmental Health, in the public interest, based on  
2 information and belief and investigation of counsel, except for information based on knowledge,  
3 hereby makes the following allegations:

#### 4 INTRODUCTION

5 1. This complaint seeks to remedy Defendants' continuing failure to warn  
6 individuals in California that they are being exposed to lead and lead compounds (collectively  
7 referred to herein as "Lead") and/or cadmium. Lead is a chemical known to the State of  
8 California to cause cancer and birth defects and other reproductive harm. Cadmium is a  
9 chemical known to the State of California to cause birth defects and other reproductive harm.  
10 Such exposures have occurred, and continue to occur, through the manufacture, distribution, sale  
11 and/or use of Defendants' jewelry ("Jewelry") made of materials containing Lead, cadmium or  
12 both. Consumers, including pregnant women and children, are exposed to Lead, cadmium or  
13 both when they wear, use, touch or handle the Jewelry.

14 2. Under California's Proposition 65, Health & Safety Code §25249.5, *et*  
15 *seq.*, it is unlawful for businesses to knowingly and intentionally expose individuals in California  
16 to chemicals known to the State to cause cancer, birth defects or other reproductive harm without  
17 providing clear and reasonable warnings to individuals prior to their exposure. Defendants  
18 introduce Jewelry into the California marketplace contaminated with significant quantities of  
19 Lead, cadmium or both Lead and cadmium, thereby exposing consumers of their Jewelry to Lead  
20 and/or cadmium. Many of these consumers are women of childbearing age.

21 3. Despite the fact that Defendants expose pregnant women, children and  
22 other people who come into contact with the Jewelry to Lead, cadmium or both, Defendants  
23 provide no warnings whatsoever about the carcinogenic and reproductive hazards associated with  
24 these Lead and cadmium exposures. Defendants' conduct thus violates the warning provision of  
25 Proposition 65. Health & Safety Code §25249.6.

#### 26 PARTIES

27 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a  
28 non-profit corporation dedicated to protecting the public from environmental health hazards and

1 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the  
2 State of California. CEH is a “person” within the meaning of Health & Safety Code  
3 §25249.11(a) and brings this enforcement action in the public interest pursuant to Health &  
4 Safety Code §25249.7(d). CEH is a nationally recognized non-profit environmental advocacy  
5 group that has prosecuted a large number of Proposition 65 cases in the public interest. These  
6 cases have resulted in significant public benefit, including the reformulation of thousands of  
7 products to remove toxic chemicals to make them safer. CEH also provides information to  
8 Californians about the health risks associated with exposure to hazardous substances, where  
9 manufacturers and other responsible parties fail to do so.

10           5. Defendant ABC ONLINE RESOURCES, LLC is a person in the course of  
11 doing business within the meaning of Health & Safety Code §25249.11. ABC Online Resources,  
12 LLC manufactures, distributes and/or sells the Jewelry for sale or use in California.

13           6. Defendant ANY TIME COSTUMES.COM, INC. is a person in the course  
14 of doing business within the meaning of Health & Safety Code §25249.11. Any Time  
15 Costumes.com, Inc. manufactures, distributes and/or sells the Jewelry for sale or use in  
16 California.

17           7. Defendant ASADART, LLC is a person in the course of doing business  
18 within the meaning of Health & Safety Code §25249.11. ASADART, LLC manufactures,  
19 distributes and/or sells the Jewelry for sale or use in California.

20           8. Defendant BUYSEASONS, INC. is a person in the course of doing  
21 business within the meaning of Health & Safety Code §25249.11. BuySeasons, Inc.  
22 manufactures, distributes and/or sells the Jewelry for sale or use in California.

23           9. Defendant COSTUME CRAZE, L.C. is a person in the course of doing  
24 business within the meaning of Health & Safety Code §25249.11. Costume Craze, L.C.  
25 manufactures, distributes and/or sells the Jewelry for sale or use in California.

26           10. Defendant COSTUME SUPERCENTER LLC is a person in the course of  
27 doing business within the meaning of Health & Safety Code §25249.11. Costume Supercenter  
28 LLC manufactures, distributes and/or sells the Jewelry for sale or use in California.

1           11. Defendant COSTUME SUPERCENTER OF NJ L.L.C. is a person in the  
2 course of doing business within the meaning of Health & Safety Code §25249.11. Costume  
3 Supercenter of NJ L.L.C. manufactures, distributes and/or sells the Jewelry for sale or use in  
4 California.

5           12. Defendant FIRST FANTASIES - COSTUME CUZZINS, INC. is a person  
6 in the course of doing business within the meaning of Health & Safety Code §25249.11. First  
7 Fantasies - Costume Cuzzins, Inc. manufactures, distributes and/or sells the Jewelry for sale or  
8 use in California.

9           13. Defendant GAGS AND GAMES, INC. is a person in the course of doing  
10 business within the meaning of Health & Safety Code §25249.11. Gags and Games,  
11 Inc. manufactures, distributes and/or sells the Jewelry for sale or use in California.

12           14. Defendant HALLOWEEN EXPRESS is a person in the course of doing  
13 business within the meaning of Health & Safety Code §25249.11. Halloween Express  
14 manufactures, distributes and/or sells the Jewelry for sale or use in California.

15           15. Defendant MORRIS COSTUMES, INC. is a person in the course of doing  
16 business within the meaning of Health & Safety Code §25249.11. Morris Costumes, Inc.  
17 manufactures, distributes and/or sells the Jewelry for sale or use in California.

18           16. Defendant SCREAMERS COSTUMES is a person in the course of doing  
19 business within the meaning of Health & Safety Code §25249.11. Screamers Costumes  
20 manufactures, distributes and/or sells the Jewelry for sale or use in California.

21           17. Defendant SHOP BLOC, INC. is a person in the course of doing business  
22 within the meaning of Health & Safety Code §25249.11. Shop Bloc, Inc. manufactures,  
23 distributes and/or sells the Jewelry for sale or use in California.

24           18. Defendant SPIRIT HALLOWEEN SUPERSTORES, LLC is a person in  
25 the course of doing business within the meaning of Health & Safety Code §25249.11. Spirit  
26 Halloween Superstores, LLC manufactures, distributes and/or sells the Jewelry for sale or use in  
27 California.

28           19. Defendant TOYNK TOYS, LLC is a person in the course of doing

1 business within the meaning of Health & Safety Code §25249.11. Toynk Toys, LLC  
2 manufactures, distributes and/or sells the Jewelry for sale or use in California.

3 20. Defendant UNBEATABLE SALE.COM, INC. is a person in the course of  
4 doing business within the meaning of Health & Safety Code §25249.11. Unbeatable Sale.com,  
5 Inc. manufactures, distributes and/or sells the Jewelry for sale or use in California.

6 21. DOES 1 through 200 are each a person in the course of doing business  
7 within the meaning of Health & Safety Code §25249.11. DOES 1 through 200 manufacture,  
8 distribute and/or sell the Jewelry for sale or use in California.

9 22. The true names of DOES 1 through 200 are unknown to CEH at this time.  
10 When their identities are ascertained, the Complaint shall be amended to reflect their true names.

11 23. The defendants identified in paragraphs 5 through 20 and DOES 1 through  
12 200 are collectively referred to herein as "Defendants."

### 13 JURISDICTION AND VENUE

14 24. The Court has jurisdiction over this action pursuant to Health & Safety  
15 Code §25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant  
16 to California Constitution Article VI, Section 10, because this case is a cause not given by statute  
17 to other trial courts.

18 25. This Court has jurisdiction over the Defendants because each is a business  
19 entity that does sufficient business, has sufficient minimum contacts in California or otherwise  
20 intentionally avails itself of the California market through the sale, marketing or use of the  
21 Jewelry in California and/or by having such other contacts with California so as to render the  
22 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair  
23 play and substantial justice.

24 26. Venue is proper in the Alameda Superior Court because one or more of the  
25 violations arise in the County of Alameda.

### 26 BACKGROUND FACTS

27 27. The People of the State of California have declared by initiative under  
28 Proposition 65 their right "[t]o be informed about exposures to chemicals that cause cancer, birth

1 defects, or other reproductive harm.” Proposition 65, §1(b).

2           28. To effectuate this goal, Proposition 65 prohibits exposing people to  
3 chemicals listed by the State of California as known to cause cancer, birth defects or other  
4 reproductive harm without a “clear and reasonable warning” unless the business responsible for  
5 the exposure can prove that it fits within a statutory exemption. Health & Safety Code §25249.6  
6 states, in pertinent part:

7           No person in the course of doing business shall knowingly and  
8 intentionally expose any individual to a chemical known to the  
9 state to cause cancer or reproductive toxicity without first giving  
clear and reasonable warning to such individual. . .

10           29. On February 27, 1987, the State of California officially listed lead as a  
11 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive  
12 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to  
13 the developing fetus, “female reproductive toxicity,” which means harm to the female  
14 reproductive system, and “male reproductive toxicity,” which means harm to the male  
15 reproductive system. 27 California Code of Regulations (“C.C.R.”) §27001(c). On February 27,  
16 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead  
17 became subject to the clear and reasonable warning requirement regarding reproductive toxicants  
18 under Proposition 65. *Ibid.*; Health & Safety Code §25249.10(b).

19           30. On October 1, 1992, the State of California officially listed lead and lead  
20 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were  
21 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear  
22 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.  
23 §27001(c); Health & Safety Code §25249.10(b).

24           31. On May 1, 1997, the State of California officially listed cadmium as a  
25 chemical known to cause reproductive toxicity. Cadmium became subject to the Proposition 65  
26 “clear and reasonable” reproductive toxicity warning one year later beginning on May 1, 1998.  
27 27 C.C.R. §27001(c); Health & Safety Code §25249.10(b).

28           32. For over eight years, CEH has been extensively investigating the presence

1 of toxic chemicals in Jewelry. CEH's investigation has included filing three Proposition 65  
2 lawsuits against manufacturers and re-sellers of Jewelry that contain lead and lead compounds  
3 ("Lead"), entitled *Center for Environmental Health v. Hot Topic, Inc., et al.* (Alameda County  
4 Superior Court Case No. RG 04-162037), *Center for Environmental Health v. Nadri, Inc., et al.*  
5 (Alameda County Superior Court Case No. RG 06-269531), and *Center for Environmental*  
6 *Health v. Two's Company, Inc., et al.* (Alameda County Superior Court Case No. RG 10-  
7 545680). CEH's Lead-in-Jewelry actions have resulted in the entry of dozens of consent  
8 judgments restricting the Lead levels permitted in Jewelry as well as the passing of California  
9 and federal laws prohibiting the sale of Leaded Jewelry.

10           33. More recently, CEH's investigation has expanded to include research and  
11 testing regarding the presence of cadmium in Jewelry, which has revealed that some  
12 manufacturers of Jewelry appear to be using cadmium as a replacement for Lead in such Jewelry.  
13 CEH's investigation has included filing three Proposition 65 lawsuits against manufacturers and  
14 re-sellers of Jewelry that contain cadmium, entitled *Center for Environmental Health v.*  
15 *Aeropostale, Inc.* (Alameda County Superior Court Case No. RG 10-514803), *Center for*  
16 *Environmental Health v. Cara Accessories Ltd.* (Alameda County Superior Court Case No. RG  
17 10-545687), and *Center for Environmental Health v. Forum Novelties, Inc.* (Alameda County  
18 Superior Court Case No. RG 11-574481). CEH's complaint in the *Cara Accessories* action also  
19 alleges violations of Proposition 65 based on sales of Lead-containing Jewelry. The *Hot Topic,*  
20 *Nadri* and *Forum Novelties* actions have been coordinated with other actions under *Proposition*  
21 *65 Jewelry Cases*, JCCP Case No. 4666. CEH also co-sponsored SB 924, which was passed by  
22 the California Legislature in 2010 and which prohibits the sale of cadmium-containing children's  
23 Jewelry.

24           34. Young children are especially susceptible to the toxic effects of Lead.  
25 Children show a greater sensitivity to Lead's effects than do adults. Adverse health impacts from  
26 Lead exposure generally occur in children at lower blood Lead levels than in adults. Children  
27 absorb and retain more Lead in proportion to their weight than do adults. Young children also  
28 show a greater prevalence of iron deficiency, a condition that can increase gastrointestinal

1 absorption of Lead. The body accumulates Lead over a lifetime and releases it slowly, so even  
2 small doses received in childhood, over time, can cause adverse health impacts, including but not  
3 limited to reproductive toxicity, later in life. For example, in times of physiological stress, such  
4 as pregnancy, the body can mobilize accumulated stores of Lead in tissue and bone, thereby  
5 increasing the level of Lead in the blood and increasing the risk of harm to the fetus.

6           35. There is no safe level of exposure to Lead and even minute amounts of  
7 Lead exposure have been shown to permanently reduce mental capacity. *See, e.g.,* Davis, J.M.,  
8 Svendgaard, D.J., "Lead and Child Development," *Nature* 329:297-300, 1987. One study on the  
9 effect of childhood Lead exposure declared that even the smallest detectable amount of blood  
10 Lead levels in children can mean the difference between an A or B grade in school. Lanphear,  
11 B.P., Dietrich, K., Auinger, P., Cox, C., "Subclinical Lead Toxicity in U.S. Children and  
12 Adolescents," *Neurodevelopmental Disabilities II Platform*, 2000. A recent study found that  
13 childhood Lead exposure actually predicts intellectual functioning in early adulthood in that adult  
14 IQ levels are inversely associated with blood Lead concentrations from childhood. Mazumdar,  
15 M., Bellinger, D.C., Gregas, M., Abanilla, K., Bacic, J., Needleman, H.L., "Low-Level  
16 Environmental Lead Exposure in Childhood and Adult Intellectual Function: A Follow-Up  
17 Study," *Environmental Health* 10:24, 2011.

18           36. Lead exposures for pregnant women are also of particular concern in light  
19 of evidence that even short term Lead exposures *in utero* may have long-term harmful effects.  
20 *See, e.g.,* Hu, H., *et al.*, "Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant  
21 Mental Development," *Environmental Health Perspectives* 114:11, 2006; Schnaas, L., *et al.*,  
22 "Reduced Intellectual Development in Children with Prenatal Lead Exposure," *Environmental*  
23 *Health Perspectives* 114:5, 2006.

24           37. Cadmium in consumer products is of particular concern in light of  
25 evidence that cadmium exposure has the potential to negatively impact reproduction and  
26 embryonic development in several different ways and at every stage of the reproductive process.  
27 *See, e.g.,* Thompson, J., *et al.*, "Review: Cadmium: Toxic Effects on the Reproductive System  
28 and the Embryo," *Reproductive Toxicology* (February 2008) Vol. 25:304; and Ji, Yan-Li, *et al.*,



1 “Pubertal Cadmium Exposure Impairs Testicular Development and Spermatogenesis via  
2 Disrupting Testicular Testosterone Synthesis in Adult Mice,” *Reproductive Toxicology* (accepted  
3 for publication October 2009) (even low levels of cadmium accumulation in semen may  
4 contribute to male infertility).

5 38. Defendants’ Jewelry is made of materials and components that contain  
6 Lead, cadmium or both Lead and cadmium.

7 39. Defendants’ Jewelry contains sufficient quantities of Lead, cadmium or  
8 both such that consumers, including pregnant women and children, who wear, use, touch and/or  
9 handle the Jewelry are exposed to Lead and cadmium through the average use of the Jewelry.  
10 The route of exposure for the violation is ingestion via hand-to-mouth contact after consumers  
11 touch or handle the Jewelry; direct ingestion when consumers place the Jewelry in their mouths;  
12 and dermal absorption directly through the skin when consumers wear, touch or handle the  
13 Jewelry. These exposures occur in homes, workplaces and everywhere else throughout  
14 California where such Jewelry is worn, handled or used.

15 40. No clear and reasonable warning is provided with the Jewelry regarding  
16 the carcinogenic and reproductive hazards of Lead or the reproductive hazards of cadmium.

17 41. Any person acting in the public interest has standing to enforce violations  
18 of Proposition 65 provided that such person has supplied the requisite public enforcers with a  
19 valid 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the  
20 action within such time. Health & Safety Code §25249.7(d).

21 42. More than sixty days prior to naming each Defendant in this lawsuit, CEH  
22 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General,  
23 the District Attorneys of every county in California, the City Attorneys of every California city  
24 with a population greater than 750,000 and to each of the named Defendants. In compliance with  
25 Health & Safety Code §25249.7(d) and 27 C.C.R. §25903(b), each of the Notices included the  
26 following information: (1) the name and address of each violator; (2) the statute violated; (3) the  
27 time period during which violations occurred; (4) specific descriptions of the violations,  
28 including (a) the routes of exposure to listed chemicals from the Jewelry, and (b) the specific

1 type of products sold and used in violation of Proposition 65; and (5) the name of the specific  
2 Proposition 65-listed chemical that is the subject of the violations described in each of the  
3 Notices.

4           43. CEH also sent a Certificate of Merit for each of the Notices to the  
5 California Attorney General, the District Attorneys of every county in California, the City  
6 Attorneys of every California city with a population greater than 750,000 and to the named  
7 Defendants. In compliance with Health & Safety Code §25249.7(d) and 11 C.C.R. §3101, each  
8 of the Certificates certified that CEH's counsel: (1) has consulted with one or more persons with  
9 relevant and appropriate experience or expertise who reviewed facts, studies or other data  
10 regarding the exposures to Lead and cadmium alleged in the Notices; and (2) based on the  
11 information obtained through such consultations, believes that there is a reasonable and  
12 meritorious case for a citizen enforcement action based on the facts alleged in the Notices. In  
13 compliance with Health & Safety Code §25249.7(d) and 11 C.C.R. §3102, each of the  
14 Certificates served on the Attorney General included factual information – provided on a  
15 confidential basis – sufficient to establish the basis for the Certificate, including the identity of  
16 the person(s) consulted by CEH's counsel and the facts, studies or other data reviewed by such  
17 persons.

18           44. None of the public prosecutors with the authority to prosecute violations  
19 of Proposition 65 has commenced and/or is diligently prosecuting a cause of action against  
20 Defendants under Health & Safety Code §25249.5, *et seq.*, based on the claims asserted in the  
21 Notice.

22           45. Under Proposition 65, an exposure is “knowing” where the party  
23 responsible for such exposure has:

24                   knowledge of the fact that a[n] . . . exposure to a chemical listed  
25                   pursuant to [Health & Safety Code §25249.8(a)] is occurring. No  
26                   knowledge that the . . . exposure is unlawful is required.

27 27 C.C.R. §25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final  
28 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,  
§12201).

1 46. Defendants have been informed of the Lead and cadmium in their Jewelry  
2 by the 60-Day Notice of Violation and accompanying Certificate of Merit served on them by  
3 CEH.

4 47. Defendants also have constructive knowledge that their Jewelry contains  
5 Lead and cadmium due to the widespread media coverage concerning the problem of Lead and  
6 cadmium in consumer products in general and in Jewelry in particular. Defendants are also  
7 presumed to know the law and, due to the widespread nature of the problem, the California  
8 Legislature passed laws governing the Lead and cadmium content of Jewelry in 2006 and 2010,  
9 respectively.

10 48. Defendants both know and intend that individuals, including pregnant  
11 women and children, through the average use of the Jewelry, will wear, touch and handle the  
12 Jewelry, thus exposing them to Lead and cadmium.

13 49. Nevertheless, Defendants continue to expose consumers to Lead and  
14 cadmium without prior clear and reasonable warnings regarding the carcinogenic and  
15 reproductive hazards of Lead and the reproductive hazards of cadmium.

16 50. CEH has engaged in good-faith efforts to resolve the claims alleged herein  
17 prior to filing this complaint.

18 51. Any person "violating or threatening to violate" Proposition 65 may be  
19 enjoined in any court of competent jurisdiction. Health & Safety Code §25249.7. "Threaten to  
20 violate" is defined to mean "to create a condition in which there is a substantial probability that a  
21 violation will occur." Health & Safety Code §25249.11(e). Proposition 65 provides for civil  
22 penalties not to exceed \$2,500 per day for each violation of Proposition 65.

23 **FIRST CAUSE OF ACTION**

24 **(Violations of the Health & Safety Code §25249.6)**  
25 **(Defendants ABC Online Resources, LLC, ASADART, LLC, Costume Craze, L.C.,**  
26 **Costume Supercenter LLC, Costume Supercenter of NJ L.L.C., First Fantasies - Costume**  
27 **Cuzzins, Inc., Halloween Express, Morris Costumes, Inc., Screamers Costumes, Shop Bloc,**  
28 **Inc., Spirit Halloween Superstores, LLC, Unbeatable Sale.com, Inc. and DOES 1-200)**

52. CEH realleges and incorporates by reference as if specifically set forth

1 herein Paragraphs 1 through 51, inclusive.

2 53. By placing the Jewelry into the stream of commerce, each Defendant is a  
3 person in the course of doing business within the meaning of Health & Safety Code §25249.11.

4 54. Lead is a chemical listed by the State of California as known to cause  
5 cancer, birth defects or other reproductive harm.

6 55. Defendants ABC Online Resources, LLC, ASADART, LLC, Costume  
7 Craze, L.C., Costume Supercenter LLC, Costume Supercenter of NJ L.L.C., First Fantasies -  
8 Costume Cuzzins, Inc., Halloween Express, Morris Costumes, Inc., Screamers Costumes, Shop  
9 Bloc, Inc., Spirit Halloween Superstores, LLC, Unbeatable Sale.com, Inc. and DOES 1-200  
10 (collectively, the "Lead Defendants") know that average use of the Jewelry will expose users of  
11 the Jewelry to Lead. Lead Defendants intend that the Jewelry be used in a manner that results in  
12 users of the Jewelry being exposed to Lead contained in the Jewelry.

13 56. The Lead Defendants have failed, and continue to fail, to provide prior  
14 clear and reasonable warnings to users of the Jewelry regarding the carcinogenic or reproductive  
15 toxicity of Lead.

16 57. By committing the acts alleged above, the Lead Defendants have at all  
17 times relevant to this complaint violated Proposition 65 by knowingly and intentionally exposing  
18 individuals to Lead without first giving clear and reasonable warnings to such individuals  
19 regarding the carcinogenic or reproductive toxicity of Lead.

20 Wherefore, CEH prays for judgment against Lead Defendants, as set forth  
21 hereafter.

22 **SECOND CAUSE OF ACTION**

23 (Violations of the Health & Safety Code §25249.6)  
24 (Defendants Any Time Costumes.com, Inc., BuySeasons, Inc., First Fantasies - Costume  
25 Cuzzins, Inc., Gags and Games, Inc., Halloween Express,  
26 Toyнк Toys, LLC, Unbeatable Sale.com, Inc. and DOES 1-200)

27 58. CEH realleges and incorporates by reference as if specifically set forth  
28 herein Paragraphs 1 through 57, inclusive.

59. By placing the Jewelry into the stream of commerce, each Defendant is a  
person in the course of doing business within the meaning of Health & Safety Code §25249.11.

1                   60. Cadmium is a chemical listed by the State of California as known to cause  
2 birth defects or other reproductive harm.

3                   61. Defendants Any Time Costumes.com, Inc., BuySeasons, Inc., First  
4 Fantasies - Costume Cuzzins, Inc., Gags and Games, Inc., Halloween Express,  
5 Toykn Toys, LLC, Unbeatable Sale.com, Inc. and DOES 1-200 (collectively, the “Cadmium  
6 Defendants”) know that average use of the Jewelry will expose users of the Jewelry to cadmium.  
7 Cadmium Defendants intend that the Jewelry be used in a manner that results in users of the  
8 Jewelry being exposed to cadmium contained in the Jewelry.

9                   62. The Cadmium Defendants have failed, and continue to fail, to provide  
10 prior clear and reasonable warnings to users of the Jewelry regarding the reproductive toxicity of  
11 cadmium.

12                   63. By committing the acts alleged above, the Cadmium Defendants have at  
13 all times relevant to this complaint violated Proposition 65 by knowingly and intentionally  
14 exposing individuals to cadmium without first giving clear and reasonable warnings to such  
15 individuals regarding the reproductive toxicity of cadmium.

16                   Wherefore, CEH prays for judgment against Cadmium Defendants, as set forth  
17 hereafter.

18                   **PRAYER FOR RELIEF**

19                   Wherefore, CEH prays for judgment against Defendants as follows:

20                   1. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil  
21 penalties against each of the Defendants in the amount of \$2,500 per day for each violation of  
22 Proposition 65 according to proof;

23                   2. That the Court, pursuant to Health & Safety Code §25249.7(a),  
24 preliminarily and permanently enjoin Defendants from offering the Jewelry for sale in California  
25 without providing prior clear and reasonable warnings, as CEH shall specify in further  
26 application to the Court;

27                   3. That the Court, pursuant to Health & Safety Code §25249.7(a), order  
28 Defendants to take action to stop ongoing unwarned exposures to Lead and cadmium resulting

1 from use of Jewelry sold by Defendants, as CEH shall specify in further application to the Court;

2 4. That the Court, pursuant to Code of Civil Procedure §1021.5 or any other  
3 applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

4 5. That the Court grant such other and further relief as may be just and  
5 proper.

6

7 Dated: March 5, 2012

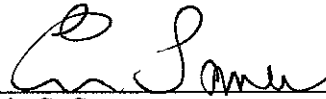
Respectfully submitted,

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LEXINGTON LAW GROUP

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Eric S. Somers  
Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH

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