

ENDORSED
FILED
ALAMEDA COUNTY

OCT 01 2012

CLERK OF THE SUPERIOR COURT
By ~~Kmet Dhillon~~

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION

15 ANTHONY E. HELD, PH.D., P.E.,

16 Plaintiff,

17 v.

18 ALMAR SALES CO., INC.; AMSCAN
19 HOLDINGS, INC.; EASTER UNLIMITED,
20 INC.; ELLIE SHOES, INC.; ELOPE, INC.;
21 EVERSTAR, US; FORUM NOVELTIES,
22 INC.; IN CHARACTER COSTUMES, INC.;
23 JACOBSON HAT CO., INC.; LEG AVENUE
24 INC.; LOVIN' ENTERPRISES, INC.;
25 MORBID ENTERPRISES, LLC; PAPER
26 MAGIC GROUP, INC.; RG COSTUMES &
27 ACCESSORIES, INC.; SILVERTOP
28 ASSOCIATES, INC.; R.H. SMITH & SONS
(WIGMAKERS) DBA SMIFFY'S;
UNDERWRAPS, INC.; and DOES 1-150,
inclusive,

Defendants.

Case No. HG12633575

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

(Cal. Health & Safety Code § 25249.6 et seq.)

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff ANTHONY E.
3 HELD, PH.D., P.E., in the public interest of the citizens of the State of California, to enforce the
4 People’s right to be informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”), lead and/or
5 lead compounds (“Lead”), butyl benzyl phthalate (“BBP”), di-n-butyl phthalate (“DBP”),
6 cadmium and/or cadmium compounds (“Cadmium”), arsenic (inorganic arsenic compounds and
7 inorganic oxides)(“Arsenic”), and/or formaldehyde (gas)(“Formaldehyde”), chemicals found in
8 consumer products sold in California.

9 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to
10 warn California citizens about their exposure to DEHP, Lead, BBP, DBP, Cadmium, Arsenic,
11 and/or Formaldehyde, present in or on certain Halloween costumes, Halloween costume
12 accessories (including wigs, masks, gloves, footwear, belts, bags, hats, costume props, hosiery,
13 and weapons and jewelry intended to accessorize a costume (excluding makeup)), and
14 Halloween indoor and outdoor home décor and games (including Halloween candy bowls, lawn,
15 wall, door and table ornaments and lights, decorative spiders/webs, lighting, ghosts, witches,
16 goblins, skeletons, bats, cats and tombstones), that defendants manufacture, import, distribute
17 and/or offer for sale to consumers throughout the State of California.

18 3. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
19 California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”), “No person in the course
20 of doing business shall knowingly and intentionally expose any individual to a chemical known
21 to the state to cause cancer or reproductive toxicity without first giving clear and reasonable
22 warning to such individual. . . .” (Cal. Health & Safety Code § 25249.6.)

23 4. On February 27, 1987, California identified and listed lead as a chemical known to
24 cause birth defects and other reproductive harm. Lead became subject to the warning requirement
25 one year later and was therefore subject to the “clear and reasonable warning” requirements of
26 Proposition 65, beginning on February 27, 1988. (Title 27 of the California Code of Regulation
27 (“CCR”) § 27001 (c); Cal. Health & Safety Code § 25249.8. & 25249.10(b).)

1 5. On February 27, 1987, California identified and listed arsenic (inorganic arsenic
2 compounds) as a chemical known to cause cancer. Arsenic (inorganic arsenic compounds)
3 became subject to the warning requirement one year later and was therefore subject to the “clear
4 and reasonable warning” requirements of Proposition 65, beginning on February 27, 1988. (Title
5 27 of the California Code of Regulation (“CCR”) § 27001 (c); Cal. Health & Safety Code §
6 25249.8. & 25249.10(b).)

7 6. On October 1, 1987, California identified and listed cadmium and cadmium
8 compounds as a chemical known to cause cancer. Cadmium and cadmium compounds became
9 subject to the warning requirement one year later and were therefore subject to the “clear and
10 reasonable warning” requirements of Proposition 65, beginning on October 1, 1988. (Title 27 of
11 the California Code of Regulation (“CCR”) § 27001 (c); Cal. Health & Safety Code § 25249.8.
12 & 25249.10(b).)

13 7. On January 1, 1988, California identified and listed formaldehyde (gas) as a
14 chemical known to cause cancer. Formaldehyde became subject to the warning requirement one
15 year later and was therefore subject to the “clear and reasonable warning” requirements of
16 Proposition 65, beginning on January 1, 1989. (Title 27 of the California Code of Regulation
17 (“CCR”) § 27001 (c); Cal. Health & Safety Code § 25249.8. & 25249.10(b).)

18 8. On October 1, 1992, California identified and listed lead and lead compounds as
19 chemicals known to cause cancer. Lead and lead compounds became subject to the warning
20 requirement one year later and were therefore subject to the “clear and reasonable warning”
21 requirements of Proposition 65, beginning on October 1, 1993. (Title 27 of the California Code
22 of Regulation (“CCR”) § 27001 (c); Cal. Health & Safety Code § 25249.8. & 25249.10(b).)

23 9. On May 1, 1997, California identified and listed cadmium as a chemical known to
24 cause birth defects and other reproductive harm. Cadmium became subject to the warning
25 requirement one year later and was, therefore, subject to the “clear and reasonable warning”
26 requirements of Proposition 65, beginning on May 1, 1998. (27 CCR § 27001 (c); Cal. Health &
27 Safety Code §§ 25249.8 & 25249.10(b).)

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1 10. On May 1, 1997, California identified and listed arsenic (inorganic oxides) as a
2 chemical known to cause birth defects and reproductive harm. Arsenic (inorganic oxides)
3 became subject to the warning requirement one year later and was therefore subject to the “clear
4 and reasonable warning” requirements of Proposition 65, beginning on May 1, 1998. (Title 27 of
5 the California Code of Regulation (“CCR”) § 27001 (c); Cal. Health & Safety Code § 25249.8.
6 & 25249.10(b).)

7 11. On October 23, 2003, California identified and listed DEHP as a chemical known
8 to cause birth defects and other reproductive harm. DEHP became subject to the warning
9 requirement one year later and was, therefore, subject to the “clear and reasonable warning”
10 requirements of Proposition 65, beginning on October 23, 2004. (27 CCR § 27001 (c); Cal.
11 Health & Safety Code § 25249.8. & 25249.10(b).)

12 12. On December 2, 2005, California identified and listed BBP and DBP as chemicals
13 known to cause birth defects and other reproductive harm. BBP and DBP became subject to the
14 warning requirement one year later and were, therefore, subject to the “clear and reasonable
15 warning” requirements of Proposition 65, beginning on December 2, 2006. (27 CCR § 27001
16 (c); Cal. Health & Safety Code §§ 25249.8 & 25249.10(b).)

17 13. Defendants manufacture, import, distribute, and/or sell Halloween costumes,
18 Halloween costume accessories, and Halloween indoor and outdoor home décor and games,
19 containing DEHP, Lead, BBP, DBP, Cadmium, Arsenic, and/or Formaldehyde, as follows:

20 a. Defendant ALMAR SALES CO., INC. manufactures, imports,
21 distributes, and/or sells Halloween costume accessories containing DEHP
22 including, but not limited to *Fierce & Fabulous Studded Gloves, PCG181, YC-*
23 *1106-4469 (#0 24576 86632 7);*

24 b. Defendant AMSCAN HOLDINGS, INC. manufactures, imports,
25 distributes, and/or sells Halloween costume accessories containing DEHP
26 including, but not limited to, *Deluxe Pirate Boot Tops, #7280 (#757565 127122);*

1 c. Defendant EASTER UNLIMITED, INC. manufactures, imports,
2 distributes, and/or sells Halloween costumes containing DEHP including, but not
3 limited to, *Spirit Meter's Running Adult Costume*, #01023142 and *Spirit Sexy*
4 *Scottie Adult Costume*, Item No. 120614M, #09060CGP35, #01022953;

5 d. Defendant ELLIE SHOES, INC. manufactures, imports,
6 distributes, and/or sells Halloween costume accessories containing DEHP, DBP,
7 and Lead;

8 e. Defendant ELOPE, INC. manufactures, imports, distributes, and/or
9 sells Halloween costumes and Halloween costume accessories containing DEHP,
10 DBP, BBP, Lead, and/or Arsenic;

11 f. Defendant EVERSTAR, US manufactures, imports, distributes,
12 and/or sells Halloween home décor containing DEHP including, but not limited
13 to, *70-count Light Set*, #65-343A (#7 64878 65343 9);

14 g. Defendant FORUM NOVELTIES, INC. manufactures, imports,
15 distributes, and/or sells Halloween costumes, Halloween costume accessories, and
16 Halloween indoor and outdoor décor containing DEHP, Lead, DBP, Cadmium,
17 Arsenic, and/or Formaldehyde;

18 h. Defendant IN CHARACTER COSTUMES, INC. manufactures,
19 imports, distributes, and/or sells Halloween costumes and Halloween costume
20 accessories containing DEHP, DBP, BBP, Lead, Cadmium, Arsenic, and/or
21 Formaldehyde;

22 i. Defendant JACOBSON HAT CO., INC. manufactures, imports,
23 distributes, and/or sells hats with bands containing Lead including, but not limited
24 to, *Cowboy Hat* (#7 63285 78779 9);

25 j. Defendant LEG AVENUE INC. manufactures, imports, distributes,
26 and/or sells Halloween costumes containing DEHP including, but not limited to,
27 *Leg Avenue Officer Bombshell 4PC. Costume*, Style: 83619 and Halloween
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1 costume accessories containing DEHP including, but not limited to, *Leg Avenue*
2 *Gangster Double Gun Zipper Holster, Style A1917 (#7 14718 43640 1)*;

3 k. Defendant LOVIN' ENTERPRISES, INC. manufactures, imports,
4 distributes, and/or sells Halloween costumes containing DEHP including, but not
5 limited to, *Dreamgirl "The Dirty Double" Costume, Style No. 5868X (#8 76802*
6 *08124 6)*;

7 l. Defendant MORBID ENTERPRISES, LLC manufactures, imports,
8 distributes, and/or sells Halloween costumes, Halloween costume accessories, and
9 Halloween indoor and outdoor décor containing DEHP, Lead, DBP, Cadmium,
10 Arsenic, and/or Formaldehyde;

11 m. Defendant PAPER MAGIC GROUP, INC. manufactures, imports,
12 distributes, and/or sells Halloween games containing DEHP including, but not
13 limited to, *Spider Ring Toss, #6529180 (#0 37693 02032 9)*; and

14 n. Defendant RG COSTUMES & ACCESSORIES, INC.
15 manufactures, imports, distributes, and/or sells Halloween costume accessories
16 containing DEHP including, but not limited to, *Santa's Belt, Item No. 82111 (#0*
17 *54225 82111 7)*;

18 o. Defendant SILVERTOP ASSOCIATES, INC. manufactures,
19 imports, distributes, and/or sells Halloween costumes and Halloween costume
20 accessories including, but not limited to, *The Bag Boutique by Rasta Imposta*
21 *Cauldron Bag, #5906 (#7 91249 59060 4)*, containing DEHP, DBP, BBP, Lead,
22 and Formaldehyde;

23 p. Defendant R.H. SMITH & SONS (WIGMAKERS) DBA
24 SMIFFY'S manufactures, imports, distributes, and/or sells Halloween costumes,
25 Halloween costume accessories including, but not limited to, *Authentic Western*
26 *Belt & Holster, #33097(#5 020570 330970)*, and Halloween indoor and outdoor
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1 home/party décor and games containing DEHP, DBP, BBP, Lead, Cadmium,
2 and/or Arsenic;

3 q. Defendant UNDERWRAPS, INC. manufactures, imports,
4 distributes, and/or sells Halloween costumes including, but not limited to,
5 *Underwraps Superior Quality Costumes, Thor, #28988 (#8 97164 89881 5)*, and
6 Halloween costume accessories containing DEHP, DBP, BBP, and Lead.

7 14. All Halloween costumes, Halloween costume accessories, and Halloween indoor
8 and outdoor home décor and games, containing DEHP, Lead, BBP, DBP, Cadmium, Arsenic,
9 and/or Formaldehyde, as listed above in paragraphs 13(a) through (q) above, shall hereinafter be
10 referred to as the “PRODUCTS.” As to each specific defendant, however, Products shall refer
11 only to those specific products listed for each specific defendant in paragraphs 13(a) through (q)
12 above.

13 15. DEHP, Lead, BBP, DBP, Cadmium, Arsenic, and Formaldehyde shall collectively
14 hereinafter be referred to as the “Listed Chemicals.” As to each specific defendant, however,
15 Listed Chemicals shall refer only to the specific chemical(s) listed for each specific defendant in
16 paragraphs 13(a) through (q) above.

17 16. Defendants’ failure to warn adequately, if at all, a variety of California consumers,
18 businesses, employees, and other persons not covered by California’s Occupational Safety
19 Health Act, Labor Code section 6300 *et seq.*, in the State of California about their exposure to
20 the Listed Chemicals in conjunction with defendants’ distribution, importation, manufacturing,
21 and sale of the PRODUCTS is a violation of Proposition 65 and subjects defendants to
22 enjoinder of such conduct as well as civil penalties for each violation.

23 17. For defendants’ violations of Proposition 65, plaintiff seeks preliminary injunctive
24 and permanent injunctive relief to compel defendants to provide purchasers or users of the
25 PRODUCTS with the required warning regarding the health hazards of the Listed Chemicals.
26 (Cal. Health & Safety Code § 25249.7(a).)

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1 27. Defendant ELLIE manufactures, imports, distributes, and/or offers the
2 PRODUCTS for sale or use in the State of California or implies by its conduct that it
3 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
4 California.

5 28. Defendant ELOPE, INC. (“ELOPE”) is a person doing business within the
6 meaning of California Health & Safety Code § 25249.11.

7 29. Defendant ELOPE manufactures, imports, distributes, and/or offers the
8 PRODUCTS for sale or use in the State of California or implies by its conduct that it
9 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
10 California.

11 30. Defendant EVERSTAR, US (“EVERSTAR”) is a person doing business within the
12 meaning of California Health & Safety Code § 25249.11.

13 31. Defendant EVERSTAR manufactures, imports, distributes, and/or offers the
14 PRODUCTS for sale or use in the State of California or implies by its conduct that it
15 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
16 California.

17 32. Defendant FORUM NOVELTIES, INC. (“FORUM”) is a person doing business
18 within the meaning of California Health & Safety Code § 25249.11.

19 33. Defendant FORUM manufactures, imports, distributes, and/or offers the
20 PRODUCTS for sale or use in the State of California or implies by its conduct that it
21 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
22 California.

23 34. Defendant IN CHARACTER COSTUMES, INC. (“IN CHARACTER”) is a
24 person doing business within the meaning of California Health & Safety Code § 25249.11.

25 35. Defendant IN CHARACTER manufactures, imports, distributes, and/or offers the
26 PRODUCTS for sale or use in the State of California or implies by its conduct that it

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1 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
2 California.

3 36. Defendant JACOBSON HAT CO., INC. (“JACOBSON”) is a person doing
4 business within the meaning of California Health & Safety Code § 25249.11.

5 37. Defendant JACOBSON manufactures, imports, distributes, and/or offers the
6 PRODUCTS for sale or use in the State of California or implies by its conduct that it
7 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
8 California.

9 38. Defendant LEG AVENUE INC. (“LEG”) is a person doing business within the
10 meaning of California Health & Safety Code § 25249.11.

11 39. Defendant LEG manufactures, imports, distributes, and/or offers the PRODUCTS
12 for sale or use in the State of California or implies by its conduct that it manufactures, imports,
13 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

14 40. Defendant LOVIN’ ENTERPRISES, INC. (“LOVIN’”) is a person doing business
15 within the meaning of California Health & Safety Code § 25249.11.

16 41. Defendant LOVIN’ manufactures, imports, distributes, and/or offers the
17 PRODUCTS for sale or use in the State of California or implies by its conduct that it
18 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
19 California.

20 42. Defendant MORBID ENTERPRISES, LLC (“MORBID”) is a person doing
21 business within the meaning of California Health & Safety Code § 25249.11.

22 43. Defendant MORBID manufactures, imports, distributes, and/or offers the
23 PRODUCTS for sale or use in the State of California or implies by its conduct that it
24 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
25 California.

26 44. Defendant PAPER MAGIC GROUP, INC. (“PAPER”) is a person doing business
27 within the meaning of California Health & Safety Code § 25249.11.

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1 45. Defendant PAPER manufactures, imports, distributes, and/or offers the
2 PRODUCTS for sale or use in the State of California or implies by its conduct that it
3 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
4 California.

5 46. Defendant RG COSTUMES & ACCESSORIES, INC. (“RG COSTUMES”) is a
6 person doing business within the meaning of California Health & Safety Code § 25249.11.

7 47. Defendant RG COSTUMES manufactures, imports, distributes, and/or offers the
8 PRODUCTS for sale or use in the State of California or implies by its conduct that it
9 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
10 California.

11 48. Defendant SILVERTOP ASSOCIATES, INC. (“SILVERTOP”) is a person doing
12 business within the meaning of California Health & Safety Code § 25249.11.

13 49. Defendant SILVERTOP manufactures, imports, distributes, and/or offers the
14 PRODUCTS for sale or use in the State of California or implies by its conduct that it
15 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
16 California.

17 50. Defendant R.H. SMITH & SONS (WIGMAKERS) DBA SMIFFY’S
18 (“SMIFFY’S”) is a person doing business within the meaning of California Health & Safety
19 Code § 25249.11.

20 51. Defendant SMIFFY’S manufactures, imports, distributes, and/or offers the
21 PRODUCTS for sale or use in the State of California or implies by its conduct that it
22 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
23 California.

24 52. Defendant UNDERWRAPS, INC. (“UNDERWRAPS”) is a person doing business
25 within the meaning of California Health & Safety Code § 25249.11.

26 53. Defendant UNDERWRAPS manufactures, imports, distributes, and/or offers the
27 PRODUCTS for sale or use in the State of California or implies by its conduct that it

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1 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of
2 California.

3 54. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each persons
4 doing business within the meaning of California Health & Safety Code § 25249.11.

5 55. MANUFACTURER DEFENDANTS engage in the process of researching, testing,
6 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
7 engage in the process of researching, testing, designing, assembling, fabricating and/or
8 manufacturing.

9 56. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
10 doing business within the meaning of California Health & Safety Code § 25249.11.

11 57. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
12 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use in
13 the State of California.

14 58. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons
15 doing business within the meaning of California Health & Safety Code § 25249.11.

16 59. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
17 State of California and, in some circumstances, may also be manufacturers and/or distributors.

18 60. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
19 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to
20 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that
21 each of the fictitiously named defendants is responsible for the acts and occurrences herein
22 alleged. When ascertained, their true names shall be reflected in an amended complaint.

23 61. ALMAR, AMSCAN, EASTER, ELLIE, ELOPE, EVERSTAR, FORUM, IN
24 CHARACTER, JACOBSON, LEG, LOVIN’, MORBID, PAPER, RG COSTUMES,
25 SILVERTOP, SMIFFY’S, UNDERWRAPS, MANUFACTURER DEFENDANTS,
26 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate,
27 collectively be referred to hereinafter as “DEFENDANTS.”

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1 **VENUE AND JURISDICTION**

2 62. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
3 Procedure §§ 394, 395, 395.5, because this Court is a court of competent jurisdiction, because
4 one or more instances of wrongful conduct occurred, and continues to occur, in the County of
5 Alameda and/or because DEFENDANTS conducted, and continue to conduct, business in this
6 County with respect to the PRODUCTS.

7 63. The California Superior Court has jurisdiction over this action pursuant to
8 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction in
9 all causes except those given by statute to other trial courts.” The statute under which this action
10 is brought does not specify any other basis of subject matter jurisdiction.

11 64. The California Superior Court has jurisdiction over DEFENDANTS based on
12 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
13 association that either are citizens of the State of California, have sufficient minimum contacts in
14 the State of California, or otherwise purposefully avail themselves of the California market.
15 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California
16 courts consistent with traditional notions of fair play and substantial justice.

17 **FIRST CAUSE OF ACTION**

18 **(Violation of Proposition 65 - Against All Defendants)**

19 65. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
20 Paragraphs 1 through 64, inclusive.

21 66. The citizens of the State of California have expressly stated in the Safe Drinking
22 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, *et seq.*
23 (“Proposition 65”) that they must be informed “about exposures to chemicals that cause cancer,
24 birth defects and other reproductive harm.” (Cal. Health & Safety Code § 25249.6.)

25 67. Proposition 65 states, “[n]o person in the course of doing business shall knowingly
26 and intentionally expose any individual to a chemical known to the state to cause cancer or
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1 reproductive toxicity without first giving clear and reasonable warning to such individual....”

2 (*Id.*)

3 68. On or about September 20, 2011, a sixty-day notice of violation, together with the
4 requisite certificate of merit, was provided to JACOBSON and various public enforcement
5 agencies stating that as a result of JACOBSON’s sales of the PRODUCTS, purchasers and users
6 in the State of California were being exposed to Lead resulting from the reasonably foreseeable
7 uses of the PRODUCTS, without the individual purchasers and users first having been provided
8 with a “clear and reasonable warning” regarding such toxic exposures.

9 69. On or about October 28, 2011, sixty-day notices of violation, together with the
10 requisite certificates of merit, were provided to FORUM, MORBID, and various public
11 enforcement agencies stating that as a result of their sales of the PRODUCTS, purchasers and
12 users in the State of California were being exposed to DEHP, Lead, DBP, Cadmium, Arsenic,
13 and/or Formaldehyde resulting from the reasonably foreseeable uses of the PRODUCTS, without
14 the individual purchasers and users first having been provided with a “clear and reasonable
15 warning” regarding such toxic exposures.

16 70. On or about December 13, 2011, sixty-day notices of violation, together with the
17 requisite certificates of merit, was provided to EASTER, LEG, LOVIN’, RG COSTUMES, and
18 various public enforcement agencies stating that as a result of their sales of the PRODUCTS,
19 purchasers and users in the State of California were being exposed to DEHP resulting from the
20 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first
21 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

22 71. On January 31, 2012, a sixty-day notice of violation, together with the requisite
23 certificate of merit, was provided to CSS Industries, Inc., PAPER, and various public
24 enforcement agencies stating that as a result of CSS Industries, Inc.’s and PAPER’s sales of the
25 PRODUCTS, purchasers and users in the State of California were being exposed DEHP resulting
26 from the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and
27 users first having been provided with a “clear and reasonable warning” regarding such toxic
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1 exposures. On June 15, 2012, a supplemental sixty-day notice of violation, together with the
2 requisite certificate of merit, was provided to CSS Industries, Inc., PAPER, and various public
3 enforcement agencies stating that as a result of CSS Industries, Inc.'s and PAPER's sales of the
4 PRODUCTS, purchasers and users in the State of California were being exposed to DEHP
5 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual
6 purchasers and users first having been provided with a "clear and reasonable warning" regarding
7 such toxic exposures. PAPER has assumed all of CSS Industries, Inc.'s liability as it pertains to
8 this matter.

9 72. On or about January 31, 2012, a sixty-day notice of violation, together with the
10 requisite certificate of merit, was provided to AMSCAN and various public enforcement
11 agencies stating that as a result of AMSCAN's sales of the PRODUCTS, purchasers and users in
12 the State of California were being exposed to DEHP resulting from the reasonably foreseeable
13 uses of the PRODUCTS, without the individual purchasers and users first having been provided
14 with a "clear and reasonable warning" regarding such toxic exposures.

15 73. On January 31, 2012, a sixty-day notice of violation, together with the requisite
16 certificate of merit, was provided to House of Humor and various public enforcement agencies
17 stating that as a result of House of Humor's sales of the PRODUCTS, purchasers and users in the
18 State of California were being exposed DEHP and Lead resulting from the reasonably
19 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
20 been provided with a "clear and reasonable warning" regarding such toxic exposures. On May
21 31, 2012, a sixty-day notice of violation, together with the requisite certificate of merit, was
22 provided to SMIFFY'S and various public enforcement agencies stating that as a result of
23 SMIFFY'S sales of the PRODUCTS, purchasers and users in the State of California were being
24 exposed to DEHP, DBP, BBP, Lead, Cadmium, and/or Arsenic resulting from the reasonably
25 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
26 been provided with a "clear and reasonable warning" regarding such toxic exposures.
27 SMIFFY'S has assumed all of House of Humor's liability as it pertains to this matter.

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1 74. On or about February 28, 2012, a sixty-day notice of violation, together with the
2 requisite certificate of merit, was provided to EVERSTAR and various public enforcement
3 agencies stating that as a result of EVERSTAR's sales of the PRODUCTS, purchasers and users
4 in the State of California were being exposed to DEHP resulting from the reasonably foreseeable
5 uses of the PRODUCTS, without the individual purchasers and users first having been provided
6 with a "clear and reasonable warning" regarding such toxic exposures.

7 75. On or about March 8, 2012, a sixty-day notice of violation, together with the
8 requisite certificate of merit, was provided to ALMAR and various public enforcement agencies
9 stating that as a result of ALMAR's sales of the PRODUCTS, purchasers and users in the State
10 of California were being exposed to DEHP resulting from the reasonably foreseeable uses of the
11 PRODUCTS, without the individual purchasers and users first having been provided with a
12 "clear and reasonable warning" regarding such toxic exposures.

13 76. On May 30, 2012, a sixty-day notice of violation, together with the requisite
14 certificate of merit, was provided to General Novelty, Ltd. and various public enforcement
15 agencies stating that as a result of General Novelty, Ltd.'s sales of the PRODUCTS, purchasers
16 and users in the State of California were being exposed Lead resulting from the reasonably
17 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
18 been provided with a "clear and reasonable warning" regarding such toxic exposures. On July
19 11, 2012, a sixty-day notice of violation, together with the requisite certificate of merit, was
20 provided to UNDERWRAPS and various public enforcement agencies stating that as a result of
21 UNDERWRAPS' sales of the PRODUCTS, purchasers and users in the State of California were
22 being exposed to DEHP, DBP, BBP, and Lead resulting from the reasonably foreseeable uses of
23 the PRODUCTS, without the individual purchasers and users first having been provided with a
24 "clear and reasonable warning" regarding such toxic exposures. UNDERWRAPS has assumed
25 all of General Novelty, Ltd.'s liability as it pertains to this matter.

26 77. On or about May 31, 2012, a sixty-day notice of violation, together with the
27 requisite certificate of merit, was provided to ELLIE and various public enforcement agencies
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1 stating that as a result of ELLIE's sales of the PRODUCTS, purchasers and users in the State of
2 California were being exposed to DEHP, DBP, and Lead resulting from the reasonably
3 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
4 been provided with a "clear and reasonable warning" regarding such toxic exposures.

5 78. On or about May 31, 2012, a sixty-day notice of violation, together with the
6 requisite certificate of merit, was provided to ELOPE and various public enforcement agencies
7 stating that as a result of ELOPE's sales of the PRODUCTS, purchasers and users in the State of
8 California were being exposed to DEHP, DBP, BBP, Lead, and/or Arsenic resulting from the
9 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users first
10 having been provided with a "clear and reasonable warning" regarding such toxic exposures.

11 79. On or about May 31, 2012, a sixty-day notice of violation, together with the
12 requisite certificate of merit, was provided to IN CHARACTER and various public enforcement
13 agencies stating that as a result of IN CHARACTER's sales of the PRODUCTS, purchasers and
14 users in the State of California were being exposed to DEHP, DBP, BBP, Lead, Cadmium,
15 Arsenic, and/or Formaldehyde resulting from the reasonably foreseeable uses of the
16 PRODUCTS, without the individual purchasers and users first having been provided with a
17 "clear and reasonable warning" regarding such toxic exposures.

18 80. On or about August 1, 2012, a sixty-day notice of violation, together with the
19 requisite certificate of merit, was provided to SILVERTOP and various public enforcement
20 agencies stating that as a result of SILVERTOP's sales of the PRODUCTS, purchasers and users
21 in the State of California were being exposed to DEHP, DBP, BBP, Lead, and/or Formaldehyde
22 resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual
23 purchasers and users first having been provided with a "clear and reasonable warning" regarding
24 such toxic exposures.

25 81. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
26 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
27 DEFENDANTS' manufacture, distribution and/or offering of the PRODUCTS for sale or use in
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1 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
2 DEFENDANTS' receipt of plaintiff's sixty-day notice of violation. Plaintiff further alleges and
3 believes that such violations will continue to occur into the future.

4 82. After receipt of the claims asserted in the above-referenced sixty-day notices of
5 violation (paragraphs 54 through 59), the appropriate public enforcement agencies have failed to
6 commence and diligently prosecute a cause of action against DEFENDANTS under Proposition
7 65.

8 83. The PRODUCTS manufactured, imported, distributed, and/or offered for sale or
9 use in California by DEFENDANTS contained the Listed Chemicals above the allowable state
10 limits.

11 84. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
12 imported, distributed, and/or offered for sale or use by DEFENDANTS in California contained
13 the Listed Chemicals.

14 85. The Listed Chemicals were present in or on the PRODUCTS in such a way as to
15 expose individuals to the Listed Chemicals through dermal contact, ingestion and/or inhalation
16 during the reasonably foreseeable use of the PRODUCTS.

17 86. The normal and reasonably foreseeable use of the PRODUCTS has caused and
18 continues to cause consumer and workplace exposures to the Listed Chemicals, as such exposure
19 is defined by 27 California Code of Regulations ("CCR") § 25602(b).

20 87. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
21 the PRODUCTS would expose individuals to the Listed Chemicals through dermal contact,
22 ingestion and/or inhalation.

23 88. DEFENDANTS intended that such exposures to the Listed Chemicals from the
24 reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental
25 participation in the manufacture, importation, distribution and/or offer for sale or use of
26 PRODUCTS to individuals in the State of California.

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1 89. DEFENDANTS failed to provide a “clear and reasonable warning” to those
2 consumers and/or other individuals in the State of California who were or who could become
3 exposed to the Listed Chemicals through dermal contact, ingestion and/or inhalation during the
4 reasonably foreseeable use of the PRODUCTS.

5 90. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
6 directly by California voters, individuals exposed to the Listed Chemicals through dermal
7 contact, ingestion and/or inhalation resulting from the reasonably foreseeable use of the
8 PRODUCTS, sold by DEFENDANTS without a “clear and reasonable warning,” have suffered,
9 and continue to suffer, irreparable harm, for which harm they have no plain, speedy or adequate
10 remedy at law.

11 91. As a consequence of the above-described acts, DEFENDANTS are each liable for
12 a maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &
13 Safety Code § 25249.7(b).

14 92. As a consequence of the above-described acts, California Health & Safety Code
15 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
16 DEFENDANTS.

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1 **PRAYER FOR RELIEF**

2 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

3 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess
4 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation alleged
5 herein;

6 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing or
8 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable
9 warnings” as defined by 27 CCR § 25601, as to the harms associated with exposures to the
10 Listed Chemicals;


11 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

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

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14 Dated: October 1, 2012

Respectfully Submitted,

15 THE CHANLER GROUP

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17 By: 
18 Josh Voorhees
19 Attorneys for Plaintiff
20 ANTHONY E. HELD, PH.D., P.E.,
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