

# AMENDED SECOND SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE § 25249.7(d)

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**DATE:** September 20, 2011

**TO:** Marc Beige, President – Rubie’s Costume Company, Inc.  
California Attorney General’s Office;  
District Attorney’s Office for 58 Counties; and  
City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles

**FROM:** Anthony E. Held, Ph.D., P.E.

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## I. INTRODUCTION

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My name is Anthony E. Held. I hold a Doctor of Philosophy degree in Environmental Engineering and I am a registered professional engineer in the State of California. I am a citizen of the State of California acting in the interest of the general public. I seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items. This Notice is provided to the public agencies listed above pursuant to California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”) and amends the 60-Day Notice of Violation sent on October 29, 2010, which supplemented the 60-Day Notices of Violation sent on January 26, 2009, and June 30, 2009. As noted above, notice is also being provided to the alleged violator, Rubie’s Costume Company, Inc. (the “Violator”). The violations covered by this Notice consist of the product exposures, routes of exposure, and types of harm potentially resulting from exposure to the toxic chemicals (“listed chemicals”) identified below, as follows:

Product Exposure: See Section VII. Exhibit A  
Listed Chemicals: Di(2-ethylhexyl)phthalate (“DEHP”); Di-n-butyl phthalate (“DBP”);  
Lead and/or Lead Compounds; Cadmium and/or Cadmium Compounds;  
Arsenic and/or Arsenic Compounds; Formaldehyde  
Routes of Exposure: Ingestion, Dermal  
Types of Harm: Cancer and/or Birth Defects and Other Reproductive Harm

## II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

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The specific types of products that are causing consumer and occupational exposures in violation of Proposition 65, and that are covered by this Notice, are listed under “Product Category/Type” in Exhibit A in Section VII below. All products within the types covered by this Notice shall be referred to hereinafter as the “products.” The sales of these products in California dating as far back as September 20, 2008 are subject to this notice. As a result of the sales of these products, exposures to the listed chemicals have been occurring without clear and reasonable warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposure to the listed chemicals, resulting from contact with the products, California citizens lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the toxic chemicals from the reasonably foreseeable use of the products.

**A. CONSUMER PRODUCT EXPOSURE (DEHP AND DBP)**

California citizens, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemicals. Infants, children and/or women of childbearing age ingest the listed chemicals when they, among other activities, place the product, or a portion thereof, into their mouth, or otherwise suck, lick, teethe and/or bite the product thereby allowing the listed chemicals to leach out of the substrate directly into their mouths. Infants, children and/or women of childbearing age ingest the listed chemicals when they, among other activities, touch the products and transfer the listed chemicals from the products to their mouths through hand-to-mouth activities that may continue to occur for a significant period after contact with the products stops. Infants, children and/or women of childbearing age are exposed to the listed chemicals through direct dermal contact when they, among other activities, handle, touch or otherwise use the products.

**B. CONSUMER PRODUCT EXPOSURE (LEAD, CADMIUM, ARSENIC, AND FORMALDEHYDE)**

California consumers, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemicals. By way of example but not limitation, exposures occur when California citizens use, display, clean, repair, pack, unpack, arrange, store or otherwise handle the products. These tasks cause consumers to be exposed directly or indirectly through the routine touching of the parts or portions of the products containing readily available surface amounts of the listed chemicals. Additionally, exposure can occur through the routine touching and ingesting of other materials that are contaminated with the listed chemicals from the products as a result of these tasks. People likely to be exposed include both children and adults.

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**III. CONTACT INFORMATION**

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Please direct all questions concerning this notice to me through my counsel's office at the following address:

Anthony E. Held, Ph.D., P.E.  
c/o Josh Voorhees  
The Chanler Group  
Parker Plaza  
2560 Ninth Street, Suite 214  
Berkeley, CA 94710  
Telephone: (510) 848-8880

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**IV. PROPOSITION 65 INFORMATION**

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For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment's ("OEHHHA") Proposition 65 Implementation Office at (916) 445-6900. For the Violator's reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHHA.

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**V. RESOLUTION OF NOTICED CLAIMS**

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Based on the allegations set forth in this Notice, I intend to file a citizen enforcement lawsuit against the alleged Violator unless such Violator enters into a binding written agreement to: (1) recall products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those whom have received such products; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health & Safety Code § 25249.7(b). If the alleged Violator is interested in resolving this dispute without resort to time-consuming and expensive litigation, please feel free to contact my counsel identified in Section III above. It should be noted that neither my counsel nor I can: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any District or City Attorney who received this Notice. Therefore, while reaching an agreement with me will resolve my claims, such agreement may not satisfy the public prosecutors.

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**VI. ADDITIONAL NOTICE INFORMATION**

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Identified below are specific examples that are within the categories or types of offending products covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the examples within the categories or types of product are also provided below. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 "clear and reasonable warnings" at one or more locations and/or via other means including, but not limited to, transactions made over-the-counter, business-to-business, through the internet and/or via a catalog by the Violator and other distributors and retailers of the manufacturer.

<i>Product*</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Yarn Babies Caribbean Pirate [Costume], #11739 (#0 82686 11739 5)	Spirit Halloween Superstores; Spencer Gifts LLC Alameda County, Northern California	Rubie's Costume Company, Inc.
Lil' All Stars! Lil' Slugger [Costume], #11278 (#0 82686 11278 9)	<a href="http://www.costumecraze.com">http://www.costumecraze.com</a>	Rubie's Costume Company, Inc.
Batman Child Gauntlets, #8151 (#0 82686 08151)	Target Corporation Sacramento County, Northern California	Rubie's Costume Company, Inc.
Inflatable Pumpkin Bean Bag Toss Game, #57403 (#7 21773 57403 0)	<a href="http://www.costumecraze.com">http://www.costumecraze.com</a>	Rubie's Costume Company, Inc.

VI. ADDITIONAL NOTICE INFORMATION (continued)

<i>Product*</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Hanging Girls Economy Costumes, Style Nos. LBOXI275 (#881028, #881026, #881029, #881095, #881125), SKU No. 778203		Rubie's Costume Company, Inc.
Sequin Dorothy [Costume], Style Nos. 882812, 883702 (HG882812)		Rubie's Costume Company, Inc.
Devilish Diva [Costume], Item No. 881125		Rubie's Costume Company, Inc.
2PC Mask (34G), Item No. 10732-M		Rubie's Costume Company, Inc.
Witch Shoes, Style Nos. WM881406, 881406 (884025)		Rubie's Costume Company, Inc.
Devilish Diva Seq. Devil Horns, Item No. 881125-H		Rubie's Costume Company, Inc.
Wigs, Item Nos. 51559, 51558, 51561, 52563		Rubie's Costume Company, Inc.
Darth Vader Light Saber, Style Nos. 3949(570), WM3949		Rubie's Costume Company, Inc.
80's Star Earrings, Style No. 63283		Rubie's Costume Company, Inc.
Lady Gaga SL-Bracelet, Item No. 30152		Rubie's Costume Company, Inc.
Tombstone Assortment, Item Nos. M370101, M36901, M36903, M36904, M36907, M36911, M36913, 8060, 8061, 8099, 8066, 8064, 8063, 6047, 6048, 6045, 6046, 6049, 68150, 6078, 6079, 6080, 6081, 6082, 68138, 3024		Rubie's Costume Company, Inc.

VII. EXHIBIT A

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Halloween Costumes containing one or more of the chemicals listed herein.	<p>Yarn Babies Caribbean Pirate [Costume], #11739 (#0 82686 11739 5);</p> <p>Lil' All Stars! Lil' Slugger [Costume], #11278 (#0 82686 11278 9);</p> <p>Hanging Girls Economy Costumes, Style Nos. LB0XI275 (#881028, #881026, #881029, #881095, #881125), SKU No. 778203;</p> <p>Sequin Dorothy [Costume], Style Nos. 882812, 883702 (HG882812);</p> <p>Devilish Diva [Costume], Item No. 881125</p>	<p>Di(2-ethylhexyl)phthalate; Di-n-butyl phthalate; Lead and/or Lead Compounds; Cadmium and/or Cadmium Compounds; Arsenic and/or Arsenic Compounds; and/or Formaldehyde.</p>
Halloween Costume Accessories, specifically wigs, masks, gloves, footwear, belts, bags, hats, costume props, hosiery, weapons and jewelry intended to accessorize a costume (but excluding makeup) <sup>1</sup> containing one or more of the chemicals listed herein.	<p>Batman Child Gauntlets, #8151 (#0 82686 08151);</p> <p>2PC Mask (34G), Item No. 10732-M;</p> <p>Witch Shoes, Style Nos. WM881406, 881406 (884025);</p> <p>Devilish Diva Seq. Devil Horns, Item No. 881125-H;</p> <p>Wigs, Item Nos. 51559, 51558, 51561, 52563;</p> <p>Darth Vader Light Saber, Style Nos. 3949(570), WM3949;</p> <p>80's Star Earrings, Style No. 63283;</p> <p>Lady Gaga SL-Bracelet, Item No. 30152</p>	<p>Di(2-ethylhexyl)phthalate; Di-n-butyl phthalate; Lead and/or Lead Compounds; Cadmium and/or Cadmium Compounds; Arsenic and/or Arsenic Compounds; and/or Formaldehyde.</p>

<sup>1</sup> Jewelry products that are the subject of other third-party Proposition 65 60-day notices issued on or before August 1, 2011, such as the Center for Environmental Health notices to Rubies Costume Company, Inc. dated November 20, 2008 and December 9, 2010, are specifically carved out and excluded from this Notice.

VII. EXHIBIT A (continued)

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Halloween indoor and outdoor Home Décor and Games, specifically Halloween candy bowls, lawn, wall, door and table ornaments, decorative spiders/webs, ghosts, witches, goblins, skeletons, bats, cats and tombstones containing one or more of the toxins listed herein.	Inflatable Pumpkin Bean Bag Toss Game, #57403 (#7 21773 57403 0);  Tombstone Assortment, Item Nos. M370101, M36901, M36903, M36904, M36907, M36911, M36913, 8060, 8061, 8099, 8066, 8064, 8063, 6047, 6048, 6045, 6046, 6049, 68150, 6078, 6079, 6080, 6081, 6082, 68138, 3024	Di(2-ethylhexyl)phthalate; Di-n-butyl phthalate; Lead and/or Lead Compounds; Cadmium and/or Cadmium Compounds; Arsenic and/or Arsenic Compounds; and/or Formaldehyde.

\*The specifically identified examples of the types of product which are subject to this Notice are for the recipient's benefit to assist in its investigation of, among other things, the magnitude of potential exposure to the listed chemicals from other items within the product categories/types listed in Exhibit A. It is important to note that these examples are not meant to be an exhaustive or comprehensive identification of each specific offending product of the types listed under "Product Category/Type" in Exhibit A and that not all of the examples contain all of the listed chemicals. Further, it is this citizen's position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the types or categories described above that may have been manufactured, distributed, sold, shipped, or stored (or otherwise within the notice recipient's custody or control) during the relevant period so as to ensure that the requisite warnings were and are provided to California citizens prior to purchase.

# PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, CA 94710.

On September 20, 2011, I served the following documents:

**AMENDED SECOND SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(d);**

**PROPOSITION 65: A SUMMARY;**

**CERTIFICATE OF MERIT; AND**

**CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE ATTORNEY GENERAL)**

on the alleged Violator listed below via First Class Certified Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the entity listed below and providing such envelope to a United States Postal Service Representative:

Marc Beige, President  
Rubie's Costume Company, Inc.  
1 Ruby Plaza  
Richmond Hill, NY 11418

as well as providing copies of the notice to the public enforcers by placing a true and correct copy in a sealed envelope, addressed to each party listed below, and served as follows:

<i>Via 2<sup>nd</sup> Day Air Service by placing such envelope in a Federal Express Drop-Off Box:</i>	The Attorney General of the State of California;
<i>By placing each envelope in a United States Postal Service mailbox, postage prepaid:</i>	The District Attorney for Each of the 58 counties in California; and  The City Attorney for Los Angeles, San Diego, San Jose, San Francisco and Sacramento

*A list of addresses for each of these recipients is attached.*

Executed on September 20, 2011, at Berkeley, California.



Caroline Liang

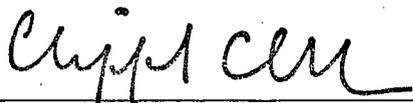
# CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Clifford A. Chanler, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice has violated Health and Safety Code § 25249.6 by failing to provide clear and reasonable warnings;
2. I am the attorney for the noticing party;
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the *alleged* exposure to the listed chemicals that is the subject of this action;
4. Based on the information obtained through those consultations, and on all other information in my possession, including the Certification received from the alleged Violator, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute;
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health and Safety Code § 25249.7(h)(2) (*i.e.*, (1) the identity of the persons consulted with and relied on by the certifier, (2) the facts, studies, or other data reviewed by those persons, and (3) the Certification received from the alleged Violator).

Dated: September 20, 2011

  
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Clifford A. Chanler