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17 **UNITED STATES DISTRICT COURT**  
18 **SOUTHERN DISTRICT OF CALIFORNIA**

19 MARLIESE WEED on behalf of herself and all  
20 others similarly situated,

21 Plaintiff,

22 v.

23 AMERICA'S COLLECTIBLES NETWORK,  
24 INC. d/b/a JEWELRY TELEVISION,

25 Defendant.

26 Case No. \_\_\_\_\_

27 **CLASS ACTION COMPLAINT**  
28 **FOR DAMAGES AND**  
**INJUNCTIVE RELIEF**

**JURY TRIAL DEMANDED**

1 Plaintiff, Marliese Weed, individually and on behalf of all others similarly situated, by  
2 and through her undersigned attorneys, brings this action against Defendant America's  
3 Collectibles Network, Inc. d/b/a Jewelry Television ("Jewelry Television"), based upon personal  
4 knowledge as to herself, and as to all other matters, based upon information and belief and upon  
5 the investigation of Plaintiff's counsel to date, demanding a trial by jury, and alleges as follows:

6 **INTRODUCTION**

7 1. Plaintiff Marliese Weed brings this action as a class action on behalf of herself  
8 and a Class consisting of persons or entities in the State of California and elsewhere throughout  
9 the United States who purchased gemstones described by Defendant as green or red "andesine -  
10 labradorite" from Defendant from January 1, 2003 – the present. Plaintiff brings this action to  
11 recover the money that she and the Class spent on gemstones fraudulently advertised and  
12 misrepresented by Defendant as being a highly-coveted, extremely rare, all natural, expensive  
13 gem that looks like Oregon sunstone, an exceptionally rare feldspar with vivid reddish-orange  
14 colors. In reality, Defendant has sold to customers throughout the United States of America low-  
15 cost yellow or colorless labradorite that has been given a chemical "facelift" to make it appear  
16 like the rare Oregon sunstone.

17 **THE PARTIES**

18 2. Plaintiff Marliese Weed is a resident of the County of San Diego, State of  
19 California. Ms. Weed purchased andesine-labradorite from Defendant during the class period at  
20 a cost of over \$4,000.

21 3. Defendant America's Collectibles Network, Inc. d/b/a Jewelry Television is a  
22 corporation organized under the law of the State of Tennessee and with a principal place of  
23 business at 10001 Kingston Pike Street 57, Knoxville, Tennessee, 37922. Defendant is  
24 authorized to do business in California, has sufficient minimum contacts with California,  
25 broadcasts a full-time satellite and cable television show on channels JTV and JWLV  
26 nationwide and in California, promotes and sells its products in California and nationwide on  
27 www.jewelerytelevision.com, markets, delivers, promotes, and advertises its products to  
28 consumers in California and throughout the United States, and/or otherwise has intentionally



1           9. Defendant's website explains to consumers that Andesine and Labradorite are  
2 each distinct members of the feldspar mineral family, and that their self-coined "andesine-  
3 labradorite" gems contain such a "close relationship between both minerals" that the gems  
4 cannot be separated by gemologists "with the standard array of tools available to the trade." See  
5 [www.jewelrytelevision.com/index.aspx?tid=24222](http://www.jewelrytelevision.com/index.aspx?tid=24222).

6           10. The red and green Gemstones that the company has sold to consumers greatly  
7 resemble Oregon sunstone, a rare feldspar with vivid reddish-orange colors. Oregon sunstone is  
8 mined and marketed by American vendors proud of the natural and untreated beauty and value of  
9 their rare gemstones, and the only verified known source of such gemstones is Oregon. All-  
10 natural Oregon sunstone sells for at least \$100 per carat, usually far more.

11           11. Defendant, through its website, claims to be unable to answer the question "What  
12 gives red and green andesine-labradorite their color," responding that "[t]his question has not  
13 been answered yet. Although major labs have studied these gemstones, the nature of the color is  
14 still conjecture. This may change in the near future." [www.jewelrytelevision.com/index.aspx?](http://www.jewelrytelevision.com/index.aspx?tid=24222)  
15 [tid=24222](http://www.jewelrytelevision.com/index.aspx?tid=24222)

16           12. In fact, Defendant's Gemstones only resemble the *real* Oregon gemstones as a  
17 result of artificial treatment including heating and/or diffusion of low-value yellow feldspar from  
18 China, Mexico, Mongolia, and/or other inexpensive sources.

19           13. During the class period, Defendant, a very large and sophisticated company with  
20 in excess of \$400 million in revenues last year, knew or should have known that the Gemstones  
21 it was selling were shams and nothing more than the mass-produced result of chemical facelifts  
22 in gemological beauty parlors. Upon information and belief, these "facelifts" were done to the  
23 inexpensive and abundant yellow or colorless labradorite.

24           14. Defendant, upon information and belief, obtained its sham product for pennies per  
25 carat and sold it for extraordinary profits. Because the sham Gemstones came from plentiful  
26 low-value yellow feldspar, Defendant was able to sell them for great profits while still  
27 undercutting the per-carat price of real Oregon sunstone.  
28

1           15. Defendant stated that its lower prices had nothing to do with cosmetic  
2 improvement and everything to do with production costs, availability (JTV claimed to have the  
3 largest inventory in the World), and the mysterious discovery of purported new sources of the  
4 Gemstones.

5           16. Defendant likewise touted, on national television broadcast around the country,  
6 that the stones are “100% natural.” The following is a transcript of a sales presentation made for  
7 Red Andesine-Labradorite jewelry on a Jewelry Television show, given by two Jewelry  
8 Television presenters:

9           **[Speaker #1]:** This ring that you are going to be seeing. And we  
10 are talking about rarity, we’re talking about, this could - there are  
11 only 25 of these. This could actually be the most rare gemstone on  
12 the face of the planet. And when I say could be your saying well it  
13 could be well do you not know? Nope. Do you know why? We  
14 want - From every bit of factual information that we have right  
15 now we could say that it’s the most rare gemstone on the face of  
16 the planet but the reason that we can’t is because nobody knows  
17 exactly where the mine site is. And we have probably – no not  
18 probably, let me take that back. We have at Jewelry Television,  
19 documented [sic] the best supply of red andesine labradorite in the  
20 entire world. We at Jewelry TV. We are basically and primarily a  
21 gemstone company....Red labradorite went from \$2,000 to \$3,000  
22 carat retail in one week.

23           **[Speaker #2]:** True story – fact. [picks up and shows a calculator].

24           **[Speaker #1]:** [Angela, the show planner and merchandiser] said,  
25 something must really really be desperately going on in that mine  
26 site for it to have gone from 2 to 3 thousand in one week. I’m  
27 talking about serious depletion. So guys \$3,000 a carat on the red  
28 andesine labradorite.... This is a ring that could potentially be  
more rare than Alexandrite more rare than Tanzanite more rare  
than Paraiba Tourmaline and more rare than all of them put  
together.

**[Speaker #2]:** Absolutely.

**[Speaker #1]:** And the reason that we know that to be true is  
because we know that we’ve got the largest supply of red andesine  
labradorite in the world and we don’t have much and we can’t get  
much. It is the best kept secret in the history of jewelry. There has  
never been a gemstone that the mine site has been kept a hidden  
secret for this amount of time.... I am trying to keep up with what  
is going on and they are saying that red andesine labradorite is just  
[...] it’s a mystery stone it is a fabulous gemstone.

**[Speaker #2]:** A connoisseur’s delight.

**[Speaker #1]:** It is the most collectible gemstone in the planet  
right now, the most talked about. \$3,000 a carat. Take a look at

1 this up close. At 2.30 carats for the red labradorite. [...] So lets  
2 just assume that since you've got the 44 points of diamonds. A  
collector could pay \$7,000 for this easy.

3 **[Speaker #2]:** Oh yeah.

4 **[Speaker #1]:** A collector could pay 7,000 for this. This could be  
5 a 7,000 baby. A collector. Guys and the stone is 100 % natural and  
6 untreated. Now let me just say this. When we bought this, the stone  
was \$500 dollars. When we bought it, it was \$500. It was not  
\$3,000 a carat when we bought this. [...]

7 **[Speaker #2]:** It's a sensational value.

8 **[Speaker #1]:** [...] [T]his could be the most important piece of  
9 jewelry you ever collected in your entire life because \$3,000 a  
10 carat is the retail on the stone and to get a stone over a half a carat  
11 is considered to be a miracle. A half a carat is considered to be a  
12 miracle. Now let me tell you what we've done, because of the  
13 price jump of red andesine labradorite. We are going to show you  
14 every piece of lab that we have to my knowledge at all on the  
jewelry site and its four. How does that strike you. This is a  
company with 3,000 something employees last count and we have  
billions of pieces of jewelry, billions, billions! And we have four  
selections of red andesine labradorite. Okay, that should help  
someone [...].

15 **[Speaker #2]:** As you are ordering this, understand if you are  
16 learning about Andesine you're curious, what is this red andesine  
labradorite. And the Andesine is the codicil that's the indicator  
17 that's the one that says get on it and grab it. Take it to a certified  
gemologist – if you are learning about gemology – get on the  
18 website – get some of the books and start learning and understand.  
What I want you to do is get this home. It is such an incredible  
19 value I am so serious about this and what this gemstone will mean  
in the world of jewelry [...] get it home and then do the research  
20 you've got 30 days to do the research and if it does not come back  
with everything we said and its 100 times more – which we can't  
21 even get to – it's a college course really when you think about it  
because you can study gemology for a lifetime and never  
22 understand it completely. Its one of those fields and endeavors that  
is constantly evolving and changing but this is a very important  
gem in the world of collectibles. It's a big carat weight. It looks  
23 like a ... sapphire. It is 100% natural and there are so few gems in  
the world that can come close to that fact. So few. [...] [R]ed  
24 andesine labradorite which comes from the family - it's a feldspar  
[sic] andesine labradorite....

25 17. The results of tests on the Gemstones, conducted by gemologists, reflect that the  
26 Gemstones have been artificially colorized by surface diffusion of copper and iron and other  
27 treatment. In other words, the "rich greens and reds of both minerals" composing Defendant's  
28 Gemstones are only surface-deep and the gems are not "100% natural."

1           18.     The stones sold by Defendant originally came from nature with none of the color  
2 and appearance virtues on which Defendant has touted the stones. The beauty is phony, nothing  
3 more than a factory add-on.

4           19.     During the pertinent times, Defendant has sold what in reality was nothing but  
5 colorless and yellow common feldspar, which benefited from secret treatment to give stones  
6 thick color rinds of red and green.

7           20.     In December 2007, Defendant advertised the Gemstones on its television network  
8 for prices of, for example, a one carat stone for \$149, three carat stone for \$689, four carat stone  
9 for \$919. In January 2008, Defendant was advertising the Gemstones for prices of, for example,  
10 a one carat stone for \$49, and a one carat stone in a ring for \$79.

11          21.     In January 2008, Defendant on its television network promoted the Gemstones for  
12 their purported resale value and touted how consumers could learn more about andesine  
13 labradorite on its website.

14          22.     In or about January 2008, Defendant marketed the Gemstones as products that  
15 were selling out fast and announced how Defendant was on the cusp of announcing information  
16 regarding andesine labradorite that purportedly no one in the gem world had been able to  
17 discover.

18          23.     In February 2008, Defendant announced that it had purportedly found an andesine  
19 mine in China, but also --- after receiving consumer complaints --- admitted that the Gemstones  
20 that they had touted as 100% natural really derived their color from artificial treatment.

21          24.     In February 2008, Jewelry Television co-founder Jerry Sisk claimed that  
22 Defendant always thought the Gemstones were natural, and that Defendant had sent samples to  
23 major labs that were all unable to shed any light on the truth about the Gemstones.

24                 **Interviewer:** We thought this color was natural. Can you tell us a  
25 little bit about that?

26                 **Jerry Sisk (co-founder Jewelry Television):** I think everybody  
27 did. We all sent samples to the major labs. And they didn't know  
28 the mechanism. They couldn't determine the mechanism. So  
basically they couldn't say this was treated. So it was assumed the  
material was natural. It wasn't until we actually got to the mine,  
saw the operation, and saw how they were performing that

1 transformation that we knew the truth and now we're bringing it  
2 out.

3 25. After an uprising of consumer complaints, Defendant admitted that the  
4 Gemstones it had been selling were "heated" but even then insisted that this treatment is  
5 acceptable and that the artificially enhanced Gemstones somehow have the same value as real,  
6 all-natural gemstones:

7 **Interviewer:** When we discovered the mine, we actually found  
8 out the material was heat treated. Does this affect the value of the  
9 stone?

10 **Jerry Sisk:** No. What you're buying is the color. And color rules  
11 when it comes to gem stones. The other thing is when we found  
12 the mine we realized that they would take a ton of material, of raw  
13 material, earth. They would basically get 2 to 2.2 pounds of rough  
14 out of that ton of earth. And then, when they treated it, they maybe  
15 had 2-3 ounces of material that changed. So you're talking about  
16 from a ton to come down to 2 or 3 ounces and not all that is even  
17 cutable. So you start realizing that it's a rare gemstone because  
18 very little material ends up the way you really want it to be.

19 Defendant also offered customers a brief return period which was not publicized or advertised,  
20 was ill-administered, and did not even begin to correct the harm that was done.

21 26. Pursuant to the Federal Trade Commission ("FTC") "Guides for the Jewelry,  
22 Precious Metals, and Pewter Industries," at § 23.22, "[i]t is unfair or deceptive to fail to disclose  
23 that a gemstone has been treated if . . . the treatment has a significant effect on the stone's value.  
24 The seller should disclose that the gemstone has been treated." According to the FTC's note to §  
25 23.22, "[t]he disclosures outlined in this section are applicable to sellers at every level of trade"  
26 and "where a jewelry product can be purchased without personally viewing the product, (e.g.,  
27 direct mail catalogs, online services, televised shopping programs) disclosure should be made in  
28 the solicitation for or description of the product." During the pertinent times, Defendant  
systematically failed to provide these required consumer disclosures.

29 27. Pursuant to FTC Guide § 23.1, "[i]t is unfair or deceptive to misrepresent the  
30 type, kind, grade, quality, quantity, metallic content, size, weight, cut, color, character, treatment,  
31 substance, durability, serviceability, origin, price, value, preparation, production, manufacture,  
32 distribution, or any other material aspect of an industry product." Defendant violated this  
33 provision.



1 28. Pursuant to FTC Guide Note 2 to § 23.1, “[t]o prevent deception, any  
2 qualifications or disclosures, such as those described in the guides, should be sufficiently clear  
3 and prominent.” Defendant did not comply with this provision.

4 29. Pursuant to FTC Guide § 23.2, “[i]t is unfair or deceptive to use, as part of any  
5 advertisement, packaging material, label, or other sales promotion matter, any visual  
6 representation, picture, televised or computer image, illustration, diagram, or other depiction  
7 which, either alone or in conjunction with any accompanying words or phrases, misrepresents  
8 the type, kind, grade, quality, quantity, metallic content, size, weight, cut, color, character,  
9 treatment, substance, durability, serviceability, origin, preparation, production, manufacture,  
10 distribution, or any other material aspect of an industry product.” Defendant violated this  
11 provision.

12 30. Defendant’s failures to comply with the pertinent FTC provisions evidences  
13 Defendant’s violations of the CLRA, and California’s Unfair Competition Laws and False  
14 Advertising Laws.

15 **CLASS ACTION ALLEGATIONS**

16 31. Plaintiff brings this class action, pursuant to the provisions of California Code of  
17 Civil Procedure § 382, California Civil Code § 1781, and Federal Rule of Civil Procedure 23, on  
18 behalf of the following class (“Class”):

19 All persons and entities in the United States who purchased  
20 Gemstones from Defendant from January 1, 2003, to the present.

21 32. Excluded from the Class is the Defendant, its officers, directors, agents, trustees,  
22 corporations, trusts, representatives, employees, principals, servants, partners, joint venturers, or  
23 entities controlled by the Defendant; business entities for purposes of Plaintiff’s claim for relief  
24 under the California Consumers Legal Remedies Act, Civil Code §1750, *et seq.*; the Judge  
25 assigned to this action, any member of the Judge’s immediate family; and counsel for Plaintiff.

26 33. Subject to additional information obtained through further investigation and  
27 discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or  
28 amended complaint.

1           34.     Although the exact number and identity of Class members is not presently known,  
2 they can be identified in Defendant's records through discovery. Nonetheless, Plaintiff is  
3 informed and believes that thousands of consumers purchased Gemstones within the United  
4 States during the class period. The class is, therefore, so numerous and geographically dispersed  
5 that joinder of all members in one action is impracticable.

6           35.     There are numerous common questions of fact and law arising out of Defendant's  
7 conduct and its false and misleading sales practices associated with the Gemstones. The issues  
8 alleged herein are ones of a common or general interest, of many persons, and it is impracticable  
9 to bring them all before the court, such that one or more may sue for the benefit of all. Defendant  
10 has acted with respect to Plaintiff and members of the proposed class in a manner generally  
11 applicable to each of them.

12           36.     Common questions of fact and law predominate over any questions affecting only  
13 individual members of the Class. The predominating common or class-wide questions of fact  
14 include the following:

- 15           a.     whether Defendant falsely advertised the Gemstones;
- 16           b.     whether the Gemstones were in fact artificially enhanced to show colors  
17                 that they did not originally have;
- 18           c.     whether the artificially enhanced Gemstones have the same value as  
19                 gemstones that authentically and originally have the color qualities;
- 20           d.     whether Defendant used false, misleading, and/or deceptive statements or  
21                 representations in selling the Gemstones;
- 22           e.     whether Defendant's actions with respect to the sale and marketing of the  
23                 Gemstones were unconscionable;
- 24           f.     whether Defendant represented on Gemstones' advertising that Gemstones  
25                 had a characteristics, ingredients, uses, or benefits that they did not have,  
26                 in violation of California Civil Code § 1770(a)(5);

- 1 g. whether Defendant represented that Gemstones were of a particular  
2 standard, quality, or grade that they were not, in violation of California  
3 Civil Code § 1770(a)(7);
- 4 h. whether Defendant advertised Gemstones with the intent not to sell it as  
5 advertised in violation of California Civil Code § 1770(a)(9);
- 6 i. whether Defendant is subject to liability for violating the Consumers Legal  
7 Remedies Act, California Civil Code § 1750 et seq.;
- 8 j. whether Defendant has violated the Unfair Competition Law, California  
9 Business and Professions Code § 17200 et seq.;
- 10 k. whether Defendant has violated the False Advertising Law, California  
11 Business and Professions Code § 17500 et seq.;
- 12 l. whether Plaintiff and class members are entitled to an award of  
13 compensatory damages pursuant to California Civil Code § 1780(a)(1);
- 14 m. whether Plaintiff and class members are entitled to an award of statutory  
15 damages pursuant to California Civil Code § 1780(a)(1);
- 16 n. whether Plaintiff and class members are entitled to an award of restitution  
17 pursuant to California Civil Code § 1780(a)(3);
- 18 o. whether Plaintiff and class members are entitled to an award of punitive  
19 damages pursuant to California Civil Code § 1780(a)(4);
- 20 p. whether Defendant has been unjustly enriched as a result of the unlawful,  
21 fraudulent, and unfair conduct alleged herein, such that it would be  
22 inequitable for Defendant to retain the benefits conferred upon it by  
23 Plaintiff and the proposed class; and
- 24 q. whether the class is entitled to an award of restitution;

25 37. Defendant's defenses, to the extent that any such defenses apply, are applicable  
26 generally to Plaintiff and the entire Class and are not distinguishable as to proposed Class  
27 Members.  
28

1           38. Plaintiff's claims are typical of the claims of all proposed class members as a  
2 whole, all of whom have sustained damages, as a proximate, direct, or legal result of the  
3 common course of conduct of Defendant as complained of herein. Plaintiff's claims are typical  
4 of the Class because Defendant subjected all Class members to the same course of conduct.

5           39. Plaintiff will fairly and adequately represent and protect the interests of the  
6 proposed class, and does not have interests that are antagonistic to or in conflict with those he  
7 seeks to represent. Plaintiff has retained counsel who have considerable experience in the  
8 prosecution of class actions and other forms of complex litigation. Plaintiff is able to fairly and  
9 adequately protect the interests of all members of the Class.

10           40. Under the factual and legal circumstances alleged herein, a class action  
11 proceeding is superior to any other methods available for both fair and efficient adjudication of  
12 the rights of each Class member. In view of the complexity of the issues and the expense that an  
13 individual plaintiff would incur if he or she attempted to obtain relief from a large corporation  
14 such as those that have been named as Defendant in this action, the separate claims of individual  
15 class members or joinder of individual members of the class is impractical because the claims are  
16 monetarily insufficient to support separate actions. Because of the size of the individual class  
17 members' claims, few, if any, class members could afford to seek legal redress for the wrongs  
18 complained of in this Complaint.

19           41. To process individual cases would also increase the expense and delay to Class  
20 Members, the Defendant, and the Court. In contrast, a class action in this matter will avoid case  
21 management difficulties and provide multiple benefits to the litigating parties, including  
22 efficiency, economy of scale, unitary adjudication with consistent results and equal protection of  
23 the rights of each Class member, all by the way of the comprehensive and efficient supervision  
24 of the litigation by a single court.

25           42. The proposed class is readily definable, and prosecution of Plaintiff's claims as a  
26 class action will eliminate the possibility of repetitious litigation and will provide redress for  
27 claims too small to support the expense of individual, complex litigation. Absent a class action,  
28 class members will continue to suffer losses, Defendant's violations of law will be allowed to

1 proceed without a full, fair, judicially supervised remedy, and Defendant will retain sums  
2 received as a result of its wrongdoing. A class action therefore provides a fair and efficient  
3 method for adjudicating this controversy.

4 43. The prosecution of separate claims by individual class members would create a  
5 risk of inconsistent or varying adjudications with respect to thousands of individual class  
6 members, which would, as a practical matter, dispose of the interests of the class members not  
7 parties to those separate actions or would substantially impair or impede their ability to protect  
8 their interests and enforce their rights.

9 44. Notice of a certified class action and of any resolution of the litigation can be  
10 provided to Class members by first-class mail, email, broadcasting on Defendant's own  
11 networks, or publication, or such other methods of notice as deemed appropriate by the Court.

12 45. Defendants benefited from the sale of the Gemstones to Plaintiff and the Class,  
13 and the benefit to Defendant can be identified from the sale and the monies received from the  
14 Gemstone purchasers. All or a portion of this benefit retained by Defendant is money in which  
15 Plaintiff and the Class have an ownership interest. Plaintiff and the Class were injured and lost  
16 money as a result of Defendant's unfair, unlawful, and fraudulent business practices described  
17 herein.

18 **FIRST CLAIM FOR RELIEF**  
**(For Violations of the Consumers Legal Remedies Act Cal. Civ. Code §§1750, et seq.)**

19 46. Plaintiff realleges and hereby incorporates by reference the allegations set forth in  
20 each of the preceding paragraphs of this Complaint as if they were fully set forth herein.

21 47. This claim is brought pursuant to California Civil Code § 1750 et seq., the  
22 California Consumers Legal Remedies Act ("CLRA").

23 48. Defendant is a "person" within the meaning of Civil Code §§1761(c) and 1770,  
24 and sell "goods" within the meaning of Civil Code §§1761(b) and 1770.

25 49. Plaintiff and the Class are consumers within the meaning of Civil Code §1761(d).

26 50. The subject Gemstones under California Civil Code § 1761(a) constitute "goods."

27 51. Plaintiff and the Class' purchase of a Gemstone from Defendant constitutes a  
28 transaction within the meaning of Civil Code §§1761(e) and 1770.

1           52. Defendant's conduct violated and continues to violate the CLRA in at least the  
2 following respects:

- 3           a. In violation of §1770(a)(2) of the CLRA, Defendant "misrepresent[ed] the  
4 source, sponsorship, approval, or certification of goods."  
5           b. In violation of § 1770(a)(3) of the CLRA, Defendant "misrepresent[ed]  
6 the affiliation, connection, or association with, or certification by,  
7 another."  
8           c. In violation of §1770(a)(4) of the CLRA, Defendant "us[ed] deceptive  
9 representations or designations of geographic origin in connection with  
10 goods,  
11           d. In violation of § 1770(a)(5) of the CLRA, Defendant "represent[ed] that  
12 goods . . . have sponsorship, approval, characteristics, ingredients, uses,  
13 benefits, or quantities which they do not have,"  
14           e. In violation of §1770(a)(7) of the CLRA, Defendant represented that  
15 goods are of a particular standard, quality or grade when they are of  
16 another.  
17           f. In violation of §1770(a)(9) of the CLRA, Defendant advertised goods with  
18 the intent not to sell them as advertised.  
19           g. In violation of §1770(a)(14) of the CLRA, Defendant represented that the  
20 transaction was supplied in accordance with a previous representation  
21 when it has not.

22           53. Defendant engaged in these unfair and/or deceptive acts and practices with the  
23 intent that they result, and which did result, in the sale of the Gemstones to Plaintiff and the  
24 Class.

25           54. In purchasing the Gemstones from Defendant, Plaintiff and the Class reasonably  
26 believed and/or depended on the material false and/or misleading information provided by  
27 Defendant with respect to the value, quality, and gemological make-up of the Gemstones. In  
28

1 other words, Defendant induced Plaintiff and the Class to purchase the Gemstones through the  
2 acts and omissions alleged herein.

3 55. Upon information and belief, under California Civil Code § 1755, to the extent  
4 that Defendant may be found to be “the owners or employees of any advertising medium,  
5 including, but not limited to, newspapers, magazines, broadcast stations, billboards and transit  
6 ads, by whom any advertisement in violation of this title is published or disseminated,” said  
7 Defendant had knowledge of the deceptive methods, acts or practices declared to be unlawful by  
8 Section 1770.

9 56. In engaging in unfair or deceptive conduct in violation of the CLRA, Defendant  
10 actively concealed and failed to disclose material facts about the true characteristics of the  
11 Gemstones purchased by Plaintiff and the Class.

12 57. As a result of Defendant’s acts and practices as alleged in this Complaint, Plaintiff  
13 seeks and order enjoining Defendant from continuing to engage in unlawful, unfair or fraudulent  
14 business practices, and any other act prohibited by law.

15 58. Plaintiff has contemporaneous with the filing of this Complaint provided notice to  
16 Defendant pursuant to Civil Code §1782(a), and will amend to add claims for damages under the  
17 CLRA if Defendant does not take appropriate corrective action. These damages are likely to  
18 include those available under California Civil Code § 1780(a) (for damages resulting from the use  
19 or employment by Defendant of a method, act, or practice declared to be unlawful by Section  
20 1770); California Civil Code § 1780(a)(1)(actual damages); California Civil Code § 1780(a)(3)  
21 (restitution); California Civil Code § 1780(a)(4) (punitive damages); and California Civil Code §  
22 1780(a)(5)(any other relief which the court deems proper).

23 59. Pursuant to California Civil Code § 1780(d), Plaintiff and class members are  
24 entitled to an award of court costs and attorney's fees.

25 60. Pursuant to California Civil Code § 1783, this claim is brought not more than  
26 three years from the date of the commission of the alleged improper method, act, or practice.  
27  
28

1  
2 **SECOND CLAIM FOR RELIEF**  
3 **(For Violations of the Unfair Competition Law Cal. Bus. & Prof. Code §§17200, et seq.)**

4 61. Plaintiff realleges and hereby incorporates by reference the allegations set forth in  
5 each of the preceding paragraphs of this Complaint as if they were fully set forth herein.

6 62. This claim is brought pursuant to the California Unfair Competition Law  
7 (“UCL”), Bus. & Prof. Code §§ 17200 et seq.

8 63. Plaintiff may pursue a representative claim on behalf of others in that Plaintiff  
9 meets the standing requirements of California Business and Professions Code §§ 17204 and  
10 complies with Section 382 of the Code of Civil Procedure.

11 64. Defendant’s acts and practices relating to its sales and advertisements of the  
12 Gemstones, as described herein, constitute unlawful, unfair or fraudulent business practices in  
13 violation of the UCL.

14 65. The utility of Defendant’s marketing and sale of the Gemstones to the public is  
15 significantly outweighed by the gravity of the harm they impose on Plaintiff and the Class.  
16 Defendant’s acts and practices are oppressive, unscrupulous or substantially injurious to  
17 consumers.

18 66. The above-described unfair, unlawful and fraudulent business practices conducted  
19 by Defendant present a threat and likelihood of harm and deception to members of the Class in  
20 that Defendant has systematically perpetrated and continue to perpetrate the unfair, unlawful and  
21 fraudulent conduct upon members of the public by engaging in the conduct described herein.

22 67. Defendant’s acts and practices constitute unlawful business practices in violation  
23 of Business and Professions Code §§17200 *et seq.* because, among other things, they violate the  
24 CLRA, Cal. Civ. Code §§1750 *et seq.*, Business & Professional Code §§17500 *et seq.*, and the  
25 FTC Guide for the Jewelry, Precious Metals, and Pewter Industries, §§23.22 *et seq.*

26 68. Plaintiff and the Class have suffered harm as a proximate result of the wrongful  
27 conduct of the Defendant alleged herein, and therefore bring this claim for relief for restitution  
28 and disgorgement. Plaintiff is a person who has suffered injury in fact and has lost money as a  
result of such unfair competition.



1           69.     In purchasing the Gemstones from Defendant, Plaintiff and the Class reasonably  
2 believed and/or depended on the material false and/or misleading information provided by  
3 Defendant with respect to the value, quality, and gemological make-up of the Gemstones. In  
4 other words, Defendant induced Plaintiff and the Class to purchase the Gemstones through the  
5 acts and omissions alleged herein.

6           70.     Pursuant to Business and Professions Code §§17200 and 17203, Plaintiff, on  
7 behalf of herself and the Class, seek an order of this Court: enjoining the Defendant from  
8 continuing to sell and market the Gemstones to the public without fully disclosing their true  
9 characteristics. Plaintiff and the Class are further entitled to, and pray for, restitution of all  
10 monies paid in connection with Defendant’s unconscionable sale of the Gemstones.

11          71.     Plaintiff further request an order awarding Plaintiff and the Class restitution and  
12 disgorgement of profits acquired by Defendant by means of such unlawful acts and practices, so  
13 as to deter Defendant and to rectify Defendant’s unfair and unlawful practices and to restore any  
14 and all monies to Plaintiff and the class, which are still retained by Defendant, plus interest and  
15 attorneys’ fees and costs pursuant to, *inter alia*, Code of Civil Procedure §1021.5.

16          72.     Pursuant to California Business and Professions Code §§ 17204 and 17535,  
17 Plaintiff and class members have suffered injury in fact and have lost money or property as a  
18 result of a violation of the UCL.

19          73.     Defendant has further violated the UCL’s proscription against engaging in  
20 unlawful conduct as a result of its violations of the CLRA, as alleged above; by falsely  
21 advertising Gemstones; and otherwise by engaging in fraudulent and deceptive conduct.

22                                    **THIRD CLAIM FOR RELIEF**  
23                                    **(For Violations of California’s False Advertising Law**  
  **Cal. Bus. & Prof. Code §§17500, *et seq.*)**

24          74.     Plaintiff realleges and hereby incorporate all proceeding paragraphs as if they  
25 were fully set forth herein

26          75.     Plaintiff and the Class have suffered injury in fact and lost money and/or property,  
27 including but not limited to monies unlawfully, unfairly and deceptively obtained through the  
28

1 Defendant's sale of the Gemstones. Plaintiff has standing to pursue her claims under Business  
2 and Professions Code §§ 17203, 17205, and 17500.

3 76. Defendant's actions, as alleged herein, occurred in the conduct of trade or  
4 commerce directly or indirectly affecting consumers throughout California and the United States,  
5 through their advertisements, marketing and representations concerning the Gemstones.

6 77. In purchasing the Gemstones from Defendant, Plaintiff and the Class reasonably  
7 believed and/or depended on the material false and/or misleading information provided by  
8 Defendant with respect to the value, quality, and gemological make-up of the Gemstones. In  
9 other words, Defendant induced Plaintiff and the Class to purchase the Gemstones through the  
10 acts and omissions alleged herein.

11 78. Defendants caused to be made or disseminated throughout California and the  
12 United States, through advertising, marketing and other publications, statements that are untrue  
13 or misleading, and which were known, or which by the exercise of reasonable care should have  
14 been known to Defendants, to be untrue, misleading to consumers, Plaintiff and the Class.

15 79. Plaintiffs, on behalf of themselves and all others similarly situated, are entitled to  
16 and seek an injunction prohibiting Defendants from engaging in the acts and practices  
17 complained of, and recovery of their attorneys' fees and costs pursuant to, *inter alia*, Code of  
18 Civil Procedure section 1021.5.

19 **FOURTH CLAIM FOR RELIEF**  
20 **(For Unjust Enrichment)**

21 80. Plaintiff realleges and hereby incorporate by reference the allegations set forth in  
22 each of the preceding paragraphs of this Complaint as if they were fully set forth herein.

23 81. By engaging in the conduct described in this Complaint, Defendant has been  
24 unjustly enriched at the expense of Plaintiff and the Class by its sale of Gemstones by the use of  
25 false advertising and by engaging in fraudulent and deceptive conduct.

26 82. As a proximate result of Defendant's unlawful, fraudulent, and unfair conduct,  
27 Defendant has obtained revenues by which they became unjustly enriched at Plaintiff and  
28 members of the proposed class's expense.



