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ENDORSED
FILED
ALAMEDA COUNTY

MAY 12 2006

CLERK OF THE SUPERIOR COURT
JY YASMIN SINGH, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

RG06269531

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

Plaintiff,)

v.)

NADRI, INC.; THALIA PRODUCTS, INC.;)
VENUS FASHION JEWELRY; LA-KONTRA;)
and Defendant DOES 1 through 200, inclusive,)

Defendants.)

Case No. _____

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

Health & Safety Code §25249.6 *et seq.*

(Other)

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

4 **INTRODUCTION**

5 1. This complaint seeks to remedy defendants' continuing failure to warn
6 individuals in California that they are being exposed to lead and lead compounds (collectively,
7 "Lead"), chemicals known to the State of California to cause cancer, birth defects and other
8 reproductive harm. Such exposures have occurred, and continue to occur, through the
9 manufacture, distribution, sale and use of defendants' jewelry, such as bracelets, necklaces, and
10 earrings, made of materials containing Lead (the "Products"). Lead is present in both the
11 metallic and non-metallic parts of the Products. The route of exposure for the violations is direct
12 ingestion when consumers place the Products in their mouths, ingestion via hand to mouth
13 contact after consumers wear, touch or handle the Products or eat after coming into contact with
14 the Products, and dermal absorption directly through the skin when consumers wear, touch or
15 handle the Products. Many of the Products are designed for and marketed to young children and
16 teens, who are particularly likely to place the Products in their mouths and who are also
17 particularly susceptible to lead poisoning. These exposures occur in homes, workplaces and
18 everywhere else throughout California where people wear, touch or handle the Products. Clear
19 and reasonable warnings are not provided to users of the Products regarding the carcinogenic or
20 reproductive hazards of Lead. Consequently, defendants have violated and continue to violate
21 the warning provision of Proposition 65. Health & Safety Code §25249.6.

22 **PARTIES**

23 2. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a
24 non-profit corporation dedicated to protecting the public from environmental health hazards and
25 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the
26 State of California. CEH is a "person" within the meaning of Health & Safety Code
27 §25249.11(a) and brings this enforcement action in the public interest pursuant to Health &
28 Safety Code §25249.7(d). CEH is a nationally recognized non-profit environmental advocacy

1 Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except
2 those given by statute to other trial courts.” The statute under which this action is brought do not
3 grant jurisdiction to any other trial court.

4 11. This Court has jurisdiction over the Defendants because, each is a business
5 entity that does sufficient business, has sufficient minimum contacts in California, or otherwise
6 intentionally avails itself of the California market, through the sale, marketing or use of the
7 Products in California. to render the exercise of jurisdiction over it by the California courts
8 consistent with traditional notions of fair play and substantial justice.

9 12. Venue is proper in the Alameda Superior Court because one or more of the
10 violations arise in the County of Alameda.

11 **BACKGROUND FACTS**

12 13. The People of the State of California have declared by initiative under
13 Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth
14 defects, or other reproductive harm.” Proposition 65, §1(b).

15 14. To effectuate this goal, Proposition 65 requires that individuals be
16 provided with a “clear and reasonable warning” before being exposed to chemicals listed by the
17 State of California as known to cause cancer, birth defects and other reproductive harm unless
18 the business responsible for the exposure can prove that it fits within a statutory exemption.
19 Health & Safety Code §25249.6 states, in pertinent part:

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

24 15. On February 27, 1987, the State of California officially listed lead as a
25 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive
26 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to
27 the developing fetus, “female reproductive toxicity,” which means harm to the female
28 reproductive system, and “male reproductive toxicity,” which means harm to the male
29 reproductive system. 22 California Code of Regulations (“CCR”) §12000(c). On February 27,

1 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead
2 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
3 under Proposition 65. 22 CCR §12000(c); Health & Safety Code §25249.10(b).

4 16. On October 1, 1992, the State of California officially listed lead and lead
5 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
6 listed as a chemicals known to cause cancer, lead and lead compounds became subject to the
7 clear and reasonable warning requirement regarding carcinogens under Proposition 65. 22 CCR
8 §12000(c); Health & Safety Code §25249.10(b).

9 17. Under Proposition 65, an exposure is “knowing” where the party
10 responsible for such exposure has:

11 knowledge of the fact that a[n] . . . exposure to a chemical listed
12 pursuant to Health and Safety Code §25249.8(a) is occurring. No
13 knowledge that the . . . exposure is unlawful is required.

14 22 CCR §12201(d).

15 18. Defendants know that individuals, including children, wear, touch and
16 handle the Products, thus exposing them to Lead without prior clear and reasonable warning
17 regarding the carcinogenic or reproductive hazards of Lead.

18 19. Defendants intend that individuals, including children, through the
19 reasonably foreseeable use of the Products, wear, touch and handle the Products, thus exposing
20 them to Lead without prior clear and reasonable warning regarding the carcinogenic or
21 reproductive hazards of Lead.

22 20. The Products contain sufficient quantities of Lead such that consumers
23 who wear, touch or handle the Products are exposed to Lead through the reasonably foreseeable
24 use of the Products. These exposures occur when people who wear, touch or handle the Products
25 ingest the Lead by placing the Products directly in their mouths, ingest the Lead by hand to
26 mouth contact, ingest the Lead by eating or drinking after coming into contact with the Products,
27 and absorb the Lead through directly the skin. No clear and reasonable warning is provided with
28 the Products regarding the carcinogenic or reproductive hazards of Lead.

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

5 22. More than sixty days before naming each Defendant in this suit, CEH
6 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General,
7 the District Attorneys of every county in California, the City Attorneys of every California city
8 with a population greater than 750,000, and to each named Defendant. In compliance with
9 Health & Safety Code §25249.7(d) and 22 CCR §12903(b), each Notice of Violation included
10 the following information: the name and address of the violator; the statute violated; the time
11 period during which violations occurred; specific descriptions of the violations, including the
12 routes of exposure to Lead from the Products, and the specific type of product with specific
13 non-exclusive examples of Products sold and used in violation of Proposition 65; and the name
14 of the specific Proposition 65-listed chemical that is the subject of the violation described in the
15 Notice (Lead).

16 23. CEH also sent a Certificate of Merit relating to each of the Notices to the
17 California Attorney General, the District Attorneys of every county in California, the City
18 Attorneys of every California city with a population greater than 750,000, and to each named
19 Defendant. In compliance with Health & Safety Code §25249.7(d) and 11 CCR §3101, each of
20 these Certificates certified that CEH’s counsel: (1) has consulted with one or more persons with
21 relevant and appropriate experience or expertise who reviewed facts, studies or other data
22 regarding the exposures to Lead alleged in the Notice; and (2) based on the information obtained
23 through such consultations, believes that there is a reasonable and meritorious case for a citizen
24 enforcement action based on the facts alleged in the attached Notice. In compliance with Health
25 & Safety Code §25249.7(d) and 11 CCR §3102, each of the Certificates served on the Attorney
26 General included factual information – provided on a confidential basis – sufficient to establish
27 the basis for the Certificate, including the identity of the person(s) consulted by CEH’s counsel
28 and the facts, studies or other data reviewed by such persons.

1 **PRAYER FOR RELIEF**

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

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

6 2. That the Court, pursuant to Health & Safety Code §25249.7(a),
7 preliminarily and permanently enjoin Defendants from offering the Products for sale in
8 California without providing clear and reasonable warnings, as plaintiff shall specify in further
9 application to the Court;

10 3. That the Court, pursuant to Health & Safety Code §25249.7(a), order
11 Defendants to take action to stop ongoing unwarned exposures to Lead resulting from use of
12 Products sold by Defendants, as CEH shall specify in further application to the Court;

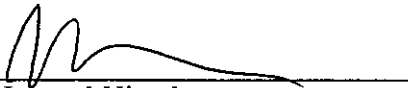
13 4. That the Court, pursuant to Code of Civil Procedure §1021.5 and any other
14 applicable theory, grant Plaintiff its reasonable attorneys' fees and costs of suit; and

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

17 Dated: May 11, 2006

18 Respectfully submitted,

19 LEXINGTON LAW GROUP, LLP

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22 Howard Hirsch
23 Attorneys for Plaintiff
24 CENTER FOR ENVIRONMENTAL
25 HEALTH
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