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ENDORSED
FILED
ALAMEDA COUNTY

NOV - 8 2010

CLERK OF THE SUPERIOR COURT
By Barbara Lamotte Deputy

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

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13 CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)
14)
Plaintiff,)
15)
v.)
16)
CARA ACCESSORIES LTD.; and Defendant)
17 DOES 1 through 200, inclusive,)
18)
Defendants.)
19 _____)

Case No. RG10545687

COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES

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

(Other)

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

4 INTRODUCTION

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

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

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

26 PARTIES

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

1 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair
2 play and substantial justice.

3 11. Venue is proper in the Alameda Superior Court because one or more of the
4 violations arise in the County of Alameda.

5 **BACKGROUND FACTS**

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

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

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

17 14. On February 27, 1987, the State of California officially listed lead as a
18 chemical known to cause reproductive toxicity. Lead is specifically identified as a reproductive
19 toxicant under three subcategories: “developmental reproductive toxicity,” which means harm to
20 the developing fetus, “female reproductive toxicity,” which means harm to the female
21 reproductive system, and “male reproductive toxicity,” which means harm to the male
22 reproductive system. 27 California Code of Regulations (“C.C.R.”) §27001(c). On February 27,
23 1988, one year after it was listed as a chemical known to cause reproductive toxicity, lead
24 became subject to the clear and reasonable warning requirement regarding reproductive toxicants
25 under Proposition 65. *Ibid.*; Health & Safety Code §25249.10(b).

26 15. On October 1, 1992, the State of California officially listed lead and lead
27 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
28 listed as chemicals known to cause cancer, lead and lead compounds became subject to the clear

1 and reasonable warning requirement regarding carcinogens under Proposition 65. 27 C.C.R.
2 §27001(c); Health & Safety Code §25249.10(b).

3 16. On May 1, 1997, the State of California officially listed cadmium as a
4 chemical known to cause reproductive toxicity. Cadmium is specifically identified as a
5 reproductive toxicant under two subcategories: “developmental reproductive toxicity” and “male
6 reproductive toxicity.” 27 C.C.R. §27001(c). Cadmium became subject to the Proposition 65
7 “clear and reasonable” reproductive toxicity warning one year later beginning on May 1, 1998.
8 *Ibid.*; Health & Safety Code §25249.10(b).

9 17. For over six years, CEH has been extensively investigating the presence of
10 toxic chemicals in Jewelry made available for sale in California. CEH’s investigation has
11 included filing three Proposition 65 lawsuits against manufacturers and re-sellers of Jewelry that
12 contain Lead, entitled *Center for Environmental Health v. Hot Topic, Inc., et al.* (Alameda
13 County Superior Court Case No. RG 04-162037), *Center for Environmental Health v. Nadri,*
14 *Inc. et al.* (Alameda County Superior Court Case No. RG 06-269531) and *Center for*
15 *Environmental Health v. Two’s Company, Inc., et al.* (Alameda County Superior Court case
16 number pending). CEH’s Lead-in-Jewelry actions have resulted in the entry of dozens of
17 consent judgments restricting the Lead levels permitted in Jewelry as well as the passing of
18 California and federal laws prohibiting the sale of Leaded Jewelry. More recently, CEH’s
19 investigation has expanded to include research and testing regarding the presence of cadmium in
20 Jewelry, which has revealed that some manufacturers of Jewelry appear to be using cadmium as
21 a replacement for Lead in such Jewelry. CEH’s investigation has included filing a Proposition
22 65 lawsuit against manufacturers and re-sellers of Jewelry that contain cadmium, entitled *Center*
23 *for Environmental Health v. Aeropostale, Inc.* (Alameda County Superior Court Case No. RG
24 10-514803). CEH also co-sponsored SB 924, which was passed by the California Legislature in
25 2010 and which prohibits the sale of cadmium-containing children’s Jewelry.

26 18. Young children are especially susceptible to the toxic effects of Lead.
27 Children show a greater sensitivity to Lead’s effects than do adults. Adverse health impacts
28 from Lead exposure generally occur in children at lower blood Lead levels than in adults.

1 Children absorb and retain more Lead in proportion to their weight than do adults. Young
2 children also show a greater prevalence of iron deficiency, a condition that can increase
3 gastrointestinal absorption of Lead. The body accumulates Lead over a lifetime and releases it
4 slowly, so even small doses received in childhood, over time, can cause adverse health impacts,
5 including but not limited to reproductive toxicity, later in life. For example, in times of
6 physiological stress, such as pregnancy, the body can mobilize accumulated stores of Lead in
7 tissue and bone, thereby increasing the level of Lead in the blood and increasing the risk of harm
8 to the fetus.

9 19. There is no safe level of exposure to Lead and even minute amounts of
10 Lead exposure have been shown to permanently reduce mental capacity. *See, e.g.,* Davis, J.M.,
11 Svendgaard, D.J., "Lead and Child Development," *Nature* 329:297-300, 1987. One study on the
12 effect of childhood Lead exposure declared that even the smallest detectable amount of blood
13 Lead levels in children can mean the difference between an A or B grade in school. Lanphear,
14 B.P., Dietrich, K., Auinger, P., Cox, C., "Subclinical Lead Toxicity in U.S. Children and
15 Adolescents," *Neurodevelopmental Disabilities II Platform*, 2000. Another study followed
16 children into adulthood and found a sevenfold increase in the risk for developing a reading
17 disability among children exposed to sufficient levels of Lead as toddlers. Needleman, H.L.,
18 Schell, A., Bellinger, D., Leviton, A., Allred, E.N., "The Long-Term Effects of Exposure to Low
19 Doses of Lead in Childhood: An 11-Year Follow-up Report," *New England Journal of Medicine*
20 322:83-88, 1990.

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

27 21. Cadmium in consumer products is of particular concern in light of
28 evidence that cadmium exposure has the potential to negatively impact reproduction and

1 embryonic development in several different ways and at every stage of the reproductive process.
2 See, e.g., Thompson, J., et al., "Review: Cadmium: Toxic Effects on the Reproductive System
3 and the Embryo," *Reproductive Toxicology* (February 2008) Vol. 25:304; and Ji, Yan-Li, et al.,
4 "Pubertal Cadmium Exposure Impairs Testicular Development and Spermatogenesis via
5 Disrupting Testicular Testosterone Synthesis in Adult Mice," *Reproductive Toxicology* (accepted
6 for publication October 2009) (even low levels of cadmium accumulation in semen may
7 contribute to male infertility).

8 22. Defendants' Jewelry is made of materials and components that contain
9 Lead, cadmium or both.

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

18 24. No clear and reasonable warning is provided with the Jewelry regarding
19 the carcinogenic and reproductive hazards of Lead or the reproductive hazards of cadmium.

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

24 26. More than sixty days prior to naming each Defendant in this lawsuit, CEH
25 provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General,
26 the District Attorneys of every county in California, the City Attorneys of every California city
27 with a population greater than 750,000 and to each of the named Defendants. In compliance
28 with Health & Safety Code §25249.7(d) and 27 C.C.R. §25903(b), each of the Notices included

1 the following information: (1) the name and address of each violator; (2) the statute violated; (3)
2 the time period during which violations occurred; (4) specific descriptions of the violations,
3 including (a) the routes of exposure to listed chemicals from the Jewelry, and (b) the specific
4 type of products sold and used in violation of Proposition 65; and (5) the name of the specific
5 Proposition 65-listed chemical that is the subject of the violations described in each of the
6 Notices.

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

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

25 29. Under Proposition 65, an exposure is “knowing” where the party
26 responsible for such exposure has:

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

1 27 C.C.R. §25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
2 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
3 §12201).

4 30. Defendants have been informed of the Lead and cadmium in their Jewelry
5 by the 60-Day Notice of Violation and accompanying Certificate of Merit served on them by
6 CEH.

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

13 32. Defendants both know and intend that individuals, including pregnant
14 women, through the average use of the Jewelry, will wear, touch and handle the Jewelry, thus
15 exposing them to Lead and cadmium.

16 33. Nevertheless, Defendants continue to expose consumers to Lead and
17 cadmium without prior clear and reasonable warnings regarding the carcinogenic and
18 reproductive hazards of Lead and the reproductive hazards of cadmium.

19 34. CEH has engaged in good-faith efforts to resolve the claims alleged herein
20 prior to filing this complaint.

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

26 **FIRST CAUSE OF ACTION**

27 **(Violations of the Health & Safety Code §25249.6)**

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

1 herein Paragraphs 1 through 35, inclusive.

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

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

6 39. Cadmium is a chemical listed by the State of California as known to cause
7 birth defects or other reproductive harm.

8 40. Defendants know that average use of the Jewelry will expose users of the
9 Jewelry to Lead, cadmium or both. Defendants intend that the Jewelry be used in a manner that
10 results in users of the Jewelry being exposed to Lead and/or cadmium contained in the Jewelry.

11 41. The Defendants have failed, and continue to fail, to provide prior clear and
12 reasonable warnings to users of the Jewelry regarding the carcinogenic or reproductive toxicity
13 of Lead or the reproductive toxicity of cadmium.

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

19 Wherefore, CEH prays for judgment against Defendants, as set forth hereafter.

20 **PRAYER FOR RELIEF**

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

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

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

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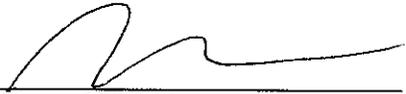
3. That the Court, pursuant to Health & Safety Code §25249.7(a), order Defendants to take action to stop ongoing unwarned exposures to Lead and cadmium resulting from use of Jewelry sold by Defendants, as CEH shall specify in further application to the Court;

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

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

Dated: November 8, 2010

Respectfully submitted,
LEXINGTON LAW GROUP


Howard Hirsch
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH