

ENDORSED  
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ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT  
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Deputy

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

10  
11 CENTER FOR ENVIRONMENTAL HEALTH, )  
a non-profit corporation, )

12 Plaintiff, )

13 v. )

14 FORUM NOVELTIES, INC.; PARTY CITY )  
15 CORPORATION; and Defendant DOES 1 )  
through 500, inclusive, )

16 Defendants. )  
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Case No. RG 11574481

**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 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 cadmium, a chemical known to the State  
7 of California to cause birth defects and other reproductive harm. Such exposures have occurred,  
8 and continue to occur, through the manufacture, distribution, sale and/or use of Defendants'  
9 jewelry ("Jewelry") made of materials containing cadmium. Consumers, including pregnant  
10 women and children, are exposed to cadmium when they wear, use, touch or handle the Jewelry.

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

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

23 **PARTIES**

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



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

3 12. 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 13. 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 14. To effectuate this goal, Proposition 65 prohibits exposing people to  
10 chemicals listed by the State of California as known to cause birth defects or other reproductive  
11 harm without a “clear and reasonable warning” unless the business responsible for the exposure  
12 can prove that it fits within a statutory exemption. Health & Safety Code §25249.6 states, in  
13 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 15. On May 1, 1997, the State of California officially listed cadmium as a  
18 chemical known to cause reproductive toxicity. Cadmium became subject to the Proposition 65  
19 “clear and reasonable” reproductive toxicity warning one year later beginning on May 1, 1998.  
20 27 C.C.R. §27001(c); Health & Safety Code §25249.10(b).

21 16. For over seven years, CEH has been extensively investigating the presence  
22 of toxic chemicals in Jewelry. CEH’s investigation has included filing three Proposition 65  
23 lawsuits against manufacturers and re-sellers of Jewelry that contain lead and lead compounds  
24 (“Lead”), entitled *Center for Environmental Health v. Hot Topic, Inc., et al.* (Alameda County  
25 Superior Court Case No. RG 04-162037), *Center for Environmental Health v. Nadri, Inc., et al.*  
26 (Alameda County Superior Court Case No. RG 06-269531) and *Center for Environmental*  
27 *Health v. Two’s Company, Inc., et al.* (Alameda County Superior Court Case No. RG 10-545680.  
28 CEH’s Lead-in-Jewelry actions have resulted in the entry of dozens of consent judgments

1 restricting the Lead levels permitted in Jewelry as well as the passing of California and federal  
2 laws prohibiting the sale of Leaded Jewelry. Defendants Forum Novelties, Inc. and Party City  
3 Corporation are both named defendants in CEH's *Nadri* action. On December 11, 2008, the  
4 Court entered a consent judgment against Party City Corporation requiring reformulation of its  
5 Jewelry to eliminate actionable exposures to Lead under Proposition 65.

6           17. More recently, CEH's investigation has expanded to include research and  
7 testing regarding the presence of cadmium in Jewelry, which has revealed that some  
8 manufacturers of Jewelry appear to be using cadmium as a replacement for Lead in such Jewelry.  
9 CEH's investigation has included filing two Proposition 65 lawsuits against manufacturers and  
10 re-sellers of Jewelry that contain cadmium, entitled *Center for Environmental Health v.*  
11 *Aeropostale, Inc.* (Alameda County Superior Court Case No. RG 10-514803), and *Center for*  
12 *Environmental Health v. Cara Accessories Ltd.* (Alameda County Superior Court Case No. RG  
13 10-545687). CEH's complaint in the *Cara Accessories* action also alleges violations of  
14 Proposition 65 based on sales of Lead-containing Jewelry. CEH also co-sponsored SB 924,  
15 which was passed by the California Legislature in 2010 and which prohibits the sale of cadmium-  
16 containing children's Jewelry.

17           18. Cadmium in consumer products is of particular concern in light of  
18 evidence that cadmium exposure has the potential to negatively impact reproduction and  
19 embryonic development in several different ways and at every stage of the reproductive process.  
20 *See, e.g.,* Thompson, J., *et al.*, "Review: Cadmium: Toxic Effects on the Reproductive System  
21 and the Embryo," *Reproductive Toxicology* (February 2008) Vol. 25:304; and Ji, Yan-Li, *et al.*,  
22 "Pubertal Cadmium Exposure Impairs Testicular Development and Spermatogenesis via  
23 Disrupting Testicular Testosterone Synthesis in Adult Mice," *Reproductive Toxicology* (accepted  
24 for publication October 2009) (even low levels of cadmium accumulation in semen may  
25 contribute to male infertility).

26           19. The Jewelry is made of materials and components that contain cadmium.  
27 Cadmium is primarily present in the metallic parts of the Jewelry. For example, metallic  
28 components such as beads, pendants, clasps, posts and other parts of the Jewelry often contain

1 cadmium.

2           20. Defendants' Jewelry contains sufficient quantities of cadmium such that  
3 consumers, including pregnant women and children, who wear, use, touch and/or handle the  
4 Jewelry are exposed to cadmium through the average use of the Jewelry. The route of exposure  
5 for the violation is ingestion via hand-to-mouth contact after consumers touch or handle the  
6 Jewelry; direct ingestion when consumers place the Jewelry in their mouths; and dermal  
7 absorption directly through the skin when consumers wear, touch or handle the Jewelry. These  
8 exposures occur in homes, workplaces and everywhere else throughout California where such  
9 Jewelry is worn, handled or used.

10           21. No clear and reasonable warning is provided with the Jewelry regarding  
11 the reproductive hazards of cadmium.

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

16           23. More than sixty days prior to naming each Defendant in this lawsuit, CEH  
17 provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General,  
18 the District Attorneys of every county in California, the City Attorneys of every California city  
19 with a population greater than 750,000 and to each of the named Defendants. In compliance with  
20 Health & Safety Code §25249.7(d) and 27 C.C.R. §25903(b), each of the Notices included the  
21 following information: (1) the name and address of each violator; (2) the statute violated; (3) the  
22 time period during which violations occurred; (4) specific descriptions of the violations,  
23 including (a) the routes of exposure to cadmium from the Jewelry, and (b) the specific type of  
24 products sold and used in violation of Proposition 65; and (5) the name of the specific  
25 Proposition 65-listed chemical that is the subject of the violations described in each of the  
26 Notices (cadmium).

27           24. CEH also sent a Certificate of Merit for each of the Notices to the  
28 California Attorney General, the District Attorneys of every county in California, the City

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

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

17           26. Defendants both know and intend that individuals, including pregnant  
18 women and children, will wear, use, touch and/or handle the Jewelry, thus exposing them to  
19 cadmium.

20           27. Under Proposition 65, an exposure is “knowing” where the party  
21 responsible for such exposure has:

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

25 27 C.C.R. §25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final  
26 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,  
27 §12201).

28           28. Defendants have been informed of the cadmium in their Jewelry by the 60-

1 Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.

2 29. Nevertheless, Defendants continue to expose consumers to cadmium  
3 without prior clear and reasonable warnings regarding the reproductive hazards of cadmium.

4 30. CEH has engaged in good-faith efforts to resolve the claims alleged herein  
5 prior to filing this complaint.

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

11 **FIRST CAUSE OF ACTION**

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

13 32. CEH realleges and incorporates by reference as if specifically set forth  
14 herein Paragraphs 1 through 31, inclusive.

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

17 34. Cadmium is a chemical listed by the State of California as known to cause  
18 birth defects or other reproductive harm.

19 35. Defendants know that average use of the Jewelry will expose users of the  
20 Jewelry to cadmium. Defendants intend that the Jewelry be used in a manner that results in users  
21 of the Jewelry being exposed to cadmium contained in the Jewelry.

22 36. The Defendants have failed, and continue to fail, to provide prior clear and  
23 reasonable warnings regarding the reproductive toxicity of cadmium to users of the Jewelry.

24 37. By committing the acts alleged above, the Defendants have at all times  
25 relevant to this complaint violated Proposition 65 by knowingly and intentionally exposing  
26 individuals to cadmium without first giving clear and reasonable warnings to such individuals  
27 regarding the reproductive toxicity of cadmium.

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

1 **PRAYER FOR RELIEF**

2 Wherefore, CEH 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 Jewelry for sale in California  
8 without providing prior clear and reasonable warnings, as CEH 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 cadmium resulting from use of  
12 Jewelry 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 or any other  
14 applicable theory, grant CEH 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  
18 Dated: May 4, 2011

Respectfully submitted,

19 LEXINGTON LAW GROUP

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21 

22 Eric S. Somers  
23 Attorneys for Plaintiff  
24 CENTER FOR ENVIRONMENTAL HEALTH