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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

11
12
13 CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)

14 Plaintiff,)

15 v.)

16 TWO'S COMPANY, INC.; and Defendant)
17 DOES 1 through 200, inclusive,)

18 Defendants.)
19

Case No. RG 10545680

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 and 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 (the "Jewelry") made of materials
10 containing Lead. Lead is present in both the metallic and non-metallic parts of the Jewelry. The
11 route of exposure for the violations is direct ingestion when consumers place the Jewelry in their
12 mouths, ingestion via hand-to-mouth contact after consumers wear, touch or handle the Jewelry
13 or eat after coming into contact with the Jewelry, and dermal absorption directly through the skin
14 when consumers wear, touch or handle the Jewelry. Many of the Jewelry items are designed for
15 and marketed to young children and teens, who are particularly likely to place the Jewelry in
16 their mouths and who are also particularly susceptible to Lead poisoning. These exposures occur
17 in homes, workplaces and everywhere else throughout California where people wear, touch or
18 handle the Jewelry. Clear and reasonable warnings are not provided to users of the Jewelry
19 regarding the carcinogenic or reproductive hazards of Lead. Consequently, Defendants have
20 violated and continue to violate the warning provision of Proposition 65. Health & Safety Code
21 §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 group that has prosecuted a large number of Proposition 65 cases in the public interest. These
2 cases have resulted in significant public benefit, including reformulation of toxic products to
3 make them safer and the provision of clear and reasonable warnings on hundreds of products
4 sold throughout California.

5 3. Defendant TWO'S COMPANY, INC. is a person in the course of doing
6 business within the meaning of Health & Safety Code §25249.11. Two's Company, Inc.
7 manufactures, distributes and/or sells the Jewelry for sale and use in California.

8 4. DOES 1-200 are each a person in the course of doing business within the
9 meaning of Health & Safety Code §25249.11. DOES 1 through 200 manufacture, distribute
10 and/or sell the Jewelry for sale or use in California.

11 5. The true names of DOES 1 through 200 are unknown to plaintiff at this
12 time. When their identities are ascertained, the complaint shall be amended to reflect their true
13 names.

14 6. The defendant identified in Paragraph 3 and DOES 1 through 200 are
15 collectively referred to herein as "Defendants."

16 JURISDICTION AND VENUE

17 7. The Court has jurisdiction over this action pursuant to Health & Safety
18 Code §25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant
19 to California Constitution Article VI, Section 10, because this case is a cause not given by statute
20 to other trial courts.

21 8. This Court has jurisdiction over the Defendants because each is a business
22 entity that does sufficient business, has sufficient minimum contacts in California or otherwise
23 intentionally avails itself of the California market through the sale, marketing or use of the
24 Jewelry in California and/or by having such other contacts with California so as to render the
25 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair
26 play and substantial justice.

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

1 BACKGROUND FACTS

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

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

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

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

22 13. On October 1, 1992, the State of California officially listed lead and lead
23 compounds as chemicals known to cause cancer. On October 1, 1993, one year after they were
24 listed as a chemicals known to cause cancer, lead and lead compounds became subject to the
25 clear and reasonable warning requirement regarding carcinogens under Proposition 65. 27
26 C.C.R. §27001(c); Health & Safety Code §25249.10(b).

27 14. For over six years, CEH has been extensively investigating the presence of
28 toxic chemicals in Jewelry made available for sale in California. CEH’s investigation has

1 included filing two Proposition 65 lawsuits against manufacturers and re-sellers of Jewelry that
2 contain Lead, entitled *Center for Environmental Health v. Hot Topic, Inc., et al.* (Alameda
3 County Superior Court Case No. RG 04-162037) and *Center for Environmental Health v. Nadri,*
4 *Inc. et al.* (Alameda County Superior Court Case No. RG 06-269531). CEH's Lead-in-Jewelry
5 actions have resulted in the entry of dozens of consent judgments restricting the Lead levels
6 permitted in Jewelry as well as the passing of California and federal laws prohibiting the sale of
7 Leaded Jewelry.

8 15. Young children are especially susceptible to the toxic effects of Lead.
9 Children show a greater sensitivity to Lead's effects than do adults. Adverse health impacts
10 from Lead exposure generally occur in children at lower blood Lead levels than in adults.
11 Children absorb and retain more Lead in proportion to their weight than do adults. Young
12 children also show a greater prevalence of iron deficiency, a condition that can increase
13 gastrointestinal absorption of Lead. The body accumulates Lead over a lifetime and releases it
14 slowly, so even small doses received in childhood, over time, can cause adverse health impacts,
15 including but not limited to reproductive toxicity, later in life. For example, in times of
16 physiological stress, such as pregnancy, the body can mobilize accumulated stores of Lead in
17 tissue and bone, thereby increasing the level of Lead in the blood and increasing the risk of harm
18 to the fetus.

19 16. There is no safe level of exposure to Lead and even minute amounts of
20 Lead exposure have been shown to permanently reduce mental capacity. *See, e.g.,* Davis, J.M.,
21 Svendgaard, D.J., "Lead and Child Development," *Nature* 329:297-300, 1987. One study on the
22 effect of childhood Lead exposure declared that even the smallest detectable amount of blood
23 Lead levels in children can mean the difference between an A or B grade in school. Lanphear,
24 B.P., Dietrich, K., Auinger, P., Cox, C., "Subclinical Lead Toxicity in U.S. Children and
25 Adolescents," *Neurodevelopmental Disabilities II Platform*, 2000. Another study followed
26 children into adulthood and found a sevenfold increase in the risk for developing a reading
27 disability among children exposed to sufficient levels of Lead as toddlers. Needleman, H.L.,
28 Schell, A., Bellinger, D., Leviton, A., Allred, E.N., "The Long-Term Effects of Exposure to Low

1 Doses of Lead in Childhood: An 11-Year Follow-up Report,” *New England Journal of Medicine*
2 322:83-88, 1990.

3 17. Lead exposures for pregnant women are also of particular concern in light
4 of evidence that even short term Lead exposures *in utero* may have long-term harmful effects.
5 See, e.g., Hu, H., *et al.*, “Fetal Lead Exposure at Each State of Pregnancy as a Predictor of Infant
6 Mental Development,” *Environmental Health Perspectives* 114:11, 2006; Schnaas, L., *et al.*,
7 “Reduced Intellectual Development in Children with Prenatal Lead Exposure,” *Environmental*
8 *Health Perspectives* 114:5, 2006.

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

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

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

23 21. More than sixty days before naming each Defendant in this suit, CEH
24 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General,
25 the District Attorneys of every county in California, the City Attorneys of every California city
26 with a population greater than 750,000, and to each named Defendant. In compliance with
27 Health & Safety Code §25249.7(d) and 27 C.C.R. §25903(b), each Notice of Violation included
28 the following information: the name and address of the violator; the statute violated; the time

1 period during which violations occurred; specific descriptions of the violations, including the
2 routes of exposure to Lead from the Jewelry, and the specific type of product with specific
3 non-exclusive examples of Jewelry sold and used in violation of Proposition 65; and the name of
4 the specific Proposition 65-listed chemical that is the subject of the violation described in the
5 Notice.

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

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

23 24. Under Proposition 65, an exposure is “knowing” where the party
24 responsible for such exposure has:

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

28 27 C.C.R. §25102(n). This knowledge may be either actual or constructive. *See, e.g.,* Final

1 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
2 §12201).

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

5 26. Defendants also have constructive knowledge that their Jewelry contains
6 Lead due to the widespread media coverage concerning the problem of Lead in consumer
7 products in general and in Jewelry in particular. Defendants are also presumed to know the law
8 and the California Legislature passed a law in 2006 governing the Lead content of Jewelry due to
9 the widespread nature of the problem.

10 27. Defendants both know and intend that individuals, including pregnant
11 women, through the average use of the Jewelry, will wear, touch and handle the Jewelry, thus
12 exposing them to Lead.

13 28. Nevertheless, Defendants continue to expose consumers to Lead without
14 prior clear and reasonable warnings regarding the carcinogenic or reproductive hazards of Lead.

15 29. CEH has engaged in good-faith efforts to resolve the claims alleged herein
16 prior to filing this complaint.

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

22 **FIRST CAUSE OF ACTION**

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

24 31. CEH realleges and incorporates by reference as if specifically set forth
25 herein Paragraphs 1 through 30, inclusive.

26 32. By placing the Jewelry into the stream of commerce, Defendants are
27 persons in the course of doing business within the meaning of Health & Safety Code §25249.11.

28 33. Lead is a chemical listed by the State of California as known to cause

1 cancer, birth defects and other reproductive harm.

2 34. Defendants know that through the average use of the Jewelry, users of the
3 Jewelry are exposed to Lead. Defendants intend that the Jewelry be used in a manner that results
4 in users of the Jewelry being exposed to Lead contained in the Jewelry.

5 35. Defendants have failed, and continue to fail, to provide clear and
6 reasonable warning regarding the carcinogenicity and reproductive toxicity of Lead to users of
7 the Jewelry.

8 36. By committing the acts alleged above, Defendants have at all times
9 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing
10 individuals to Lead without first giving clear and reasonable warning to such individuals
11 regarding the carcinogenicity and reproductive toxicity of Lead.

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

13 **PRAYER FOR RELIEF**

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

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

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

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

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

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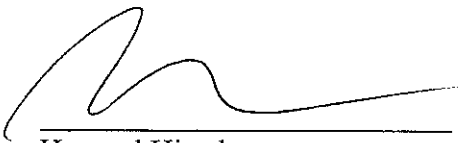
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5. That the Court grant such other and further relief as may be just and proper.

Dated: November 8, 2010

Respectfully submitted,

LEXINGTON LAW GROUP



Howard Hirsch
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH