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CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED  
FILED  
ALAMEDA COUNTY

NOV - 2 2016

CLERK OF THE SUPERIOR COURT  
By: ERICA BAKER, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH, )  
a non-profit corporation, )  
  
Plaintiff, )  
  
v. )  
  
KELLWOOD COMPANY, LLC; )  
AMAZON.COM, INC.; and DOES 1 through )  
100, inclusive, )  
  
Defendants. )

Case No.

PG16837582

**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 use of Defendants'  
9 necklaces (the "Necklaces"). The Necklaces are often sold with dresses as matching accessories  
10 and are made of materials and components containing high levels of cadmium. Consumers,  
11 including pregnant women and children, are exposed to cadmium when they touch, handle or  
12 wear the Necklaces.

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

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

25 **PARTIES**

26 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a  
27 non-profit corporation dedicated to protecting the public from environmental health hazards and  
28 toxic exposures. CEH is based in Oakland, California and incorporated under the laws of the





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

7           17. The Necklaces are made of materials and components that contain  
8 cadmium. Cadmium is primarily present in the metallic parts of the Necklaces. For example,  
9 metallic components such as pendants, clasps and other parts of the Necklaces contain cadmium.

10           18. Defendants’ Necklaces contain sufficient quantities of cadmium such that  
11 consumers, including pregnant women and children, who touch, handle or wear the Necklaces  
12 are exposed to a significant amount of cadmium. The primary routes of exposure for the  
13 violations are ingestion via hand-to-mouth contact after consumers touch or handle the  
14 Necklaces; direct ingestion when consumers place the Necklaces in their mouths; and dermal  
15 absorption directly through the skin when consumers touch, handle or wear the Necklaces.  
16 These exposures occur in homes, workplaces and everywhere else throughout California where  
17 the Necklaces are touched, handled or worn.

18           19. No clear and reasonable warning is provided with the Necklaces regarding  
19 the reproductive hazards of cadmium.

20           20. 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           21. 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 Notice included the

1 following information: (1) the name and address of each violator; (2) the statute violated; (3) the  
2 time period during which violations occurred; (4) specific descriptions of the violations,  
3 including (a) the routes of exposure to cadmium from the Necklaces, and (b) the specific type of  
4 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           22. CEH also sent a Certificate of Merit for each Notice to the California  
8 Attorney General, the District Attorneys of every county in California, the City Attorneys of  
9 every California city with a population greater than 750,000 and to each named Defendant. In  
10 compliance with Health & Safety Code §25249.7(d) and 11 C.C.R. §3101, each Certificate  
11 certified that CEH's counsel: (1) has consulted with one or more persons with relevant and  
12 appropriate experience or expertise who reviewed facts, studies or other data regarding the  
13 exposures to cadmium alleged in each Notice; and (2) based on the information obtained through  
14 such consultations, believes that there is a reasonable and meritorious case for a citizen  
15 enforcement action based on the facts alleged in each Notice. In compliance with Health &  
16 Safety Code §25249.7(d) and 11 C.C.R. §3102, each Certificate served on the Attorney General  
17 included factual information – provided on a confidential basis – sufficient to establish the basis  
18 for the Certificate, including the identity of the person(s) consulted by CEH's counsel and the  
19 facts, studies or other data reviewed by such persons.

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

24           24. Defendants both know and intend that individuals, including pregnant  
25 women and children, will wear, use, touch and/or handle the Necklaces, thus exposing them to  
26 cadmium.

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

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

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

26. Defendants have been informed of the cadmium in their Necklaces by the 60-Day Notice of Violation and accompanying Certificate of Merit served on them by CEH. One of the Defendants, Kellwood Company, LLC, has also been informed of the cadmium in its Necklaces by formal letter from the Washington Department of Ecology (which found Necklaces with 984,000 parts per million cadmium) and by letter from the federal Consumer Product Safety Commission (“CPSC”).

27. Defendants also have constructive knowledge that their Necklaces contain cadmium due to the widespread media coverage concerning the problem of cadmium in consumer products in general, and in jewelry such as the Necklaces in particular.

28. As companies that manufacture, import, distribute and/or sell the Necklaces for use in the California marketplace, Defendants know or should know that the Necklaces contain heavy metals such as cadmium and that individuals who touch, handle or wear the Necklaces will be exposed to cadmium. This is particularly the case as one of the Defendants, Kellwood Company, LLC, was subject to a 2011 CPSC recall of similar Necklaces that were made of Lead, another stunningly toxic heavy metal. The cadmium exposures to consumers who touch, handle or wear the Necklaces are a natural and foreseeable consequence of Defendants’ placing the Necklaces into the stream of commerce.

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

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

31. Any person “violating or threatening to violate” Proposition 65 may be

1 enjoined in any court of competent jurisdiction. Health & Safety Code §25249.7. “Threaten to  
2 violate” is defined to mean “to create a condition in which there is a substantial probability that a  
3 violation will occur.” Health & Safety Code §25249.11(e). Proposition 65 provides for civil  
4 penalties not to exceed \$2,500 per day for each violation of Proposition 65.

5 **FIRST CAUSE OF ACTION**

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

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

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

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

13 35. Defendants know that average use of the Necklaces will expose users of  
14 the Necklaces to cadmium. Defendants intend that the Necklaces be used in a manner that  
15 results in exposures to cadmium from the Necklaces.

16 36. Defendants have failed, and continue to fail, to provide prior clear and  
17 reasonable warnings regarding the reproductive toxicity of cadmium to users of the Necklaces.

18 37. By committing the acts alleged above, Defendants have at all times  
19 relevant to this Complaint violated Proposition 65 by knowingly and intentionally exposing  
20 individuals to cadmium without first giving clear and reasonable warnings to such individuals  
21 regarding the reproductive toxicity of cadmium.

22 **PRAYER FOR RELIEF**

23 CEH prays for judgment against Defendants as follows:

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

27 2. That the Court, pursuant to Health & Safety Code §25249.7(a),  
28 preliminarily and permanently enjoin Defendants from offering the Necklaces for sale in



1 California without either reformulating the Necklaces such that no Proposition 65 Warnings are  
2 required or providing prior clear and reasonable warnings, as CEH shall specify in further  
3 application to the Court;

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

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

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

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12 Dated: November 2, 2016

Respectfully submitted,

13 LEXINGTON LAW GROUP

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16 Eric S. Somers  
17 Attorneys for Plaintiff  
18 CENTER FOR ENVIRONMENTAL HEALTH  
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