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CENTER FOR ENVIRONMENTAL HEALTH

**ENDORSED
FILED
ALAMEDA COUNTY
OCT - 5 2018**

CLERK OF THE SUPERIOR COURT:
By Lanette Buffin, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,
a non-profit corporation,

Plaintiff,

v.

ROSS STORES, INC.; TREND TEXTILE INC.;
and DOES 1 through 100, inclusive,

Defendants.

Case No. 18923611

**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 information and
2 belief and investigation of counsel, except for information based on knowledge, hereby makes the
3 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' jewelry.
9 The jewelry is often sold with women's clothing as a matching accessory, and is made of
10 materials and components containing high levels of cadmium. Consumers, including pregnant
11 women, are exposed to cadmium when they touch, handle or wear the jewelry.

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

18 3. Despite the fact that Defendants expose pregnant women and other people who
19 come into contact with Defendants' jewelry to cadmium, Defendants provide no warnings
20 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 non-profit
25 corporation dedicated to protecting the public from environmental health hazards and toxic
26 exposures. CEH is based in Oakland, California and incorporated under the laws of the State of
27 California. CEH is a "person" within the meaning of Health & Safety Code §25249.11(a) and
28 brings this enforcement action in the public interest pursuant to Health & Safety Code

1 §25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group that has
2 prosecuted a large number of Proposition 65 cases in the public interest. These cases have
3 resulted in significant public benefit, including the reformulation of thousands of products to
4 remove toxic chemicals to make them safer. CEH also provides information to Californians
5 about the health risks associated with exposure to hazardous substances, where manufacturers and
6 other responsible parties fail to do so.

7 5. Defendant ROSS STORES, INC. is a person in the course of doing business
8 within the meaning of Health & Safety Code §25249.11. Ross Stores, Inc. sells jewelry in
9 California.

10 6. Defendant TREND TEXTILE INC. is a person in the course of doing business
11 within the meaning of Health & Safety Code §25249.11. Trend Textile Inc. manufactures,
12 distributes and/or sells jewelry that is sold and used in California.

13 7. DOES 1 through 100 are each a person in the course of doing business within the
14 meaning of Health & Safety Code §25249.11. DOES 1 through 100 manufacture, distribute
15 and/or sell jewelry that is sold and used in California

16 8. The true names of DOES 1 through 100 are either unknown to CEH at this time or
17 the applicable time period before which CEH may file a Proposition 65 action has not run. When
18 their identities are ascertained or the applicable time period runs, the Complaint shall be amended
19 to reflect their true names.

20 9. The defendants identified in paragraphs 5 and 6 and DOES 1 through 100 are
21 collectively referred to herein as “Defendants.”

22 **JURISDICTION AND VENUE**

23 10. The Court has jurisdiction over this action pursuant to Health & Safety Code §
24 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to
25 California Constitution Article VI, Section 10, because this case is a cause not given by statute to
26 other trial courts.

27 11. This Court has jurisdiction over Defendants because each is a business entity that
28 does sufficient business, has sufficient minimum contacts in California, or otherwise intentionally

1 avails itself of the California market through the sale of the jewelry that is sold at retail in
2 California or by having such other contacts with California so as to render the exercise of
3 jurisdiction over it by the California courts consistent with traditional notions of fair play and
4 substantial justice.

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

7 **BACKGROUND FACTS**

8 13. The People of the State of California have declared by initiative under Proposition
9 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or
10 other reproductive harm.” Proposition 65, §1(b).

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

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

19 15. On May 1, 1997, the State of California officially listed cadmium as a chemical
20 known to cause reproductive toxicity. Cadmium became subject to the Proposition 65 “clear and
21 reasonable” reproductive toxicity warning one year later beginning on May 1, 1998. 27 C.C.R.
22 §27001(c); Health & Safety Code §25249.10(b).

23 16. Cadmium in consumer products is of particular concern in light of evidence that
24 cadmium exposure has the potential to negatively impact reproduction and embryonic
25 development in several different ways and at every stage of the reproductive process. *See, e.g.,*
26 *Thompson, J., et al., “Review: Cadmium: Toxic Effects on the Reproductive System and the*
27 *Embryo,” Reproductive Toxicology (February 2008) Vol. 25:304; and Ji, Yan-Li, et al., “Pubertal*
28 *Cadmium Exposure Impairs Testicular Development and Spermatogenesis via Disrupting*

1 Testicular Testosterone Synthesis in Adult Mice,” *Reproductive Toxicology* (accepted for
2 publication October 2009) (even low levels of cadmium accumulation in semen may contribute to
3 male infertility).

4 17. Defendants’ jewelry is made of materials and components that contain cadmium.
5 Cadmium is primarily present in the metallic parts of the jewelry. For example, the metallic
6 components such as pendants attached to necklaces often contain cadmium.

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

14 19. No clear and reasonable warning is provided with the jewelry regarding the
15 reproductive hazards of cadmium.

16 20. Any person acting in the public interest has standing to enforce violations of
17 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
18 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
19 within such time. Health & Safety Code §25249.7(d).

20 21. More than sixty days prior to naming each Defendant in this lawsuit, CEH
21 provided a 60-Day “Notice of Violation of Proposition 65” to the California Attorney General,
22 the District Attorneys of every county in California, the City Attorneys of every California city
23 with a population greater than 750,000 and to each of the named Defendants. In compliance with
24 Health & Safety Code §25249.7(d) and 27 C.C.R. §25903(b), each Notice included the following
25 information: (1) the name and address of each violator; (2) the statute violated; (3) the time period
26 during which violations occurred; (4) specific descriptions of the violations, including (a) the
27 routes of exposure to cadmium from the jewelry, and (b) the specific type of products sold and
28

1 used in violation of Proposition 65; and (5) the name of the specific Proposition 65-listed
2 chemical that is the subject of the violations described in each of the Notices.

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

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

19 24. Defendants both know and intend that individuals, including pregnant women, will
20 wear, use, touch and/or handle the jewelry, thus exposing them to cadmium.

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

23 knowledge of the fact that a[n] . . . exposure to a chemical listed pursuant
24 to [Health & Safety Code § 25249.8(a)] is occurring. No 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 §12601).

28

1 26. Defendants have been informed of the cadmium in their jewelry by the 60-Day
2 Notice of Violation and accompanying Certificate of Merit served on them by CEH.

3 27. Defendants also have constructive knowledge that their jewelry contains cadmium
4 due to the widespread media coverage concerning the problem of cadmium in consumer products
5 in general, and in jewelry in particular.

6 28. As companies that manufacture, import, distribute and/or sell jewelry for use in the
7 California marketplace, Defendants know or should know that the jewelry contains heavy metals
8 such as cadmium and that individuals who touch, handle or wear the jewelry will be exposed to
9 cadmium. The cadmium exposures to consumers who touch, handle or wear the jewelry are a
10 natural and foreseeable consequence of Defendants' placing the jewelry into the stream of
11 commerce.

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

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

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

21 **FIRST CAUSE OF ACTION**
22 **(Violations of Health & Safety Code §25249.6)**

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

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

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

1 35. Defendants know that average use of the jewelry will expose users of the jewelry
2 to cadmium. Defendants intend that the jewelry be used in a manner that results in exposures to
3 cadmium from the jewelry.

4 36. Defendants have failed, and continue to fail, to provide prior clear and reasonable
5 warnings regarding the reproductive toxicity of cadmium to users of the jewelry.

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

10 **PRAYER FOR RELIEF**

11 CEH prays for judgment against Defendants as follows:

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

15 2. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and
16 permanently enjoin Defendants from offering the jewelry for sale in California without either
17 reformulating the jewelry such that no Proposition 65 warnings are required or providing prior
18 clear and reasonable warnings, as CEH shall specify in further application to the Court;

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

22 4. That the Court, pursuant to Code of Civil Procedure §1021.5 or any other
23 applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and
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5. That the Court grant such other and further relief as may be just and proper.

Dated: October 2, 2018

Respectfully submitted,

LEXINGTON LAW GROUP



Eric S. Somers
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH