

**ENDORSED
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ALAMEDA COUNTY**

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CLERK OF THE SUPERIOR COURT

By

Deputy

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA
12

13 CENTER FOR ENVIRONMENTAL HEALTH,
14 a non-profit corporation,

15 Plaintiff,

16 v.

17 ROSS STORES, INC.; TREND TEXTILE INC.;
AMERICAN DREAM CLOTHING, INC.;
18 CORNERSTONE APPAREL, INC.; FASHION
MAGAZINE, INC.; JCMC COLLECTIONS,
19 INC.; LA MAIN CONNECTION INC.; LINE SK,
INC.; MARK-EDWARDS APPAREL, INC.;
20 MARK-EDWARDS APPAREL (USA), INC.; SJS
APPAREL, INC.; THE SKATE GROUP, INC.;
21 and DOES 1 through 100, inclusive,

22 Defendants.
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Case No. RG18923611

**FIRST AMENDED 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 at issue is often (but not always) sold with women's clothing as a matching
10 accessory, and is made of materials and components containing high levels of cadmium.
11 Consumers, including pregnant women, are exposed to cadmium when they touch, handle or wear
12 the jewelry.

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

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

24 **PARTIES**

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

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

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

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

14 7. Defendant AMERICAN DREAM CLOTHING, INC. is a person in the course of
15 doing business within the meaning of Health & Safety Code §25249.11. American Dream
16 Clothing, Inc. manufactures, distributes and/or sells jewelry that is sold and used in California.

17 8. Defendant CORNERSTONE APPAREL, INC. is a person in the course of doing
18 business within the meaning of Health & Safety Code §25249.11. Cornerstone Apparel, Inc. sells
19 jewelry in California.

20 9. Defendant FASHION MAGAZINE, INC. is a person in the course of doing
21 business within the meaning of Health & Safety Code §25249.11. Fashion Magazine, Inc.
22 manufactures, distributes and/or sells jewelry that is sold and used in California.

23 10. Defendant JCMC COLLECTIONS, INC. is a person in the course of doing
24 business within the meaning of Health & Safety Code §25249.11. JCMC Collections, Inc.
25 manufactures, distributes and/or sells jewelry that is sold and used in California.

26 11. Defendant LA MAIN CONNECTION INC. is a person in the course of doing
27 business within the meaning of Health & Safety Code §25249.11. LA Main Connection, Inc.
28 manufactures, distributes and/or sells jewelry that is sold and used in California.

1 12. Defendant LINE SK, INC. is a person in the course of doing business within the
2 meaning of Health & Safety Code §25249.11. Line SK, Inc. manufactures, distributes and/or
3 sells jewelry that is sold and used in California.

4 13. Defendant MARK-EDWARDS APPAREL, INC. is a person in the course of
5 doing business within the meaning of Health & Safety Code §25249.11. Mark-Edwards Apparel,
6 Inc. manufactures, distributes and/or sells jewelry that is sold and used in California.

7 14. Defendant MARK-EDWARDS APPAREL (USA), INC. is a person in the course
8 of doing business within the meaning of Health & Safety Code §25249.11. Mark-Edwards
9 Apparel (USA), Inc. manufactures, distributes and/or sells jewelry that is sold and used in
10 California.

11 15. Defendant SJS APPAREL, INC. is a person in the course of doing business within
12 the meaning of Health & Safety Code §25249.11. SJS Apparel, Inc. manufactures, distributes
13 and/or sells jewelry that is sold and used in California.

14 16. Defendant THE SKATE GROUP, INC. is a person in the course of doing business
15 within the meaning of Health & Safety Code §25249.11. The Skate Group, Inc. manufactures,
16 distributes and/or sells jewelry that is sold and used in California.

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

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

24 19. The defendants identified in paragraphs 5 through 16 and DOES 1 through 100 are
25 collectively referred to herein as "Defendants."

26 **JURISDICTION AND VENUE**

27 20. The Court has jurisdiction over this action pursuant to Health & Safety Code §
28 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to

1 California Constitution Article VI, Section 10, because this case is a cause not given by statute to
2 other trial courts.

3 21. This Court has jurisdiction over Defendants because each is a business entity that
4 does sufficient business, has sufficient minimum contacts in California, or otherwise intentionally
5 avails itself of the California market through the sale of the jewelry that is sold at retail in
6 California or by having such other contacts with California so as to render the exercise of
7 jurisdiction over it by the California courts consistent with traditional notions of fair play and
8 substantial justice.

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

11 **BACKGROUND FACTS**

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

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

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

23 25. On May 1, 1997, the State of California officially listed cadmium as a chemical
24 known to cause reproductive toxicity. Cadmium became subject to the Proposition 65 “clear and
25 reasonable” reproductive toxicity warning one year later beginning on May 1, 1998. 27 C.C.R.
26 §27001(c); Health & Safety Code §25249.10(b).

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

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

8 27. Defendants’ jewelry is made of materials and components that contain cadmium.
9 Cadmium is primarily present in the metallic parts of the jewelry such as pendants attached to
10 necklaces.

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

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

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

24 31. 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 with
28 Health & Safety Code §25249.7(d) and 27 C.C.R. §25903(b), each Notice included the following

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

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

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

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

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

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

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

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

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

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

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

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

23 **FIRST CAUSE OF ACTION**
24 **(Violations of Health & Safety Code §25249.6)**

25 42. CEH realleges and incorporates by reference as if specifically set forth herein
26 Paragraphs 1 through 41, inclusive.

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

1 44. Cadmium is a chemical listed by the State of California as known to cause birth
2 defects or other reproductive harm.

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

6 46. Defendants have failed, and continue to fail, to provide prior clear and reasonable
7 warnings regarding the reproductive toxicity of cadmium to users of the jewelry.

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

12 **PRAYER FOR RELIEF**

13 CEH prays for judgment against Defendants as follows:

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

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

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

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

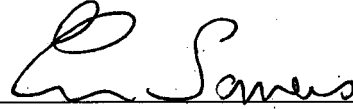
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5. That the Court grant such other and further relief as may be just and proper.

Dated: November 9, 2018

Respectfully submitted,

LEXINGTON LAW GROUP



Eric S. Somers
Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH