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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)
)
Plaintiff,)
)
v.)
)
ROSS STORES, INC., *et al.*,)
)
Defendants.)

Case No. RG 18-923611
**[PROPOSED] CONSENT
JUDGMENT AS TO FASHION
MAGAZINE, INC.**

1. INTRODUCTION

1.1 This Consent Judgment is entered into by Plaintiff Center for Environmental Health, a California non-profit corporation (“CEH”) and Defendant Fashion Magazine, Inc. (“Defendant”), to settle certain claims asserted by CEH against Defendant as set forth in the operative complaint in the matter entitled *Center for Environmental Health v. Ross Stores, Inc., et al.*, Alameda County Superior Court Case No. RG 18-923611.

1.2 On August 17, 2018, CEH served a Notice of Violation under Proposition 65 alleging that Defendant violated Proposition 65 (California Health & Safety Code § 25249.5, *et seq.*) by exposing persons to cadmium contained in jewelry, including but not limited to jewelry

1 sold with clothing, without first providing a clear and reasonable warning pursuant to Proposition
2 65. On November 9, 2018, CEH filed the operative First Amended Complaint based on the
3 allegations in the Notice, which named Fashion Magazine, Inc. as a defendant.

4 1.3 Defendant is a corporation that manufactures, distributes and/or sells Covered
5 Products (as defined herein) that are sold in the State of California.

6 1.4 For purposes of this Consent Judgment only, CEH and Defendant (the “Parties”)
7 stipulate that this Court has jurisdiction over the allegations of violations contained in the
8 Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint, that
9 venue is proper in the County of Alameda, and that this Court has jurisdiction to enter this
10 Consent Judgment as a full and final resolution of all claims which were or could have been raised
11 in the Complaint based on the facts alleged therein with respect to Covered Products
12 manufactured, distributed or sold by Defendant.

13 1.5 CEH and Defendant enter into this Consent Judgment as a full and final settlement
14 of all claims that were raised in the Complaint, or which could have been raised in the Complaint,
15 arising out of the facts or conduct related to Defendant alleged therein. By execution of this
16 Consent Judgment and agreeing to comply with its terms, the Parties do not admit any facts or
17 conclusions of law including, but not limited to, any facts or conclusions of law suggesting or
18 demonstrating any violations of Proposition 65 relating to cadmium in jewelry. Nothing in this
19 Consent Judgment is or shall be construed as an admission by the Parties of any fact, conclusion
20 of law, issue of law or violation of law, nor shall compliance with the Consent Judgment
21 constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of
22 law, or violation of law. Defendant denies the material, factual and legal allegations in CEH’s
23 Complaint and expressly denies any wrong doing whatsoever. Nothing in this Consent Judgment
24 shall prejudice, waive or impair any right, remedy, argument or defense the Parties may have in
25 this or any other pending or future legal proceedings. This Consent Judgment is the product of
26 negotiation and compromise and is accepted by the Parties solely for purposes of settling,
27 compromising, and resolving issues disputed in this action.

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1 **2. DEFINITIONS**

2 2.1 The term “Cadmium Limit” means a concentration of 0.01 percent (100 parts per
3 million (“ppm”)) by weight cadmium in any component of a Covered Product, or in any material
4 used in a Covered Product.

5 2.2 The term “Covered Product” means jewelry, including but not limited to necklaces,
6 whether sold individually or as part of a set with a piece of clothing.

7 2.3 The term “Effective Date” means the date of entry of this Consent Judgment.

8 **3. INJUNCTIVE RELIEF**

9 3.1 **Reformulation of Covered Products.** Defendant shall comply with the following
10 requirements to achieve expeditious reformulation of the Covered Products to reduce or eliminate
11 exposures to cadmium arising from the Covered Products:

12 3.1.1 **Specification Compliance Date.** To the extent it has not already done
13 so, no more than 30 days after the Effective Date, Defendant shall provide the Cadmium Limit to
14 each of its suppliers of Covered Products and Covered Product components and shall instruct each
15 such supplier to only deliver Covered Products and Covered Product components that are below
16 the Cadmium Limit.

17 3.1.2 **Reformulation Date.** As of the Effective Date, Defendant shall not
18 manufacture, purchase, import, supply, sell or offer to sell any: (i) Covered Product that exceeds
19 the Cadmium Limit; or (ii) any Covered Product that contains a component that exceeds the
20 Cadmium Limit.

21 3.2 **Market Withdrawal of Covered Products.** To the extent not already done, on or
22 before the Effective Date, Defendant shall have: (i) ceased shipping the following specific
23 products (“Recall Products”):

- 24 • Papaya Long Gold Necklace with Diamond Shaped Pendant & Tassel (sold with Papaya
25 Striped Dolman Tee in Light Gray), SKU No. 21485213403, Style No. FM7967;
- 26 • Papaya Long Gold Necklace with Round Pendant & Tassel (sold with Papaya Striped
27 Blouse in Black & White), SKU No. 1132100268, Style No. FM7680;

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- Papaya Gold Pendant Necklace (sold with Papaya Red Blouse), SKU No. 4897169489, Style FM7696

to stores and/or customers in California, (ii) withdrawn the Recall Products from the market in California, and (iii) if the Recall Products were not withdrawn from sale in California prior to the Effective Date, sent instructions to any of its stores and/or customers that offer the Recall Products for sale in California to cease offering the Recall Products for sale and to either return all Recall Products to Defendant for destruction, or to directly destroy the Recall Products. Any destruction of the Recall Products shall be in compliance with all applicable laws. Defendant shall maintain electronic or written records demonstrating its compliance with its obligations under this Section and provide those to CEH with a report of the number of Recall Products returned or destroyed within ninety days of the Effective Date.

4. ENFORCEMENT

4.1 General Enforcement Provisions. CEH may, by motion or application for an order to show cause before this Court, enforce the terms and conditions contained in this Consent Judgment. Any action to enforce alleged violations of this Consent Judgment with respect to the Cadmium Limit by Defendant shall be brought exclusively pursuant to this Section 4.

4.2 Enforcement of Materials Violation.

4.2.1 Notice of Violation. In the event that, at any time following the Effective Date, CEH identifies one or more Covered Products manufactured, distributed, or sold by Defendant that CEH believes in good faith exceed the Cadmium Limit, CEH may issue a Notice of Violation pursuant to this Section.

4.2.2 Service of Notice of Violation and Supporting Documentation.

4.2.2.1 The Notice of Violation shall be sent to the person(s) identified in Section 8 to receive notices for Defendant, and must be served within 75 days of the date the Covered Product at issue was purchased or otherwise acquired by CEH, provided, however, that: (i) CEH may have up to an additional 45 days to provide Defendant with the test data required by Section 4.2.2.3 below if it has not yet obtained it from its laboratory; and (ii) CEH may serve a subsequent Notice of Violation to a supplier of a Covered Product identified in a previous Notice

1 of Violation so long as: (a) the identity of the supplier cannot be discerned from the labeling of the
2 Covered Product; and (b) the Notice of Violation to the supplier is served within 75 days of the
3 date the supplier is identified in writing to CEH by Defendant.

4 4.2.2.2 The Notice of Violation shall, at a minimum, set forth for each
5 Covered Product: (a) the date the alleged violation was observed, (b) the location at which the
6 Covered Product was offered for sale, (c) a description of the Covered Product giving rise to the
7 alleged violation, and (d) all test data obtained by CEH regarding the Covered Product and
8 supporting documentation sufficient for validation of the test results. Such Notice of Violation
9 shall be based upon total acid digest test data from an independent laboratory. Wipe, swipe, and
10 swab testing are not sufficient to support a Notice of Violation.

11 4.2.3 **Notice of Election of Response.** No more than 30 days after service of a
12 Notice of Violation, Defendant shall provide written notice to CEH whether it elects to contest the
13 allegations contained in a Notice of Violation (“Notice of Election”). Failure to provide a Notice
14 of Election within 30 days of service of a Notice of Violation shall be deemed an election to
15 contest the Notice of Violation.

16 4.2.3.1 If a Notice of Violation is contested, the Notice of Election shall
17 include all then-available documentary evidence regarding the alleged violation, including all test
18 data, if any. If Defendant or CEH later acquires additional test or other data regarding the alleged
19 violation, it shall notify the other party and promptly provide all such data or information to the
20 party.

21 4.2.4 **Meet and Confer.** If a Notice of Violation is contested, CEH and
22 Defendant shall meet and confer to attempt to resolve their dispute. Within 30 days of serving a
23 Notice of Election contesting a Notice of Violation, and if no enforcement motion or application
24 has been filed by CEH pursuant to Section 4.1, Defendant may withdraw the original Notice of
25 Election contesting the violation and serve a new Notice of Election conceding the violation,
26 provided however that Defendant shall pay \$5,000 in addition to any payment required under
27 Section 4.2.7. At any time, CEH may withdraw a Notice of Violation, in which case for purposes
28 of this Section 4 the result shall be as if CEH never issued any such Notice of Violation. If no

1 informal resolution of a Notice of Violation results within 30 days of a Notice of Election to
2 contest, CEH may file an enforcement motion or application pursuant to Section 4.1. In any such
3 proceeding, CEH may seek whatever fines, costs, penalties attorneys' fees or remedies are
4 provided by law for failure to comply with the Consent Judgment.

5 **4.2.5 Non-Contested Matters.** If Defendant elects not to contest the
6 allegations in a Notice of Violation, it shall undertake corrective action pursuant to Section 4.2.6
7 and shall make any payments required by Section 4.2.7.

8 **4.2.6 Corrective Action in Non-Contested Matters.** If Defendant elects not to
9 contest the allegation, it shall include in its Notice of Election a detailed description with
10 supporting documentation of the corrective action that it has undertaken or proposes to undertake
11 to address the alleged violation. Any such correction shall, at a minimum, provide reasonable
12 assurance that the Covered Product will no longer be offered for sale in California. Corrective
13 action must include instructions to Defendant's customers that offer the Covered Product for sale
14 to consumers to cease offering the Covered Product(s) identified in the Notice of Violation for sale
15 in California as soon as practicable. The Notice of Election shall also include the name, address,
16 telephone number, and other contact information, of Defendant's supplier(s) of each Covered
17 Product or Covered Product component identified in the Notice of Violation. Defendant shall
18 make available to CEH for inspection and copying records and correspondence regarding the
19 corrective action. If there is a dispute over the corrective action, the Parties shall meet and confer
20 pursuant to Section 4.2.4 before seeking any remedy in court.

21 **4.2.7 Payments in Non-Contested Matters.** In addition to the corrective
22 action, Defendant shall be required to make a payment as reimbursement for costs for
23 investigating, preparing, sending and prosecuting Notices of Violation, and to reimburse
24 attorneys' fees and costs incurred in connection with these activities, as specified below:

25 **4.2.7.1** If Defendant serves a Notice of Election not to contest the
26 allegations in the instant Notice of Violation, it shall be required to make a payment of \$10,000.
27 This payment shall, however, be reduced to \$5,000 if Defendant produces with its Notice of
28 Election test data showing that the Covered Product that is the subject of the Notice of Violation

1 did not exceed the Cadmium Limit. For purposes of this Section 4.2.7.1 only, “test data” shall
2 mean total cadmium by acid digest performed by an accredited laboratory on the same Covered
3 Product that is the subject of the Notice of Violation. For purposes of this Section, the “same
4 Covered Product” must be a Covered Product that has a label attached that demonstrates that the
5 Covered Product was produced at the same factory and on the same production date as that
6 indicated on the label of the Covered Product tested by CEH that supports the Notice of Violation.

7 4.2.7.2 The payment shall be made by check payable to the Lexington Law
8 Group and shall be paid within 15 days of service of a Notice of Election triggering a payment.

9 4.2.8 **Repeat Violations.** If Defendant has received three or more Notices of
10 Violation that were not successfully contested or withdrawn in any 12-month period then, at
11 CEH’s option, CEH may seek whatever fines, costs, penalties, attorneys’ fees or other remedies
12 that are provided by law for failure to comply with the Consent Judgment. Prior to seeking such
13 relief, CEH shall meet and confer with Defendant for a period not to exceed 30 days (unless
14 extended by mutual agreement) to determine if the parties can agree on measures Defendant can
15 undertake to prevent future violations.

16 **5. PAYMENTS**

17 5.1 **Payments by Defendant.** Defendant shall pay the total sum of \$40,000 as a
18 settlement payment (“Settlement Payment”) according to the payment schedule set forth in Exhibit
19 A.

20 5.2 **Allocation of Payments.** The total Settlement Payment shall be paid in checks in
21 the amounts specified and delivered as set forth in Exhibit A. Any failure by Defendant to comply
22 with the payment terms herein shall be subject to a stipulated late fee to be paid by Defendant in
23 the amount of \$100 for each day the full payment is not received after the applicable payment due
24 date set forth in Section 5.1. The late fees required under this Section shall be recoverable,
25 together with reasonable attorneys’ fees, in an enforcement proceeding brought pursuant to
26 Section 4 of this Consent Judgment. The Settlement Payment paid by Defendant shall be
27 allocated as set forth below between the following categories and made payable as follows:
28

1 5.2.1 Defendant shall pay \$5,335 as a civil penalty (“Civil Penalty”) pursuant
2 to Health & Safety Code §25249.7(b). The Civil Penalty payment shall be apportioned in
3 accordance with Health & Safety Code §25249.12 (25% to CEH and 75% to the State of
4 California's Office of Environmental Health Hazard Assessment (“OEHHA”). Accordingly,
5 Defendant shall pay the OEHHA portion of the Civil Penalty payment for \$4,018 by check made
6 payable to OEHHA and associated with taxpayer identification number 68-0284486. This
7 payment shall be delivered as follows:

8 For United States Postal Service Delivery:

9 Attn: Mike Gyurics
10 Fiscal Operations Branch Chief
11 Office of Environmental Health Hazard Assessment
12 P.O. Box 4010, MS #19B
13 Sacramento, CA 95812-4010

14 For Non-United States Postal Service Delivery:

15 Attn: Mike Gyurics
16 Fiscal Operations Branch Chief
17 Office of Environmental Health Hazard Assessment
18 1001 I Street, MS #19B
19 Sacramento, CA 95814

20 Defendant shall pay \$1,337 for the CEH portion of the Civil Penalty payment made payable to the
21 Center for Environmental Health and associated with taxpayer identification number 94-3251981.

22 5.2.2 Defendant shall pay \$4,017 as an Additional Settlement Payment
23 (“ASP”) to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of
24 Regulations, Title 11, § 3204. CEH intends to place these funds in CEH’s Toxics and Youth Fund
25 and use them to support CEH programs and activities that seek to educate the public about
26 cadmium and other toxic chemicals in consumer products that are marketed to youth, work with
27 industries that market products to youth to reduce exposure to cadmium and other toxic chemicals,
28 and thereby reduce the public health impacts and risks of exposure to cadmium and other toxic
chemicals in consumer products that are marketed to youth in California. CEH shall obtain and
maintain adequate records to document that ASPs are spent on these activities and CEH agrees to
provide such documentation to the Attorney General within thirty days of any request from the

1 Attorney General. The payment pursuant to this Section shall be made payable to the Center for
2 Environmental Health and associated with taxpayer identification number 94-3251981.

3 5.2.3 Defendant shall pay \$30,628 as a reimbursement of a portion of CEH's
4 reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement shall be made in
5 as follows: (a) \$25,742 payable to the Lexington Law Group and associated with taxpayer
6 identification number 94-3317175; and (b) \$4,886 payable to the Center For Environmental
7 Health and associated with taxpayer identification number 94-3251981.

8 5.2.4 Notwithstanding the provisions of the Enforcement of Judgments Law
9 and Code of Civil Procedure § 780.160, in the event that Settling Defendant does not comply fully
10 with its payment obligations under this Section 5, in addition to any other enforcement mechanism
11 available to CEH, CEH may seek an order requiring Settling Defendant to submit to a debtor's
12 examination in the Alameda County Superior Court. In the event that Settling Defendant fails to
13 submit to any such debtor's examination ordered by the Court, CEH may seek an order holding
14 Settling Defendant in contempt of Court.

15 **6. MODIFICATION AND DISPUTE RESOLUTION**

16 6.1 **Modification.** This Consent Judgment may be modified from time to time by
17 express written agreement of the Parties with the approval of the Court, or by an order of this
18 Court upon motion and in accordance with law.

19 6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
20 shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to
21 modify the Consent Judgment.

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1 **7. CLAIMS COVERED AND RELEASE**

2 7.1 This Consent Judgment is a full, final, and binding resolution between CEH and
3 Defendant and Defendant’s parents, shareholders, divisions, subdivisions, subsidiaries, partners,
4 sister companies and their successors and assigns (“Defendant Releasees”), and all entities to
5 whom they distribute or sell Covered Products, including, but not limited to, Cornerstone Apparel,
6 Inc. dba Papaya, distributors, wholesalers, customers, retailers, franchisees, cooperative members,
7 and licensees (“Downstream Defendant Releasees”), of any violation of Proposition 65 that have
8 been or could have been asserted in the public interest against Defendant, Defendant Releasees,
9 and Downstream Defendant Releasees, regarding the failure to warn about exposure to cadmium
10 arising in connection with Covered Products manufactured, distributed, or sold by Defendant prior
11 to the Effective Date.

12 7.2 CEH, for itself and acting on behalf of the public interest pursuant to Health &
13 Safety Code § 25249.7(d), releases, waives, and forever discharges any and all claims against
14 Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any violation
15 of Proposition 65 or any other statutory or common law claims that have been or could have been
16 asserted in the public interest regarding the failure to warn about exposure to cadmium arising in
17 connection with Covered Products manufactured, distributed or sold by Defendant prior to the
18 Effective Date.

19 7.3 Compliance with the terms of this Consent Judgment by Defendant and the
20 Defendant Releasees shall constitute compliance with Proposition 65 by Defendant, the Defendant
21 Releasees and the Downstream Defendant Releasees with respect to any alleged failure to warn
22 about cadmium in Covered Products manufactured, distributed or sold by Defendant after the
23 Effective Date.

24 **8. PROVISION OF NOTICE**

25 8.1 When any Party is entitled to receive any notice under this Consent Judgment, the
26 notice shall be sent by first class and electronic mail as follows:

27 8.1.1 **Notices to Defendant.** The person for Defendant to receive Notice
28 pursuant to this Consent Judgment shall be:

1 S. Calvin Myung
2 Law Offices of S. Calvin Myung
3 3700 Wilshire Boulevard, Suite 500
4 Los Angeles, CA 90010
5 scalvinmyunglaw@gmail.com

6 8.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
7 this Consent Judgment shall be:

8 Eric S. Somers
9 Lexington Law Group
10 503 Divisadero Street
11 San Francisco, CA 94117
12 esomers@lexlawgroup.com

13 8.2 Any Party may modify the person and address to whom the notice is to be sent by
14 sending the other Party notice by first class and electronic mail.

15 **9. COURT APPROVAL**

16 9.1 This Consent Judgment shall become effective on the Effective Date, provided
17 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
18 Defendant shall support approval of such Motion.

19 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect
20 and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

21 **10. GOVERNING LAW AND CONSTRUCTION**

22 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
23 California.

24 **11. ENTIRE AGREEMENT**

25 11.1 This Consent Judgment contains the sole and entire agreement and understanding
26 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
27 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
28 and therein. There are no warranties, representations, or other agreements between the Parties
except as expressly set forth herein. No representations, oral or otherwise, express or implied,
other than those specifically referred to in this Consent Judgment have been made by any Party
hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,

1 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
2 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
3 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
4 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
5 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
6 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
7 whether or not similar, nor shall such waiver constitute a continuing waiver.

8 **12. RETENTION OF JURISDICTION**

9 12.1 This Court shall retain jurisdiction of this matter to implement, enforce or modify
10 the Consent Judgment.

11 **13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

12 13.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
13 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
14 execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

15 **14. NO EFFECT ON OTHER SETTLEMENTS**

16 14.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim
17 against any other entity on terms that are different than those contained in this Consent Judgment.

18 **15. SUCCESSORS AND ASSIGNS**

19 This Consent Judgment shall apply to and be binding upon CEH and Settling Defendant,
20 and their respective divisions, subdivisions, and subsidiaries, and the successors or assigns of any
21 of them.

22 **16. EXECUTION IN COUNTERPARTS**

23 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by
24 means of facsimile, which taken together shall be deemed to constitute one document.

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**IT IS SO ORDERED, ADJUDGED,
AND DECREED**

Dated:

Judge of the Superior Court of the State of California

IT IS SO STIPULATED:

Dated: 2/7, 2020

CENTER FOR ENVIRONMENTAL HEALTH

Michael Green

Michael Green

Printed Name

CEO

Title

Dated: _____, 2020

DEFENDANT FASHION MAGAZINE, INC.

Printed Name

Title

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Dated: <u>1 / 27 /</u> , 2020	DEFENDANT FASHION MAGAZINE, INC.
	 Printed Name <u>Seung Dae Na</u> Title <u>CEO</u>

EXHIBIT A

Deadline	Payee(s)	Type	Amount	Deliver To
7 Days After Entry of CJ	OEHHA	Penalty	\$4,018	OEHHA per Section 5.2.1
	CEH	Penalty	\$1,337	LLG per Section 8.1.2
	CEH	ASP	\$4,017	LLG per Section 8.1.2
	CEH	Fee	\$4,886	LLG per Section 8.1.2
	LLG	Fee	\$5,742	LLG per Section 8.1.2
37 Days After Entry of CJ	LLG	Fee	\$20,000	LLG per Section 8.1.2
		TOTAL	\$40,000	

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EXHIBIT A

Deadline	Payee(s)	Type	Amount	Deliver To
7 Days After Entry of CJ	OEHHA	Penalty	\$4,018	OEHHA per Section 5.2.1
	CEH	Penalty	\$1,337	LLG per Section 8.1.2
	CEH	ASP	\$4,017	LLG per Section 8.1.2
	CEH	Fee	\$4,886	LLG per Section 8.1.2
	LLG	Fee	\$5,742	LLG per Section 8.1.2
37 Days After Entry of CJ	LLG	Fee	\$20,000	LLG per Section 8.1.2
		TOTAL	\$40,000	