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 SAMSUNG C&T AMERICA, 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 Samsung C&T America, 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 November 20, 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

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sold with clothing, without first providing a clear and reasonable warning pursuant to Proposition 65.

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

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

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

2. DEFINITIONS

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

2.2 The term "Covered Product" means jewelry, including but not limited to necklaces, whether sold individually or as part of a set with a dress or other piece of clothing.

2.3 The term "Effective Date" means the date of entry of this Consent Judgment.

3. INJUNCTIVE RELIEF

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

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

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

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

- En Focus Studio Circular Gold Brooch with Pearls (Sold with En Focus Studio Dress in Black & Ivory), Style No. 61224/VTU181763RS, Ross SKU No. 400180697418;

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 provide CEH with a written certification of compliance under this section 3.2 within 90 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 4.2.2.2 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 of Violation so long as: (a) the identity of the supplier cannot be discerned from the labeling of the Covered Product; and (b) the Notice of Violation to the supplier is served within 75 days of the date the supplier is identified in writing to CEH by Defendant.

4.2.2.2 The Notice of Violation shall, at a minimum, set forth for each Covered Product: (a) the date the alleged violation was observed, (b) the location at which the Covered Product was offered for sale, (c) a description of the Covered Product giving rise to the

alleged violation, and (d) all test data obtained by CEH regarding the Covered Product and supporting documentation sufficient for validation of the test results. Such Notice of Violation shall be based upon total acid digest test data from an independent laboratory. Wipe, swipe, and swab testing are not sufficient to support a Notice of Violation.

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

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

4.2.4 **Meet and Confer.** If a Notice of Violation is contested, CEH and Defendant shall meet and confer to attempt to resolve their dispute. Within 30 days of serving a Notice of Election contesting a Notice of Violation, and if no enforcement motion or application has been filed by CEH pursuant to Section 4.1, Defendant may withdraw the original Notice of Election contesting the violation and serve a new Notice of Election conceding the violation, provided however that Defendant shall pay $5,000 in addition to any payment required under Section 4.2.7. At any time, CEH may withdraw a Notice of Violation, in which case for purposes of this Section 4 the result shall be as if CEH never issued any such Notice of Violation. If no informal resolution of a Notice of Violation results within 30 days of a Notice of Election to contest, CEH may file an enforcement motion or application pursuant to Section 4.1. In any such proceeding, CEH may seek whatever fines, costs, penalties attorneys' fees or remedies are provided by law for failure to comply with the Consent Judgment.

4.2.5 **Non-Contested Matters.** If Defendant elects not to contest the allegations in a Notice of Violation, it shall undertake corrective action pursuant to Section 4.2.6

and shall make any payments required by Section 4.2.7.

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

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

4.2.7.1 If Defendant serves a Notice of Election not to contest the allegations in the instant Notice of Violation, it shall be required to make a payment of $10,000. This payment shall, however, be reduced to $5,000 if Defendant produces with its Notice of Election test data showing that the Covered Product that is the subject of the Notice of Violation did not exceed the Cadmium Limit. For purposes of this Section 4.2.7.1 only, "test data" shall mean total cadmium by acid digest performed by an accredited laboratory on the same Covered Product that is the subject of the Notice of Violation. For purposes of this Section, the "same Covered Product" must be a Covered Product that has a label attached that demonstrates that the Covered Product was produced at the same factory and on the same production date as that indicated on the label of the Covered Product tested by CEH that supports the Notice of Violation.

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

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

5. PAYMENTS

5.1 **Payments by Defendant.** On or before fourteen (14) days after the entry of this Consent Judgment, Defendant shall pay the total sum of $90,000 as a settlement payment ("Settlement Payment") as further set forth in this Section.

5.2 **Allocation of Payments.** The total Settlement Payment shall be paid in five (5) separate checks in the amounts specified below and delivered as set forth below. Any failure by Defendant to comply with the payment terms herein shall be subject to a stipulated late fee to be paid by Defendant in the amount of $100 for each day the full payment is not received after the applicable payment due date set forth in Section 5.1. The late fees required under this Section shall be recoverable, together with reasonable attorneys' fees, in an enforcement proceeding brought pursuant to Section 4 of this Consent Judgment. The Settlement Payment paid by Defendant shall be allocated as set forth below between the following categories and made payable as follows:

5.2.1 Defendant shall pay $12,228 as a civil penalty ("Civil Penalty") pursuant to Health & Safety Code §25249.7(b). The Civil Penalty payment shall be apportioned in accordance with Health & Safety Code §25249.12 (25% to CEH and 75% to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, Defendant shall pay the OEHHA portion of the Civil Penalty payment for $9,171 by check made

payable to OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be delivered as follows:

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

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

Defendant shall pay the CEH portion of the Civil Penalty payment for $3,057 by check made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.2 Defendant shall pay $9,171 as an Additional Settlement Payment ("ASP") to CEH pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH intends to place these funds in CEH's Toxics and Youth Fund and use them to support CEH programs and activities that seek to educate the public about cadmium and other toxic chemicals in consumer products that are marketed to youth, work with industries that market products to youth to reduce exposure to cadmium and other toxic chemicals, 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 Attorney General. The payment pursuant to this Section shall be made payable to the Center for Environmental Health and associated with taxpayer identification number 94-3251981. This

payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.3 Defendant shall pay $68,601 as a reimbursement of a portion of CEH's reasonable attorneys' fees and costs. The attorneys' fees and cost reimbursement shall be made in two separate checks as follows: (a) $57,800 payable to the Lexington Law Group and associated with taxpayer identification number 94-3317175; and (b) $10,801 payable to the Center For Environmental Health and associated with taxpayer identification number 94-3251981. Both of these payments shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

5.2.4 To summarize, Defendant shall deliver checks made out to the payees and in the amounts set forth below:

Payee	**Type**	**Amount**	**Deliver To**
OEHHA	Penalty	$9,171	OEHHA per Section 5.2.1
Center For Environmental Health	Penalty	$3,057	LLG
Center For Environmental Health	ASP	$9,171	LLG
Lexington Law Group	Fee and Cost	$57,800	LLG
Center For Environmental Health	Fee and Cost	$10,801	LLG

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

6. MODIFICATION AND DISPUTE RESOLUTION

6.1 **Modification.** This Consent Judgment may be modified from time to time by

express written agreement of the Parties with the approval of the Court, or by an order of this Court upon motion and in accordance with law.

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

7. CLAIMS COVERED AND RELEASE

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

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

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

8. PROVISION OF NOTICE

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

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

Peter S. Hong
Corporate Counsel for Samsung C&T America, Inc.
5601 E. Slauson Avenue
Commerce, CA 90040
peter.hong@samsung.com

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

Eric S. Somers
Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117
esomers@lexlawgroup.com

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

9. COURT APPROVAL

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

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

10. GOVERNING LAW AND CONSTRUCTION

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

11. ENTIRE AGREEMENT

11.1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,

negotiations, commitments, or understandings related thereto, if any, are hereby merged herein 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, shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the extent that they are expressly incorporated herein. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

12. RETENTION OF JURISDICTION

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

13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT

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

14. NO EFFECT ON OTHER SETTLEMENTS

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

15. SUCCESSORS AND ASSIGNS

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

16. EXECUTION IN COUNTERPARTS

16.1 The stipulations to this Consent Judgment may be executed in counterparts and by

means of facsimile, which taken together shall be deemed to constitute one document.

IT IS SO ORDERED, ADJUDGED, AND DECREED

Dated: _____

_____
Judge of the Superior Court of the State of California

IT IS SO STIPULATED:

Dated: 9/27, 2019	**CENTER FOR ENVIRONMENTAL HEALTH** Michael Green Printed Name CEO Title
Dated: _____, 2019	**DEFENDANT SAMSUNG C&T AMERICA, INC.** _____ _____ Printed Name _____ Title

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means of facsimile, which taken together shall be deemed to constitute one document.

IT IS SO ORDERED, ADJUDGED, AND DECREED

Dated: _____

Judge of the Superior Court of the State of California

IT IS SO STIPULATED:

Dated: _____, 2019	**CENTER FOR ENVIRONMENTAL HEALTH** _____ _____ Printed Name _____ Title
Dated: Sept. 20, 2019	**DEFENDANT SAMSUNG C&T AMERICA, INC.** _____ Jung Suk Lee Printed Name Vice President Title

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