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By _____
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Superior Court
Santa Clara

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SANTA CLARA
13 UNLIMITED CIVIL JURISDICTION

14 JOHN MOORE,

15 Plaintiff,

16 v.

17 BENSON MILLS, INC.; BENSON SALES
18 CO., INC.; KOHL'S CORPORATION; and
19 DOES 1-150, inclusive,

20 Defendants.

Case No. _____

112CV237078

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

)(Cal. Health & Safety Code § 25249.6 et seq.)

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff John Moore, in the
3 public interest of the citizens of the State of California, to enforce the People’s right to be informed
4 of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical found in placemats sold in
5 California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to warn
7 California citizens about their exposure to DEHP, present in or on certain placemats that defendants
8 manufacture, import, distribute and/or offer for sale to consumers throughout the State of
9 California.

10 3. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
11 California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”), “No person in the course of
12 doing business shall knowingly and intentionally expose any individual to a chemical known to the
13 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to
14 such individual. . . .” (*Cal. Health & Safety Code § 25249.6.*)

15 4. On October 24, 2003, California identified and listed DEHP as a chemical known to
16 cause birth defects and other reproductive harm. DEHP became subject to the warning requirement
17 one year later and was, therefore, subject to the “clear and reasonable warning” requirements of
18 Proposition 65, beginning on October 24, 2004. (*27 CCR § 27001 (c); Cal. Health & Safety Code §*
19 *25249.8.*)

20 5. Defendants manufacture, import, distribute, sell and/or offer for sale placemats in the
21 State of California containing DEHP as follows:

22 a. Defendant Benson Mills, Inc. (“BENSON”) manufactures, imports,
23 distributes, sells and/or offers for sale placemats containing DEHP including, but not
24 limited to, *APT. 9 Placemat, #34821, #111 90 94 (#7 21862 34821 4).*

25 b. Defendant Benson Sales Co., Inc. (“BENSON SALES”) manufactures,
26 imports, distributes, sells and/or offers for sale placemats containing DEHP including,
27 but not limited to, *APT. 9 Placemat, #34821, #111 90 94 (#7 21862 34821 4).*

1 14. BENSON SALES manufactures, imports, distributes, sells and/or offers the Products
2 for sale or use in the State of California or implies by its conduct that it manufactures, imports,
3 distributes, sells and/or offers the Products for sale or use in the State of California.

4 15. KOHL'S is a person doing business within the meaning of California Health & Safety
5 Code § 25249.11.

6 16. KOHL'S distributes, sells and/or offers the Products for sale or use in the State of
7 California or implies by its conduct that it distributes, sells and/or offers the Products for sale or use
8 in the State of California.

9 17. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons
10 doing business within the meaning of California Health & Safety Code § 25249.11.

11 18. MANUFACTURER DEFENDANTS engage in the process of research, testing,
12 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they engage
13 in the process of research, testing, designing, assembling, fabricating and/or manufacturing, one or
14 more of the Products for sale or use in the State of California.

15 19. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons
16 doing business within the meaning of California Health & Safety Code § 25249.11.

17 20. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
18 transport one or more of the Products to individuals, businesses or retailers for sale or use in the
19 State of California.

20 21. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each persons doing
21 business within the meaning of California Health & Safety Code § 25249.11.

22 22. RETAILER DEFENDANTS offer the Products for sale to individuals in the State of
23 California and, in some circumstances, may also be manufacturers and/or distributors.

24 23. At this time, the true name of defendants DOES 1 through 150, inclusive, are unknown
25 to plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code of Civil
26 Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that each of the
27 fictitiously named defendants is responsible for the acts and occurrences herein alleged. When
28 ascertained, their true names shall be reflected in an amended complaint.

1 30. Proposition 65 states, “[n]o person in the course of doing business shall knowingly and
2 intentionally expose any individual to a chemical known to the state to cause cancer or reproductive
3 toxicity without first giving clear and reasonable warning to such individual....” (*Id.*)

4 31. On or about November 17, 2011, a 60-Day Notice of Violation, together with the
5 requisite Certificate of Merit (the “Notice”), was provided to KOHL’S and various public
6 enforcement agencies stating that as a result of DEFENDANTS’ manufacture, distribution and/or
7 sale of the Products, purchasers and users in the State of California were being exposed to DEHP
8 resulting from the reasonably foreseeable uses of the Products, without the individual purchasers
9 and users first having been provided with a “clear and reasonable warning” regarding such toxic
10 exposures.

11 32. On or about December 30, 2012, a 60-Day Notice of Violation dated November 17,
12 2011, together with the requisite Certificate of Merit (the “Notice”), was provided to BENSON,
13 BENSON SALES and various public enforcement agencies stating that as a result of
14 DEFENDANTS’ manufacture, distribution and/or sale of the Products, purchasers and users in the
15 State of California were being exposed to DEHP resulting from the reasonably foreseeable uses of
16 the Products, without the individual purchasers and users first having been provided with a “clear
17 and reasonable warning” regarding such toxic exposures.

18 33. DEFENDANTS have engaged in the manufacture, importation, distribution and/or
19 offering of the Products for sale or use, in violation of California Health & Safety Code § 25249.6,
20 and DEFENDANTS’ manufacture, importation, distribution, and/or offering of the Products for
21 sale or use, in violation of California Health & Safety Code § 25249.6, has continued to occur
22 beyond DEFENDANTS’ receipt of the Notice. Plaintiff further alleges and believes that such
23 violations will continue to occur into the future.

24 34. After receipt of the claims asserted in the Notice, the appropriate public enforcement
25 agencies have failed to commence and diligently prosecute a cause of action against
26 DEFENDANTS under Proposition 65.

27 35. The Products manufactured, imported, distributed, and/or offered for sale or use in
28 California by DEFENDANTS contained DEHP above the allowable state limits.

1 36. DEFENDANTS knew or should have known that the Products manufactured,
2 imported, distributed, and/or offered for sale or use by DEFENDANTS in California contained
3 DEHP.

4 37. DEHP was present in or on the Products in such a way as to expose individuals to
5 DEHP through dermal contact and ingestion during the reasonably foreseeable use of the Products.

6 38. The normal and reasonably foreseeable use of the Products has caused and continues
7 to cause consumer and workplace exposures to DEHP, as such exposure is defined by 27 California
8 Code of Regulations (“CCR”) § 25602(b).

9 39. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of the
10 Products would expose individuals to DEHP through dermal contact and ingestion.

11 40. DEFENDANTS intended that such exposures to DEHP from the reasonably
12 foreseeable use of the Products would occur by their deliberate, non-accidental participation in the
13 manufacture, importation, distribution and/or offer for sale or use of Products to individuals in the
14 State of California.

15 41. DEFENDANTS failed to provide a “clear and reasonable warning” to those consumers
16 and/or other individuals in the State of California who were or who could become exposed to
17 DEHP through dermal contact and ingestion during the reasonably foreseeable use of the Products.

18 42. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
19 directly by California voters, individuals exposed to DEHP through dermal contact and ingestion
20 resulting from the reasonably foreseeable use of the Products, sold by DEFENDANTS without a
21 “clear and reasonable warning,” have suffered, and continue to suffer, irreparable harm, for which
22 harm they have no plain, speedy or adequate remedy at law.

23 43. As a consequence of the above-described acts, DEFENDANTS are each liable for a
24 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health & Safety
25 Code § 25249.7(b).

26 44. As a consequence of the above-described acts, California Health & Safety Code
27 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
28 DEFENDANTS.

1 **PRAYER FOR RELIEF**

2 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

3 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess
4 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation alleged
5 herein;

6 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, importing distributing,
8 and/or offering the Products for sale or use in California, without providing “clear and reasonable
9 warnings” as defined by 27 CCR § 25601, as to the harms associated with exposures to DEHP;

10 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

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

12
13 Dated: November 30, 2012

Respectfully Submitted,

14 THE CHANLER GROUP

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16 By: 

17 Laralei Paras
18 Attorneys for Plaintiff
19 JOHN MOORE
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