



1 NATURE OF THE ACTION

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

6 2. By this First Amended Complaint, plaintiff seeks to remedy defendants’ continuing  
7 failure to warn California citizens about their exposure to DEHP, present in or on certain placemats  
8 that defendants manufacture, import, distribute, sell and/or offer for sale to consumers throughout  
9 the State of 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. Significant levels of DEHP have been discovered in or on the vinyl/PVC materials of  
21 placemats that are manufactured, imported, distributed, and/or sold by defendant Benson Mills, Inc.  
22 (“BENSON”) and/or defendant Benson Sales Co., Inc. (“BENSON SALES”).

23 6. One example of the placemats with vinyl/PVC materials containing DEHP that are  
24 manufactured, imported, distributed and/or sold by BENSON and/or BENSON SALES is the *APT.*  
25 *9 Placemat, #34821, #111 90 94 (#7 21862 34821 4).*

26 7. All such placemats identified in paragraphs 5 and 6 above, shall hereinafter be  
27 collectively referred to as the “Products.”

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1 8. Defendants' failure to warn consumers and/or other individuals in the State of  
2 California about their exposure to DEHP in conjunction with defendants' sale of the Products is a  
3 violation of Proposition 65 and subjects defendants to enjoinder of such conduct as well as civil  
4 penalties for each such violation.

5 9. For defendants' violations of Proposition 65, plaintiff seeks preliminary and  
6 permanent injunctive relief to compel defendants to provide purchasers or users of the Products  
7 with the required warning regarding the health hazards of DEHP. (*Cal. Health & Safety Code* §  
8 25249.7(a).)

9 10. Plaintiff also seeks civil penalties against defendants for their violations of Proposition  
10 65, as provided for by California Health & Safety Code § 25249.7(b).

11 **PARTIES**

12 11. John Moore is a citizen of the State of California who is dedicated to protecting the  
13 health of California citizens through the elimination or reduction of toxic exposures from consumer  
14 and commercial products, and brings this action in the public interest pursuant to California Health  
15 & Safety Code § 25249.7.

16 12. BENSON is a person doing business within the meaning of California Health & Safety  
17 Code § 25249.11.

18 13. BENSON manufactures, imports, distributes, sells and/or offers the Products for sale  
19 or use in the State of California or implies by its conduct that it manufactures, imports, distributes,  
20 sells and/or offers the Products for sale or use in the State of California.

21 14. BENSON SALES is a person doing business within the meaning of California Health  
22 & Safety Code § 25249.11.

23 15. BENSON SALES manufactures, imports, distributes, sells and/or offers the Products  
24 for sale or use in the State of California or implies by its conduct that it manufactures, imports,  
25 distributes, sells and/or offers the Products for sale or use in the State of California.

26 16. KOHL'S is a person doing business within the meaning of California Health & Safety  
27 Code § 25249.11.

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1           17. KOHL’S distributes, sells and/or offers the Products for sale or use in the State of  
2 California or implies by its conduct that it distributes, sells and/or offers the Products for sale or use  
3 in the State of California.

4           18. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each persons  
5 doing business within the meaning of California Health & Safety Code § 25249.11.

6           19. MANUFACTURER DEFENDANTS engage in the process of research, testing,  
7 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they engage  
8 in the process of research, testing, designing, assembling, fabricating and/or manufacturing, one or  
9 more of the Products for sale or use in the State of California.

10           20. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons  
11 doing business within the meaning of California Health & Safety Code § 25249.11.

12           21. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or  
13 transport one or more of the Products to individuals, businesses or retailers for sale or use in the  
14 State of California.

15           22. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons doing  
16 business within the meaning of California Health & Safety Code § 25249.11.

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

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

24           25. BENSON, BENSON SALES, KOHL’S, MANUFACTURER DEFENDANTS,  
25 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate,  
26 collectively be referred to hereinafter as “DEFENDANTS.”

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1 **VENUE AND JURISDICTION**

2 26. Venue is proper in the Santa Clara County Superior Court, pursuant to Code of Civil  
3 Procedure §§ 394, 395, 395.5, because this Court is a court of competent jurisdiction, because one  
4 or more instances of wrongful conduct occurred, and continues to occur, in the County of Santa  
5 Clara and/or because DEFENDANTS conducted, and continue to conduct, business in this County  
6 with respect to the Products.

7 27. The California Superior Court has jurisdiction over this action pursuant to California  
8 Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction in all causes  
9 except those given by statute to other trial courts.” The statute under which this action is brought  
10 does not specify any other basis of subject matter jurisdiction.

11 28. The California Superior Court has jurisdiction over DEFENDANTS based on  
12 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
13 association that either are citizens of the State of California, have sufficient minimum contacts in  
14 the State of California, or otherwise purposefully avail themselves of the California market.  
15 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California  
16 courts consistent with traditional notions of fair play and substantial justice.

17 **FIRST CAUSE OF ACTION**

18 **(Violation of Proposition 65 - Against All Defendants)**

19 29. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs  
20 1 through 28, inclusive.

21 30. The citizens of the State of California have expressly stated in Proposition 65 that they  
22 must be informed “about exposures to chemicals that cause cancer, birth defects and other  
23 reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

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

27 32. On or about November 17, 2011, a 60-Day Notice of Violation, together with the  
28 requisite Certificate of Merit (the “Notice”), was provided to KOHL’S and various public

1 enforcement agencies stating that as a result of DEFENDANTS' manufacture, distribution and/or  
2 sale of the Products, purchasers and users in the State of California were being exposed to DEHP  
3 resulting from the reasonably foreseeable uses of the Products, without the individual purchasers  
4 and users first having been provided with a "clear and reasonable warning" regarding such toxic  
5 exposures.

6 33. On or about December 30, 2012, a 60-Day Notice of Violation dated November 17,  
7 2011, together with the requisite Certificate of Merit (the "Notice"), was provided to BENSON,  
8 BENSON SALES and various public enforcement agencies stating that as a result of  
9 DEFENDANTS' manufacture, distribution and/or sale of the Products, purchasers and users in the  
10 State of California were being exposed to DEHP resulting from the reasonably foreseeable uses of  
11 the Products, without the individual purchasers and users first having been provided with a "clear  
12 and reasonable warning" regarding such toxic exposures.

13 34. DEFENDANTS have engaged in the manufacture, importation, distribution and/or  
14 offering of the Products for sale or use, in violation of California Health & Safety Code § 25249.6,  
15 and DEFENDANTS' manufacture, importation, distribution, and/or offering of the Products for  
16 sale or use, in violation of California Health & Safety Code § 25249.6, has continued to occur  
17 beyond DEFENDANTS' receipt of the Notice. Plaintiff further alleges and believes that such  
18 violations will continue to occur into the future.

19 35. After receipt of the claims asserted in the Notice, the appropriate public enforcement  
20 agencies have not elected to commence and diligently prosecute a cause of action against  
21 DEFENDANTS under Proposition 65.

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

24 37. DEFENDANTS knew or should have known that the Products manufactured,  
25 imported, distributed, and/or offered for sale or use by DEFENDANTS in California contained  
26 DEHP.

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

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- 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, importing distributing, and/or offering the Products for sale or use in California, without providing “clear and reasonable warnings” as defined by 27 CCR § 25601, as to the harms associated with exposures to DEHP;
- 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: March 28, 2013

Respectfully Submitted,

THE CHANLER GROUP

By:   
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Attorneys for Plaintiff  
JOHN MOORE