

ENDORSED  
FILED  
San Francisco County Superior Court

OCT 10 2012

CLERK OF THE COURT

BY: DEBORAH STEPPE  
Deputy Clerk

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF SAN FRANCISCO**

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12 CONSUMER ADVOCACY GROUP, INC.,  
in the public interest,

13 Plaintiff,

14 v.

15  
16 KOHL'S CORPORATION, a Delaware  
Corporation, KOHL'S DEPARTMENT  
17 STORES, INC., a Delaware Corporation,  
KOHL'S ILLINOIS, INC., a Nevada  
18 Corporation, and DOES 1-20;

19 Defendants.

CASE NO.

CGC-12-525044

COMPLAINT FOR PENALTY,  
INJUNCTION, AND RESTITUTION

Violation of Proposition 65, the Safe  
Drinking Water and Toxic Enforcement  
Act of 1986 (*Health & Safety Code*, §  
25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL  
CASE (exceeds \$25,000)

**BY FAX**

20  
21 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
22 defendants KOHL'S CORPORATION, KOHL'S DEPARTMENT STORES, INC., KOHL'S  
23 ILLINOIS, INC., and DOES 1-20 as follows:

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**THE PARTIES**

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2 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an  
3 organization qualified to do business in the State of California. CAG is a person within  
4 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting  
5 as a private attorney general, brings this action in the public interest as defined under  
6 Health and Safety Code section 25249.7, subdivision (d).
- 7 2. Defendant KOHL'S CORPORATION ("KOHL'S") is a Delaware corporation, qualified  
8 to do business and doing business in the State of California at all relevant times herein.
- 9 3. Defendant KOHL'S DEPARTMENT STORES, INC. ("KOHL'S STORES") is a  
10 Delaware corporation, qualified to do business and doing business in the State of  
11 California at all relevant times herein.
- 12 4. Defendant KOHL'S ILLINOIS, INC. ("KOHL'S ILLINOIS") is a Nevada corporation,  
13 qualified to do business and doing business in the State of California at all relevant times  
14 herein.
- 15 5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,  
16 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
17 complaint to allege their true names and capacities when ascertained. Plaintiff is  
18 informed, believes, and thereon alleges that each fictitiously named defendant is  
19 responsible in some manner for the occurrences herein alleged and the damages caused  
20 thereby.
- 21 6. At all times mentioned herein, the term "Defendants" includes KOHL'S, KOHL'S  
22 STORES, KOHL'S ILLINOIS, and DOES 1-20.
- 23 7. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
24 times mentioned herein have conducted business within the State of California.
- 25 8. At all times relevant to this action, each of the Defendants, including DOES 1-20, was an  
26 agent, servant, or employee of each of the other Defendants. In conducting the activities  
27 alleged in this Complaint, each of the Defendants was acting within the course and scope  
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1 of this agency, service, or employment, and was acting with the consent, permission, and  
2 authorization of each of the other Defendants. All actions of each of the Defendants  
3 alleged in this Complaint were ratified and approved by every other Defendant or their  
4 officers or managing agents. Alternatively, each of the Defendants aided, conspired with  
5 and/or facilitated the alleged wrongful conduct of each of the other Defendants.

- 6 9. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
7 Defendants was a person doing business within the meaning of Health and Safety Code  
8 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
9 employees at all relevant times.

### 10 JURISDICTION

- 11 10. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
12 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
13 those given by statute to other trial courts. This Court has jurisdiction over this action  
14 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
15 violations of Proposition 65 in any Court of competent jurisdiction.

- 16 11. This Court has jurisdiction over Defendants named herein because Defendants either  
17 reside or are located in this State or are foreign corporations authorized to do business in  
18 California, are registered with the California Secretary of State, or who do sufficient  
19 business in California, have sufficient minimum contacts with California, or otherwise  
20 intentionally avail themselves of the markets within California through their manufacture,  
21 distribution, promotion, marketing, or sale of their products within California to render  
22 the exercise of jurisdiction by the California courts permissible under traditional notions  
23 of fair play and substantial justice.

- 24 12. Venue is proper in the County of San Francisco because one or more of the instances of  
25 wrongful conduct occurred, and continues to occur, in the County of San Francisco  
26 and/or because Defendants conducted, and continue to conduct, business in the County of  
27 San Francisco with respect to the consumer product that is the subject of this action.

1 **BACKGROUND AND PRELIMINARY FACTS**

2 13. In 1986, California voters approved an initiative to address growing concerns about  
3 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to  
4 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,  
5 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
6 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections  
7 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources  
8 from contamination, to allow consumers to make informed choices about the products  
9 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
10 fit.

11 14. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
12 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*  
13 § 25249.8. The list, which the Governor updates at least once a year, contains over 700  
14 chemicals and chemical families. Proposition 65 imposes warning requirements and  
15 other controls that apply to Proposition 65-listed chemicals.

16 15. All businesses with ten (10) or more employees that operate or sell products in California  
17 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited  
18 from knowingly discharging Proposition 65-listed chemicals into sources of drinking  
19 water (*Health & Safety Code* § 25249.5), and (2) required to provide "clear and  
20 reasonable" warnings before exposing a person, knowingly and intentionally, to a  
21 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

22 16. Proposition 65 provides that any person "violating or threatening to violate" the statute  
23 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.  
24 "Threaten to violate" means "to create a condition in which there is a substantial  
25 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
26 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
27 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

1 17. Plaintiff identified certain practices of manufacturers and distributors of DEHP-bearing  
2 products of exposing, knowingly and intentionally, persons in California to the  
3 Proposition 65-listed chemicals of such products without first providing clear and  
4 reasonable warnings of such to the exposed persons prior to the time of exposure.  
5 Plaintiff later discerned that Defendants engaged in such practice.

6 18. On January 1, 1988, the Governor of California added DEHP to the list of chemicals  
7 known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP  
8 to the list of chemicals known to the State to cause developmental male reproductive  
9 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)  
10 months after addition of DEHP to the list of chemicals known to the State to cause  
11 reproductive toxicity, DEHP became fully subject to Proposition 65 warning  
12 requirements and discharge prohibitions.

13 **SATISFACTION OF PRIOR NOTICE**

14 19. On or about February 28, 2012, Plaintiff gave notice of alleged violations of Health and  
15 Safety Code section 25249.6, concerning consumer products exposures and occupational  
16 exposures, subject to a private action to KOHL'S, KOHL'S STORES, and to the  
17 California Attorney General, County District Attorneys, and City Attorneys for each city  
18 containing a population of at least 750,000 people in whose jurisdictions the violations  
19 allegedly occurred, concerning the product Vinyl Placemats.

20 20. On or about March 15, 2012, Plaintiff gave notice of alleged violations of Health and  
21 Safety Code section 25249.6, concerning consumer products exposures and occupational  
22 exposures, subject to a private action to KOHL'S, KOHL'S STORES, KOHL'S  
23 ILLINOIS, and to the California Attorney General, County District Attorneys, and City  
24 Attorneys for each city containing a population of at least 750,000 people in whose  
25 jurisdictions the violations allegedly occurred, concerning the product Vinyl Placemats.

- 1 21. Before sending the notices of alleged violation, Plaintiff investigated the consumer  
2 products involved, the likelihood that such products would cause users to suffer  
3 significant exposures to DEHP, and the corporate structure of each of the Defendants.
- 4 22. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
5 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
6 Plaintiff who executed the certificate had consulted with at least one person with relevant  
7 and appropriate expertise who reviewed data regarding the exposures to DEHP, the  
8 subject Proposition 65-listed chemical of this action. Based on that information, the  
9 attorney for Plaintiff who executed the Certificate of Merit believed there was a  
10 reasonable and meritorious case for this private action. The attorney for Plaintiff attached  
11 to the Certificate of Merit served on the Attorney General the confidential factual  
12 information sufficient to establish the basis of the Certificate of Merit.
- 13 23. Plaintiff's notices of alleged violations also included a Certificate of Service and a  
14 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
15 (Proposition 65) A Summary." *Health & Safety Code § 25249.7(d)*.
- 16 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
17 gave notices of the alleged violations to KOHL'S, KOHL'S STORES, KOHL'S  
18 ILLINOIS, and the public prosecutors referenced in Paragraphs 19 and 20.
- 19 25. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
20 any applicable district attorney or city attorney has commenced and is diligently  
21 prosecuting an action against the Defendants.

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1 **FIRST CAUSE OF ACTION**

2 (By CONSUMER ADVOCACY GROUP, INC. and against KOHL'S  
3 CORPORATION, KOHL'S DEPARTMENT STORES, INC., and DOES 1-20 for  
4 Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act  
5 of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))

6 **Vinyl Placemats**

- 7 26. Plaintiff CONSUMER ADVOCACY GROUP repeats and incorporates by reference  
8 paragraphs 1 through 25 of this complaint as though fully set forth herein.
- 9 27. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
10 distributor, promoter, or retailer of Vinyl Placemats ("Placemats"), including but not  
11 limited to Sonoma Outdoors™ Beach Brights Placemat (flip flops of various colors  
12 against clear glittery background) Style# SS1TLBBPM20-1414, a consumer product used  
13 in close proximity to food.
- 14 28. Plaintiff is informed, believes, and thereon alleges that Placemats contains DEHP.
- 15 29. Defendants knew or should have known that DEHP has been identified by the State of  
16 California as a chemical known to cause cancer and reproductive toxicity and therefore  
17 was subject to Proposition 65 warning requirements. Defendants were also informed of  
18 the presence of DEHP in Placemats within Plaintiff's notice of alleged violations further  
19 discussed above at Paragraph 19.
- 20 30. Plaintiff's allegations regarding Placemats concerns "[c]onsumer products exposure[s],"  
21 which "is an exposure that results from a person's acquisition, purchase, storage,  
22 consumption, or other reasonably foreseeable use of a consumer good, or any exposure  
23 that results from receiving a consumer service." *Cal. Code Regs.* tit. 27, § 25602(b).  
24 Placemats are consumer products, and, as mentioned herein, exposures to DEHP took  
25 place as a result of such normal and foreseeable consumption and use.
- 26 31. Plaintiff is informed, believes, and thereon alleges that between February 28, 2009 and  
27 the present, each of the Defendants knowingly and intentionally exposed their employees  
28 and California consumers and users of Placemats, which Defendants manufactured,  
distributed, or sold as mentioned above, to DEHP, without first providing any type of

1 clear and reasonable warning of such to the exposed persons before the time of exposure.  
2 Defendants have distributed and sold Placemats in California. Defendants know and  
3 intend that California consumers will use and consume Placemats, thereby exposing them  
4 to DEHP. Defendants thereby violated Proposition 65.

5 32. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
6 Persons sustain exposures by handling Placemats without wearing gloves or any other  
7 personal protective equipment, or by touching bare skin or mucous membranes with  
8 gloves after handling Placemats, as well as through direct and indirect hand to mouth  
9 contact, hand to mucous membrane, or breathing in particulate matter dispersed from  
10 Placemats. And as to Defendants' employees, employees may be exposed to DEHP in the  
11 course of their employment by handling, distributing, and selling Placemats.

12 33. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
13 Proposition 65 as to Placemats have been ongoing and continuous to the date of the  
14 signing of this complaint, as Defendants engaged and continue to engage in conduct  
15 which violates Health and Safety Code section 25249.6, including the manufacture,  
16 distribution, promotion, and sale of Placemats, so that a separate and distinct violation of  
17 Proposition 65 occurred each and every time a person was exposed to DEHP by  
18 Placemats as mentioned herein.

19 34. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
20 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
21 violations alleged herein will continue to occur into the future.

22 35. Based on the allegations herein, Defendants are liable for civil penalties of up to  
23 \$2,500.00 per day per individual exposure to DEHP from Placemats, pursuant to Health  
24 and Safety Code section 25249.7(b).

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1 Defendants have distributed and sold Mats in California. Defendants know and intend  
2 that California consumers will use and consume Mats, thereby exposing them to DEHP.  
3 Defendants thereby violated Proposition 65.

4 42. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
5 Persons sustain exposures by handling Mats without wearing gloves or any other personal  
6 protective equipment, or by touching bare skin or mucous membranes with gloves after  
7 handling Mats, as well as through direct and indirect hand to mouth contact, hand to  
8 mucous membrane, or breathing in particulate matter dispersed from Mats. And as to  
9 Defendants' employees, employees may be exposed to DEHP in the course of their  
10 employment by handling, distributing, and selling Mats.

11 43. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
12 Proposition 65 as to Mats have been ongoing and continuous to the date of the signing of  
13 this complaint, as Defendants engaged and continue to engage in conduct which violates  
14 Health and Safety Code section 25249.6, including the manufacture, distribution,  
15 promotion, and sale of Mats, so that a separate and distinct violation of Proposition 65  
16 occurred each and every time a person was exposed to DEHP by Mats as mentioned  
17 herein.

18 44. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
19 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
20 violations alleged herein will continue to occur into the future.

21 45. Based on the allegations herein, Defendants are liable for civil penalties of up to  
22 \$2,500.00 per day per individual exposure to DEHP from Mats, pursuant to Health and  
23 Safety Code section 25249.7(b).

24 46. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
25 filing this Complaint.

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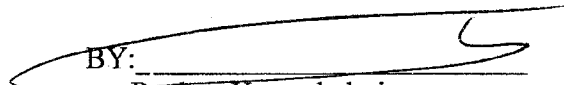
**PRAYER FOR RELIEF**

Plaintiff demands against each of the Defendants as follows:

1. A permanent injunction mandating Proposition 65-compliant warnings;
2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
3. Costs of suit;
4. Reasonable attorney fees and costs; and
5. Any further relief that the court may deem just and equitable.

Dated: 10-09-12, 2012

YEROUSHALMI & ASSOCIATES

BY:   
Reuben Yeroushalmi  
Attorneys for Plaintiff,  
Consumer Advocacy Group, Inc.