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ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**03/30/2022**  
Clerk of the Court  
BY: LAURA SIMMONS  
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO

11 PRECILA BALABBO,  
12 Plaintiff,

13 vs.

14 LUG USA, LLC, KOHL'S, INC.,  
15 KOHL'S CORPORATION,  
16 Defendants.

Case No.:

**CGC-22-598953**

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

**(Violation of Health & Safety Code § 25249.5 et  
seq.)**

17 Plaintiff Precila Balabbo ("Plaintiff"), by and through her attorneys, alleges the following  
18 cause of action in the public interest of the citizens of the State of California.

19 **BACKGROUND OF THE CASE**

20 1. Plaintiff brings this representative action on behalf of all California citizens to  
21 enforce relevant portions of the Safe Drinking Water and Toxic Enforcement Act of 1986, codified  
22 at the Health and Safety Code § 25249.5 et seq ("Proposition 65"), which reads, in relevant part,  
23 "[n]o person in the course of doing business shall knowingly and intentionally expose any  
24 individual to a chemical known to the state to cause cancer or reproductive toxicity without first  
25 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

26 2. This complaint is a representative action brought by Plaintiff in the public interest  
27 of the citizens of the State of California to enforce the People's right to be informed of the health  
28 hazards caused by exposure to di-isodecyl phthalate (DIDP), a toxic chemical found in Lug  
Transport clear view envelopes sold and/or distributed by defendant Lug USA, LLC ("Lug USA")  
and/or defendant Kohl's, Inc. and/or defendant Kohl's Corporation (collectively, Kohl's, Inc. and

1 Kohl's Corporation are referred to as "Kohl's") (collectively, Lug USA and Kohl's are referred to  
2 as the "Defendants") in California.

3 3. DIDP is a harmful chemical known to the State of California to cause reproductive  
4 toxicity. On April 20, 2007, the State of California listed DIDP as a chemical known to the State  
5 to cause developmental toxicity and it has come under the purview of Proposition 65 regulations  
6 since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
7 25249.10(b).

8 4. Proposition 65 requires all businesses with ten (10) or more employees that operate  
9 within California or sell products therein to comply with Proposition 65 regulations. Included in  
10 such regulations is the requirement that businesses must label any product containing a Proposition  
11 65-listed chemical that will create an exposure above safe harbor levels with a "clear and  
12 reasonable" warning before "knowingly and intentionally" exposing any person to any such listed  
13 chemical.

14 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
15 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be  
16 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code  
17 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the  
18 actions of a defendant which "violate or threaten to violate" the statute. Health & Safety Code §  
19 25249.7.

20 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,  
21 without a requisite exposure warning, Lug Transport clear view envelopes (the "Products") that  
22 expose persons to DIDP when used for their intended purpose.

23 7. Defendants' failure to warn consumers and other individuals in California of the  
24 health hazards associated with exposure to DIDP in conjunction with the sale and/or distribution  
25 of the Products is a violation of Proposition 65 and subjects Defendants to the enjoinder and civil  
26 penalties described herein.

27 8. Plaintiff seeks civil penalties against Defendants for their violations of Proposition  
28 65 in accordance with Health and Safety Code § 25249.7(b).



1 of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has  
2 jurisdiction over this lawsuit.

3 16. This Court has jurisdiction over Defendants because each defendant is either a  
4 citizen of the State of California, has sufficient minimum contacts with the State of California, is  
5 registered with the California Secretary of State as foreign corporations authorized to do business  
6 in the State of California, and/or has otherwise purposefully availed itself of the California market.  
7 Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent  
8 and permissible with traditional notions of fair play and substantial justice.

9 **STATUTORY BACKGROUND**

10 17. The people of the State of California declared in Proposition 65 their right “[t]o be  
11 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
12 harm.” (Section 1(b) of Initiative Measure, Proposition 65.)

13 18. To effect this goal, Proposition 65 requires that individuals be provided with a  
14 “clear and reasonable warning” before being exposed to substances listed by the State of California  
15 as causing cancer or reproductive toxicity. H&S Code § 25249.6 states, in pertinent part:

16 No person in the course of doing business shall knowingly and intentionally expose any  
17 individual to a chemical known to the state to cause cancer or reproductive toxicity without  
18 first giving clear and reasonable warning to such individual...

19 19. An exposure to a chemical in a consumer product is one “which results from a  
20 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a  
21 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §  
22 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...  
23 shall provide a warning to any person to whom the product is sold or transferred unless the product  
24 is packaged or labeled with a clear and reasonable warning.”





1 foreseeable use of the Product, exposure to DIDP will occur at levels that require Proposition 65  
2 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of the California  
3 Code of Regulations.

4 31. On April 26, 2022, Plaintiff received from the analytical chemist an exposure  
5 assessment report which concluded that persons in California who use the Products will be exposed  
6 to levels of DIDP that require a Proposition 65 exposure warning.

7 32. On April 27, 2022, Plaintiff gave notice of alleged violation of Health and Safety  
8 Code § 25249.6 (the “Notice”) to Defendants concerning the exposure of California citizens to  
9 DIDP from use of the Products without proper warning, subject to a private action to Defendants  
10 and to the California Attorney General’s office and the offices of the County District attorneys and  
11 City Attorneys for each city with a population greater than 750,000 persons wherein the herein  
12 violations allegedly occurred.

13 33. The Notice complied with all procedural requirements of Proposition 65 including  
14 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at  
15 least one person with relevant and appropriate expertise who reviewed relevant data regarding  
16 DIDP exposure, and that counsel believed there was meritorious and reasonable cause for a private  
17 action.

18 34. After receiving the Notice, and to Plaintiff’s best information and belief, none of  
19 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a  
20 cause of action against Defendants under Proposition 65 to enforce the alleged violations which  
21 are the subject of the Notice.

22 35. Plaintiff is commencing this action more than sixty (60) days from the date of the  
23 Notice to Defendants, as required by law.

24 **FIRST CAUSE OF ACTION**

25 **(By Plaintiff against Defendants for the Violation of Proposition 65)**

26 36. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 35 of  
27 this Complaint as though fully set forth herein.

1 37. Defendants have, at all times mentioned herein, acted as distributor, and/or retailer  
2 of the Products.

3 38. Use of the Products will expose users and consumers thereof to DIDP, a hazardous  
4 chemical found on the Proposition 65 list of chemicals known to be hazardous to human health.

5 39. The Products do not comply with the Proposition 65 warning requirements.

6 40. Plaintiff, based on her best information and belief, avers that at all relevant times  
7 herein, and at least since April 27, 2021, continuing until the present, that Defendants have  
8 continued to knowingly and intentionally expose California users and consumers of the Products  
9 to DIDP without providing required warnings under Proposition 65.

10 41. The exposures that are the subject of the Notice result from the purchase,  
11 acquisition, handling and recommended use of the Products. Consequently, the primary route of  
12 exposure to these chemicals is through dermal absorption. Dermal absorption of DIDP can occur  
13 through direct skin contact when the Products are contacted with bare hands or exposed skin.  
14 Additionally, some amount of exposure through ingestion will occur by touching the Products with  
15 subsequent touching of the user's hand to mouth.

16 42. Plaintiff, based on her best information and belief, avers that such exposures will  
17 continue every day until clear and reasonable warnings are provided to purchasers and users or  
18 until this known toxic chemical is removed from the Products.

19 43. Defendants have knowledge that the normal and reasonably foreseeable use of the  
20 Products exposes individuals to DIDP, and Defendants intend that exposures to DIDP will occur  
21 by their deliberate, non-accidental participation in the importation, distribution, sale and offering  
22 of the Products to consumers in California

23 44. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
24 Complaint.

25 45. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above  
26 described acts, Defendants are liable for a maximum civil penalty of \$2,500 per day per violation.



1 46. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically  
2 authorized to grant injunctive relief in favor of Plaintiff and against Defendants.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following  
5 relief:

6 A. That the court assess civil penalties against each defendant in the amount of \$2,500  
7 per day for each violation for up to 365 days (up to a maximum civil penalty amount per  
8 violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);


9 B. That the court preliminarily and permanently enjoin Defendants mandating  
10 Proposition 65 compliant warnings on the Products;

11 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit, in the  
12 amount of \$50,000.00.

13 D. That the court grant any further relief as may be just and proper.

14 Dated: March 30, 2022

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