1 2 3 4 5 6 7	Kimberly Gates Johnson, State Bar No. 282369 Seven Hills LLP 4 Embarcadero Center, Suite 1400 San Francisco, CA 94111 Telephone: (415) 926-7247 kimberly@sevenhillsllp.com Attorneys for Plaintiff CENTER FOR ADVANCED PUBLIC AWARE SUPERIOR COURT OF TI		ELECTRONICALLY FILED Superior Court of California, County of San Francisco 05/22/2023 Clerk of the Court BY: JEFFREY FLORES Deputy Clerk	
8	COUNTY OF S	SAN FRANCISCO		
9	UNLIMITED CIV	VIL JURISDICTION	CGC-23-606674	
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11	CENTER FOR ADVANCED PUBLIC	Case No.		
12	AWARENESS,	COMPLAINT FOR		
13	Plaintiff,	AND INJUNCTIVE RELIEF		
14	v.	Violation of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of		
15	KOHL'S, INC.; KOHL'S CORPORATION; and	1986 (Health & Safety seq.)	v Code § 25249.5 <i>et</i>	
16		UNLIMITED CIVIL		
17	Defendants.			
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28	COMPLAINT FOR CIVIL PENAI			
		LTIES AND INJUNCTIVE	NELIEF	

Plaintiff CENTER FOR ADVANCED PUBLIC AWARENESS, acting in the public interest, alleges a cause of action against Defendants KOHL'S, INC.; KOHL'S CORPORATION, and DOES 1-30.

INTRODUCTION AND NATURE OF THE ACTION

1. This Complaint is a representative action brought by plaintiff Center for Advanced Public Awareness ("CAPA") in the public interest of the citizens of the State of California to enforce the People's right to be informed of the health hazards caused by exposures to Lead and di(2-ethylhexyl) phthalate ("DEHP"), toxic chemicals found in and on the products manufactured, imported, distributed, sold or offered for sale by Defendants in the State of California.

By this Complaint, plaintiff seeks to remedy Defendants' continuing failure to warn
 individuals not covered by California's Occupational Safety Health Act, Labor Code § 6300 *et seq.* ("consumers") they are being exposed to substances known to the State of California to cause
 cancer, birth defects and other reproductive harm through exposures to Lead and DEHP, chemicals
 present in and on PRODUCTS manufactured, imported, distributed, shipped, marketed, sold or
 offered for sale throughout California by defendants and purchased by California consumers who
 handle or use the PRODUCTS.

3. Detectable levels of Lead and DEHP (collectively, "Chemicals") are found in and on
the PRODUCTS that Defendants manufacture, import, sell or distribute for sale to individuals
throughout California.

4. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
Health and Safety Code § 25249.6 *et seq.* ("**Proposition 65**"), it is unlawful for a person in the course
of doing business to knowingly and intentionally expose consumers in California to chemicals known
to the State to cause cancer, birth defects or other reproductive harm, without first providing a "clear
and reasonable" health hazard warning to such individuals prior to purchase or use.

5. CAPA contends and alleges Defendants manufacture, distribute, import, sell, and
offer for sale, in and into California, ceramic planters with exterior decoration containing Lead
including, but not limited to: (a) the *Sonoma Ancient Isle Planter with Stand Style 21SNOCQ17*#205466 UPC 4 00334 09772 9; and (b) ceramic planters with vinyl components containing DEHP,

including, but not limited to, the Sonoma Mild West Planter Basket, Navy Blue, #212078, Style 21SNODQ10, UPC 4 00468 96111 8 (collectively the "PRODUCTS") without Proposition 65's requisite health hazard warning regarding the harms associated with exposures to the Chemicals. Defendants' conduct subjects them to civil penalties for each violation, enjoinment as well as preliminary and permanent injunctive relief. Health & Safety Code § 25249.7(a) and (b).

PARTIES

6. 7 Plaintiff CAPA is a California-based non-profit organization proceeding in the public 8 interest pursuant to California Health & Safety Code § 25249.7(d) to ensure chemicals known to the 9 State of California to cause cancer, birth defects or other reproductive harm are disclosed in or 10 eliminated from consumer products sold in California. CAPA is a person within the meaning of 11 Health & Safety Code § 25249.11(a), and it brings this action in the public interest, pursuant to 12 Health and Safety Code § 25249.7(d).

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7. Plaintiff is informed, believes, and thereon alleges, at all relevant times, Defendant 14 Kohl's Inc. was and is a "person" "in the course of doing business" with ten (10) or more employees, 15 within the meanings of Health and Safety Code §§ 25249.6 and 25249.11.

8. 16 Kohl's Inc. manufactures, imports, distributes, sells, and/or offers the PRODUCTS for 17 sale or use in the State of California, or implies by its conduct that it manufactures, imports, 18 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

19 9. Plaintiff is informed, believes, and thereon alleges, at all relevant times, Defendant Kohl's Corporation was and is a "person" "in the course of doing business" with ten (10) or more 20 21 employees, within the meanings of Health and Safety Code §§ 25249.6 and 25249.11.

22 10. Kohl's Corporation manufactures, imports, distributes, sells, and/or offers the 23 PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California. 24

25 11. Kohl's Inc. and Kohl's Corporation are hereinafter collectively referred to as ("KOHL'S"). 26

27 12. Defendants DOES 1-10 ("MANUFACTURER DEFENDANTS") are each a person 28 in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and

25249.11. MANUFACTURER DEFENDANTS, and each of them, assemble, fabricate, and manufacture, or each implies by its conduct that it does such for one or more of the PRODUCTS offered for sale or use in California.

13. Defendants DOES 11-20 ("DISTRIBUTOR DEFENDANTS") are each a person in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11. DISTRIBUTOR DEFENDANTS, and each of them, distribute, transfer, and transport, or each impliedly does so by its conduct, one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in the State of California.

9 14. Defendants DOES 21-30 ("RETAILER DEFENDANTS") are each a person in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11. 10 11 RETAILER DEFENDANTS, and each of them, by and through their conduct, offer the PRODUCTS 12 for sale to individuals in the State of California.

13 15. At this time, the true names of Defendants DOES 1 through 30, inclusive, are 14 unknown to plaintiff, who, therefore, sues said DOES Defendants by their fictitious names, pursuant 15 to Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, each 16 of the fictitiously named Defendants is responsible in some manner for the acts and occurrences alleged herein and the damages caused thereby. When ascertained, their true names and capacities 17 18 shall be reflected in an amended complaint.

19 16. At all times mentioned herein, KOHL'S, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, hereinafter, where 20 21 appropriate, be referred to collectively as the "DEFENDANTS."

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23 17. This Court has jurisdiction over this action, pursuant to Cal. Health & Safety Code § 25249.7, allowing enforcement by any court of competent jurisdiction. The California Superior 25 Court has jurisdiction over this action, pursuant to California Constitution Article VI, section 10, which grants the Superior Court "original jurisdiction in all causes except those given by statute to 26 27 other trial courts." The statute under which this action is brought does not specify any other basis of 28 subject matter jurisdiction.

JURISDICTION AND VENUE

18. The California Superior Court has jurisdiction over DEFENDANTS, based on 2 plaintiff's information and good faith belief DEFENDANTS are each a person, firm, corporation or 3 association that is a citizen of the State of California, does sufficient business in California, has sufficient minimum contacts in California, and/or otherwise purposefully and intentionally avail 5 themselves of the California market through their manufacture, importation, distribution, promotion, marketing or sale of PRODUCTS within the State. DEFENDANTS' purposeful availment renders 7 the exercise of personal jurisdiction by California courts consistent with traditional notions of fair 8 play and substantial justice.

9 19. Venue is proper in the Superior Court for the County of San Francisco, pursuant to Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent 10 11 jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because one or more 12 instances of wrongful conduct occurred, and continue to occur, in this county, and/or because 13 DEFENDANTS conducted, and continue to conduct, business in the County of San Francisco with respect to the PRODUCTS that are the subject of this action. 14

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REGULATORY BACKGROUND AND LAW

20. In 1986, the people of the State of California approved an initiative addressing the 16 17 harms caused by hazardous chemicals and declared their right "[t]o be informed about exposures to 18 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp., Proposed 19 General Law, Gen, Elec. (Nov. 4, 1986) at p.3.

20 21. Formally known as the Safe Drinking Water and Toxic Enforcement Act of 1986 and 21 codified at Health & Safety Code § 25249.6 et seq., Proposition 65 states, in relevant part, "[n]o 22 person in the course of doing business shall knowingly and intentionally expose any individual to a 23 chemical known to cause cancer or reproductive toxicity without first giving a clear and reasonable warning to such individual..." 24

25 22. Under the Act, a "person in the course of doing business" is defined as a business with ten (10) or more employees. Health & Safety Code § 25249.11(b). Businesses are prohibited from 26 27 exposing individuals to hazardous chemicals without first giving a "clear and reasonable" warning. 28 Health & Safety Code § 25249.6.

23. Exposing individuals to hazardous chemicals means to cause individuals to ingest, inhale, contact via body surfaces or otherwise come into contact with a listed chemical. 27 CCR § 25102(i). An exposure to a hazardous chemical is defined as one that "results from a person's acquisition, purchase, storage, consumption or other reasonably foreseeable use of a product..."
27 C.C.R. § 25600(h).

6 24. Under Proposition 65, persons violating the statute may be enjoined in any court of
7 competent jurisdiction and may be subject to civil penalties of up to \$2,500 per day, per violation.
8 Health & Safety Code § 25249.7.

9 25. On October 1, 1992, pursuant to Proposition 65's implementing regulations, California identified and listed Lead as a chemical known to the State to cause cancer, and Lead became subject 10 11 to the "clear and reasonable warning" requirements one year later, on October 1, 1993. Thereafter, on 12 April 20, 2007, pursuant to the implementing regulations, California also identified and listed Lead as 13 a chemical known to the State cause birth defects and reproductive harm. Lead became subject to the "clear and reasonable warning" requirements regarding birth defects and other reproductive harm one 14 15 year later, on April 20, 2008. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8, 16 25249.10(b).

17 26. On October 24, 2003, pursuant to Proposition 65's implementing regulations,
18 California identified and listed DEHP as a chemical known to the State cause birth defects and
19 reproductive harm. DEHP became subject to the "clear and reasonable warning" requirements one
20 year later, on October 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code
21 §§ 25249.8, 25249.10(b).

STATEMENT OF FACTS

23 27. Plaintiff purchased DEFENDANTS' PRODUCTS, without a warning, in California.
24 28. Plaintiff investigated and tested both of DEFENDANTS' PRODUCTS at an
25 accredited lab, and consulted with a person with relevant and appropriate knowledge and expertise,
26 who, after reviewing the collected data and analyzing the risk of exposure to Lead and DEHP,
27 determined the PRODUCTS subject consumers in California to exposure to the listed Chemicals at

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levels requiring warnings under the Statute, based on touching, handling or otherwise utilizing PRODUCTS in accordance with their reasonably foreseeable and intended usages.

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29. Based on the foregoing, Plaintiff's attorney executed certificates of merit, attesting there were reasonable and meritorious cases for this private action and including the factual information supporting the certificate when it served the NOTICES on the California Attorney General's Office, as required. Health & Safety Code § 25249.7(d); Title 11 C.C.R. § 3102.

30. Thereafter, on September 13, 2022, plaintiff served a 60-Day Notice of Violation 8 ("LEAD NOTICE"), together with the certificate of merit, on KOHL'S, the California Attorney 9 General's Office, and the requisite public enforcement agencies, alleging, as a result of 10 DEFENDANTS' sales of the PRODUCTS, consumers in the State of California were, and are, being exposed to Lead through their reasonably foreseeable use of the PRODUCTS as intended without first receiving a "clear and reasonable warning," as required by Proposition 65. 12

13 31. Additionally, on September 13, 2022, plaintiff served a 60-Day Notice of Violation 14 ("DEHP NOTICE"), together with the certificate of merit, on KOHL'S, the California Attorney 15 General's Office, and the requisite public enforcement agencies, alleging, as a result of DEFENDANTS' sales of the PRODUCTS, consumers in the State of California were, and are, being 16 17 exposed to Lead and DEHP through their reasonably foreseeable use of the PRODUCTS as intended 18 without first receiving a "clear and reasonable warning," as required by Proposition 65.

19 32. After receiving plaintiff's LEAD NOTICE and DEHP NOTICE (the "NOTICES"), no 20 public enforcement agency has commenced and is diligently prosecuting a cause of action against 21 DEFENDANTS under Proposition 65 to enforce the alleged violations that are the subject of the NOTICES. 22

FIRST CAUSE OF ACTION

(Violation of Proposition 65 - Against All DEFENDANTS)

CAPA realleges and incorporates by reference, as if fully stated herein, the allegations 25 33. set forth in Paragraphs 1 through 32, inclusive. 26

27 34. DEFENDANTS' PRODUCTS contain Lead and DEHP at levels requiring a clear and 28 reasonable warning under Proposition 65.

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

35. DEFENDANTS know or should have known the PRODUCTS they manufacture, import, distribute, sell, and offer for sale in California contain Lead and DEHP. As a result of Plaintiff's NOTICES, DEFENDANTS also have actual knowledge of the presence of Lead and DEHP in the PRODUCTS.

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36. The PRODUCTS DEFENDANTS manufacture, import, distribute, sell, and offer for sale, in or into the State of California, cause exposures to Lead and DEHP, both direct and/or indirect dermal contact and ingestion, through the reasonably foreseeable use of the PRODUCTS.

37. The normal and reasonably foreseeable use of the PRODUCTS has caused, and continues to cause, exposures to Lead and DEHP.

1038.DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS11exposes individuals to Lead and DEHP through direct and indirect dermal contact and/or ingestion.

39. DEFENDANTS intend that exposures to Lead and DEHP from the reasonably
foreseeable use of the PRODUCTS will occur by their deliberate, non-accidental participation in the
California marketplace.

40. The exposures to Lead and DEHP, caused by DEFENDANTS and endured by
consumers and other individuals in California, are not exempt from the "clear and reasonable"
warning requirements of Proposition 65.

18 41. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers
19 and other individuals in California who have been, or who will be, exposed to Lead and DEHP
20 through direct and indirect dermal contact and/or ingestion resulting from the use of the PRODUCTS
21 as intended.

42. Contrary to the express policy and statutory prohibition of Proposition 65, consumers
and other individuals, exposed to Lead and DEHP through dermal contact and ingestion, as a result of
their use of the PRODUCTS that DEFENDANTS sold without a "clear and reasonable" health hazard
warning, have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy,
or adequate remedy at law.

27 43. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for
28 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS' violations have

1	continued beyond their receipt of plaintiff's NOTICES. As such, DEFENDANTS' violations are			
2	ongoing and continuous in nature and, unless enjoined, will continue in the future.			
3	44. Pursuant to Health and Safety Code § 25249.7(b), because of the above-described	d acts,		
4	DEFENDANTS, and each of them, are liable for a maximum civil penalty of \$2,500 per day for each			
5	violation.			
6	45. Because of the above-described acts, Health and Safety Code § 25249.7(a) also			
7	specifically authorizes the Court to grant injunctive relief against DEFENDANTS.			
8	PRAYER FOR RELIEF			
9	Wherefore, CAPA prays for relief and judgment against DEFENDANTS, and each of them,			
10	as follows:			
11	1. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily at	nd		
12	permanently enjoin DEFENDANTS from manufacturing, distributing, importing, marketing or			
13	otherwise offering the PRODUCTS for sale or use in California without first providing a "clear and			
14	reasonable warning" to consumers addressing the harms associated with exposures to Lead and			
15	DEHP;			
16	2. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue prelimina	ıry		
17	and permanent injunctions mandating DEFENDANTS recall all PRODUCTS currently in the chain			
18	of commerce in California that do not bear a clear and reasonable health hazard warning;			
19	3. That the Court assess civil penalties against DEFENDANTS, and each of them, i	n the		
20	amount of \$2,500 per day for each violation of Proposition 65, in an amount to be determined at trial;			
21	4. That the Court award plaintiff its reasonable attorneys' fees and costs of suit, incu	urred		
22	herein; and			
23	5. That the Court grant any further relief as it deems just and equitable.			
24	Dated: May 22, 2023 Respectfully submitted,			
25	SEVEN HILLS LLP			
26	By:			
27	Kimberly Gates Johnson Attorneys for Plaintiff			
28	Center for Advanced Public Awareness			
	COMBLAINT FOR CIVIL DENIALTIES AND DURDOTHTE DELIFE	8		
	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF			