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ELECTRONICALLY
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Superior Court of California,
County of San Francisco

05/22/2023
Clerk of the Court
BY: JEFFREY FLORES
Deputy Clerk

Attorneys for Plaintiff
CENTER FOR ADVANCED PUBLIC AWARENESS

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 COUNTY OF SAN FRANCISCO

9 UNLIMITED CIVIL JURISDICTION

CGC-23-606674

11 CENTER FOR ADVANCED PUBLIC
12 AWARENESS,

13 Plaintiff,

14 v.

15 KOHL'S, INC.; KOHL'S CORPORATION; and
16 DOES 1-30, inclusive,

17 Defendants.

Case No.

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

UNLIMITED CIVIL

1 Plaintiff CENTER FOR ADVANCED PUBLIC AWARENESS, acting in the public interest,
2 alleges a cause of action against Defendants KOHL'S, INC.; KOHL'S CORPORATION, and DOES
3 1-30.

4 INTRODUCTION AND NATURE OF THE ACTION

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

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

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

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

25 5. CAPA contends and alleges Defendants manufacture, distribute, import, sell, and
26 offer for sale, in and into California, ceramic planters with exterior decoration containing Lead
27 including, but not limited to: (a) the *Sonoma Ancient Isle Planter with Stand Style 21SNOCQ17*
28 *#205466 UPC 4 00334 09772 9*; and (b) ceramic planters with vinyl components containing DEHP,

1 including, but not limited to, the *Sonoma Mild West Planter Basket, Navy Blue, #212078, Style*
2 *21SNODQ10, UPC 4 00468 96111 8* (collectively the “**PRODUCTS**”) without Proposition 65’s
3 requisite health hazard warning regarding the harms associated with exposures to the Chemicals.
4 Defendants’ conduct subjects them to civil penalties for each violation, enjoinder as well as
5 preliminary and permanent injunctive relief. Health & Safety Code § 25249.7(a) and (b).

6 **PARTIES**

7 6. 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).

13 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.

16 8. 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
20 Kohl’s Corporation was and is a “person” “in the course of doing business” with ten (10) or more
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,
24 imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

25 11. Kohl’s Inc. and Kohl’s Corporation are hereinafter collectively referred to as
26 (“**KOHL’S**”).

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

1 25249.11. MANUFACTURER DEFENDANTS, and each of them, assemble, fabricate, and
2 manufacture, or each implies by its conduct that it does such for one or more of the PRODUCTS
3 offered for sale or use in California.

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

9 14. Defendants DOES 21-30 (“**RETAILER DEFENDANTS**”) are each a person in the
10 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
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
17 alleged herein and the damages caused thereby. When ascertained, their true names and capacities
18 shall be reflected in an amended complaint.

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

JURISDICTION AND VENUE

22
23 17. This Court has jurisdiction over this action, pursuant to Cal. Health & Safety Code
24 § 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,
26 which grants the Superior Court “original jurisdiction in all causes except those given by statute to
27 other trial courts.” The statute under which this action is brought does not specify any other basis of
28 subject matter jurisdiction.

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

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

7 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
11 exposed to Lead through their reasonably foreseeable use of the PRODUCTS as intended without
12 first receiving a “clear and reasonable warning,” as required by Proposition 65.

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
16 DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California were, and are, being
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
22 NOTICES.

23 **FIRST CAUSE OF ACTION**

24 **(Violation of Proposition 65 - Against All DEFENDANTS)**

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

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

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

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

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

10 38. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS
11 exposes individuals to Lead and DEHP through direct and indirect dermal contact and/or ingestion.

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

15 40. The exposures to Lead and DEHP, caused by DEFENDANTS and endured by
16 consumers and other individuals in California, are not exempt from the "clear and reasonable"
17 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.

22 42. Contrary to the express policy and statutory prohibition of Proposition 65, consumers
23 and other individuals, exposed to Lead and DEHP through dermal contact and ingestion, as a result of
24 their use of the PRODUCTS that DEFENDANTS sold without a "clear and reasonable" health hazard
25 warning, have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy,
26 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 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 and
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 preliminary
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, in 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, incurred
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*