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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 PRECILA BALABBO,

12 Plaintiff,

13 v.

14 KOHL'S, INC., KOHL'S CORPORATION,

15 Defendants.

Case No.: CGC-22-598548

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: September 18, 2023

Hearing Time: 9:30 AM

Complaint Filed: March 7, 2022

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1. INTRODUCTION

1.1 **The Parties.** This Consent Judgment is entered into by and between Precila Balabbo acting on behalf of the public interest (hereinafter “Balabbo”), Kohl’s, Inc. and Kohl’s Corporation (collectively, “Kohl’s” or “Defendant”) with Balabbo and Defendant collectively referred to as the “Parties” and each of them as a “Party.” Balabbo is an individual residing in California that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Kohl’s is alleged to be a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

1.2 **Allegations and Representations.** Balabbo alleges that Defendant has exposed individuals to diisononyl phthalate (DINP) from its sales of Hearts Vinyl Tablecloth, Style 11CTLVDTC01-52X70, UPC# 400307900933, without providing a clear and reasonable exposure warning pursuant to Proposition 65. DINP is listed under Proposition 65 as a chemical known to the State of California to cause cancer.

1.3 **Notice of Violation/Complaint.** On or about March 16, 2021, Balabbo served Kohl’s and various public enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant violated Proposition 65 for failing to warn consumers and customers that use of Kohl’s vinyl tablecloths, including but not limited to exemplar Hearts Vinyl Tablecloth, Style 11CTLVDTC01-52X70, UPC# 400307900933 expose users in California to DINP. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On March 7, 2022, Balabbo filed a complaint (the “Complaint”) in the matter.

1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve, enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all claims which were or could have been raised in the Complaint based on the facts alleged

1 therein and/or in the Notice.

2 1.5 Defendant denies the material allegations contained in Balabbo's Notice and
3 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
4 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
5 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
6 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
7 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
8 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term "Covered Products" means Kohl's vinyl tablecloths,
11 including as an exemplar but not limited to, Hearts Vinyl Tablecloths, Style 11CTLVDTC01-
12 52X70, UPC # 400307900933, that are manufactured, distributed and/or offered for sale in
13 California by Kohl's.

14 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
15 entered as a Judgment of the Court.

16 **3. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

17 3.1 **Reformulation of Covered Products.** Within twelve (12) months of the Effective
18 Date (the "Compliance Date"), and continuing thereafter, Covered Products that Kohl's directly
19 manufactures, imports, distributes, sells, or offers for sale in California shall either be: (a)
20 reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable
21 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a
22 "Reformulated Product" is a Covered Product that is in compliance with the standard set forth in §
23 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated
24 Product or Covered Product that entered the stream of commerce prior to the Compliance Date.

25 3.2 **Reformulation Standard.** "Reformulated Products" shall mean Covered Products
26 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DINP
27 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
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1 and 8270C or other methodology utilized by federal or state government agencies for the purpose
2 of determining the phthalate content in a solid substance.

3 **3.3 Clear and Reasonable Warning.** Subject to the qualification set forth in § 3.1, as
4 of the Compliance Date, and continuing thereafter, a clear and reasonable exposure warning as set
5 forth in §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant manufacturers,
6 imports, distributes, sells, or offers for sale in California that are not Reformulated Products. The
7 warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b),
8 respectively:

9 (a) **Warning.** The “Warning” shall consist of the statement:

10 **⚠ WARNING:** This product can expose you to chemicals including diisononyl
11 phthalate (DINP), which is known to the State of California to cause cancer. For
12 more information go to www.P65Warnings.ca.gov.

13 (b) **Alternative Warning:** Kohl’s may, but is not required to, use the alternative short-
14 form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

15 **⚠ WARNING:** Cancer - www.P65Warnings.ca.gov.

16 **3.4 A Warning or Alternative Warning** provided pursuant to § 3.3 must print the word
17 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
18 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
19 triangle with a black outline, except that if the sign or label for the Covered Product does not use
20 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
21 than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed
22 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or
23 electronic device or automatic process, provided that the **Warning** or **Alternative Warning** is
24 displayed with such conspicuousness, as compared with other words, statements, or designs as to
25 render it likely to be read and understood by an ordinary individual under customary conditions of
26 purchase or use. A **Warning** or **Alternative Warning** may be contained in the same section of the
27 packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the
28 use of the Covered Product and shall be at least the same size as those other safety warnings.

1 If the Covered Products are offered for sale to consumers in California on a website, the
2 warning requirements of this Section and Section 3.3 shall be satisfied if the **Warning** or
3 **Alternative Warning** is posted on websites where Kohl's offers Covered Products for sale to
4 consumers in California. The requirements of this Section shall be satisfied if the **Warning** or
5 **Alternative Warning**, or a clearly marked hyperlink using the word "**WARNING**," appears on
6 the product display page or is otherwise prominently displayed to the purchaser prior to completing
7 the purchase. To comply with this Section and Section 3.3, Kohl's shall (a) post the **Warning** or
8 **Alternative Warning** on its own website and, if it has the ability to do so, on the websites of its
9 third-party internet sellers; or (b) provide such third-party internet sellers with written notice in
10 accordance with Title 27, California Code of Regulations, Section 25600.2. Third-party internet
11 sellers of the Covered Products that have been provided with written notice in accordance with
12 Title 27, California Code of Regulations, Section 25600.2 are not released in Section 5 of this
13 Agreement if they fail to meet the warning requirements of this Section.

14 **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in
15 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
16 Judgment or by complying with warning requirements adopted by the State of California's Office
17 of Environmental Health Hazard Assessment ("OEHHA") applicable to the Covered Product and
18 the exposure at issue after the Compliance Date.

19 **4. MONETARY TERMS**

20 **4.1 Civil Penalty.** Kohl's shall pay \$1,000.00 as a Civil Penalty pursuant to Health and
21 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
22 Code § 25249.12(c)(1) and (d), with 75% of these funds remitted to OEHHA and the remaining
23 25% of the Civil Penalty remitted to Balabbo, as provided by California Health & Safety Code
24 § 25249.12(d).

25 **4.1.1** Within ten (10) days of the Effective Date, Kohl's shall issue two separate
26 checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$750.00; and to (b)
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1 “Brodsky Smith in Trust for Balabbo” in the amount of \$250.00. Payment owed to Balabbo
2 pursuant to this Section shall be delivered to the following payment address:

3 Evan J. Smith, Esquire
4 Brodsky & Smith
5 Two Bala Plaza, Suite 805
6 Bala Cynwyd, PA 19004

7 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
8 to OEHHA (Memo Line “Prop 65 Penalties”) at one of the following address(es):

9 For United States Postal Service Delivery:

10 Mike Gyurics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 P.O. Box 4010
14 Sacramento, CA 95812-4010

15 For Non-United States Postal Service Delivery:

16 Mike Gyurics
17 Fiscal Operations Branch Chief
18 Office of Environmental Health Hazard Assessment
19 1001 I Street
20 Sacramento, CA 95814

21 A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith at the address set
22 forth above as proof of payment to OEHHA.

23 4.2 **Attorneys’ Fees.** Within ten (10) days of the Effective Date, Kohl’s shall pay
24 \$16,500.00 to Brodsky Smith as complete reimbursement for Balabbo’s attorneys’ fees and costs
25 incurred as a result of investigating, bringing this matter to Kohl’s attention, litigating and
26 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
27 of Civil Procedure § 1021.5.

28 **5. RELEASE OF ALL CLAIMS**

5.1 This Consent Judgment is a full, final, and binding resolution between Balabbo
acting on her own behalf, and on behalf of the public interest, and Kohl’s, and its parents,
shareholders, members, directors, officers, managers, employees, representatives, agents,
attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their

1 predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom they
2 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
3 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
4 retailers, franchisees, and cooperative members (“Downstream Releasees”), of all claims for
5 violations of Proposition 65 based on exposure to DINP from use of the Covered Products as set
6 forth in the Notice, with respect to any Covered Products manufactured, distributed, or sold by
7 Kohl’s prior to the Compliance Date. It is the Parties’ intention that this Consent Judgment shall
8 have preclusive effect such that no other actions by private enforcers, whether purporting to act in
9 his, her, or its interests or the public interest shall be permitted to pursue and/or take any action
10 with respect to any violation of Proposition 65 based on exposure to DINP that was alleged in the
11 Complaint, or that could have been brought pursuant to the Notice against Kohl’s and/or the
12 Downstream Releasees of the Covered Products (“Proposition 65 Claims”).

13 5.2 In addition to the foregoing, Balabbo, on behalf of herself, her past and current
14 agents, representatives, attorneys, and successors and/or assignees, and *not* in her representative
15 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
16 legal action and releases Kohl’s, Defendant Releasees, and Downstream Releasees from any and
17 all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
18 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys’ fees, of
19 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
20 future, with respect to any alleged violations of Proposition 65 related to or arising from Covered
21 Products manufactured, distributed, or sold by Kohl’s, Defendant Releasees or Downstream
22 Releasees. With respect to the foregoing waivers and releases in this paragraph, Balabbo hereby
23 specifically waives any and all rights and benefits which she now has, or in the future may have,
24 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as
25 follows:

26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
27 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
28 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE

1 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
2 DEBTOR OR RELEASED PARTY.

3 5.3 Kohl's waives any and all claims against Balabbo, her attorneys and other
4 representatives, for any and all actions taken, or statements made (or those that could have been
5 taken or made) by Balabbo and her attorneys and other representatives, whether in the course of
6 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
7 and/or with respect to Covered Products.

8 **6. INTEGRATION**

9 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and all
10 prior negotiations and understandings related hereto shall be deemed to have been merged within
11 it. No representations or terms of agreement other than those contained herein exist or have been
12 made by any Party with respect to the other Party or the subject matter hereof.

13 **7. GOVERNING LAW**

14 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
15 California and apply within the State of California. If Proposition 65 is repealed or is otherwise
16 rendered inapplicable by reason of law generally, or as to Covered Products, then Defendant shall
17 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
18 that, Covered Products are so affected.

19 **8. NOTICES**

20 8.1 Unless specified herein, all correspondence and notices required to be provided
21 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
22 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
23 by the other party at the following addresses:

24 For Defendant:

25 Matt Orr
26 Amin Talati Wasserman, LLP
27 515 S. Flower St., 18th Fl.
28 Los Angeles, CA 90071

And

1 For Balabbo:

2 Evan Smith
3 Brodsky & Smith
4 9595 Wilshire Blvd., Ste. 900
5 Beverly Hills, CA 90212

6 Any party, from time to time, may specify in writing to the other party a change of address to
7 which all notices and other communications shall be sent.

8 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

9 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
10 which shall be deemed an original, and all of which, when taken together, shall constitute one and
11 the same document.

12 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
13 **APPROVAL**

14 10.1 Balabbo agrees to comply with the requirements set forth in California Health &
15 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
16 Defendant agrees it shall support approval of such Motion.

17 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
18 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
19 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
20 days, the case shall proceed on its normal course.

21 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
22 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
23 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
24 its normal course on the trial court's calendar.

25 **11. MODIFICATION**

26 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
27 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.
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12. ATTORNEY'S FEES

12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

13. RETENTION OF JURISDICTION

13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

14. AUTHORIZATION

14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this document and certify that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

AGREED TO:

AGREED TO:

Date: 07/19/2023

Date: _____

By: 
PRECILA BALABBO

By: _____
KOHL'S, INC. & KOHL'S
CORPORATION

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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Date: _____

Date: 7/19/23

By: _____
PRECILA BALABBO

By:  _____
KOHL'S, INC. & KOHL'S
CORPORATION

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Dated: _____

Judge of Superior Court