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

11 PRECILA BALABBO,

12 Plaintiff,

13 v.

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

16 Defendants.

Case No.: CGC-22-598953

**CONSENT JUDGMENT**

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: September 6, 2024

Hearing Time: 9:30 AM

Complaint Filed: March 30, 2022

1       **1. INTRODUCTION**

2           1.1       **The Parties.** This Consent Judgment is entered into by and between Precila Balabbo  
3 acting on behalf of the public interest (hereinafter “Balabbo”), on the one hand, and Lug USA, LLC  
4 (“Lug” or “Defendant”), on the other hand, with Balabbo and Defendant collectively referred to as  
5 the “Parties” and each of them as a “Party.” Balabbo is an individual residing in California that  
6 seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing  
7 or eliminating hazardous substances contained in consumer products. Kohl’s and Lug are alleged  
8 to be a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety  
9 Code §§ 25249.6 et seq. Lug hereby enters its appearance in this action for the purpose of allowing  
10 this Consent Judgment to be entered against it.

11           1.2       **Allegations and Representations.** Balabbo alleges that Defendants have exposed  
12 individuals to di-isodecyl phthalate (DIDP) from its sales of *the* Lug Transport clear view  
13 envelopes, UPC # 880479244026, manufactured or imported by Lug, and sold by Kohl’s and/or  
14 other retailers (“Lug Transport envelopes”) without providing a clear and reasonable exposure  
15 warning pursuant to Proposition 65. DIDP is listed pursuant to Proposition 65 as a chemical known  
16 to the State of California to cause birth defects or other reproductive harm.

17           1.3       **Notice of Violation/Action.** On or about April 27, 2021, Balabbo served Kohl’s,  
18 Inc., Kohl’s Corporation (collectively, “Kohl’s”), and various public enforcement agencies with  
19 documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d)  
20 (the “Notice”), alleging that Defendants violated Proposition 65 for failing to warn consumers and  
21 customers that use of the Lug Transport envelopes expose users in California to DIDP. No public  
22 enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On March 30,  
23 2022, Balabbo filed a complaint (the “Complaint”). On July 15, 2024, Balabbo filed a first amended  
24 complaint (the “First Amended Complaint”). The Complaint and the First Amended Complaint are  
25 collectively referred to herein as, the “Action.”

26           1.4       For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
27 jurisdiction over Defendants as to the allegations contained in the Action filed in this matter, that  
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1 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,  
2 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution  
3 of all claims which were or could have been raised in the Action based on the facts alleged therein  
4 and in the Notice.

5 1.5 Defendants denied the material allegations contained in Balabbo's Notice and  
6 Action and maintain that they have not violated Proposition 65. Nothing in this Consent Judgment  
7 shall be construed as an admission by any Defendant of any fact, finding, issue of law, or violation  
8 of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission  
9 by any Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being  
10 specifically denied by Defendants. However, this section shall not diminish or otherwise affect the  
11 obligations, responsibilities, and duties of Defendants under this Consent Judgment.

12 **2. DEFINITIONS**

13 2.1 **Covered Products.** The term "Covered Products" means the Lug Transport  
14 envelopes, that are manufactured, distributed, shipped into California and offered for sale in  
15 California that expose users to DIDP.

16 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is  
17 entered as a Judgment of the Court.

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

19 3.1 **Reformulation of Covered Products.** As of the date this Consent Judgment is  
20 signed by both Parties, and continuing thereafter, Covered Products that Lug directly manufactures,  
21 imports, distributes, sells, or offers for sale in California shall either be: (a) reformulated Products  
22 pursuant to § 3.2, below; or (b) labeled with a clear and reasonable exposure warning pursuant to  
23 §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a "Reformulated Product" is a  
24 Covered Product that is in compliance with the standard set forth in § 3.2 below. The warning  
25 requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated Product.

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

4       **3.3 Clear and Reasonable Warning.** As of the date this Consent Judgment is signed  
5 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in  
6 this §§ 3.3 and 3.4 must be provided for all Covered Products that Lug manufacturers, imports,  
7 distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be  
8 no obligation for Defendant to provide a warning for Covered Products that enter the stream of  
9 commerce prior to the date this Consent Judgment is signed by both Parties. The warning shall  
10 consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

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

12       ⚠ **WARNING:** This product can expose you to chemicals including di-isodecyl  
13 phthalate (DIDP), which is known to the State of California to cause birth defects  
14 or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

15       (b) **Alternative Warning:** Lug may, but is not required to, use the alternative short-  
16 form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

17       ⚠ **WARNING:** Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

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

1 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning  
2 the use of the Covered Product and shall be at least the same size as those other safety warnings. If  
3 “consumer information,” as that term is defined in Title 27, California Code of Regulations, Section  
4 25600.1(c) as it may be amended from time to time, is provided in a foreign language, Lug shall  
5 provide the **Warning** or **Alternative Warning** in the foreign language in accordance with  
6 applicable warning regulations adopted by the State of California’s Office of Environmental Health  
7 Hazard Assessment (“OEHHA”).

8 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product’s  
9 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where  
10 the Covered Products are offered for sale to consumers in California. The requirements of this  
11 Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink  
12 using the word “**WARNING**,” appears on the product display page, or by otherwise prominently  
13 displaying the warning to the purchaser prior to completing the purchase. To comply with this  
14 Section, Lug shall (a) post the **Warning** or **Alternative Warning** on its own website and, if it has  
15 the ability to do so, on the websites of its third-party internet sellers; and (b) if it does not have the  
16 ability to post the **Warning** or **Alternative Warning** on the websites of its third-party internet  
17 sellers, provide such sellers with written notice in accordance with Title 27, California Code of  
18 Regulations, § 25600.2. Third-party internet sellers of the Covered Product that have been provided  
19 with written notice in accordance with Title 27, California Code of Regulations, § 25600.2 are not  
20 released in Section 5 of this Agreement if they fail to meet the warning requirements herein.

21 3.5 **Compliance with Warning Regulations.** Defendants shall be deemed to be in  
22 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent  
23 Judgment or by complying with warning regulations adopted by OEHHA applicable to the Covered  
24 Product and exposures at issue within sixty (60) days after the Effective Date.

25 **4. MONETARY TERMS**

26 4.1 **Civil Penalty.** Lug shall pay \$2,000.00 as a Civil Penalty pursuant to Health and  
27 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety  
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1 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil  
2 Penalty remitted to Balabbo, as provided by California Health & Safety Code § 25249.12(d).

3 4.1.1 Within ten (10) days of the Effective Date, Lug shall issue two separate  
4 checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and to (b)  
5 "Brodsky Smith in Trust for Balabbo" in the amount of \$500.00. Payment owed to Balabbo  
6 pursuant to this Section shall be delivered to the following payment address:

7 Evan J. Smith, Esquire  
8 Brodsky Smith  
9 Two Bala Plaza, Suite 805  
Bala Cynwyd, PA 19004

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

12 For United States Postal Service Delivery:

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

16 For Non-United States Postal Service Delivery:

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

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

22 4.2 **Attorneys' Fees.** Within ten (10) days of the Effective Date, Lug shall pay  
23 \$18,000.00 to Brodsky Smith as complete reimbursement for Balabbo's attorneys' fees and costs  
24 incurred as a result of investigating, bringing this matter to the attention of Kohl's, litigating and  
25 negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code  
26 of Civil Procedure § 1021.5.

1           4.3       Lug’s payment obligations shall be satisfied in full once it has made the payments  
2 set forth in this section 4 and the Defendants shall have no obligation to make any additional  
3 payments to any party for any reason.

4       **5.       RELEASE OF ALL CLAIMS**

5           5.1       This Consent Judgment is a full, final, and binding resolution between Balabbo  
6 acting on her own behalf, and on behalf of the public interest, and Kohl’s, Inc., Kohl’s Corporation  
7 and Lug USA, LLC, and their parents, shareholders, members, directors, officers, managers,  
8 employees, representatives, agents, attorneys, divisions, subdivisions, subsidiaries, partners, sister  
9 companies, and affiliates, and their predecessors, successors and assigns (“Defendants Releasees”),  
10 and all entities from whom they obtain and to whom they directly or indirectly distribute or sell  
11 Covered Products, including but not limited to manufacturers, suppliers, distributors, wholesalers,  
12 customers, licensors, licensees retailers, including but not limited to Kohl’s, and its parents,  
13 subsidiaries, and affiliates, franchisees, and cooperative members (“Downstream Releasees”), of  
14 all claims for violations of Proposition 65 based on exposure to DIDP from use of the Covered  
15 Products manufactured, distributed, or sold by Lug for the period starting at the beginning of time  
16 and ending 60 days after the Effective Date as set forth in the Notice. It is the Parties’ intention that  
17 this Consent Judgment shall have preclusive effect such that no other actions by private enforcers,  
18 whether purporting to act in his, her, or its interests or the public interest shall be permitted to  
19 pursue and take any action with respect to any violation of Proposition 65 based on exposure to  
20 DIDP from use of the Covered Products that was alleged in the Complaint, or that could have been  
21 brought pursuant to the Notice against Kohl’s and the Downstream Releasees (“Proposition 65  
22 Claims”). Lug’s compliance with the terms of this Consent Judgment constitutes compliance with  
23 Proposition 65 by Lug with regard to exposure to DIDP from use of the Covered Products.

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

10 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
11 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
12 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
13 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
14 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
15 DEBTOR OR RELEASED PARTY.

14 5.3 Defendants waive any and all claims against Balabbo, her attorneys and other  
15 representatives, for any and all actions taken, or statements made (or those that could have been  
16 taken or made) by Balabbo and her attorneys and other representatives, whether in the course of  
17 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
18 and with respect to Covered Products.

19 **6. INTEGRATION**

20 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and  
21 any and all prior negotiations and understandings related hereto shall be deemed to have been  
22 merged within it. No representations or terms of agreement other than those contained herein exist  
23 or have been made by any Party with respect to the other Party or the subject matter hereof.

24 **7. GOVERNING LAW**

25 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
26 California and apply within the State of California. In the event that Proposition 65 is repealed or  
27 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then  
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1 Defendants shall have no further obligations pursuant to this Consent Judgment with respect to,  
2 and to the extent that, Covered Products are so affected.

3 **8. NOTICES**

4 8.1 Unless specified herein, all correspondence and notices required to be provided  
5 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-  
6 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party  
7 by the other party at the following addresses:

8 For Defendants:

9 Grace N. Monroy  
10 Meister Seelig Fein LLP  
11 1250 Sixth St., Ste. 403  
Santa Monica, CA 90401

12 And

13 For Balabbo:

14 Evan Smith  
15 Brodsky Smith  
16 9465 Wilshire Blvd., Ste. 300  
17 Beverly Hills, CA 90212

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

20 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

21 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of  
22 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
23 the same document.

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

26 10.1 Balabbo agrees to comply with the requirements set forth in California Health &  
27 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.  
28 Defendants agree they shall support approval of such Motion.

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

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

**11. MODIFICATION**

11.1 This Consent Judgment may be modified only by further stipulation of the Parties and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

**12. ATTORNEY'S FEES**

12.1 In any action arising out of this Consent Judgment, the prevailing party may recover 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 in any action arising from this Consent Judgment.

**13. RETENTION OF JURISDICTION**

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

**14. DISMISSAL OF KOHL'S**

Upon the execution of this Consent Judgment by Plaintiff and Lug, Plaintiff shall file a stipulation of dismissal dismissing her claims against Kohl's, Inc. and Kohl's Corporation with prejudice.

1 **15. AUTHORIZATION**

2 15.1 The undersigned are authorized to execute this Consent Judgment on behalf of their  
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this  
4 document and certify that he or she is fully authorized by the Party he or she represents to execute  
5 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as  
6 explicitly provided herein each Party is to bear its own fees and costs.

7 **AGREED TO:**

**AGREED TO:**

8  
9 Date: \_\_\_\_\_

Date: 7/19/24 DocuSigned by: \_\_\_\_\_

10 By: \_\_\_\_\_

By: Jason Richter  
1D201D88715C4DF...

11 **PRECILA BALABBO**

**Lug USA, LLC**

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**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: \_\_\_\_\_

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Judge of Superior Court

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**15. AUTHORIZATION**

15.1 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: 7 / 19 / 24

Date: \_\_\_\_\_

By:   
PRECILA BALABBO

By: \_\_\_\_\_  
Lug USA, LLC

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court