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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

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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.

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

16 **⚠ WARNING:** Reproductive Harm - www.P65Warnings.ca.gov.

17 **3.4** A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
18 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
19 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
20 triangle with a black outline, except that if the sign or label for the Covered Product does not use
21 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
22 than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed
23 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or
24 electronic device or automatic process, providing that the **Warning** or **Alternative Warning** is
25 displayed with such conspicuousness, as compared with other words, statements, or designs as to
26 render it likely to be read and understood by an ordinary individual under customary conditions of
27 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of
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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
10 Bala Cynwyd, PA 19004

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

13 For United States Postal Service Delivery:

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

19 For Non-United States Postal Service Delivery:

20 Mike Gyurics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
23 1001 I Street
24 Sacramento, CA 95814

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

27 4.2 **Attorneys’ Fees.** Within ten (10) days of the Effective Date, Lug shall pay
28 \$18,000.00 to Brodsky Smith as complete reimbursement for Balabbo’s attorneys’ fees and costs
incurred as a result of investigating, bringing this matter to the attention of Kohl’s, litigating and
negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to Code
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
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
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. NOTICE TO DEFENDANT**

25 7.1 Unless specified herein, all correspondence and notices required to be provided
26 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
27 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
28 by the other party at the following address:

1 For Defendant:

2 Grace N. Monroy
3 Meister Seelig Fein LLP
4 1250 Sixth St., Ste. 403
5 Santa Monica, CA 90401

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 **8. NOTICE TO PLAINTIFF**

9 8.1 Unless specified herein, all correspondence and notices required to be provided
10 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
11 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
12 by the other party at the following address:

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.

1 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
2 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
3 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
4 days, the case shall proceed on its normal course.

5 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
6 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
7 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
8 its normal course on the trial court's calendar.

9 **11. MODIFICATION**

10 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
11 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

12 **12. ATTORNEY'S FEES**

13 12.1 In any action arising out of this Consent Judgment, the prevailing party may recover
14 reasonable attorney's fees and costs.

15 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
16 pursuant to law in any action arising from this Consent Judgment.

17 **13. RETENTION OF JURISDICTION**

18 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
19 Consent Judgment.

20 **14. DISMISSAL OF KOHL'S**

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

Date: _____ *7/19/24*

By: _____

By: _____ *Jason Richter*

PRECILA BALABBO

Lug USA, LLC

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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: 7 / 19 / 24

Date: _____

10 By: 
11 **PRECILA BALABBO**

By: _____
Lug USA, LLC

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

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23 Dated: _____

Judge of Superior Court