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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

01/25/2023
Clerk of the Court
BY: JEFFREY FLORES
Deputy Clerk

5 Attorneys for Plaintiff
KEEP AMERICA SAFE AND BEAUTIFUL
6

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 COUNTY OF SAN FRANCISCO

9 UNLIMITED CIVIL JURISDICTION

CGC-23-604219

10
11 KEEP AMERICA SAFE AND BEAUTIFUL,

Case No.

12 Plaintiff,

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

13 v.

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

14 BUFFALO CORPORATION; THE HOME
DEPOT; and DOES 1-30, inclusive,

15 Defendants.
16

UNLIMITED CIVIL

1 Plaintiff KEEP AMERICA SAFE AND BEAUTIFUL, acting in the public interest, alleges a
2 cause of action against Defendants BUFFALO CORPORATION, THE HOME DEPOT, and DOES
3 1-30.

4 **INTRODUCTION AND NATURE OF THE ACTION**

5 1. This Complaint is a representative action brought by plaintiff Keep America Safe and
6 Beautiful (“**KASB**”) in the public interest of the citizens of the State of California to enforce the
7 People’s right to be informed of the health hazards caused by exposures to di(2-ethylhexyl) phthalate
8 (“**DEHP**”), a toxic chemical found in and on the work chairs with vinyl/PVC upholstery
9 manufactured, 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 birth
13 defects or other reproductive harm through exposures to DEHP, when they purchase, use or handle
14 Defendants’ work chairs with vinyl/PVC upholstery.

15 3. Detectable levels of DEHP are found in and on the work chairs with vinyl/PVC
16 upholstery that Defendants manufacture, import, sell or distribute for sale to individuals throughout
17 California.

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

23 5. KASB contends and alleges Defendants manufacture, distribute, import, sell, and
24 offer for sale, in and into California work chairs with vinyl/PVC upholstery (“**PRODUCTS**”)
25 containing DEHP, without Proposition 65’s requisite health hazard warning regarding the harms
26 associated with exposures to the chemical, including, but not limited to, *BLACK BULL 265 lbs.*
27 *Rolling Mechanics Creeper Seat with Divided Organizer and Tool Tray; Item # RCWST.*
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1 Defendants' conduct subjects them to civil penalties for each violation, enjoinder as well as
2 preliminary and permanent injunctive relief. Health & Safety Code § 25249.7(a) and (b).

3 **PARTIES**

4 6. Plaintiff KASB is a non-profit corporation organized under the laws of California and
5 acting in the interest of the general public, dedicated to protecting the health of California citizens and
6 the environment through the elimination or reduction of toxic chemicals utilized in manufacturing
7 consumer products and to increasing public awareness of those chemicals through the promotion of
8 sound environmental practices and corporate responsibility. KASB is a person within the meaning of
9 Health & Safety Code § 25249.11(a), and it brings this action in the public interest, pursuant to
10 Health and Safety Code § 25249.7(d).

11 7. Plaintiff is informed, believes, and thereon alleges, at all relevant times, Defendant
12 BUFFALO CORPORATION ("**BUFFALO**") was and is a "person" "in the course of doing
13 business" with ten (10) or more employees, within the meanings of Health and Safety Code
14 §§ 25249.6 and 25249.11.

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

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

22 10. HOME DEPOT 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. Defendants DOES 1-10 ("**MANUFACTURER DEFENDANTS**") are each a person
26 in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
27 25249.11. MANUFACTURER DEFENDANTS, and each of them, assemble, fabricate, and
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1 manufacture, or each implies by its conduct that it does such for one or more of the PRODUCTS
2 offered for sale or use in California.

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

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

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

18 15. At all times mentioned herein, **BUFFALO, HOME DEPOT, MANUFACTURER**
19 **DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS** shall,
20 hereinafter, where appropriate, be referred to collectively as the “**DEFENDANTS.**”

21 **JURISDICTION AND VENUE**

22 16. This Court has jurisdiction over this action, pursuant to Cal. Health & Safety Code
23 § 25249.7, allowing enforcement by any court of competent jurisdiction. The California Superior
24 Court has jurisdiction over this action, pursuant to California Constitution Article VI, section 10,
25 which grants the Superior Court “original jurisdiction in all causes except those given by statute to
26 other trial courts.” The statute under which this action is brought does not specify any other basis of
27 subject matter jurisdiction.
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1 result of DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California were, and
2 are, being exposed to DEHP through their reasonably foreseeable use of the PRODUCTS as intended
3 without first receiving a “clear and reasonable warning,” as required by Proposition 65.

4 29. After receiving plaintiff’s Notice, no public enforcement agency has commenced and
5 is diligently prosecuting a cause of action against DEFENDANTS under Proposition 65 to enforce
6 the alleged violations that are the subject of the Notice.

7 **FIRST CAUSE OF ACTION**

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

9 30. KASB realleges and incorporates by reference, as if fully stated herein, the allegations
10 set forth in Paragraphs 1 through 29, inclusive.

11 31. DEFENDANTS’ PRODUCTS contain DEHP in levels requiring a clear and
12 reasonable warning under Proposition 65.

13 32. DEFENDANTS know or should have known the PRODUCTS they manufacture,
14 import, distribute, sell, and offer for sale in California contain DEHP. As a result of plaintiff’s
15 Notice, DEFENDANTS also have actual knowledge of the presence of DEHP in the PRODUCTS.

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

19 34. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
20 continues to cause, exposures to DEHP.

21 35. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS
22 exposes individuals to DEHP through direct and indirect dermal contact and/or ingestion.

23 36. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable use
24 of the PRODUCTS will occur by their deliberate, non-accidental participation in the California
25 marketplace.

26 37. The exposures to DEHP, caused by DEFENDANTS and endured by consumers and
27 other individuals in California, are not exempt from the “clear and reasonable” warning requirements
28 of Proposition 65.

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3. That the Court assess civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation of Proposition 65, in an amount to be determined at trial;


4. That the Court award plaintiff its reasonable attorneys' fees and costs of suit, incurred herein; and

5. That the Court grant any further relief as it deems just and equitable.

Dated: January 25, 2023

Respectfully submitted,

SEVEN HILLS LLP

By: 

Kimberly Gates Johnson
Attorneys for Plaintiff
Keep America Safe and Beautiful