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5	Attorneys for Plaintiff		01/25/2023 Clerk of the Court BY: JEFFREY FLORES			
6	KEEP AMERICA SAFE AND BEAUTIFUL		Deputy Clerk			
7	SUPERIOR COURT OF THE STATE OF CALIFORNIA					
8	COUNTY OF SAN FRANCISCO					
9	UNLIMITED CI	UNLIMITED CIVIL JURISDICTION CGC-23-60421				
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11	KEEP AMERICA SAFE AND BEAUTIFUL,	Case No.				
12	Plaintiff,	COMPLAINT FOR AND INJUNCTIVE	CIVIL PENALTIES RELIEF			
13	V.	Violation of Proposition 65, The Safe				
14	BUFFALO CORPORATION; THE HOME DEPOT; and DOES 1-30, inclusive,	Drinking Water and	Foxic Enforcement ActIfety Code § 25249.5 et			
15	Defendants.	seq.)				
16		UNLIMITED CIVIL				
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	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF					

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

INTRODUCTION AND NATURE OF THE ACTION

1. This Complaint is a representative action brought by plaintiff Keep America Safe and Beautiful ("**KASB**") in the public interest of the citizens of the State of California to enforce the People's right to be informed of the health hazards caused by exposures to di(2-ethylhexyl) phthalate ("**DEHP**"), a toxic chemical found in and on the work chairs with vinyl/PVC upholstery manufactured, imported, distributed, sold or offered for sale by Defendants in the State of California.

 By this Complaint, plaintiff seeks to remedy Defendants' continuing failure to warn individuals not covered by California's Occupational Safety Health Act, Labor Code § 6300 *et seq*.
 ("consumers") they are being exposed to substances known to the State of California to cause birth defects or other reproductive harm through exposures to DEHP, when they purchase, use or handle Defendants' work chairs with vinyl/PVC upholstery.

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

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

5. KASB contends and alleges Defendants manufacture, distribute, import, sell, and
 offer for sale, in and into California work chairs with vinyl/PVC upholstery ("PRODUCTS")
 containing DEHP, without Proposition 65's requisite health hazard warning regarding the harms
 associated with exposures to the chemical, including, but not limited to, *BLACK BULL 265 lbs. Rolling Mechanics Creeper Seat with Divided Organizer and Tool Tray; Item # RCWST.*

Defendants' conduct subjects them to civil penalties for each violation, enjoinment as well as preliminary and permanent injunctive relief. Health & Safety Code § 25249.7(a) and (b).

PARTIES

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

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

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

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

10. HOME DEPOT manufactures, imports, distributes, sells, and/or offers the
PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures,
imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

11. Defendants DOES 1-10 ("MANUFACTURER DEFENDANTS") are each a person
in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
25249.11. MANUFACTURER DEFENDANTS, and each of them, assemble, fabricate, and

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manufacture, or each implies by its conduct that it does such for one or more of the PRODUCTS offered for sale or use in California.

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

8 13. Defendants DOES 21-30 ("RETAILER DEFENDANTS") are each a person in the 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 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 alleged herein and the damages caused thereby. When ascertained, their true names and capacities 16 shall be reflected in an amended complaint. 17

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."

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, which grants the Superior Court "original jurisdiction in all causes except those given by statute to 25 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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17. The California Superior Court has jurisdiction over DEFENDANTS, based on 2 plaintiff's information and good faith belief DEFENDANTS are each a person, firm, corporation or 3 association that is a citizen of the State of California, does sufficient business in California, has sufficient minimum contacts in California, and/or otherwise purposefully and intentionally avail themselves of the California market through their manufacture, importation, distribution, promotion, 5 marketing or sale of PRODUCTS within the State. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California courts consistent with traditional notions of fair 8 play and substantial justice.

9 18. Venue is proper in the Superior Court for the County of San Francisco, pursuant to Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent 10 11 jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of wrongful conduct occurred, and continue to occur, in this county, and/or because 12 13 DEFENDANTS conducted, and continue to conduct, business in the County of San Francisco with respect to the PRODUCTS that are the subject of this action. 14

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REGULATORY BACKGROUND AND LAW

19. In 1986, the people of the State of California approved an initiative addressing the 16 17 harms caused by hazardous chemicals and declared their right "[t]o be informed about exposures to 18 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp., Proposed 19 General Law, Gen, Elec. (Nov. 4, 1986) at p.3.

20 20. Formally known as the Safe Drinking Water and Toxic Enforcement Act of 1986 and 21 codified at Health & Safety Code § 25249.6 et seq., Proposition 65 states, in relevant part, "[n]o 22 person in the course of doing business shall knowingly and intentionally expose any individual to a 23 chemical known to cause cancer or reproductive toxicity without first giving a clear and reasonable warning to such individual..." 24

25 21. Under the Act, a "person in the course of doing business" is defined as a business with ten (10) or more employees. Health & Safety Code § 25249.11(b). Businesses are prohibited from 26 27 exposing individuals to hazardous chemicals without first giving a "clear and reasonable" warning. 28 Health & Safety Code § 25249.6.

22. Exposing individuals to hazardous chemicals means to cause individuals to ingest, inhale, contact via body surfaces or otherwise come into contact with a listed chemical. 27 CCR § 25102(i). An exposure to a hazardous chemical is defined as one that "results from a person's acquisition, purchase, storage, consumption or other reasonably foreseeable use of a product..." 27 C.C.R. § 25600(h).

6 23. Under Proposition 65, persons violating the statute may be enjoined in any court of
7 competent jurisdiction and may be subject to civil penalties of up to \$2,500 per day, per violation.
8 Health & Safety Code § 25249.7.

9 24. On October 24, 2003, pursuant to Proposition 65's implementing regulations,
10 California identified and listed DEHP as a chemical known to the State cause birth defects and
11 reproductive harm. DEHP became subject to the "clear and reasonable warning" requirements one
12 year later, on October 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code
13 §§ 25249.8, 25249.10(b).

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STATEMENT OF FACTS

15 25. Plaintiff purchased DEFENDANTS' PRODUCTS, without a warning, in California. 26. Plaintiff investigated and tested DEFENDANTS' PRODUCTS at an accredited lab, 16 17 and consulted with a person with relevant and appropriate knowledge and expertise, who, after 18 reviewing the collected data and analyzing the risk of exposure to DEHP, determined the 19 PRODUCTS subject consumers in California to exposure to the listed chemical at levels requiring a 20 warning under the statute, based on touching, handling or otherwise utilizing PRODUCTS in 21 accordance with their reasonably foreseeable and intended usages.

22 27. Based on the foregoing, Plaintiff's attorney executed a certificate of merit, attesting
23 there was a reasonable and meritorious case for this private action and included the factual
24 information supporting the certificate when it served the notice on the California Attorney General's
25 Office, as required. Health &Safety Code § 25249.7(d); Title 11 C.C.R. § 3102.

28. Thereafter, on January 26, 2022, plaintiff served a 60-Day Notice of Violation
("Notice"), together with the certificate of merit, on Buffalo Corporation, The Home Depot, the
California Attorney General's Office, and the requisite public enforcement agencies, alleging, as a

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.				

38. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers
 and other individuals in California who have been, or who will be, exposed to DEHP through direct
 and indirect dermal contact and/or ingestion resulting from the use of the PRODUCTS as intended.

39. Contrary to the express policy and statutory prohibition of Proposition 65, consumers and other individuals, exposed to DEHP through dermal contact and ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without a "clear and reasonable" health hazard warning, have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

9 40. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for
10 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS' violations have
11 continued beyond their receipt of plaintiff's Notice. As such, DEFENDANTS' violations are
12 ongoing and continuous in nature and, unless enjoined, will continue in the future.

41. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the abovedescribed acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty of \$2,500
per day for each violation.

42. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a)
also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

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PRAYER FOR RELIEF

Wherefore, KASB prays for relief and judgment against DEFENDANTS, and each of them,
as follows:

That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and
 permanently enjoin DEFENDANTS from manufacturing, distributing, importing, marketing or
 otherwise offering the PRODUCTS for sale or use in California without first providing a "clear and
 reasonable warning" to consumers addressing the harms associated with exposures to DEHP;

26 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary
27 and permanent injunctions mandating DEFENDANTS recall all PRODUCTS currently in the chain
28 of commerce in California that do not bear a clear and reasonable health hazard warning;

1	3. That the Court assess civil penalties against DEFENDANTS, and each of them, in the				
2	amount of \$2,500 per day for each violation of Proposition 65, in an amount to be determined at trial;				
3	4.	That the Court award plaintiff its reasonable attorneys' fees and costs of suit, incurred			
4	herein; and				
5	5.	That the Court grant any further relief as it deems just and equitable.			
6	Dated: Janua	ary 25, 2023 Respectfully submitted,			
7		SEVEN HILLS LLP			
8		Pro V. Cyr			
9 10		By: Kimberly Gates Johnson			
10		Attorneys for Plaintiff <i>Keep America Safe and Beautiful</i>			
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