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12  
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF SAN FRANCISCO  
15 UNLIMITED CIVIL JURISDICTION  
16

17 KEEP AMERICA SAFE AND BEAUTIFUL,  
18 Plaintiff,  
19 v.  
20 BUFFALO CORPORATION; THE HOME  
DEPOT; and DOES 1-30, inclusive,  
21 Defendants.  
22

Case No. CGC-23-604219

**[PROPOSED] CONSENT JUDGMENT**  
(Health & Safety Code § 25249.6 et seq. and  
Code of Civil Procedure § 664.6)

1                   **1. INTRODUCTION**

2                   This Consent Judgment is entered into by and between plaintiff Keep America Safe and Beautiful  
3 (“**KASB**”) and defendant Buffalo Corporation (“**Buffalo**”), with KASB and Buffalo each individually  
4 referred to as a “**Party**” and collectively, as the “**Parties**,” to resolve the allegations in the January 26,  
5 2022, 60-Day Notice of Violation in compliance with the Safe Drinking Water and Toxic Enforcement  
6 Act of 1986, Health & Safety Code § 25249.6 *et seq.* (“**Proposition 65**”).

7                   **1.1 The Parties**

8                   KASB is a California-based non-profit organization proceeding in the public interest pursuant  
9 to California Health & Safety Code § 25249.7(d) to ensure that chemicals known to the State of  
10 California to cause cancer, birth defects, or other reproductive harm are disclosed or eliminated from  
11 consumer products sold in California. Buffalo is a person in the course of doing business for purposes  
12 of California Health & Safety Code § 25249.11(b).

13                   **1.2 Consumer Product Description**

14                   KASB alleges that Buffalo manufactures, imports, sells, or distributes for sale in California  
15 work chairs with vinyl/PVC upholstery containing di(2ethylhexyl) phthalate (“**DEHP**”), including but  
16 not limited to, the *BLACK BULL 265 lbs. Rolling Mechanics Creeper Seat with Divided Organizer*  
17 *and Tool Tray; Item # RCWST*, without providing the health hazard warning KASB alleges is required  
18 by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). All such work chairs are  
19 referred to hereinafter as the “**Products**.” DEHP is listed pursuant to Proposition 65 as a chemical  
20 known to the State of California to cause cancer, birth defects or other reproductive harm.

21                   **1.3 Notice of Violation**

22                   On January 26, 2022, KASB served Buffalo, The Home Depot, the California Attorney  
23 General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”),  
24 alleging Buffalo violated Proposition 65 by failing to warn its customers and consumers in California  
25 that the Products can expose users to DEHP. No public enforcer has commenced and is diligently  
26 prosecuting an action to enforce the allegations set forth in the Notice.

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**1.4 Complaint**

On January 25, 2023, KASB commenced the instant action (“**Complaint**”), naming Buffalo as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

**1.5 No Admission**

Buffalo denies the material, factual and legal allegations contained in the Notice and Complaint and maintains that all products it sold or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as, nor shall compliance with this Consent Judgment constitute or be construed as, an admission by Buffalo of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Buffalo’s obligations, responsibilities, and duties under this Consent Judgment. Buffalo maintains that it has not knowingly manufactured or caused to be manufactured the Products for sale in California in violation of Proposition 65.

**1.6 Jurisdiction**

For purposes of this Consent Judgment only, the Parties stipulate: this Court has jurisdiction over Buffalo as to the allegations contained in the Complaint; venue is proper in San Francisco County; and the Court has jurisdiction to enter and enforce the provisions of this Consent Judgment, pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

**1.7 Effective Date**

The term “Effective Date” means the date on which the Court approves this Consent Judgment and enters Judgment pursuant to its terms.

**2. INJUNCTIVE RELIEF: REFORMULATION & INTERIM WARNINGS**

**2.1 Commitment to Reformulate or Warn**

Commencing on the Effective Date and continuing thereafter, all Products Buffalo manufactures, imports, sells, ships, or distributes for sale, in or into California, directly or through one or more third party retailers or e-commerce marketplaces, shall either: (a) meet the Reformulation Standard for Reformulated Products, as defined by Section 2.2; or (b) bear a clear and reasonable health hazard warning, pursuant to the following Sections 2.3 through 2.8.

1           **2.2 Reformulation Standard Defined**

2           For purposes of this Consent Judgment, “**Reformulated Products**” are defined as Products  
3 which contains di(2-ethylhexyl) phthalate (“DEHP”) in a maximum concentration of less than 0.1  
4 percent (1,000 parts per million) in any “accessible component” (i.e., any component that may be  
5 touched during a reasonably foreseeable use) when analyzed by a laboratory certified or  
6 accredited by the State of California, the United States Food and Drug  
7 Administration/Environmental Protection Agency, the National Environmental Laboratory  
8 Accreditation Program, or a member accreditation body of the International Laboratory  
9 Accreditation Cooperation (“ILAC”).

10           For purposes of compliance with this reformulation standard, testing samples shall be  
11 prepared and extracted using Consumer Product Safety Commission (“CPSC”) methodology CPSC  
12 CH-C1001.09.4 and analyzed using U.S. Environmental Protection Agency methodology 8270D, or  
13 other methodologies utilized by federal or state government agencies to determine phthalate content  
14 in a solid substance. (“**Reformulation Standard**”).

15           **2.3 Clear and Reasonable Warnings**

16           Commencing on or before the Effective Date, and continuing thereafter, for all Products  
17 Buffalo previously manufactured, imported, distributed, or offered for sale, Buffalo shall provide  
18 clear and reasonable health hazard warnings for all such Products it imports, distributes, sells or  
19 offers for sale, in or into California, that do not meet the Reformulation Standard, defined at Section  
20 2.2. For purposes of this Agreement, a warning shall be deemed clear and reasonable, if it meets the  
21 criteria set forth in California Health & Safety Code § 25249.5 *et seq.* and title 27 California Code of  
22 Regulations (“Cal. Code Regs.”) § 25600 *et seq.*, as may be amended from time to time.

23           Each warning shall be prominently placed with such conspicuousness, as compared with  
24 other words, statements, designs, or devices, as to render it likely to be read and understood by an  
25 ordinary individual under customary conditions prior to purchase or use. Each warning shall be  
26 provided in a manner such that the consumer or user understands to which *specific* Product the  
27 warning applies, so as to minimize the risk of consumer confusion. For purposes of this Agreement,  
28 the following warnings shall be deemed clear and reasonable:

1 (a) **Warning:**

2 **⚠WARNING:** This product can expose you to chemicals, including di(2-  
3 ethylhexyl)phthalate (DEHP) which is known to the State of California to cause  
4 birth defects or other reproductive harm. For more information go to  
5 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

6 The Parties agree, should Buffalo determine additional chemical endpoints need to be  
7 included in the above warnings, Buffalo may modify the content of such warnings to address the  
8 new chemical, provided the revised warnings comply with title 27 Cal. Code Regs. § 25600 *et seq.*

9 (b) **Foreign Language Requirement.** Where a consumer product sign, label or tag  
10 used to provide a warning includes “consumer information”, as the term is defined in Title 27  
11 California Code of Regulations § 25600.1(c) (“**Consumer Information**”), in languages other than  
12 English, then the accompanying warnings must also be provided in those languages, in addition to  
13 English.

14 **2.4 On-Product Warning Requirements**

15 For all Products provided for sale to consumers located in California, or to customers with  
16 retail outlets in California, ecommerce platforms, or nationwide distribution, Buffalo shall include the  
17 applicable warning statement from Section 2.3 (a) or (b) on furniture Product labels affixed to the  
18 furniture Products in the same manner as other consumer information or warning materials on  
19 Products. The entire warning shall appear in a type size of at least 6-point type and no smaller than  
20 the largest type size used for other consumer information on the Products. “**Product label**” means a  
21 display of written, printed or graphic material that is printed on or affixed to each of the Products or  
22 its immediate container or wrapper.

23 Warnings provided pursuant to Section 2.3 must print the word “**WARNING:**” in all capital  
24 letters and in bold font, followed by a colon. The warning symbol to the left of the word  
25 “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black  
26 outline, except, if the sign or label for the Products does not use the color yellow, then the symbol  
27 may be in black and white. The symbol must be in a size no smaller than the height of the word  
28 “**WARNING:**”. The warning may be contained in the same section of the packaging, labeling, or

1 instruction booklet that states other safety warnings, if any, concerning the use of the Products and  
2 shall be at least the same size as those other safety warnings.

### 3 **2.5 Internet Product Warning Requirements**

4 For all Products manufactured, imported, distributed, sold or offered for sale after the  
5 Effective Date via the internet to customers located in California, or sold in or into California  
6 through third-party websites over which Buffalo has the ability to control the application of  
7 warnings, Buffalo shall provide warnings for each Product, both on the Product label, in accordance  
8 with Section 2.4, and by prominently displaying the warning to customers prior to purchase or  
9 during the checkout process such that the consumer does not have to seek out the information being  
10 provided. The warning or a clearly marked hyperlink to the warning, using the word "WARNING"  
11 and given in conjunction with the sale of Products via the internet, shall appear on: (a) the same web  
12 page on which the Product is displayed; (b) the same web page as the order form for the Product; (c)  
13 on the same page as the price for any Product; or (d) on one or more web pages displayed to a  
14 purchaser during the checkout process. The warning shall appear in any of the above instances  
15 adjacent to or immediately following the display, description or price of the Product for which it is  
16 given in the same type size or larger than other consumer information provided for the Product.

### 17 **2.6 Receipt Notice**

18 If, after the Effective Date, Buffalo ships Product(s) to customers in California, Buffalo shall  
19 also provide, or require downstream retailers or distributors to provide, on the sales receipt and  
20 packing slip, the following notice statement:

21 **NOTICE:**

22 Some furniture products with vinyl upholstery in this  
23 shipment can expose you to chemicals known to the  
24 State of California to cause birth defects and other  
25 reproductive harm. Please check the product label  
26 for warning information. For more information go  
27 to: [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

28 A notice statement provided pursuant to this Section must print the word "NOTICE:" in all capital  
letters and in bold font. The entire notice statement shall appear in a type size of at least 12-point  
type and no smaller than the largest type size used for other consumer information on the on the sales  
receipt and packing slip.



1 penalty shall be waived in its entirety if: (a) Buffalo provides a “recent” test result (i.e., a test  
2 performed after the date of the Notice) showing the Products, as defined by Section 12., are in  
3 compliance with the Reformulation Standard set forth in Section 2.2, along with an attested  
4 declaration from an officer with knowledge that all newly manufactured products provided for or  
5 intended for sale in or into California are Reformulated Products; or (b) Buffalo provides an attested  
6 declaration from an officer with knowledge that Buffalo is no longer selling Products that do not meet  
7 the Reformulation Standard, as defined by Section 1.2, for sale in or into California. If Buffalo fails  
8 to perform by providing a test result and accompanying declaration going to reformulation or a  
9 declaration going to cessation of sales within 120 days of the Effective Date, then the final civil  
10 penalty of \$6,000 shall become due, and Buffalo shall remit its final civil penalty payments in two  
11 checks as follows: (a) “OEHHA” in the amount of \$4,500; and (b) “Seven Hills LLP in Trust for  
12 KASB” in the amount of \$1,500. KASB’s counsel shall deliver to OEHHA and KASB their  
13 respective portions of the penalty payment. Buffalo shall deliver its final civil penalty payments or  
14 other information to the address listed in Section 3.3, below.

### 15 **3.2 Reimbursement of Attorneys’ Fees and Costs**

16 KASB and its counsel offered to resolve the allegations in the Notice and Complaint without  
17 reaching terms on the amount of reimbursement of attorneys’ fees and costs. Shortly after the  
18 Parties finalized the other material settlement terms, they negotiated and reached an accord on the  
19 amount of reimbursement to be paid to KASB’s counsel, under general contract principles and the  
20 private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all  
21 work performed through the mutual execution and reporting of this Consent Judgment to the Office  
22 of the California Attorney General and entry of Judgment pursuant its terms, but exclusive of fees  
23 and costs on appeal, if any. Within ten (10) business days of the Effective Date, Buffalo shall issue a  
24 check in the amount of \$27,500 and made payable to “Seven Hills LLP” for all fees and other costs  
25 incurred investigating, bringing this matter to Buffalo’s attention, litigating, negotiating a settlement  
26 in the public interest, obtaining the Court’s approval of its terms pursuant to Section 5, and reporting  
27 to the California Attorney General. Buffalo shall deliver its payment to the address listed in Section  
28 3.3.



1           **3.3    Payments**

2           All payments payable and due under this Consent Judgment shall be delivered to KASB's  
3 counsel at the following address:

4                         Seven Hills LLP  
5                         Attn: Kimberly Gates Johnson  
6                         4 Embarcadero Center, Suite 1400  
7                         San Francisco, CA 94111

8           **4.    CLAIMS COVERED AND RELEASED**

9                         **4.1 KASB's Release of Proposition 65 Claims**

10           This Consent Judgment is a full, final, and binding resolution of the claims that were or could  
11 have been asserted by KASB arising out of the allegations in the Notice and in the Complaint. KASB,  
12 acting on its own behalf, in the public interest, and on behalf of its past and current agents,  
13 representatives, attorneys, successors and assignees ("**Releasors**") releases Buffalo, its past and  
14 present parents, subsidiaries, affiliated entities under common ownership, directors, officers,  
15 employees, attorneys, and each entity to whom Buffalo directly or indirectly distributes or sells the  
16 Products including, but not limited to, its downstream distributors, wholesalers, marketplace hosts,  
17 customers, retailers, including Home Depot, franchisee, cooperative members and licensees  
18 ("**Releasees**") based on the failure to provide a clear and reasonable warning under Proposition 65  
19 about alleged exposures to DEHP contained in the Products that were manufactured, processed,  
20 distributed, sold and/or offered for sale in California before the Effective Date, as set forth in the  
21 Notice and Complaint. The Parties further agree that compliance with Section 2 of this Consent  
22 Judgment shall be deemed compliance with Proposition 65 with respect to alleged exposures to DEHP  
23 in the Products.

24           The Parties understand and agree this Section 4.1 release shall neither extend (a) to upstream  
25 entities that manufactured the Products or any component parts thereof, or any distributors or  
26 suppliers who sold the Products or any component parts thereof to Buffalo, nor (b) downstream to  
27 Releasees who have been instructed by Buffalo, pursuant to Section 2.3, to provide a warning on  
28 Products that are not Reformulated Products and have failed to do so.

1                   **4.2 KASB’s Individual Release of Claims**

2                   In further consideration of the promises and agreements herein contained, KASB, as an  
3 individual and *not* on behalf of the public, on behalf of itself, its past and current agents,  
4 representatives, attorneys, successors, and/or assignees, hereby waives all of KASB’s rights to  
5 institute or participate in, directly or indirectly, any form of legal action and releases all claims that  
6 KASB may have, including, without limitation, all actions, and causes of action, in law or in equity,  
7 suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses, including,  
8 but not exclusively, investigation fees, expert fees, and attorneys’ fees arising under Proposition 65  
9 with respect to DEHP in the Products manufactured, distributed, sold and/or offered for sale by  
10 Buffalo and sold in or into California before the Effective Date, against Buffalo and Releasees.

11                   The Parties further understand and agree this Section 4.2 release shall not extend upstream to  
12 any entities that sold, supplied or manufactured the Products or any component parts thereof, to Buffalo.  
13 Nothing in these Section 4 releases shall affect KASB’s right to commence or prosecute an action under  
14 Proposition 65 against a Releasee that does not involve Buffalo’s Products.

15                   **4.3 Buffalo’s Release of KASB**

16                   Buffalo, on behalf of itself, its past and current officers, agents, shareholders, employees,  
17 predecessors, representatives, attorneys, successors, and assignees, hereby waives any and all claims  
18 against KASB and its attorneys and other representatives for any and all actions taken or statements  
19 made (or those that could have been taken or made) by KASB, its attorneys and other representatives,  
20 whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it  
21 in this matter with respect to the Products.

22                   **5.     COURT APPROVAL**

23                   Pursuant to California Health and Safety Code § 25249.7(f)(4), KASB shall file a noticed  
24 motion for judicial approval of this Consent Judgment. The Parties agree to mutually employ their best  
25 efforts, and those of their counsel, to support the entry of a judgment pursuant to the terms of this  
26 Consent Judgment and to judicial approval of their settlement in a timely manner. For purposes of this  
27 section, “best efforts” shall include, at a minimum, supporting the motion for approval, responding to  
28 any third-party objection, and appearing at the hearing before the Court, if so requested.



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**9. COUNTERPARTS AND PDF SIGNATURES**

This Consent Judgment may be executed in counterparts and by portable document format (pdf) signature, each of which shall be deemed an original and, all of which, when taken together, shall constitute one and the same document.

**10. COMPLIANCE WITH REPORTING REQUIREMENTS**

KASB and its counsel agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

**11. ENTIRE AGREEMENT**

This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Consent Judgment have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto.

**12. MODIFICATION**


This Consent Judgment may be modified only by: (i) a written agreement of the Parties and the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of any party and the entry of a modified Consent Judgment by the Court thereon.

**13. AUTHORIZATION**

The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agreed to all the terms and conditions of this Consent Judgment.


**AGREED TO:**

Date: 07/18/2023

By:   
My Nguyen, Chief Operating Officer  
Keep America Safe and Beautiful

**AGREED TO:**

Date: 7/14/2023

By:   
Martin V. Ahrens, Secretary  
Buffalo Corporation