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11 BUFFALO CORPORATION

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.

1 **1.4 Complaint**

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

4 **1.5 No Admission**

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

13 **1.6 Jurisdiction**

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

18 **1.7 Effective Date**

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

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

22 **2.1 Commitment to Reformulate or Warn**

23 Commencing on the Effective Date and continuing thereafter, all Products Buffalo
24 manufactures, imports, sells, ships, or distributes for sale, in or into California, directly or through
25 one or more third party retailers or e-commerce marketplaces, shall either: (a) meet the
26 Reformulation Standard for Reformulated Products, as defined by Section 2.2; or (b) bear a clear and
27 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

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. For
17 third-party websites, as a condition of sale, Buffalo shall notify the sellers that the Products must be
18 accompanied by a warning, prior to and as a condition of sale, in or into California, and shall supply
19 the warning requirements, as detailed above.

20 **2.6 Receipt Notice**

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

24 **NOTICE:**

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

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

5 **2.7 Posted Notice Signs & Stamped Receipts**

6 If, after the Effective Date, Buffalo ships Product(s) to customers with retail outlets in
7 California, with nationwide distribution, or with ecommerce platforms, Buffalo shall inform or
8 require such downstream retailers or distributors to inform customers that, if the downstream entity
9 sells, uses ,or offers the product for sale or use in a business establishment in the State of California,
10 then a sign, no smaller than 8 1/2 by 11, inches must be displayed at each public entrance and at each
11 point of usage, printed in no smaller than 28-point type and containing the following warning
12 statement:

13 **NOTICE:**

14 Some furniture products with vinyl upholstery in this
15 establishment can expose you to chemicals known to
16 the State of California to cause cancer. Please check
the product label for warning information. For more
information go to: www.P65Warnings.ca.gov.

17 **3. MONETARY SETTLEMENT TERMS**

18 **3.1 Civil Penalties**

19 **(a) Initial Civil Penalty**

20 Pursuant to Health & Safety Code § 25249.7(b), Buffalo agrees to pay an initial civil penalty
21 of \$3,000 within ten (10) days of the Effective Date. Buffalo shall allocate its civil penalty payment
22 according to Health & Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of
23 the penalty paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”),
24 and the remaining twenty-five percent (25%) retained by KASB, and shall issue its payment in two
25 separate checks made payable to: (a) “OEHHA” in the amount of \$2,250; and (b) “Seven Hills LLP
26 in Trust for KASB” in the amount of \$750. KASB’s counsel shall deliver to OEHHA and KASB
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1 their respective portions of the penalty payments. Buffalo shall deliver its civil penalty payments to
2 the address listed in Section 3.3, below.

3 **(b) Final Waivable Civil Penalty**

4 Within 120 days of the Effective Date, Buffalo agrees to pay a second, final civil penalty in
5 the amount of \$6,000 to be allocated pursuant to Health & Safety Code §§ 25249.12(c) and (d), with
6 75% of the penalty paid to OEHHA and the remaining 25% paid to KASB. However, this final civil
7 penalty shall be waived in its entirety if: (a) Buffalo provides a “recent” test result (i.e., a test
8 performed after the date of the Notice) showing the Products, as defined by Section 12., are in
9 compliance with the Reformulation Standard set forth in Section 2.2, along with an attested
10 declaration from an officer with knowledge that all newly manufactured products provided for or
11 intended for sale in or into California are Reformulated Products; or (b) Buffalo provides an attested
12 declaration from an officer with knowledge that Buffalo is no longer selling Products that do not meet
13 the Reformulation Standard, as defined by Section 1.2, for sale in or into California. If Buffalo fails
14 to perform by providing a test result and accompanying declaration going to reformulation or a
15 declaration going to cessation of sales within 120 days of the Effectove Date, then the final civil
16 penalty of \$6,000 shall become due, and Buffalo shall remit its final civil penalty payments in two
17 checks as follows: (a) “OEHHA” in the amount of \$4,500; and (b) “Seven Hills LLP in Trust for
18 KASB” in the amount of \$1,500. KASB’s counsel shall deliver to OEHHA and KASB their
19 respective portions of the penalty payment. Buffalo shall deliver its final civil penalty payments or
20 other information to the address listed in Section 3.3, below.

21 **3.2 Reimbursement of Attorneys’ Fees and Costs**

22 KASB and its counsel offered to resolve the allegations in the Notice and Complaint without
23 reaching terms on the amount of reimbursement of attorneys’ fees and costs. Shortly after the
24 Parties finalized the other material settlement terms, they negotiated and reached an accord on the
25 amount of reimbursement to be paid to KASB’s counsel, under general contract principles and the
26 private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all
27 work performed through the mutual execution and reporting of this Consent Judgment to the Office
28 of the California Attorney General and entry of Judgment pursuant its terms, but exclusive of fees

1 and costs on appeal, if any. Within ten (10) business days of the Effective Date, Buffalo shall issue a
2 check in the amount of \$27,500 and made payable to “Seven Hills LLP” for all fees and other costs
3 incurred investigating, bringing this matter to Buffalo’s attention, litigating, negotiating a settlement
4 in the public interest, obtaining the Court’s approval of its terms pursuant to Section 5, and reporting
5 to the California Attorney General. Buffalo shall deliver its payment to the address listed in Section
6 3.3.

7 **3.3 Payments**

8 All payments payable and due under this Consent Judgment shall be delivered to KASB’s
9 counsel at the following address:

10 Seven Hills LLP
11 Attn: Kimberly Gates Johnson
12 4 Embarcadero Center, Suite 1400
13 San Francisco, CA 94111

13 **4. CLAIMS COVERED AND RELEASED**

14 **4.1 KASB’s Release of Proposition 65 Claims**

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

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

6 **4.2 KASB's Individual Release of Claims**

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

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

20 **4.3 Buffalo's Release of KASB**

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

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1 **5. COURT APPROVAL**

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

8 **6. SEVERABILITY**

9 If, subsequent to the Court’s approval and entry of this Consent Judgment as a judgment, any
10 provision of this Consent Judgment is deemed by a court to be unenforceable, the validity of the
11 remaining provisions shall not be adversely affected.

12 **7. GOVERNING LAW**

13 The terms of this Consent Judgment shall be governed by the laws of the State of California
14 and apply within California. In the event Proposition 65 is repealed, preempted, or is otherwise
15 rendered inapplicable, by reason of law, generally, as to the Products or as to DEHP, then Buffalo may
16 provide KASB with written notice of any asserted change in the law and shall have no further
17 injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
18 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Buffalo
19 from its obligation to comply with any pertinent state or federal law or regulation.

20 **8. NOTICE**

21 Unless specified herein, all correspondence and notice required by this Consent Judgment shall
22 be in writing and sent by: (i) first-class registered or certified mail, return receipt requested; or (ii) a
23 recognized overnight courier to any Party by the other at the following addresses:

24 For Buffalo:

25 Martin Ahrens, Secretary
26 Buffalo Corporation
27 950 Hoff Road
28 O Fallon, MO 63366

For KASB:

Kimberly Gates Johnson, Partner
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

With a copy to:

1 Mark Love, Esq.
2 Hawkins Parnell & Young, LLP
3 33 New Montgomery Street, Suite 800
4 San Francisco, CA 94105

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

7 **9. COUNTERPARTS AND PDF SIGNATURES**

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

11 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

14 **11. ENTIRE AGREEMENT**

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

23 **12. MODIFICATION**

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

AGREED TO:

Date: September 05, 2023

Date: August 31, 2023

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

By: 
Martin V. Ahrens, Secretary
Buffalo Corporation