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MINERVA BEAUTY, INC.

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURISDICTION
15

16 CENTER FOR ADVANCED PUBLIC
17 AWARENESS,

18 Plaintiff,

19 v.

20 MINERVA BEAUTY, INC.,

21 Defendant.
22

Case No. CGC-23-605599

[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 Center for Advanced Public
3 Awareness (“CAPA”) and defendant Minerva Beauty, Inc. (“Minerva”), with CAPA and Minerva each
4 individually referred to as a “Party” and collectively, as the “Parties,” to resolve the allegations in the
5 May 27, 2022 60-Day Notice of Violation in compliance with the Safe Drinking Water and Toxic
6 Enforcement Act of 1986, Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

7 **1.1 The Parties**

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

13 **1.2 Consumer Product Description**

14 CAPA alleges that Minerva manufactures, imports, sells, and distributes for sale in California
15 seats with vinyl upholstery containing di(2-ethylhexyl) phthalate (“DEHP”), including, but not
16 limited to, *Child’s Salon Styling Chair Booster Seat, SKU: 2232b*, without providing the health
17 hazard warning that CAPA alleges is required by California Health & Safety Code § 25249.5 *et seq.*
18 (“Proposition 65”). Seats with vinyl upholstery are referred to hereinafter as the “Products,” with
19 an individual seat with vinyl upholstery sometimes being referred to hereinafter as the “Product.”
20 DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause
21 birth defects and other reproductive harm.

22 **1.3 Notice of Violation**

23 On August 24, 2022, CAPA served Minerva, the California Attorney General, and the
24 requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging
25 Minerva violated Proposition 65 by failing to warn its customers and consumers in California that its
26 Products can expose users to DEHP. No public enforcer has commenced and is diligently
27 prosecuting an action to enforce the allegations in the Notice.
28

1 **1.4 Complaint**

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

4 **1.5 No Admission**

5 Minerva denies the factual and legal allegations contained in the Notice and Complaint and
6 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 constitute or be
8 construed as, nor shall compliance with this Consent Judgment constitute or be construed as, an
9 admission by Minerva of any fact, finding, conclusion of law, issue of law, or violation of law. This
10 section shall not, however, diminish or otherwise affect Minerva’s obligations, responsibilities, and
11 duties under this Consent Judgment.

12 **1.6 Jurisdiction**

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

17 **1.7 Execution Date**

18 The term “Execution Date” means the date all parties have signed this Consent Judgment.

19 **1.8 Effective Date**

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

22 **2. INJUNCTIVE RELIEF: REFORMULATION AND INTERIM WARNINGS**

23 **2.1 Reformulation Commitment**

24 Commencing on the Execution Date and continuing thereafter, all Products Minerva
25 manufactures, orders, imports, or purchases for sale in or into California, which have not already
26 shipped to California for sale, directly or through one or more third party retailers or e-commerce
27 marketplaces, shall meet the Reformulation Standard for Reformulated Products, as defined by
28 Section 2.2.

1 **2.2 Reformulation Standard**

2 For purposes of this Consent Judgment, “**Reformulated Products**” are defined as Products,
3 which, if they contain di(2-ethylhexyl) phthalate (“**DEHP**”), di-n-butyl phthalate (“**DBP**”),
4 diisononyl phthalate (“**DINP**”), butyl benzyl phthalate (“**BBP**”), di-isodecyl phthalate (“**DIDP**”) or
5 di-n-hexyl phthalate (“**DnHP**”), contain any or all such chemicals each in a maximum concentration
6 of less than 0.1 percent (1,000 parts per million (**ppm**)) in any accessible component (i.e., any
7 component a consumer would handle during reasonably foreseeable use) when analyzed by a
8 laboratory accredited by the State of California, a federal agency, or a nationally recognized
9 accrediting organization. For purposes of compliance with this Reformulation Standard, testing
10 samples shall be prepared and extracted using Consumer Product Safety Commission (“**CPSC**”)
11 methodology CPSC-CH-C1001.09.4 and analyzed using U.S. Environmental Protection Agency
12 methodology 8270D, or other methodologies utilized by federal or state government agencies to
13 determine phthalate content in a solid substance. Nothing in this Consent Judgment shall be
14 construed as an admission that any product with a concentration of greater than 0.1% (1,000 ppm) of
15 DEHP, DBP, DINP, BBP, DIDP or DnHP, or any other chemical, and analyzed using CPSC
16 methodology CPSC-CH-C1001.09.4, U.S. Environmental Protection Agency methodology 8270D,
17 or other methodologies utilized by federal or state government agencies to determine phthalate
18 content in a solid substance, violates Proposition 65 and Minerva disputes and denies that 0.1%
19 (1,000 ppm) constitutes the Maximum Allowable Dose Level for DEHP, DINP, BBD, DIDP or
20 DnHP, or any other chemical, under Proposition 65.

21 **2.3 Certification of Compliance with Reformulation Standard**

22 On or before thirty (30) days after the Execution Date, an officer of Minerva shall provide
23 Seven Hills LLP with a written attested declaration stating, as of the Execution Date, and continuing
24 thereafter, any and all Products manufactured, ordered, imported, or purchased for sale, which have
25 not already shipped to California prior to the Execution date, to (a) consumers in California directly
26 including through its own website, affiliated websites or a third party website, and (b) customers
27 with nationwide distribution and e-commerce platforms, are Reformulated Products as defined by
28 Section 2.2. Along with its attested declaration, Minerva shall provide a recent test result performed

1 after the date of the Notice, showing the Products were tested and analyzed according to the
2 parameters set forth in Section 2.2 and are Reformulated Products. Failure to comply with this
3 section shall render this agreement null and void.

4 **2.4 Interim Clear and Reasonable Warnings**

5 Commencing on or before the Effective Date, and on all products already shipped to
6 California prior to the Execution Date but not yet sold, Minerva shall provide clear and reasonable
7 warnings for all Products, that are not Reformulated Products, provided for sale to (a) customers in
8 California and (b) customers with nationwide distribution and e-commerce platforms in accordance
9 with this Section pursuant to Title 27, California Code of Regulations § 25600, et seq. Each warning
10 shall be prominently placed with such conspicuousness as compared with other words, statements, or
11 designs as to render it likely to be read and understood by an ordinary individual under customary
12 conditions before purchase or use and shall be provided in a manner such that it is clearly associated
13 with the specific Product to which the warning applies. Where a consumer product sign, label or
14 shelf tag used to provide a warning includes consumer information in language(s) other than English,
15 the warning or notice must also be provided in the other language(s) in addition to English.

16 (a) **DEHP Warning.** The Warning for DEHP in excess of the Reformulation
17 Standard set forth in Section 2.2 shall consist of the following statement:

18 **⚠WARNING:** This product can expose you to chemicals including di(2-ethylhexyl)
19 phthalate (DEHP), which are known to the State of California to cause
20 cancer and birth defects or other reproductive harm. For more
information go to www.P65Warnings.ca.gov/furniture.

21 A warning provided pursuant to this Section 2.4(a) must print the word “**WARNING:**” in all capital
22 letters and in bold font. The warning symbol to the left of the word “**WARNING:**” must be a black
23 exclamation point in a yellow equilateral triangle with a black outline, except if the labeling does not
24 use the color yellow, then the symbol may be in black and white.

25 (b) **Product Label Warnings**

26 Minerva shall include the warning statement in Section 2.4(a) on the Product label affixed to
27 the Products in the same manner as other consumer information or warning materials on the Products.
28 The entire warning shall appear in a type size of at least 6-point type and no smaller than the largest

1 type size used for other consumer information on the Products. For purposes of this Consent
2 Judgment, “**Product label**” means a display of written, printed or graphic material that is printed on
3 or affixed to a Product or its immediate container or wrapper.

4 **(c) Internet Warning**

5 Minerva shall also provide the warning statement in Section 2.4(a) by prominently displaying,
6 or requiring the warning to be prominently displayed on third party websites or by downstream
7 retailers or distributors with e-commerce platforms, to the consumer during the purchase of any of the
8 Products without requiring customers to seek out the warning. The warning or a clearly marked
9 hyperlink to the warning using the word “**WARNING**” given in conjunction with the sale of the
10 Products via the internet shall appear either: (i) on the same web page on which each Product is
11 displayed; (ii) on the same web page as the virtual cart displaying each Product; (iii) on the same
12 page as the price for each Product; or (iv) on one or more web pages displayed to a purchaser during
13 the checkout process. The warning shall appear in any of the above instances adjacent to or
14 immediately following the display, description or price of each Product for which it is given in the
15 same type size or larger than other consumer information provided for each Product.

16 **(d) Catalog Warning**

17 If, after the Effective Date, Minerva prints new catalogs and sells Products, that are not
18 Reformulated Products, via mail order through such catalogs to customers located in California,
19 Minerva shall also provide the warning statement in Section 2.4(a) for each Product in the catalog in
20 a manner that clearly associates the warning with the *specific* Product being purchased. Any warning
21 provided in a mail order catalog shall be in the same type size or larger than other consumer
22 information provided for the Product within the catalog and shall be provided on the same page and
23 in the same location as the display and/or description of each Products.

24 **(e) Receipt Notice**

25 For each Products, sold or shipped to customers located in California, Minerva shall also
26 provide, or require downstream retailers or distributes to provide, on the sales receipt and packing
27 slip, the following notice statement:
28

NOTICE:

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

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.

(f) Posted Notice Sign

Minerva shall inform, or require downstream retailers or distributes to inform, customers that, if the customer sells, uses or offers the product for sale or use in a business establishment in the State of California, a sign no smaller than 8 1/2 by 11 inches must be displayed at each public entrance and at each point of usage, and printed in no smaller than 28-point type which contains the following warning statement:

NOTICE:

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

2.5 Customer Notification

No later than the Effective Date, Minerva shall send a letter, electronic or otherwise (“**Notification Letter**”) to: (1) each customer in California to which it supplied Products between August 24, 2021 and August 24, 2022; and (2) any other customer that is a retailer or distributor that has any inventory of Products, which Minerva supplied between August 24, 2019 and August 24, 2022, for sale to consumers in California. The Notification Letter shall advise the recipient that each Product must have a label attached to each Product expressly referring to the Product, which contains the warning statement in Section 2.4(a), before it is sold in the California market or to a customer in California, and shall further inform customers that, if the customer sells, uses or offers the Product for use in a business establishment such as a salon in the State of California, a sign no smaller than 8 1/2

1 by 11 inches must be displayed at each public entrance and at each point of usage, and printed in no
2 smaller than 28-point type which contains the warning statement in Section 2.4(f).

3 **3. MONETARY SETTLEMENT TERMS**

4 **3.1 Civil Penalty**

5 Pursuant to Health and Safety Code § 25249.7(b), Minerva agrees to pay a civil penalty of
6 \$3,300 within five (5) business days of the Effective Date. Minerva’s civil penalty payment will be
7 allocated according to Health and Safety Code §§ 25249.12(c)(1) and (d), with seventy-five percent
8 (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment
9 (“OEHHA”), and the remaining twenty-five percent (25%) retained by CAPA. Minerva shall issue
10 its payment in two checks made payable to: (a) “OEHHA” in the amount of \$2,475; and (b) “Center
11 for Advanced Public Awareness” in the amount of \$825. CAPA’s counsel shall deliver to OEHHA
12 and CAPA their respective portion of the penalty payment.

13 **3.2 Reimbursement of Attorneys’ Fees and Costs**

14 CAPA and its counsel offered to resolve the allegations in the Notice and Complaint without
15 reaching terms on the amount of reimbursement of attorneys’ fees and costs. Shortly after the
16 Parties finalized the other material settlement terms, they negotiated and reached an accord on the
17 amount of reimbursement to be paid to CAPA’s counsel, under general contract principles and the
18 private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all
19 work performed through the mutual execution and reporting of this Consent Judgment to the Office
20 of the California Attorney General and entry of Judgment pursuant its terms, but exclusive of fees
21 and costs on appeal, if any. Within five (5) days of the Effective Date, Minerva agrees to issue a
22 check in the amount of \$27,000 and made payable to “Seven Hills LLP” for all fees and other costs
23 incurred investigating, bringing this matter to Minerva’s attention, litigating, negotiating a settlement
24 in the public interest, obtaining the Court’s approval of its terms pursuant to Section 5, and reporting
25 its terms to the Office of the California Attorney General pursuant to Section 9.

1 **3.3 Payments**

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

4 Seven Hills LLP
5 Attn: Laralei Paras
6 4 Embarcadero Center, Suite 1400
7 San Francisco, CA 94111

7 **4. CLAIMS COVERED AND RELEASED**

8 **4.1 CAPA’s Release of Proposition 65 Claims**

9 This Consent Judgment is a full, final and binding resolution between CAPA, acting on its
10 own behalf and in the public interest, and Minerva, of any violation of Proposition 65 that was or
11 could have been asserted by CAPA on behalf of itself, its past and current agents, representatives,
12 attorneys, successors, and/or assignees, against Minerva, its directors, officers, employees, attorneys,
13 and each entity to whom Minerva directly or indirectly distributes or sells Products, including, but
14 not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative
15 members, and licensees (collectively, “**Releasees**”), from all claims for violations of Proposition 65
16 based on their failure to warn about alleged exposures to DEHP contained in the Products that were
17 manufactured, distributed, sold and/or offered for sale by Minerva in California before the Effective
18 Date, as alleged in the Notice.

19 **4.2 CAPA’s Individual Release of Claims**

20 In further consideration of the promises and agreements herein contained, CAPA as an
21 individual and not in its representative capacity, on behalf of itself, its past and current agents,
22 representatives, attorneys, successors, and/or assignees, hereby waives all of CAPA’s rights to
23 institute or participate in, directly or indirectly, any form of legal action and releases all claims that
24 CAPA may have, including, without limitation, all actions, and causes of action, in law or in equity,
25 suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including,
26 but not exclusively, investigation fees, expert fees, and attorneys’ fees arising under Proposition 65
27 with respect to DEHP, DBP, DINP, BBP, DIDP, and DnHP in the Products manufactured,
28

1 distributed, sold and/or offered for sale by Minerva, before the Execution Date (collectively,
2 “Claims”), against Minerva and Releasees.

3 The Parties understand and agree these Sections 4.1 and 4.2 releases shall neither extend
4 upstream to any entities that sold, supplied, or manufactured the Products or any component parts
5 thereof, or any distributors or suppliers who sold the Products or any component parts thereof to
6 Minerva nor extend to Releasees who have been instructed by Minerva pursuant to Section 2.5 to
7 provide a warning on Products that are not Reformulated Products and have failed to do so.

8 **4.3 Minerva’s Release of CAPA**

9 Minerva, on behalf of itself, its past and current agents, representatives, attorneys, successors,
10 and assignees, hereby waives any and all claims against CAPA and its attorneys and other
11 representatives, for any and all actions taken or statements made (or those that could have been taken
12 or made) by CAPA and its attorneys and other representatives, whether in the course of investigating
13 claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the
14 Products.

15 **5. COURT APPROVAL**

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

22 **6. SEVERABILITY**

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

26 **7. GOVERNING LAW**

27 The terms of this Consent Judgment shall be governed by the laws of the State of California
28 and apply within California. In the event that Proposition 65 is repealed, preempted, or is otherwise

1 rendered inapplicable by reason of law generally, or as to the Products, then Minerva may provide
2 CAPA with written notice of any asserted change in the law, and shall have no further injunctive
3 obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products
4 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Minerva from its
5 obligation to comply with any pertinent state or federal law or regulation.

6 **8. NOTICE**

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

11 For Minerva:

12 James Frank Rawl, III, CEO
13 Minerva Beauty, Inc.
14 390 Jim Daws Road
15 Monroe, GA 36055

16 *With a copy to:*

17 Evan Dwin
18 Dwin Legal, APC
19 2121 Palomar Airport Road, Suite 160
20 Carlsbad, CA 92011
21 Email: edwin@dwinlegal.com

For CAPA:

Laralei Paras, Partner
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
Email: laralei@sevenhillsllp.com

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

24 **9. COUNTERPARTS AND PDF SIGNATURES**

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

28 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

1 **11. ENTIRE AGREEMENT**

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

10 **12. MODIFICATION**

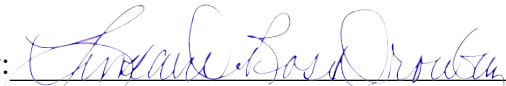
11 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
12 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
13 any party and the entry of a modified Consent Judgment by the Court thereon.

14 **13. AUTHORIZATION**

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

18 **AGREED TO:**

19 Date: May 31, 2023

20
21 By: 
22 Linda DeRose-Droubay, Executive Director
Center for Advanced Public Awareness

AGREED TO:

Date: 5/18/2023

20
21 By: 
22 James Frank Rawl, III, CEO
Minerva Beauty, Inc.