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Superior Court of California,
County of San Francisco

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO - UNLIMITED CIVIL JURISDICTION

BLUE SKY FOREVER,

Plaintiff,

v.

CHICAGO BUSINESS PARTNERS, LLC;
SEATTLE HOME FITNESS, LLC; and DOES
1-30, inclusive,

Defendants.

Case No.

CGC-24-618574

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

Violations of Health & Safety Code
§ 25249.5, *et seq.* (Proposition 65)

1 Plaintiff BLUE SKY FOREVER (“BSF” or “Plaintiff”), acting in the public interest, alleges a
2 cause of action against defendants CHICAGO BUSINESS PARTNERS, LLC; SEATTLE HOME
3 FITNESS, LLC, and DOES 1-30 (“Defendants”) for their alleged violations of Health & Safety Code
4 § 25249.6, et seq., as follows:

5 **INTRODUCTION AND NATURE OF THE ACTION**

6 1. BSF brings this representative action in the public interest on behalf of the citizens of
7 the State of California. By this action, BSF seeks to enforce the People’s right to be informed of the
8 health hazards caused by exposures to Lead, a heavy metal found in and on Vinyl Coated Kettlebells
9 manufactured, imported, distributed, sold and offered for sale by Defendants in the State of
10 California.

11 2. By this Complaint, plaintiff seeks to remedy Defendants’ failure to warn individuals not
12 covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.* (“consumers”)
13 exposed to substances known to cause birth defects or other reproductive harm through exposures to
14 Lead when they purchase, use and handle Defendants’ Vinyl Coated Kettlebells.

15 3. Detectable levels of Lead are found in and on the Vinyl Coated Kettlebells Defendants
16 manufacture, import, sell and distribute for sale in California.

17 4. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
18 Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”), it is unlawful for a person in the course
19 of doing business to knowingly and intentionally expose consumers and end-users in California to
20 chemicals known to the State to cause cancer, birth defects or other reproductive harm, without first
21 providing a “clear and reasonable warning” regarding the presence of these chemicals in Defendants’
22 products and the harms associated with exposures to such chemicals.

23 5. Defendants manufacture, distribute, import, sell, and offer for sale, in and into
24 California Vinyl Coated Kettlebells (“PRODUCTS”) containing Lead, without providing a warning
25 regarding the presence of and the harms associated with exposures to Lead in Defendants’
26 PRODUCTS. Such PRODUCTS include, without limitation, the *Top Fitness Vinyl Coated Kettlebell*
27 *5LB*. Defendants’ violations subject them to civil penalties, injunction, preliminary and permanent
28 injunctive relief. Health & Safety Code § 25249.7(a) and (b).

PARTIES

6. BSF is a non-profit corporation organized under the laws of California and acting in the public interest to reduce the presence of toxic chemicals found in consumer products and to enforce California citizens' right to be informed about the presence of toxic chemicals in the products they purchase and use, and the harms associated with exposures to such chemicals. BSF is a "person" within the meaning of Health & Safety Code § 25249.11(a). It brings this action in the public interest, pursuant to Health and Safety Code § 25249.7(d).

7. At all relevant times, defendant CHICAGO BUSINESS PARTNERS, LLC ("CHICAGO BUSINESS") operates as a "person in the course of doing business" with ten (10) or more employees within the meaning of and as defined by Health and Safety Code §§ 25249.6 and 25249.11.

8. CHICAGO BUSINESS manufactures, imports, distributes, sells, and offers the PRODUCTS for sale or use in California, or implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use to consumers in California.

9. Defendant SEATTLE HOME FITNESS, LLC ("SEATTLE HOME") operates as a "person in the course of doing business" within the meaning of and as defined by Health and Safety Code §§ 25249.6 and 25249.11.

10. SEATTLE HOME imports, distributes, sells, and offers the PRODUCTS for sale or use in California, or implies by its conduct that it imports, distributes, sells, and offers the PRODUCTS for sale or use in California.

11. Doe Defendants 1-10 ("MANUFACTURER DEFENDANTS") are each a "person in the course of doing business" within the meaning of and as defined by Health and Safety Code §§ 25249.6 and 25249.11. MANUFACTURER DEFENDANTS, and each of them, assemble, fabricate, and manufacture, or they each imply by their conduct they do so for one or more of the PRODUCTS sold and/or offered for sale or use to consumers in California.

12. Doe Defendants 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 the

1 PRODUCTS sold and offered for sale to consumers in California, or they each imply by their conduct
2 they distribute, transfer, and transport one or more of the PRODUCTS to individuals, businesses, and
3 retailers for sale or use in California.

4 13. Doe Defendants 21-30 (“RETAILER DEFENDANTS”) are each a person in the course
5 of doing business within the meaning of and as defined by Health and Safety Code §§ 25249.6 and
6 25249.11. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to
7 consumers in California.

8 14. At this time, the true names of Defendants DOES 1 through 30, inclusive, are unknown
9 to BSF, who therefore, sues these Doe Defendants by their fictitious names, pursuant to Code of Civil
10 Procedure § 474. Each of the fictitiously named Defendants is responsible in some manner for the
11 acts and occurrences alleged herein and the violations and harms caused thereby. When ascertained,
12 BSF will identify these Doe Defendants by their true names in an amendment to this Complaint.

13 15. CHICAGO BUSINESS, SEATTLE HOME, MANUFACTURER DEFENDANTS,
14 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall be referred to collectively
15 herein as the “DEFENDANTS.”

16 **JURISDICTION AND VENUE**

17 16. This Court has jurisdiction pursuant to Health & Safety Code § 25249.7, which allows
18 enforcement by any court of competent jurisdiction. The Superior Courts of the State of California
19 have jurisdiction pursuant to California Constitution Article VI, section 10, which grants the Superior
20 Courts “original jurisdiction in all causes except those given by statute to other trial courts.” The
21 statute under which this action is brought does not specify any other basis of subject matter
22 jurisdiction.

23 17. This Court has jurisdiction over DEFENDANTS because DEFENDANTS, and each of
24 them are a person, firm, corporation or association that is a citizen of the State of California, does
25 sufficient business in California, has sufficient minimum contacts in California, and/or otherwise
26 purposefully and intentionally avail themselves of the California market through their manufacture,
27 importation, distribution, promotion, marketing and sale of PRODUCTS in California.

1 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by this Court
2 consistent with traditional notions of fair play and substantial justice.

3 18. Venue is proper in the Superior Court for the County of San Francisco, pursuant to Code
4 of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
5 because BSF seeks civil penalties against DEFENDANTS, because one or more instances of
6 wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS
7 conducted, and continue to conduct, business in the County of San Francisco with respect to the
8 PRODUCTS.

9 **REGULATORY BACKGROUND AND LAW**

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

15 20. Under the Act, a “person in the course of doing business” is defined as a business with
16 ten (10) or more employees. Health & Safety Code § 25249.11(b). The Act prohibits businesses from
17 exposing consumers to hazardous chemicals without first giving a “clear and reasonable warning.”
18 Health & Safety Code § 25249.6.

19 21. Exposing consumers to hazardous chemicals means to cause consumers to ingest, inhale,
20 contact via body surfaces or otherwise come into contact with a listed chemical. California Code of
21 Regulations (“Cal. Code Regs.”) Title 27, § 25102(i). An exposure to a hazardous chemical is
22 defined as one that “results from a person’s acquisition, purchase, storage, consumption or other
23 reasonably foreseeable use of a product...” Cal. Code Regs. Tit. 27, § 25600(h).

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

27 23. On February 27, 1987, pursuant to Proposition 65 implementing regulations, California
28 listed Lead as a chemical known to cause birth defects or other reproductive harm. Lead became

1 subject to the “clear and reasonable warning” requirements one year later, on February 27, 1988. Cal.
2 Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8, 25249.10(b).

3 24. On October 1, 1992, pursuant to Proposition 65 implementing regulations, California
4 listed Lead as a chemical known to cause cancer. Lead became subject to the “clear and reasonable
5 warning” requirements one year later, on October 1, 1993. Cal. Code Regs. tit. 27, § 27001(c);
6 Health & Safety Code §§ 25249.8, 25249.10(b).

7 **STATEMENT OF FACTS**

8 25. DEFENDANTS sell and offer their PRODUCTS for sale in California without a clear
9 and reasonable warning in violation of Cal. Code Regs. Tit. 27, § 25600, *et seq.*

10 26. DEFENDANTS’ PRODUCTS expose consumers and end-users in California to Lead at
11 levels requiring a warning under Proposition 65 when they touch, handle or otherwise contact the
12 PRODUCTS during reasonably foreseeable and intended use.

13 27. On April 29, 2024, BSF served a 60-Day Notice of Violation (“Notice”), together with
14 the required certificate of merit, on CHICAGO BUSINESS, SEATTLE HOME, the Office of the
15 Attorney General, and all requisite public enforcement agencies, alleging, as a result of
16 DEFENDANTS’ sales of the PRODUCTS, consumers and end-users in California were, and are,
17 exposed to Lead without first receiving the “clear and reasonable warning” required by Proposition
18 65.

19 28. After receiving plaintiff’s Notice, no public enforcement agency has commenced or is
20 diligently prosecuting a cause of action against DEFENDANTS to enforce the alleged violations of
21 Proposition 65 that are the subject of the Notices.

22 **FIRST CAUSE OF ACTION**

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

24 29. BSF realleges and incorporates by reference, as if fully stated herein, the allegations set
25 forth in Paragraphs 1 through 28, inclusive.

26 30. DEFENDANTS’ PRODUCTS contain Lead in levels requiring a clear and reasonable
27 warning under Proposition 65.
28

1 31. DEFENDANTS know or should have known their PRODUCTS contain Lead. As a
2 result of plaintiff's Notices, DEFENDANTS now possess actual knowledge of the presence of Lead
3 in their PRODUCTS.

4 32. DEFENDANTS' PRODUCTS expose consumers, end-users, and other individuals in
5 California to Lead through dermal contact and ingestion during the reasonably foreseeable and
6 intended use of the PRODUCTS.

7 33. The normal and reasonably foreseeable use of the PRODUCTS causes exposures to
8 Lead.

9 34. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS
10 exposes consumers, end-users, and other individuals to Lead through dermal contact and/or ingestion.

11 35. DEFENDANTS intend to expose consumers, end-users, and other individuals in
12 California to Lead during their reasonably foreseeable and intended use of the PRODUCTS. Such
13 exposures to Lead occur through DEFENDANTS deliberate and non-accidental participation in the
14 California market.

15 36. The exposures to Lead caused by DEFENDANTS and endured by consumers in
16 California are not exempt from the "clear and reasonable warning" requirements of Proposition 65.

17 37. DEFENDANTS failed to provide a "clear and reasonable warning" to consumers in
18 California exposed to Lead through dermal contact and/or ingestion during their reasonably
19 foreseeable and intended use of the PRODUCTS. Defendants continue to fail to provide such
20 warning.

21 38. Contrary to the express policy and statutory prohibition of Proposition 65, consumers
22 are exposed to Lead through dermal contact and ingestion during their use of PRODUCTS
23 DEFENDANTS sold, sell and offer for sale without a "clear and reasonable warning." Such
24 consumers in California suffer irreparable harms for which they have no plain, speedy, or adequate
25 remedy at law.

26 39. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for sale
27 or use in violation of Health and Safety Code § 25249.6. DEFENDANTS' violations continue beyond
28 their receipt of BSF's Notices. As such, DEFENDANTS' violations are ongoing and continuous in

1 nature and, unless enjoined, will continue in the future.

2 40. Pursuant to Health and Safety Code § 25249.7(b), and as a consequence their acts and
3 omissions, DEFENDANTS, and each of them, are liable for a maximum civil penalty of \$2,500 per
4 violation.

5 41. As a consequence of DEFENDANTS' acts and omissions, Health and Safety Code
6 § 25249.7(a) specifically authorizes the Court to grant the relief prayed for herein.

7 **PRAYER FOR RELIEF**

8 Wherefore, BSF prays for relief and judgment against DEFENDANTS, and each of them, as
9 follows:

10 1. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and
11 permanently enjoin DEFENDANTS from manufacturing, distributing, importing, marketing or
12 otherwise offering the PRODUCTS for sale or use in California without first providing a "clear and
13 reasonable warning" to consumers regarding the presence of, and the harms associated with,
14 exposures to Lead;

15 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary and
16 permanent injunctions mandating DEFENDANTS recall PRODUCTS intended for sale in or into
17 California that do not bear a clear and reasonable warning;

18 3. That the Court assess civil penalties against DEFENDANTS, and each of them, in the
19 amount of \$2,500 per violation, according to proof at trial;

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

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

22 Dated: October 1, 2024

23 Respectfully submitted,

24 SEVEN HILLS LLP

25 By: 

26 Laralei Paras

27 Attorneys for Plaintiff

28 BLUE SKY FOREVER