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ELECTRONICALLY
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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

CGC-25-623781

BLUE SKY FOREVER,

Plaintiff,

v.

MACKENZIE-CHILDS LLC,

Defendant.

Case No.

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

Plaintiff BLUE SKY FOREVER (“BSF” or “Plaintiff”), acting in the public interest, alleges a cause of action against defendant MACKENZIE-CHILDS LLC (“Defendant”) for its alleged violations of Health & Safety Code § 25249.6, *et seq.*, as follows:

INTRODUCTION AND NATURE OF THE ACTION

1. BSF brings this representative action in the public interest on behalf of the citizens of the State of California. By this action, BSF seeks to enforce the People’s right to be informed of the health hazards caused by exposures to Lead, a heavy metal found in and on tableware with metal components manufactured, imported, distributed, sold and offered for sale by Defendant in the State of California.

2. By this Complaint, plaintiff seeks to remedy Defendant’s failure to warn individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.* (“consumers”)

1 exposed to substances known to cause birth defects or other reproductive harm through exposures to
2 Lead when they purchase, use and handle Defendant's tableware with metal components.

3 3. Detectable levels of Lead are found in and on the tableware with metal components
4 Defendant manufactures, imports, sells and distributes for sale in California.

5 4. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
6 Health and Safety Code § 25249.6 *et seq.* ("Proposition 65"), it is unlawful for a person in the course
7 of doing business to knowingly and intentionally expose consumers and end-users in California to
8 chemicals known to the State to cause cancer, birth defects or other reproductive harm, without first
9 providing a "clear and reasonable warning" regarding the presence of these chemicals in Defendant's
10 products and the harms associated with exposures to such chemicals.

11 5. Defendant manufactures, distributes, imports, sells, and offers for sale, in and into
12 California tableware with metal components ("PRODUCTS") containing Lead, without providing a
13 warning regarding the presence of and the harms associated with exposures to Lead in Defendant's
14 PRODUCTS. Such PRODUCTS include, without limitation, the *Short Sterling Check® Enamel*
15 *Candlestick, UPC 0 840115 659607*. Defendant's violations subject them to civil penalties,
16 injunction, preliminary and permanent injunctive relief. Health & Safety Code § 25249.7(a) and
17 (b).

18 **PARTIES**

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

25 7. At all relevant times, defendant MACKENZIE-CHILDS LLC ("MACKENZIE-
26 CHILDS") operates as a "person in the course of doing business" with ten (10) or more employees
27 within the meaning of and as defined by Health and Safety Code §§ 25249.6 and 25249.11.
28

8. MACKENZIE-CHILDS 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 and other individuals in California.

JURISDICTION AND VENUE

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

10. This Court has jurisdiction over DEFENDANT because DEFENDANT is a person, firm, corporation or 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 itself of the California market through its manufacture, importation, distribution, promotion, marketing and sale of PRODUCTS in California. DEFENDANT'S purposeful availment renders the exercise of personal jurisdiction by this Court consistent with traditional notions of fair play and substantial justice.

11. 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 jurisdiction, because BSF seeks civil penalties against DEFENDANT, because one or more instances of wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANT conducted, and continues to conduct, business in the County of San Francisco with respect to the PRODUCTS.

REGULATORY BACKGROUND AND LAW

12. Formally known as the Safe Drinking Water and Toxic Enforcement Act of 1986 and codified at Health & Safety Code § 25249.6 *et seq.*, Proposition 65 states, in relevant part, “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a

1 chemical known to cause cancer or reproductive toxicity without first giving a clear and reasonable
2 warning to such individual . . .”

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

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

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

15 16. On February 27, 1987, pursuant to Proposition 65 implementing regulations, California
16 listed Lead as a chemical known to cause birth defects or other reproductive harm. Lead became
17 subject to the “clear and reasonable warning” requirements one year later, on February 27, 1988. Cal.
18 Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8, 25249.10(b).

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

23 **STATEMENT OF FACTS**

24 18. DEFENDANT sells and offers its PRODUCTS for sale in California without a clear and
25 reasonable warning in violation of Cal. Code Regs. Tit. 27, § 25600, *et seq.*

19. DEFENDANT’S PRODUCTS expose consumers and end-users in California to Lead at levels requiring a warning under Proposition 65 when they touch, handle or otherwise contact the PRODUCTS during reasonably foreseeable use.

20. On April 29, 2024, BSF served a 60-Day Notice of Violation (“Notice”), together with the required certificate of merit, on MACKENZIE-CHILDS, the Office of the Attorney General, and all requisite public enforcement agencies, alleging, as a result of DEFENDANT’S sales of the PRODUCTS, consumers and end-users in California were, and are, exposed to Lead without first receiving the “clear and reasonable warning” required by Proposition 65.

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

FIRST CAUSE OF ACTION

(Violation of Proposition 65 - Against All DEFENDANTS)

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

23. DEFENDANT’S PRODUCTS contain Lead in levels requiring a clear and reasonable warning under Proposition 65.

24. DEFENDANT knows or should have known its PRODUCTS contain Lead. As a result of plaintiff's Notice, DEFENDANT now possess actual knowledge of the presence of Lead in its PRODUCTS.

25. DEFENDANT’S PRODUCTS expose consumers, end-users, and other individuals in California to Lead through dermal contact and ingestion during the reasonably foreseeable use of the PRODUCTS.

26. The normal and reasonably foreseeable use of the PRODUCTS causes exposures to Lead.

27. DEFENDANT knows the normal and reasonably foreseeable use of the PRODUCTS exposes consumers, end-users, and other individuals to Lead through dermal contact and/or ingestion.

28. DEFENDANT intends to expose consumers, end-users, and other individuals in California to Lead during their reasonably foreseeable use of the PRODUCTS. Such exposures to Lead occur through DEFENDANT'S deliberate and non-accidental participation in the California market.

29. The exposures to Lead caused by DEFENDANT and endured by consumers and other individuals in California are not exempt from the “clear and reasonable warning” requirements of Proposition 65.

30. DEFENDANT failed to provide a “clear and reasonable warning” to consumers and other individuals in California exposed to Lead through dermal contact and/or ingestion during their reasonably foreseeable use of the PRODUCTS. Defendant continues to fail to provide such warning.

31. Contrary to the express policy and statutory prohibition of Proposition 65, consumers are exposed to Lead through dermal contact and ingestion during their use of PRODUCTS DEFENDANT sold, sell and offer for sale without a “clear and reasonable warning.” Such consumers and other individuals in California suffer irreparable harms for which they have no plain, speedy, or adequate remedy at law.

32. DEFENDANT manufactures, imports, distributes, sells, and offers the PRODUCTS for sale or use in violation of Health and Safety Code § 25249.6. DEFENDANT’S violations continue beyond its receipt of BSF’s Notice. As such, DEFENDANT’S violations are ongoing and continuous in nature and, unless enjoined, will continue in the future.

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

34. As a consequence of DEFENDANT’S acts and omissions, Health and Safety Code § 25249.7(a) specifically authorizes the Court to grant the relief prayed for herein.

PRAYER FOR RELIEF

Wherefore, BSF prays for relief and judgment against DEFENDANT as follows:

1 1. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and
2 permanently enjoin DEFENDANT from manufacturing, distributing, importing, marketing or
3 otherwise offering the PRODUCTS for sale or use in California without first providing a “clear and
4 reasonable warning” to consumers regarding the presence of, and the harms associated with,
5 exposures to Lead;

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

9 3. That the Court assess civil penalties against DEFENDANT in the amount of \$2,500 per
10 violation, according to proof at trial;

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


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

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14 Dated: March 28, 2025

Respectfully submitted,

SEVEN HILLS LLP

15
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17 By: _____


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