

James M. Kim, Clerk of the Court
By: K. Keeton, Deputy

1 Laralei S. Paras, State Bar No. 203319
2 Brian C. Johnson, State Bar No. 235965
3 Seven Hills LLP
4 4 Embarcadero Center, Suite 1400
5 San Francisco, CA 94111
6 Telephone: (415) 926-7247
7 Email: laralei@sevenhillsllp.com
8 Email: brian@sevenhillsllp.com

9 Attorneys for Plaintiff
10 BLUE SKY FOREVER

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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF MARIN – UNLIMITED CIVIL JURISDICTION
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16 BLUE SKY FOREVER,

17 Plaintiff,

18 v.

19 BLACKBURN MFG. CO.; and DOES 1-30,
20 inclusive,

21 Defendants.

Case No. CV0004460

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

Violation of Proposition 65, The Safe
Drinking Water and Toxic Enforcement Act of
1986 (Health & Safety Code § 25249.5 *et*
seq.)

UNLIMITED CIVIL

22 Plaintiff BLUE SKY FOREVER, acting in the public interest, alleges a cause of action against
23 Defendants BLACKBURN MFG. CO., and DOES 1-30.

INTRODUCTION AND NATURE OF THE ACTION

24 1. This Complaint is a representative action brought by plaintiff Blue Sky Forever
25 (“**BSF**”) in the public interest of the citizens of the State of California to enforce the People’s right to
26 be informed of the health hazards caused by exposures to diisononyl phthalate (“**DINP**”), a toxic
27 chemical found in and on the tools with vinyl grips manufactured, imported, distributed, sold or
28 offered for sale by Defendants in the State of California.

2. By this Complaint, plaintiff seeks to remedy Defendants’ continuing failure to warn
individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.*
 (“**consumers**”) they are being exposed to substances known to the State of California to cause cancer
through exposures to DINP, when they purchase, use or handle Defendants’ tools with vinyl grips.

1 which grants the Superior Court “original jurisdiction in all causes except those given by statute to
2 other trial courts.” The statute under which this action is brought does not specify any other basis of
3 subject matter jurisdiction.

4 15. The California Superior Court has jurisdiction over DEFENDANTS, based on
5 plaintiff’s information and good faith belief DEFENDANTS are each a person, firm, corporation or
6 association that is a citizen of the State of California, does sufficient business in California, has
7 sufficient minimum contacts in California, and/or otherwise purposefully and intentionally avail
8 themselves of the California market through their manufacture, importation, distribution, promotion,
9 marketing or sale of PRODUCTS within the State. DEFENDANTS’ purposeful availment renders the
10 exercise of personal jurisdiction by California courts consistent with traditional notions of fair play
11 and substantial justice.

12 16. Venue is proper in the Superior Court for the County of Marin, pursuant to Code of
13 Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
14 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of
15 wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS
16 conducted, and continue to conduct, business in the County of Marin with respect to the PRODUCTS
17 that are the subject of this action.

18 **REGULATORY BACKGROUND AND LAW**

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

24 18. Under the Act, a “person in the course of doing business” is defined as a business with
25 ten (10) or more employees. Health & Saf. Code § 25249.11(b). Businesses are prohibited from
26 exposing consumers to hazardous chemicals without first giving a “clear and reasonable” warning.
27 Health & Saf. Code § 25249.6.

1 **FIRST CAUSE OF ACTION**

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

3 26. BSF realleges and incorporates by reference, as if fully stated herein, the allegations
4 set forth in Paragraphs 1 through 25, inclusive.

5 27. DEFENDANTS' PRODUCTS contain DINP in levels requiring a clear and reasonable
6 warning under Proposition 65.

7 28. DEFENDANTS know or should have known the PRODUCTS they manufacture,
8 import, distribute, sell, and offer for sale in California contain DINP. As a result of plaintiff's Notice,
9 DEFENDANTS also have actual knowledge of the presence of DINP in the PRODUCTS.

10 29. The PRODUCTS DEFENDANTS manufacture, import, distribute, sell, and offer for
11 sale in or into the State of California cause exposures to DINP, both direct and/or indirect dermal
12 contact and ingestion, through the reasonably foreseeable use of the PRODUCTS.

13 30. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
14 continues to cause, exposures to DINP.

15 31. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS
16 exposes consumers to DINP through direct and indirect dermal contact and/or ingestion.

17 32. DEFENDANTS intend that exposures to DINP from the reasonably foreseeable use of
18 the PRODUCTS will occur by their deliberate, non-accidental participation in the California
19 marketplace.

20 33. The exposures to DINP, caused by DEFENDANTS and endured by consumers in
21 California, are not exempt from the "clear and reasonable" warning requirements of Proposition 65.

22 34. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers
23 in California who have been, or who will be, exposed to DINP through direct and indirect dermal
24 contact and/or ingestion resulting from the use of the PRODUCTS as intended.

25 35. Contrary to the express policy and statutory prohibition of Proposition 65, consumers,
26 exposed to DINP through dermal contact and ingestion as a result of their use of the PRODUCTS that
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1 DEFENDANTS sold without a “clear and reasonable” health hazard warning, have suffered, and
2 continue to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

3 36. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for
4 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS’ violations have
5 continued beyond their receipt of plaintiff’s Notice. As such, DEFENDANTS’ violations are ongoing
6 and continuous in nature and, unless enjoined, will continue in the future.

7 37. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-
8 described acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty of \$2,500
9 per day for each violation.

10 **PRAYER FOR RELIEF**

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

13 1. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and
14 permanently enjoin DEFENDANTS from manufacturing, distributing, importing, marketing or
15 otherwise offering the PRODUCTS for sale or use in California without first providing a “clear and
16 reasonable warning” to consumers addressing the harms associated with exposures to DINP;

17 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary
18 and permanent injunctions mandating DEFENDANTS recall all PRODUCTS currently in the chain
19 of commerce in California that do not bear a clear and reasonable health hazard warning;

20 3. That the Court assess civil penalties against DEFENDANTS, and each of them, in the
21 amount of \$2,500 per day for each violation of Proposition 65, in an amount to be determined at trial;

22 4. That the Court award plaintiff its reasonable attorneys’ fees and costs of suit, incurred
23 herein; and

24 5. That the Court grant any further relief as it deems just and equitable.
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1 Dated: November 8, 2024

Respectfully submitted,
SEVEN HILLS LLP

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4 By: 
5 Laralee S. Paras
6 Attorneys for Plaintiff
7 *Blue Sky Forever*
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