		ELECTRONICALLY FILED Superior Court of California County of Marin 11/08/2024		
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8	SUPERIOR COURT OF THE STATE OF CALIFORNIA			
9	COUNTY OF MARIN – UNL	IMITED CIVIL JURISDICTION		
10	BLUE SKY FOREVER,	Case No. CV0004460		
11	Plaintiff,	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF		
12	v.	Violation of Proposition 65, The Safe		
13 14	BLACKBURN MFG. CO.; and DOES 1-30, inclusive,	Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code § 25249.5 <i>et seq.</i>)		
15	Defendants.	UNLIMITED CIVIL		
16	Plaintiff BLUE SKY FOREVER acting in	the public interest, alleges a cause of action against		
17	Defendants BLACKBURN MFG. CO., and DOE			
18	INTRODUCTION AND NATURE OF THE ACTION			
19		action brought by plaintiff Blue Sky Forever		
20	(" BSF ") in the public interest of the citizens of the	e State of California to enforce the People's right to		
21	be informed of the health hazards caused by expos	sures to diisononyl phthalate ("DINP"), a toxic		
22	chemical found in and on the tools with vinyl grips	s manufactured, imported, distributed, sold or		
23	offered for sale by Defendants in the State of California.			
24	2. By this Complaint, plaintiff seeks to	o remedy Defendants' continuing failure to warn		
25 26	individuals not covered by California's Occupation	onal Safety Health Act, Labor Code § 6300 et seq.		
20	("consumers") they are being exposed to substances known to the State of California to cause cancer			
28	through exposures to DINP, when they purchase, use or handle Defendants' tools with vinyl grips.			
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- 3. Detectable levels of DINP are found in and on the tools with vinyl grips Defendants 2 manufacture, import, sell or distribute for sale to consumers throughout California.

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4. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code § 25249.6 et seq. ("Proposition 65"), it is unlawful for a person in the course of doing business to knowingly and intentionally expose consumers in California to chemicals known to the State to cause cancer, birth defects or other reproductive harm, without first providing a "clear and reasonable" health hazard warning to such consumers prior to purchase or use.

8 5. BSF contends and alleges Defendants manufacture, distribute, import, sell, and offer 9 for sale, in and into California tools with vinyl grips ("PRODUCTS") containing DINP, without 10 Proposition 65's requisite health hazard warning regarding the harms associated with exposures to 11 the chemical, including, but not limited to *Tile Probe* -4.5'. Defendants' conduct subjects them to 12 civil penalties for each violation, enjoinment as well as preliminary and permanent injunctive relief. 13 Health & Saf. Code § 25249.7(a) and (b).

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PARTIES

15 6. Plaintiff BSF is a non-profit corporation organized under the laws of California and acting in the public interest to protect the health of California citizens through the reduction of toxic 16 17 chemicals in consumer products and by increasing public awareness of those chemicals. BSF is a 18 person within the meaning of Health & Safety Code § 25249.11(a), and it brings this action in the 19 public interest, pursuant to Health and Safety Code § 25249.7(d).

20 7. Plaintiff is informed, believes, and thereon alleges, at all relevant times, Defendant 21 BLACKBURN MFG. CO. ("BLACKBURN") was and is a "person" "in the course of doing 22 business" with ten (10) or more employees, within the meanings of Health and Safety Code 23 §§ 25249.6 and 25249.11.

8. 24 BLACKBURN manufactures, imports, distributes, sells, and/or offers the 25 PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California. 26

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9. Defendants DOES 1-10 ("MANUFACTURER DEFENDANTS") are each a person in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
MANUFACTURER DEFENDANTS, and each of them, assemble, fabricate, and manufacture, or each implies by its conduct that it does so for one or more of the PRODUCTS offered for sale or use in California.

10. Defendants DOES 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, or each
impliedly does so by its conduct, one or more of the PRODUCTS to individuals, businesses, or
retailers for sale or use in the State of California

11 11. Defendants DOES 21-30 ("RETAILER DEFENDANTS") are each a person in the
 12 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
 13 RETAILER DEFENDANTS, and each of them, by and through their conduct, offer the PRODUCTS
 14 for sale to consumers in the State of California.

15 12. At this time, the true names of Defendants DOES 1 through 30, inclusive, are
16 unknown to plaintiff, who, therefore, sues said DOES Defendants by their fictitious names, pursuant
17 to Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, each of
18 the fictitiously named Defendants is responsible in some manner for the acts and occurrences alleged
19 herein and the damages caused thereby. When ascertained, their true names and capacities shall be
20 reflected in an amended complaint.

At all times mentioned herein, BLACKBURN, MANUFACTURER DEFENDANTS,
 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, hereinafter, where
 appropriate, be referred to collectively as the "DEFENDANTS."

JURISDICTION AND VENUE

14. This Court has jurisdiction over this action, pursuant to Health & Safety Code
§ 25249.7, allowing enforcement by any court of competent jurisdiction. The California Superior
Court has jurisdiction over this action, pursuant to California Constitution Article VI, section 10,

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which grants the Superior Court "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 3 subject matter jurisdiction.

15. The California Superior Court has jurisdiction over DEFENDANTS, based on 4 plaintiff's information and good faith belief DEFENDANTS are each a person, firm, corporation or 5 association that is a citizen of the State of California, does sufficient business in California, has 6 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.

Venue is proper in the Superior Court for the County of Marin, pursuant to Code of 12 16. 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 conducted, and continue to conduct, business in the County of Marin with respect to the PRODUCTS 16 that are the subject of this action. 17

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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 exposing consumers to hazardous chemicals without first giving a "clear and reasonable" warning. 26 27 Health & Saf. Code § 25249.6.

1 19. Exposing consumers to hazardous chemicals means to cause consumers to ingest, 2 inhale, contact via body surfaces or otherwise come into contact with a listed chemical. Cal. Code 3 Regs. ("CCR"), tit. 27, § 25102(i). An exposure to a hazardous chemical is defined as one that "results from a person's acquisition, purchase, storage, consumption or other reasonably foreseeable 4 5 use of a product..." 27 CCR § 25600(h).

20. 6 Under Proposition 65, persons violating the statute may be enjoined in any court of 7 competent jurisdiction and may be subject to civil penalties of up to \$2,500 per day, per violation. 8 Health & Saf. Code § 25249.7.

9 21. On December 20, 2013, pursuant to Proposition 65's implementing regulations, California identified and listed DINP as a chemical known to the State to cause cancer. DINP became 10 11 subject to the "clear and reasonable warning" requirements one year later, on December 20, 2014. 27 12 CCR § 27001(c); Health & Saf. Code §§ 25249.8, 25249.10(b).

STATEMENT OF FACTS

22. DEFENDANTS' PRODUCTS were sold in California without a clear and reasonable 15 warning in violation of title 27, California Code of Regulations, section 25600, et seq.

23. DEFENDANTS' PRODUCTS subject consumers in California to exposure to the 16 17 listed chemical at levels requiring a warning under the statute, based on touching, handling, or 18 otherwise utilizing PRODUCTS in accordance with their reasonably foreseeable and intended usages.

19 24. September 26, 2023, plaintiff served a 60-Day Notice of Violation ("Notice"), 20 together with the certificate of merit, on BLACKBURN, the California Attorney General's Office, 21 and the requisite public enforcement agencies, alleging, as a result of DEFENDANTS' sales of the 22 PRODUCTS, consumers in the State of California were, and are, being exposed to DINP through 23 their reasonably foreseeable use of the PRODUCTS as intended without first receiving a "clear and 24 reasonable warning," as required by Proposition 65.

25 25. After receiving plaintiff's Notice, no public enforcement agency has commenced and is diligently prosecuting a cause of action against DEFENDANTS under Proposition 65 to enforce 26 27 the alleged violations that are the subject of the Notice.

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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 a	llegations		
4	set forth in Paragraphs 1 through 25, inclusive.			
5	27. DEFENDANTS' PRODUCTS contain DINP in levels requiring a clear an	d reasonable		
6	warning under Proposition 65.			
7	28. DEFENDANTS know or should have known the PRODUCTS they manual	facture,		
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	nd 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	l, and		
14	continues to cause, exposures to DINP.			
15	31. DEFENDANTS know the normal and reasonably foreseeable use of the P	RODUCTS		
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 forese	eable use of		
18	the PRODUCTS will occur by their deliberate, non-accidental participation in the Califor	mia		
19	marketplace.			
20	33. The exposures to DINP, caused by DEFENDANTS and endured by consu	mers in		
21	California, are not exempt from the "clear and reasonable" warning requirements of Prop	osition 65.		
22	34. DEFENDANTS failed to provide a "clear and reasonable warning" to those	se consumers		
23	in California who have been, or who will be, exposed to DINP through direct and indirec	t 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 PRC	DUCTS 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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