

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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25CV456932
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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SANTA CLARA – UNLIMITED CIVIL JURISDICTION

13 BLUE SKY FOREVER,

14 Plaintiff,

15 v.

16 GENIUS TOOLS AMERICAS CORP.; and
17 DOES 1-30, inclusive,

18 Defendants.

Case No. [25CV456932](#)

**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

19 Plaintiff BLUE SKY FOREVER, acting in the public interest, alleges a cause of action
20 against Defendants GENIUS TOOLS AMERICAS CORP., and DOES 1-30.

INTRODUCTION AND NATURE OF THE ACTION

21 1. This Complaint is a representative action brought by plaintiff Blue Sky Forever
22 (“**BSF**”) in the public interest of the citizens of the State of California to enforce the People’s right to
23 be informed of the health hazards caused by exposures di(2-ethylhexyl) phthalate (“**DEHP**”), a toxic
24 chemical found in and on the files with vinyl grips manufactured, imported, distributed, sold or
25 offered for sale by Defendants in the State of California.

26 2. By this Complaint, plaintiff seeks to remedy Defendants’ continuing failure to warn
27 individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.*
28 (“**consumers**”) they are being exposed to substances known to the State of California to cause cancer
and birth defects or other reproductive harm through exposures to DEHP, when they purchase, use or

1 handle Defendants’ files with vinyl grips. Detectable levels of DEHP are found in and on the files
2 with vinyl grips Defendants manufacture, import, sell or distribute for sale to consumers throughout
3 California.

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

9 4. BSF contends and alleges Defendants manufacture, distribute, import, sell, and offer
10 for sale, in and into California files with vinyl grips (“**PRODUCTS**”) containing DEHP, without
11 Proposition 65’s requisite health hazard warning regarding the harms associated with exposures to
12 the chemical, including, but not limited to *Genius Tools 5 Piece Diamond File Set SKU: FL-0785*
13 *UPC: 6 68233 18909 3*. Defendants’ conduct subjects them to civil penalties for each violation,
14 enjoinder as well as preliminary and permanent injunctive relief. Health & Saf. Code § 25249.7(a)
15 and (b).

16 **PARTIES**

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

22 6. Plaintiff is informed, believes, and thereon alleges, at all relevant times, Defendant
23 GENIUS TOOLS AMERICAS CORP. (“**GENIUS TOOLS**”) was and is a “person” “in the course of
24 doing business” with ten (10) or more employees, within the meanings of Health and Safety Code
25 §§ 25249.6 and 25249.11.

26 7. GENIUS TOOLS manufactures, imports, distributes, sells, and/or offers the
27 PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures,
28 imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

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

6 9. Defendants DOES 11-20 (“**DISTRIBUTOR DEFENDANTS**”) are each a person in
7 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
8 DISTRIBUTOR DEFENDANTS, and each of them, distribute, transfer, and transport, or each
9 impliedly does so by its conduct, one or more of the PRODUCTS to individuals, businesses, or
10 retailers for sale or use in the State of California

11 10. 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 11. 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.

21 12. At all times mentioned herein, GENIUS TOOLS, MANUFACTURER
22 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall,
23 hereinafter, where appropriate, be referred to collectively as the “**DEFENDANTS.**”

JURISDICTION AND VENUE

24
25 13. This Court has jurisdiction over this action, pursuant to Health & Safety Code
26 § 25249.7, allowing enforcement by any court of competent jurisdiction. The California Superior
27 Court has jurisdiction over this action, pursuant to California Constitution Article VI, section 10,
28 which grants the Superior Court “original jurisdiction in all causes except those given by statute to

1 other trial courts.” The statute under which this action is brought does not specify any other basis of
2 subject matter jurisdiction.

3 14. 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 sufficient minimum contacts in California, and/or otherwise purposefully and intentionally avail
7 themselves of the California market through their manufacture, importation, distribution, promotion,
8 marketing or sale of PRODUCTS within the State. DEFENDANTS’ purposeful availment renders the
9 exercise of personal jurisdiction by California courts consistent with traditional notions of fair play
10 and substantial justice.

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

17 **REGULATORY BACKGROUND AND LAW**

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

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

27 18. Exposing consumers to hazardous chemicals means to cause consumers to ingest,
28 inhale, contact via body surfaces or otherwise come into contact with a listed chemical. Cal. Code

1 Regs. (“**CCR**”), tit. 27, § 25102(i). An exposure to a hazardous chemical is defined as one that
2 “results from a person’s acquisition, purchase, storage, consumption or other reasonably foreseeable
3 use of a product...” 27 CCR § 25600(h).

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

7 20. On October 24, 2003, pursuant to Proposition 65’s implementing regulations,
8 California identified and listed DEHP as a chemical known to the State to cause birth defects and
9 reproductive harm. DEHP became subject to the “clear and reasonable warning” requirements one
10 year later, on October 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code
11 §§ 25249.8, 25249.10(b).

12 STATEMENT OF FACTS

13 21. DEFENDANTS’ PRODUCTS were sold in California without a clear and reasonable
14 warning in violation of title 27, California Code of Regulations, section 25600, et seq.

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

18 23. June 25, 2024, plaintiff served a 60-Day Notice of Violation (“**Notice**”), together with
19 the certificate of merit, on GENIUS TOOLS, the California Attorney General’s Office, and the
20 requisite public enforcement agencies, alleging, as a result of DEFENDANTS’ sales of the
21 PRODUCTS, consumers in the State of California were, and are, being exposed to DEHP through
22 their reasonably foreseeable use of the PRODUCTS as intended without first receiving a “clear and
23 reasonable warning,” as required by Proposition 65.

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

1 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

