**ELECTRONICALLY** Laralei S. Paras, State Bar No. 203319 1 FILED Seven Hills LLP Superior Court of California, 4 Embarcadero Center, Suite 1400 County of San Francisco 2 San Francisco, CA 94111 10/15/2024 Telephone: (415) 926-7247 3 Clerk of the Court **BY: SAHAR ENAYATI** laralei@sevenhillsllp.com **Deputy Clerk** 4 5 Attorneys for Plaintiff BLUE ŠKY FOREVER 6 7 SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF SAN FRANCISCO 8 9 UNLIMITED CIVIL JURISDICTION CGC-24-618996 10 BLUE SKY FOREVER, Case No. 11 **COMPLAINT FOR CIVIL PENALTIES** Plaintiff, 12 AND INJUNCTIVE RELIEF v. 13 Violation of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act K.G. MOTORS, INC.; THE ZABEL 14 COMPANIES LLC; and DOES 1-30, inclusive, of 1986 (Health & Safety Code § 25249.5 et seq.) 15 Defendants. **UNLIMITED CIVIL** 16 17 18 19 20 21 22 23 24 25 26 27 28

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

9

5

14

19

22

28

Plaintiff BLUE SKY FOREVER, acting in the public interest, alleges a cause of action against Defendants K.G. MOTORS, INC., THE ZABEL COMPANIES LLC, and DOES 1-30.

# INTRODUCTION AND NATURE OF THE ACTION

- 1. This Complaint is a representative action brought by plaintiff Blue Sky Forever ("BSF") in the public interest of the citizens of the State of California to enforce the People's right to be informed of the health hazards caused by exposures to the heavy metal, Lead, found in and on the bicycle rim strips with brass components manufactured, imported, distributed, sold or 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 and birth defects or other reproductive harm through exposures to Lead, when they purchase, use or handle Defendants' bicycle rim strips with brass components.
- 3. Detectable levels of Lead are found in and on the bicycle rim strips with brass components that Defendants manufacture, import, sell or distribute for sale to individuals throughout California.
- 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 individuals prior to purchase or use.
- 5. BSF contends and alleges Defendants manufacture, distribute, import, sell, and/or offer for sale, in and into California bicycle rim strips with brass components ("**PRODUCTS**") containing Lead, without Proposition 65's requisite health hazard warning regarding the harms associated with exposures to the chemical, including, but not limited to, Stan's No Tubes Flow Rim Strip, MPN: RS0033, UPC: 1 83720 00086 1, Store SKU: 87114. Defendants' conduct subjects them to civil penalties for each violation, enjoinment as well as preliminary and permanent injunctive relief. Health & Safety Code § 25249.7(a) and (b).

### **PARTIES**

- 6. Plaintiff BSF is a non-profit corporation organized under the laws of California and proceeding in the interest of the general public, dedicated to protecting the health of California citizens and the environment through the elimination or reduction of toxic chemicals utilized in manufacturing consumer products and to increasing public awareness of those chemicals through the promotion of sound environmental practices and corporate responsibility. BSF is a person within the meaning of Health & Safety Code § 25249.11(a), and it brings this action in the public interest, pursuant to Health and Safety Code § 25249.7(d).
- 7. Plaintiff is informed, believes, and thereon alleges, at all relevant times, Defendant K.G. MOTORS, INC. ("**K.G. MOTORS**") was and is a "person" "in the course of doing business" with ten (10) or more employees, within the meanings of Health and Safety Code §§ 25249.6 and 25249.11.
- 8. K.G. MOTORS manufactures, imports, distributes, sells, and/or offers the 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.
- 9. Plaintiff is informed, believes, and thereon alleges, at all relevant times, Defendant THE ZABEL COMPANIES LLC ("**ZABEL**") was and is a "person" "in the course of doing business" with ten (10) or more employees, within the meanings of Health and Safety Code §§ 25249.6 and 25249.11.
- 10. ZABEL manufactures, imports, distributes, sells, and/or offers the 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.
- 11. 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 such for one or more of the PRODUCTS offered for sale or use in California.

- 12. 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
- 13. Defendants DOES 21-30 ("**RETAILER DEFENDANTS**") are each a person in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11. RETAILER DEFENDANTS, and each of them, by and through their conduct, offer the PRODUCTS for sale to individuals in the State of California.
- 14. At this time, the true names of Defendants DOES 1 through 30, inclusive, are unknown to plaintiff, who, therefore, sues said DOES Defendants by their fictitious names, pursuant to Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, each of the fictitiously named Defendants is responsible in some manner for the acts and occurrences alleged herein and the damages caused thereby. When ascertained, their true names and capacities shall be reflected in an amended complaint.
- 15. At all times mentioned herein, K.G. MOTORS, ZABEL, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, hereinafter, where appropriate, be referred to collectively as the "**DEFENDANTS**."

### **JURISDICTION AND VENUE**

- 16. This Court has jurisdiction over this action, pursuant to Cal. 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, 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 subject matter jurisdiction.
- 17. The California Superior Court has jurisdiction over DEFENDANTS, based on plaintiff's information and good faith belief DEFENDANTS are each 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 themselves of the California market through their manufacture, importation, distribution, promotion, marketing or sale of PRODUCTS within the State. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California courts consistent with traditional notions of fair play and substantial justice.

18. 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 plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS conducted, and continue to conduct, business in the County of San Francisco with respect to the PRODUCTS that are the subject of this action.

# REGULATORY BACKGROUND AND LAW

- 19. In 1986, the people of the State of California approved an initiative addressing the harms caused by hazardous chemicals and declared their right "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp., Proposed General Law, Gen, Elec. (Nov. 4, 1986) at p.3.
- 20. 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 chemical known to cause cancer or reproductive toxicity without first giving a clear and reasonable warning to such individual..."
- 21. Under the Act, a "person in the course of doing business" is defined as a business with ten (10) or more employees. Health & Safety Code § 25249.11(b). Businesses are prohibited from exposing individuals to hazardous chemicals without first giving a "clear and reasonable" warning. Health & Safety Code § 25249.6.
- 22. Exposing individuals to hazardous chemicals means to cause individuals to ingest, inhale, contact via body surfaces or otherwise come into contact with a listed chemical. 27 CCR § 25102(i). An exposure to a hazardous chemical is defined as one that "results from a person's

8

6

10

14

16

15

17

19

18

20 21

23

22

24

25

26 27

28

acquisition, purchase, storage, consumption or other reasonably foreseeable use of a product..." 27 C.C.R. § 25600(h).

- 23. Under Proposition 65, persons violating the statute may be enjoined in any court of competent jurisdiction and may be subject to civil penalties of up to \$2,500 per day, per violation. Health & Safety Code § 25249.7.
- 24. On February 27, 1987, pursuant to Proposition 65's implementing regulations, California identified and listed Lead as a chemical known to the State cause birth defects and reproductive harm. Lead became subject to the "clear and reasonable warning" requirements one year later, on February 27, 1988. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8, 25249.10(b). On October 1, 1992, pursuant to Proposition 65's implementing regulations, California identified and listed Lead as a chemical known to the State cause cancer. Lead became subject to the "clear and reasonable warning" requirements one year later, on October 1, 1993. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8, 25249.10(b).

# **STATEMENT OF FACTS**

- 25. Plaintiff purchased DEFENDANTS' PRODUCTS, without a warning, in California.
- 26. Plaintiff investigated and tested DEFENDANTS' PRODUCTS at an accredited lab, and consulted with a person with relevant and appropriate knowledge and expertise, who, after reviewing the collected data and analyzing the risk of exposure to Lead, determined the PRODUCTS subject consumers in California to exposure to the listed chemical at levels requiring a warning under the statute, based on touching, handling or otherwise utilizing PRODUCTS in accordance with their reasonably foreseeable and intended usages.
- 27. Based on the foregoing, Plaintiff's attorney executed a certificate of merit, attesting there was a reasonable and meritorious case for this private action and included the factual information supporting the certificate when it served the notice on the California Attorney General's Office, as required. Health &Safety Code § 25249.7(d); Title 11 C.C.R. § 3102.
- 28. Thereafter, on August 5, 2024, plaintiff served a 60-Day Notice of Violation ("Notice"), together with the certificate of merit, on ZABEL, K.G. Motors, Inc., the California Attorney General's Office, and the requisite public enforcement agencies, alleging, as a result of

24

25

26

27

28

DEFENDANTS' sales of the PRODUCTS, consumers in the State of California were, and are, being exposed to Lead through their reasonably foreseeable use of the PRODUCTS as intended without first receiving a "clear and reasonable warning," as required by Proposition 65.

29. 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 the alleged violations that are the subject of the Notice.

### FIRST CAUSE OF ACTION

## (Violation of Proposition 65 - Against All DEFENDANTS)

- 30. BSF realleges and incorporates by reference, as if fully stated herein, the allegations set forth in Paragraphs 1 through 29, inclusive.
- 31. DEFENDANTS' PRODUCTS contain Lead in levels requiring a clear and reasonable warning under Proposition 65.
- 32. DEFENDANTS know or should have known the PRODUCTS they manufacture, import, distribute, sell, and offer for sale in California contain Lead. As a result of plaintiff's Notice, DEFENDANTS also have actual knowledge of the presence of Lead in the PRODUCTS.
- 33. The PRODUCTS DEFENDANTS manufacture, import, distribute, sell, and offer for sale in or into the State of California cause exposures to Lead, both direct and/or indirect dermal contact and ingestion, through the reasonably foreseeable use of the PRODUCTS.
- 34. The normal and reasonably foreseeable use of the PRODUCTS has caused, and continues to cause, exposures to Lead.
- 35. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS exposes individuals to Lead through direct and indirect dermal contact and/or ingestion.
- 36. DEFENDANTS intend that exposures to Lead from the reasonably foreseeable use of the PRODUCTS will occur by their deliberate, non-accidental participation in the California marketplace.
- 37. The exposures to Lead, caused by DEFENDANTS and endured by consumers and other individuals in California, are not exempt from the "clear and reasonable" warning requirements of Proposition 65.

- 38. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers and other individuals in California who have been, or who will be, exposed to Lead through direct and indirect dermal contact and/or ingestion resulting from the use of the PRODUCTS as intended.
- 39. Contrary to the express policy and statutory prohibition of Proposition 65, consumers and other individuals, exposed to Lead through dermal contact and ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without a "clear and reasonable" health hazard warning, have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.
- 40. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS' violations have continued beyond their receipt of plaintiff's Notice. As such, DEFENDANTS' violations are ongoing and continuous in nature and, unless enjoined, will continue in the future.
- 41. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-described acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty of \$2,500 per day for each violation.
- 42. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

#### PRAYER FOR RELIEF

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

- 1. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, importing, marketing or otherwise offering the PRODUCTS for sale or use in California without first providing a "clear and reasonable warning" to consumers addressing the harms associated with exposures to Lead;
- 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary and permanent injunctions mandating DEFENDANTS recall all PRODUCTS currently in the chain of commerce in California that do not bear a clear and reasonable health hazard warning;