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BLUE SKY FOREVER

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County of San Francisco
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO – UNLIMITED CIVIL JURISDICTION

BLUE SKY FOREVER,

Plaintiff,

v.

MR. S. LEATHER CO., INCORPORATED; and
DOES 1-30, inclusive,

Defendants.

Case No.

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

Plaintiff BLUE SKY FOREVER (“BSF”), acting in the public interest, alleges a cause of action against defendants MR. S. LEATHER CO., INCORPORATED, and Doe Defendants Nos. 1-30 (“Defendants”) for their violations of Health & Safety Code § 25249.5, *et seq.*, as follows:

INTRODUCTION AND NATURE OF THE ACTION

1. BSF brings 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 harms caused by exposures to di(2-ethylhexyl) phthalate (“DEHP”), a toxic chemical found in and on gags manufactured, imported, distributed, sold, and offered for sale by Defendants in the State of California.

2. By this Complaint, plaintiff seeks to remedy Defendants’ failure to warn individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300, *et seq.* (“consumers”) exposed to substances known to the State of California to cause birth defects or other

1 reproductive harm through exposures to DEHP, when they purchase, use and handle Defendants’
2 gags.

3 3. Detectable levels of DEHP are found in and on the gags Defendants manufacture,
4 import, sell and distribute 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 § 25249.5 *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 cause cancer, birth defects or other reproductive harm, without first providing a
9 “clear and reasonable warning” regarding the presence of these chemicals in Defendants’ products
10 and the harms associated with exposures to such chemicals.

11 5. Defendants manufacture, distribute, import, sell, and offer for sale, in and into
12 California gags (“PRODUCTS”) containing DEHP, without providing a clear and reasonable
13 warning regarding the presence of and the harms associated with exposures to DEHP in Defendants’
14 PRODUCTS. Such PRODUCTS include, without limitation, the *The Jaw Master Gag ITEM #*
15 *HT355*. Defendants’ violations subject them to civil penalties, enjoinder, preliminary and
16 permanent injunctive relief. Health & Safety Code § 25249.7(a) and (b).

17 **PARTIES**

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

24 7. At all relevant times defendant, MR. S. LEATHER CO., INCORPORATED (“MR. S.
25 LEATHER”), operates as a “person in the course of doing business” with ten (10) or more
26 employees, within the meaning of and as defined by Health and Safety Code §§ 25249.6 and
27 25249.11.

1 8. MR. S. LEATHER manufactures, imports, distributes, sells, and/or offers the
2 PRODUCTS for sale or use in California, or implies by its conduct that it manufactures, imports,
3 distributes, sells, and/or offers the PRODUCTS for sale or use to consumers in California.

4 9. Doe Defendants 1-10 (“MANUFACTURER DEFENDANTS”) are each a “person in
5 the course of doing business” within the meaning of and as defined by Health and Safety Code
6 §§ 25249.6 and 25249.11. MANUFACTURER DEFENDANTS, and each of them, assemble,
7 fabricate, and manufacture, or they each imply by their conduct they do so for one or more of the
8 PRODUCTS sold and/or offered for sale or use to consumers in California.

9 10. Doe Defendants 11-20 (“DISTRIBUTOR DEFENDANTS”) are each a person in the
10 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.
11 DISTRIBUTOR DEFENDANTS, and each of them, distribute, transfer, and transport the
12 PRODUCTS sold and offered for sale to consumers in California, or they each imply by their conduct
13 they distribute, transfer, and transport one or more of the PRODUCTS to individuals, businesses, and
14 retailers for sale or use in California.

15 11. Doe Defendants 21-30 (“RETAILER DEFENDANTS”) are each a person in the
16 course of doing business within the meaning of and as defined by Health and Safety Code §§ 25249.6
17 and 25249.11. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to
18 consumers in California.

19 12. At this time, the true names of Defendants DOES 1 through 30, inclusive, are
20 unknown to BSF, who therefore, sues these Doe Defendants by their fictitious names, pursuant to
21 Code of Civil Procedure § 474. Each of the fictitiously named Defendants is responsible in some
22 manner for the acts and occurrences alleged herein and the violations and harms caused thereby.
23 When ascertained, BSF will identify these Doe Defendants by their true names in an amendment to
24 this Complaint.

25 13. MR. S. LEATHER, MANUFACTURER DEFENDANTS, DISTRIBUTOR
26 DEFENDANTS, and RETAILER DEFENDANTS shall be referred to collectively herein as
27 “DEFENDANTS.”
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1 exposing consumers to hazardous chemicals without first giving a “clear and reasonable” warning.
2 Health & Saf. Code § 25249.6.

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

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

11 21. On October 24, 2003, pursuant to Proposition 65 implementing regulations, the State
12 of California listed DEHP as a chemical known to cause birth defects or other reproductive harm.
13 DEHP became subject to the “clear and reasonable warning” requirements one year later, on October
14 24, 2004. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8, 25249.10(b).

15 **STATEMENT OF FACTS**

16 22. DEFENDANTS sell and offer their PRODUCTS for sale in California without a clear
17 and reasonable warning in violation of Cal. Code Regs. Tit. 27, § 25600, *et seq.*

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

21 24. On January 6, 2025, BSF served a 60-Day Notice of Violation (“Notice”), together
22 with the required certificate of merit, on MR. S. LEATHER, the Office of the California Attorney
23 General, and all requisite public enforcement agencies, alleging, as a result of DEFENDANTS’ sales
24 of the PRODUCTS, consumers in California were, and are, exposed to DEHP without first receiving
25 the “clear and reasonable warning” required by Proposition 65.

26 25. After receiving BSF’s Notice, no public enforcement agency commenced and is
27 diligently prosecuting a cause of action against DEFENDANTS to enforce the violations of
28 Proposition 65 alleged in the Notice.

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 DEHP in levels requiring a clear and
6 reasonable warning under Proposition 65.

7 28. DEFENDANTS know or should have known their PRODUCTS contain DEHP. As a
8 result of BSF's Notice, DEFENDANTS now possess actual knowledge of the presence of DEHP in
9 their PRODUCTS.

10 29. DEFENDANTS' PRODUCTS expose consumers in California to DEHP through
11 dermal contact and ingestion during the reasonably foreseeable use of the PRODUCTS.

12 30. The normal and reasonably foreseeable use of the PRODUCTS causes exposures to
13 DEHP.

14 31. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS
15 exposes consumers to DEHP through dermal contact and/or ingestion.

16 32. DEFENDANTS intend to expose consumers in California to DEHP during their
17 reasonably foreseeable use of the PRODUCTS. Such exposures to DEHP occur through
18 DEFENDANTS' deliberate and non-accidental participation in the California market.

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

21 34. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers
22 in California exposed to DEHP through dermal contact and/or ingestion during their reasonably
23 foreseeable use of the PRODUCTS. DEFENDANTS continue to fail to provide such warning.

24 35. Contrary to the express policy and statutory prohibition of Proposition 65, consumers
25 are exposed to DEHP through dermal contact and ingestion during their use of PRODUCTS
26 DEFENDANTS sold, sell and offer for sale without a "clear and reasonable warning." Such
27 consumers in California suffer irreparable harms for which they have no plain, speedy, or adequate
28 remedy at law.

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

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

38. As a consequence of DEFENDANTS' acts and omissions, Health and Safety Code § 25249.7(a) specifically authorizes this Court to grant the injunctive relief prayed for herein.

PRAYER FOR RELIEF

Wherefore, BSF prays for 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 regarding the presence of, and the harms associated with, exposures to DEHP;

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

3. That the Court assess civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per violation, according to proof at trial;

4. That the Court award BSF its reasonable attorneys' fees and costs of suit; and

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

(Signature page follows)

1 Dated: June 5, 2025

Respectfully submitted,

2 SEVEN HILLS LLP

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4 By: 

Brian C. Johnson

Attorneys for Plaintiff

6 BLUE SKY FOREVER