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BLUE SKY FOREVER

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MACKENZIE-CHILDS LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

BLUE SKY FOREVER,
Plaintiff,

v.

MACKENZIE-CHILDS LLC; and DOES 1-
30, inclusive,
Defendants.

Case No. CGC-25-623781

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 et seq. and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 This Consent Judgment is entered into by and between plaintiff Blue Sky Forever (“BSF”) and
3 defendant MacKenzie-Childs LLC (“MacKenzie”), with BSF and MacKenzie each individually
4 referred to as a “Party” and collectively, as the “Parties,” to resolve the allegations in the April 29,
5 2024, 60-Day Notice of Violation in compliance with the Safe Drinking Water and Toxic Enforcement
6 Act of 1986, Health & Safety Code § 25249.6 *et seq.* (“**Proposition 65**”).

7 **1.1 The Parties**

8 BSF is a California-based non-profit organization proceeding in the public interest pursuant to
9 California Health & Safety Code § 25249.7(d) to ensure that chemicals known to the State of
10 California to cause cancer, birth defects, or other reproductive harm are disclosed or eliminated from
11 consumer products sold in California. MacKenzie is a person in the course of doing business for
12 purposes of California Health & Safety Code § 25249.11(b).

13 **1.2 Consumer Product Description**

14 BSF alleges that MacKenzie manufactures, imports, sells, or distributes for sale in California
15 tableware with exposed metal components containing the heavy metal Lead, including, but not limited
16 to, *Short Sterling Check® Enamel Candlestick, UPC 0 840115 659607*, without providing the health
17 hazard warning BSF alleges is required by California Health & Safety Code § 25249.5 *et seq.*
18 (“**Proposition 65**”). All such tableware with exposed metal components that are distributed without
19 a Proposition 65 warning are referred to hereinafter as the “**Products.**” Lead is listed pursuant to
20 Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other
21 reproductive harm.

22 **1.3 Notice of Violation**

23 On April 29, 2024, BSF served MacKenzie, the California Attorney General, and the requisite
24 public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging MacKkenzie
25 violated Proposition 65 by failing to warn its customers and consumers in California that the Products
26 can expose users to Lead. No public enforcer has commenced and is diligently prosecuting an action
27 to enforce the allegations set forth in the Notice.
28

1 **1.4 Complaint**

2 On March 28, 2025, BSF commenced the instant action (“**Complaint**”), naming Mackenzie as
3 a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

4 **1.5 No Admission**

5 MacKenzie denies the material, factual and legal allegations contained in the Notice and
6 Complaint and maintains that all products it sold or distributed for sale in California, including the
7 Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be
8 construed as, nor shall compliance with this Consent Judgment constitute or be construed as, an
9 admission by MacKenzie of any fact, finding, conclusion of law, issue of law, or violation of law.
10 This section shall not, however, diminish or otherwise affect MacKenzie’s obligations,
11 responsibilities, and duties under this Consent Judgment. MacKenzie maintains that it has not
12 knowingly manufactured or caused to be manufactured the Products for sale in California in violation
13 of Proposition 65.

14 **1.6 Jurisdiction**

15 For purposes of this Consent Judgment only, the Parties stipulate: this Court has jurisdiction
16 over MacKenzie as to the allegations contained in the Complaint; venue is proper in San Francisco
17 County; and the Court has jurisdiction to enter and enforce the provisions of this Consent Judgment,
18 pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

19 **1.7 Effective Date**

20 The term “Effective Date” means the date on which Notice is served confirming that the Court
21 approved this Consent Judgment and entered Judgment pursuant to its terms.

22 **2. INJUNCTIVE RELIEF: REFORMULATION**

23 **2.1 Reformulation Commitment**

24 Commencing no later than 30 (thirty) days after the Effective Date and continuing thereafter,
25 all Products MacKenzie manufactures, imports, sells, ships, or distributes for sale, in or into
26 California, directly or knowingly through one or more third party retailers or e-commerce
27 marketplaces, shall meet the Reformulation Standard for Reformulated Products, as defined by
28 Section 2.2.

2.2 Reformulation Standard Defined

For purposes of this Agreement, "Reformulated Products" are defined as those Products:

(a) containing no more than 0.009% or 90 parts per million ("ppm") Lead in any accessible exposed metal surface on the exterior of the Product when analyzed pursuant to U.S. Environmental Protection Agency ("EPA") testing methodologies 3050B and 6020A or equivalent methodologies utilized by federal or state agencies for the purpose of determining Lead content in a solid substance; or

(b) yielding a test result of no more than 1.0 microgram of Lead on any accessible exposed metal exterior surface when sampled pursuant to the NIOSH 9100 testing protocol and analyzed pursuant to EPA 3050B and 6020A.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), MacKenzie agrees to pay a civil penalty of \$5,876 within fifteen (15) business days of the Effective Date. MacKenzie's civil penalty payment will be allocated according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent (25%) retained by BSF. MacKenzie shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$4,407; and (b) "Seven Hills LLP in Trust for Blue Sky Forever" in the amount of \$1,469. BSF's counsel shall deliver to OEHHA and BSF their respective portions of the penalty payment. MacKenzie shall deliver its civil penalty payments to the address listed in Section 3.3, below.

3.2 Reimbursement of Attorneys' Fees and Costs

BSF and its counsel offered to resolve the allegations in the Notice and Complaint without reaching terms on the amount of reimbursement of attorneys' fees and costs. Shortly after the Parties finalized the other material settlement terms, they negotiated and reached an accord on the amount of reimbursement to be paid to BSF's counsel, under general contract principles and the private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution and reporting of this Consent Judgment to the Office of the California

1 Attorney General and entry of Judgment pursuant its terms, but exclusive of fees and costs on appeal,
2 if any. Within fifteen (15) business days of the Effective Date, MacKenzie shall issue a check in the
3 amount of \$30,000 and made payable to "Seven Hills LLP" for all fees and other costs incurred
4 investigating, bringing this matter to MacKenzie's attention, litigating, negotiating a settlement in the
5 public interest, obtaining the Court's approval of its terms pursuant to Section 5, and reporting to the
6 California Attorney General. MacKenzie shall deliver its payment to the address listed in Section 3.3.

7 **3.3 Payments**

8 All payments payable and due under this Consent Judgment shall be delivered to BSF's counsel
9 at the following address:

10 Seven Hills LLP
11 Attn: Laralei Paras
12 4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

13 **4. CLAIMS COVERED AND RELEASED**

14 **4.1 BSF's Release of Proposition 65 Claims**

15 This Consent Judgment is a full, final, and binding resolution of the claims that were or could
16 have been asserted by BSF arising out of the allegations in the Notice and in the Complaint. BSF,
17 acting on its own behalf, in the public interest, and on behalf of its past and current agents,
18 representatives, attorneys, successors and assignees releases MacKenzie, its past and present parents,
19 subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and
20 each entity to whom MacKenzie directly or indirectly distributes or sells the Products including, but
21 not limited to its downstream distributors, wholesalers, marketplace hosts, customers, retailers,
22 franchisee, cooperative members and licensees, and the successors and assigns of each ("**Releasees**")
23 based on the failure to provide a clear and reasonable warning under Proposition 65 about alleged
24 exposures to Lead contained in the Products that were manufactured, processed, distributed, sold
25 and/or offered for sale in California before the Effective Date, as set forth in the Notice and Complaint.
26 The Parties further agree that compliance with Section 2 of this Consent Judgment shall be deemed
27 compliance with Proposition 65 with respect to alleged exposures to Lead in the Products.
28

1 The Parties further understand and agree that this Section 4.1 release shall not extend to
2 upstream entities that manufactured the Products or any component parts thereof, or any distributors
3 or suppliers who sold the Products or any component parts thereof to MacKenzie.

4 **4.2 BSF's Individual Release of Claims**

5 In further consideration of the promises and agreements herein contained, BSF, acting in its
6 individual capacity only and *not* in the public interest, and on behalf of its past and current agents,
7 representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or
8 participate in, directly or indirectly, any form of legal action and releases Releasees from any and all
9 manner of actions, causes of action, claims, demands, rights, suites, obligations, debts, contracts,
10 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of
11 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
12 future, with respect to any alleged violations of Proposition 65 related to or arising from the Products
13 sold in or into California prior to the Effective Date.

14 **4.3 MacKenzie's Release of BSF**

15 MacKenzie, on behalf of itself, its past and current officers, agents, shareholders, employees,
16 predecessors, representatives, attorneys, successors, and assignees, hereby waives any and all claims
17 against BSF and its attorneys and other representatives for any and all actions taken or statements made
18 (or those that could have been taken or made) by BSF, its attorneys and other representatives, whether
19 in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this
20 matter with respect to the Products.

21 **4.4 Mutual Waiver of California Civil Code § 1542.**

22 It is possible that other claims not known to the Parties arising out of the facts alleged in the
23 Notice and relating to the Products will develop or be discovered. BSF on behalf of on behalf of itself,
24 only, and MacKenzie on behalf of itself only, acknowledge that this Agreement is expressly intended
25 to cover and include all such claims up through the Effective Date, including all rights of action
26 therefor. The Parties acknowledge that the claims released in §§ 4.1 through 4.3, above, may include
27 unknown claims, and nevertheless waives California Civil Code § 1542 as to any such unknown claims.
28 California Civil Code § 1542 reads as follows:

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
2 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
3 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
4 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
5 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
6 OR RELEASED PARTY.

7 The Parties acknowledge and understand the significance and consequences of this specific waiver of
8 California Civil Code § 1542.

9 **5. COURT APPROVAL**

10 Pursuant to California Health and Safety Code § 25249.7(f)(4), BSF shall file a noticed motion
11 for judicial approval of this Consent Judgment. The Parties agree to mutually employ their best efforts,
12 and those of their counsel, to support the entry of a judgment pursuant to the terms of this Consent
13 Judgment and to judicial approval of their settlement in a timely manner. For purposes of this section,
14 “best efforts” shall include, at a minimum, supporting the motion for approval, responding to any third-
15 party objection, and appearing at the hearing before the Court, if so requested.

16 **6. SEVERABILITY**

17 If, subsequent to the Court’s approval and entry of this Consent Judgment as a judgment, any
18 provision of this Consent Judgment is deemed by a court to be unenforceable, the validity of the
19 remaining provisions shall not be adversely affected.

20 **7. GOVERNING LAW**

21 The terms of this Consent Judgment shall be governed by the laws of the State of California
22 and apply within California. Nothing in this Consent Judgment shall be interpreted to relieve
23 MacKenzie from its obligation to comply with any pertinent state or federal law or regulation.

24 **8. NOTICE**

25 Unless specified herein, all correspondence and notice required by this Consent Judgment shall
26 be in writing and sent by: (i) first-class registered or certified mail, return receipt requested; or (ii) a
27 recognized overnight courier to any Party by the other at the following addresses:

28 **For MacKenzie:**

Lauren Michals, Esq.
Nixon Peabody LLP
One Embarcadero Center, 32nd Floor
San Francisco, CA 94111

For BSF:

Laralei Paras, Partner
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

Any Party may, from time to time, specify in writing to the other Party a change of address to which all notices and other communications shall be sent.

9. COUNTERPARTS AND PDF SIGNATURES

This Consent Judgment may be executed in counterparts and by portable document format (pdf) signature, each of which shall be deemed an original and, all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH REPORTING REQUIREMENTS

BSF and its counsel agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

11. ENTIRE AGREEMENT

This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Consent Judgment have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto.

12. MODIFICATION

This Consent Judgment may be modified only by: (i) a written agreement of the Parties and the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of any party and the entry of a modified Consent Judgment by the Court thereon. No Party shall seek modification of this Consent Judgment without first providing written notice to the other Party of the basis for the modification sought and meeting and conferring in good faith prior to moving the Court for an order modifying the Consent Judgment. In the event the Parties or either Party seek(s) modification of this Consent Judgment by written agreement or on noticed motion by the Court, the Party or Parties shall provide the OAG with no less than 45 days notice of their intended revision(s)

1 to the Consent Judgment prior to reporting the revised agreement to the OAG or the date of any
2 hearing by the Court on a motion for such modification.

3 **13. AUTHORIZATION**

4 The undersigned are authorized to execute this Consent Judgment on behalf of their respective
5 Parties and have read, understood, and agreed to all the terms and conditions of this Consent Judgment.

6 **AGREED TO:**

7 Date: 4/25/2025

8 By: 

9 Anthony Nguyen, CEO
10 Blue Sky Forever

AGREED TO:

7 Date: 4/17/25

8 By: 

9 John Ling, CEO
10 MacKenzie-Childs LLC