

## PROPOSITION 65 SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 The Parties

This Settlement Agreement (“**Agreement**”) is entered into by and between Blue Sky Forever (“**BSF**”) on one hand, and Myers Industries, Inc. and Scepter Manufacturing, LLC (jointly, “**Myers**”), on the other hand, with BSF and Myers each individually referred to as a “**Party**” and, collectively, the “**Parties.**” BSF is a California-based non-profit organization proceeding in the public interest pursuant to California Health & Safety Code § 25249.7(d) to ensure that chemicals known to the State of California to cause cancer, birth defects or other reproductive harm are disclosed in or eliminated from consumer products sold in California. Myers is a person in the course of doing business for purposes of California Health & Safety Code § 25249.11(b).

#### 1.2 Consumer Product Description

BSF alleges that Myers manufactures, imports, sells, and distributes for sale in California brass tank fittings containing the heavy metal, Lead (Pb) including, but not limited to, *Scepter Marine Mercury Tank Fitting ML Merc ¼” 1998+, Part #: SCE05837, Mfg. Part #: 05837, UPC: 063923058374*, without providing the health hazard warning that BSF alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Brass tank fittings are referred to hereinafter as the “**Products.**” Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause developmental toxicity, male reproductive toxicity, female reproductive toxicity, and cancer.

#### 1.3 Notice of Violation

On June 25, 2024, BSF served Myers, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Myers violated Proposition 65 by failing to warn its customers and consumers in California that its

Products can expose users to Lead. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

#### **1.4 No Admission**

Myers denies the factual and legal allegations contained in the Notice and maintains that all products it has sold or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Agreement shall constitute or be construed as, nor shall compliance with this Agreement constitute or be construed as, an admission by Myers of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Myers's obligations, responsibilities, and duties under this Agreement.

#### **1.5 Effective Date**

For purposes of this Agreement, "**Effective Date**" shall mean the date this Agreement is fully executed by all Parties.

### **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

#### **2.1 Commitment to Reformulate or Warn**

Commencing on the Effective Date and continuing thereafter, all Products Myers manufactures, imports, sells, ships, or distributes for sale in or into California, directly or through one or more third party retailers or e-commerce marketplaces, shall meet the Reformulation Standard for Reformulated Products, as defined by Section 2.2, or be accompanied by a clear and reasonable warning pursuant to Section 2.3.

#### **2.2 Reformulation Standard**

For purposes of this Agreement, "Reformulated Products" are defined as those Products that meet the following criteria:

- (a) the brass alloy from which the Products are made shall have no Lead as an intentionally added constituent;
- (b) the brass alloy from which the Products are made shall have a Lead content by weight of no more than 0.009% (90 parts per million, or "90 ppm") 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; and

(c) yielding a test result of no more than 1.0 microgram of Lead on the Product’s entire surface area when sampled pursuant to the NIOSH 9100 testing protocol.

### **2.3 Clear and Reasonable Warnings**

Commencing on or before the Effective Date, Myers shall provide clear and reasonable warnings for all Products, that are not Reformulated Products, provided for sale to customers in or into California in accordance with this Section pursuant to Title 27 California Code of Regulations § 25600, *et seq.* Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use and shall be provided in a manner such that it clearly associated with the specific Product to which the warning applies.

#### **(a) Warnings**

The following warning for Products containing Lead in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 shall be deemed in compliance with Title 27 California Code of Regulations § 25600, *et seq.*:

**⚠WARNING [or] CA WARNING [or] CALIFORNIA WARNING:**

This product can expose you to chemicals including Lead, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

**(b) Foreign Language Requirement.** Where a consumer product sign, label or shelf tag used to provide a warning includes consumer information in language(s) other than English, the warning must also be provided in the other language(s) in addition to English.

#### **(c) Product Warnings**

Myers shall affix a warning to the Product label or otherwise directly on all Products, that are not Reformulated Products, provided for sale to consumers located in California or to


downstream entities who sell in or into California, such as customers with retail outlets in California or nationwide distribution. For the purpose of this agreement, “**Product label**” means a display of written, printed or graphic material printed on or affixed to each of the Products or its immediate container or wrapper. A warning provided pursuant to section 2.3(a) must print the word “**WARNING:**” in all capital letters and in bold font. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except if the labeling does not use the color yellow, the symbol may be in black and white. The entire warning shall appear in at least 6-point type and no smaller than the largest type size used for other consumer information on the Products.

**(d) Internet Warnings**

If, after the Effective Date, Myers sells Products, that are not Reformulated Products, via the internet, through its own website, affiliated websites or a third party website, to consumers located in California or to customers with nationwide distribution and e-commerce websites, Myers shall provide warnings for each Product both on the Product label in accordance with Section 2.3(c), and by prominently displaying, or requiring the warning to be prominently displayed on affiliated websites, third party websites or by retail customers, to the consumer during the purchase of the Products without requiring customers to seek out the warning. The warning or a clearly marked hyperlink to the warning using the word “**WARNING**” given in conjunction with the sale of the Products via the internet shall appear either: (a) on the same web page on which the Products are displayed; (b) on the same web page as the virtual cart displaying the Products; (c) on the same page as the price for the Products; or (d) on one or more web pages displayed to a purchaser during the checkout process. The warning shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Products for which it is given in the same type size or larger than other consumer information provided for the Products. Where Myers sells, ships, or distributes Products to third-party retailers or e-commerce marketplaces, Myers will advise them of the internet Warning requirements under this Agreement as a condition of sale of the Products.

## 2.4 Customer Notification

No later than the Effective Date, Myers shall send a letter, electronic or otherwise (“**Notification Letter**”) to: (1) each customer in California to which it supplied Products between June 25, 2023 and June 25, 2024; and (2) any other customer that is a retailer or distributor that has any inventory of Products, which Myers supplied between June 25, 2021 and June 25, 2024, for sale to consumers in California. The Notification Letter shall advise the recipient that the Products contain Lead, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm. The Notification letter shall inform the recipient that all Products must either (1) be returned to Myers for a full refund or (2) have a label, attached to the packaging of each Product before it is sold in the California market or to a customer in California, expressly referring to the Product with the following warning statement:

 **WARNING** [or] **CA WARNING** [or] **CALIFORNIA WARNING:**  
This product can expose you to chemicals including Lead, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

The foregoing warning must print the word “**WARNING:**” in all capital letters and in bold font. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline. The entire warning shall appear in at least 6-point type and no smaller than the largest type size used for other consumer information on the Products. The Notification Letter shall enclose a shipping label with the return address and postage paid by Myers. If the customer is a retailer or distributor of the Products, the Notification Letter shall include a sheet of white background, adhesive stickers with the foregoing warning statements.

## 3. **MONETARY SETTLEMENT TERMS**

### 3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Myers agrees to pay a civil penalty of \$5,000 within twenty-one (21) business days of the Effective Date. Myers’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. Myers shall issue its payment in two checks made payable to: (a) “OEHHA” in the amount of \$3,750; and (b) “Seven Hills in Trust for Blue Sky Forever” in the amount of \$1,250. BSF’s counsel shall deliver to OEHHA and BSF their respective portion of the penalty payment.

### **3.2 Reimbursement of Attorneys’ Fees and Costs**

BSF and its counsel offered to resolve the allegations in the Notice 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 Agreement to the Office of the California Attorney General. Within twenty-one (21) business days of the Effective Date, Myers agrees to issue a check in the amount of \$18,750 payable to “Seven Hills LLP” for all fees and costs incurred investigating, bringing this matter to Myers’s attention, negotiating a settlement in the public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 9.

### **3.3 Payments**

All payments payable and due under this Agreement shall be delivered to BSF’s counsel at following address:

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

#### **4. CLAIMS COVERED AND RELEASED**

##### **4.1 BSF's Release of Myers and other Downstream Entities**

This Agreement is a full, final and binding resolution between BSF, as an individual and *not* on behalf of the public, and Myers, of any violation of Proposition 65 that was or could have been asserted by BSF on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, against Myers, its parents, subsidiaries, affiliated entities under common ownership including: directors, officers, employees, attorneys, and each entity to whom Myers directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, “**Releasees**”), based on their failure to warn under Proposition 65 about alleged exposures to Lead contained in the Products that were manufactured, distributed, sold and/or offered for sale by Myers in California before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, BSF as an individual and *not* on behalf of the public, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of BSF's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that BSF may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to Lead in the Products manufactured, distributed, sold and/or offered for sale by Myers, before the Effective Date (collectively, “**Claims**”), against Myers and Releasees.

The Parties further understand and agree that this Section 4.1 release shall neither extend (a) upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Myers, nor (b) to Releasees who have been instructed by Myers pursuant to Sections 2.3(d) and 2.4 to

provide a warning on Products that are not Reformulated Products and have failed to do so. Nothing in this Section affects BSF's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Myers's Products.

#### **4.2 Myers's Release of BSF**

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

#### **4.3 Mutual Waiver of California Civil Code § 1542.**

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. BSF on behalf of itself only, on one hand, and Myers, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 4.1 and 4.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads as follows:

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

BSF and Myers each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

#### **4.4 Deemed Compliance with Proposition 65.**

The Parties agree that compliance by Myers with this Settlement Agreement constitutes



compliance with Proposition 65 with respect to exposure to Lead from use of the Products.

#### **4.5 Public Benefit.**

It is Myers's understanding that the commitments it has agreed to herein, and actions to be taken by Myers under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of Myers that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Myers's failure to provide a warning concerning exposure to Lead prior to use of the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that Myers is in material compliance with this Settlement Agreement.

#### **5. SEVERABILITY**

If, subsequent to the execution of this Agreement, any provision of this Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

#### **6. GOVERNING LAW**

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

#### **7. NOTICE**

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

For Myers:

For BSF:

Adam Hamburg, Esq.  
Vorys, Sater, Seymour and Pease LLP  
4675 MacArthur Court, Suite 700  
Newport Beach, CA 92660

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.

#### **8. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

This Agreement 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.

#### **9. 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).

#### **10. ENTIRE AGREEMENT**

This Agreement 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 Agreement 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.

#### **11. MODIFICATION**


This Agreement may be modified only by a written agreement of the Parties.

## **12. AUTHORIZATION**

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

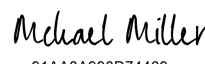
### **AGREED TO:**

Date: 4/9/2025

By:   
Anthony Nguyen, CEO  
Blue Sky Forever

### **AGREED TO:**

Date: 2025-04-04 | 7:18:48 AM PDT

Signed by:  
By:   
Michael Miller, Business Vice President  
Myers Industries, Inc.  
Scepter Manufacturing, LLC