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Attorneys for Defendant  
DESCO INDUSTRIES, INC.

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

BLUE SKY FOREVER,

Plaintiff,

v.

DESCO INDUSTRIES, INC.; and DOES 1-  
30, inclusive,

Defendants.

Case No. CGC-24-617754

**[PROPOSED] CONSENT JUDGMENT**

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

CONSENT JUDGMENT

1     **1. INTRODUCTION**

2           This Consent Judgment is entered into by and between plaintiff Blue Sky Forever (“BSF”) and  
3 defendant Desco Industries, Inc. (“Desco”), with BSF and Desco each individually referred to as a  
4 “Party” and collectively, as the “Parties,” to resolve the allegations in the June 25, 2024, 60-Day Notice  
5 of Violation in compliance with the Safe Drinking Water and Toxic Enforcement Act of 1986, Health  
6 & 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. Desco is a person in the course of doing business for purposes  
12 of California Health & Safety Code § 25249.11(b).

13          **1.2 Consumer Product Description**

14          BSF alleges that Desco manufactures, imports, sells, or distributes for sale in California  
15 vinyl/PVC badge holders containing diisononyl phthalate (“DINP”) including, but not limited to,  
16 *Menda Badge Holder, Blue, Zipper, Vertical Format, 3" x 5" OD, Hisco #: 35019-34174, Mfg #: 35019*,  
17 without providing the health hazard warning BSF alleges is required by California Health &  
18 Safety Code § 25249.5 *et seq.* (“Proposition 65”). All such vinyl/PVC badge holders are referred to  
19 hereinafter as the “Products.” DINP is listed pursuant to Proposition 65 as a chemical known to the  
20 State of California to cause cancer.

21          **1.3 Notice of Violation**

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

1           **1.4 Complaint**

2           On August 30, 2024, BSF commenced the instant action (“**Complaint**”), naming Desco as a  
3 defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

4           **1.5 No Admission**

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

13           **1.6 Jurisdiction**

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

18           **1.7 Effective Date**

19           The term “Effective Date” means the date on which the Court approves this Consent Judgment  
20 and enters Judgment pursuant to its terms.

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

22           **2.1 Commitment to Reformulate or Warn**

23           Commencing 30 days following the Effective Date (hereafter referred to as the “Compliance  
24 Date”) and continuing thereafter, all Products Desco manufactures, imports, sells, ships, or  
25 distributes for sale, in or into California, directly or through one or more third party retailers or e-  
26 commerce marketplaces, shall meet the Reformulation Standard for Reformulated Products, as  
27 defined by Section 2.2, or be accompanied by a clear and reasonable warning pursuant to Section

28 2.3.

1           **2.2    Reformulation Standard Defined**

2           For purposes of this Consent Judgment, "**Reformulated Products**" are defined as Products  
3 which, if they contain diisononyl phthalate ("DINP"), contain such chemical in a maximum  
4 concentration of less than 0.1 percent (1,000 parts per million) when analyzed by a laboratory  
5 certified or accredited by the State of California, the United States Food and Drug  
6 Administration/Environmental Protection Agency, the National Environmental Laboratory  
7 Accreditation Program, or a member accreditation body of the International Laboratory  
8 Accreditation Cooperation ("ILAC").

9           For purposes of compliance with this reformulation standard, testing samples shall be  
10 prepared and extracted using Consumer Product Safety Commission ("CPSC") methodology CPSC  
11 CH-C1001.09.4 and analyzed using U.S. Environmental Protection Agency methodology 8270D, or  
12 other methodologies utilized by federal or state government agencies to determine phthalate content  
13 in a solid substance. ("**Reformulation Standard**")

14           **2.3    Clear and Reasonable Warnings**

15           No later than the Compliance Date, Desco shall provide clear and reasonable warnings for all  
16 Products, that are not Reformulated Products, provided for sale to customers in California in  
17 accordance with this Section pursuant to Title 27 California Code of Regulations § 25600, et seq.  
18 Desco shall provide one of the following warning statements, pursuant to Cal. Code Regs. tit. 27  
19 § 25603, as it exists as of the date of execution of this Agreement, or as it may be amended in the  
20 future.

21           **(a) Warnings**

22                   **Option 1:**

23                   **⚠WARNING [or] CA WARNING [or] CALIFORNIA WARNING:** This product  
24                   can expose you to chemicals including diisononyl phthalate (DINP), which is known  
25                   to the State of California to cause cancer. For more information go to  
                    [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

26                   OR

27                   **Option 2:**

28                   **⚠WARNING [or] CA WARNING [or] CALIFORNIA WARNING:** Cancer risk  
                    from exposure to diisononyl phthalate (DINP). See [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

OR

**Option 3:**

**⚠WARNING [or] CA WARNING [or] CALIFORNIA WARNING:** Can expose you to diisononyl phthalate (DINP), a carcinogen. See [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

OR

**Option 4:** The following warning statement may be used on Products

manufactured and labeled prior to January 1, 2028:

**⚠ WARNING:** Cancer - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

The warning requirements set forth herein are recognized by the Parties as not being the exclusive manner of providing a warning for the Products. Warnings may be provided as specified in the Prop. 65 regulations, in effect as of the Effective Date and/or as amended in the future. 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 is clearly associated with the specific Product to which the warning applies.

**(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) On-Product Warnings.**

Desco shall affix a warning to the Product label or otherwise directly on Products provided for sale to consumers located in California and to customers with retail outlets in California, or e-commerce platforms with sales to consumers in California. 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 one of the following warning phrases in all capital letters and in bold font:

**WARNING [or] CA WARNING [or] CALIFORNIA WARNING.** The warning symbol to the left

1 of the warning phrase must be a black exclamation point in a yellow equilateral triangle with a black  
2 outline, except if the labeling does not use the color yellow, the symbol may be in black and white.  
3 The entire warning shall be set off from other surrounding information, enclosed in a box and appear  
4 in at least 6-point type.

5 **(d) Internet Warnings.**

6 For all Products sold in or into California through third-party websites over which Desco has  
7 the ability to control the application of warnings, Desco shall additionally prominently display the  
8 warning to customers on the internet website prior to purchase or during the checkout process such  
9 that the consumer does not have to seek out the information being provided. The warning or a clearly  
10 marked hyperlink to the warning using the warning phrase **WARNING [or] CA WARNING [or]**  
11 **CALIFORNIA WARNING** and given in conjunction with the sale of the Products via the internet,  
12 shall appear either: (a) on the same web page the Products are displayed; (b) on the same web page  
13 as the virtual cart displaying the Products; (c) on the same page as the price for the Products; or (d)  
14 on one or more web pages displayed to a purchaser during the checkout process.

15 Where Desco sells, ships, or distributes Products to third-party retailers or e-commerce  
16 marketplaces, Desco will advise them of the internet warning requirements under this Agreement as  
17 a condition of sale of the Products.

18 **3. MONETARY SETTLEMENT TERMS**

19 **3.1 Civil Penalty**

20 Pursuant to Health and Safety Code § 25249.7(b), Desco agrees to pay a civil penalty of \$3,000  
21 within ten (10) business days of the Effective Date. Desco's civil penalty payment will be allocated  
22 according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the  
23 penalty paid to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and  
24 the remaining twenty-five percent (25%) retained by BSF. Desco shall issue its payment in two checks  
25 made payable to: (a) "OEHHA" in the amount of \$2,250; and (b) "Seven Hills LLP in Trust for BSF"  
26 in the amount of \$750. BSF's counsel shall deliver to OEHHA and BSF their respective portions of  
27 the penalty payment. Desco shall deliver its civil penalty payments to the address listed in Section 3.3,  
28 below.

1           **3.2     Reimbursement of Attorneys' Fees and Costs**

2           BSF and its counsel offered to resolve the allegations in the Notice and Complaint without  
3 reaching terms on the amount of reimbursement of attorneys' fees and costs. Shortly after the Parties  
4 finalized the other material settlement terms, they negotiated and reached an accord on the amount of  
5 reimbursement to be paid to BSF's counsel, under general contract principles and the private attorney  
6 general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work performed  
7 through the mutual execution and reporting of this Consent Judgment to the Office of the California  
8 Attorney General and entry of Judgment pursuant its terms, but exclusive of fees and costs on appeal,  
9 if any. Within ten (10) business days of the Effective Date, Desco shall issue a check in the amount  
10 of \$26,000 and made payable to "Seven Hills LLP" for all agreed upon fees and other costs incurred  
11 investigating, bringing this matter to Desco's attention, litigating, negotiating a settlement in the public  
12 interest, obtaining the Court's approval of its terms pursuant to Section 5, and reporting to the  
13 California Attorney General. Desco shall deliver its payment to the address listed in Section 3.3.

14           **3.3     Payments**

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

17                     Seven Hills LLP  
18                     Attn: Laralei Paras  
19                     4 Embarcadero Center, Suite 1400  
                      San Francisco, CA 94111

20           **4.     CLAIMS COVERED AND RELEASED**

21           **4.1     BSF's Release of Proposition 65 Claims**

22           This Consent Judgment is a full, final, and binding resolution of the claims that were or could  
23 have been asserted by BSF arising out of the allegations in the Notice and in the Complaint. BSF,  
24 acting on its own behalf, in the public interest, and on behalf of its past and current agents,  
25 representatives, attorneys, successors and assignees releases Desco, its past and present parents,  
26 subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and  
27 each entity to whom Desco directly or indirectly distributes or sells the Products including, but not  
28 limited to its downstream distributors, wholesalers, marketplace hosts, customers, retailers, franchisee,

1 cooperative members and licensees ("Releasees") based on the failure to provide a clear and  
2 reasonable warning under Proposition 65 about alleged exposures to DINP contained in the Products  
3 that were manufactured, processed, distributed, sold and/or offered for sale in California before the  
4 Compliance Date, as set forth in the Notice and Complaint. The Parties further agree that compliance  
5 with Section 2 of this Consent Judgment shall be deemed compliance with Proposition 65 with respect  
6 to alleged exposures to DINP in the Products.

7 The Parties further understand and agree that this Section 4.1 release shall neither extend (a)  
8 to upstream entities that manufactured the Products or any component parts thereof, or any  
9 distributors or suppliers who sold the Products or any component parts thereof to Desco nor (b) to  
10 Releasees who have been instructed by Desco pursuant to Section 2.3, to provide a warning on  
11 Products that are not Reformulated Products and have failed to do so.

#### 12 **4.2 BSF's Individual Release of Claims**

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

#### 22 **4.3 Desco's Release of BSF**

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



1     **5. COURT APPROVAL**

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

8     **6. SEVERABILITY**

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

12    **7. GOVERNING LAW**

13             The terms of this Consent Judgment shall be governed by the laws of the State of California  
14 and apply within California. In the event Proposition 65 is repealed, preempted, or is otherwise  
15 rendered inapplicable, by reason of law, generally, as to the Products or as to DINP, then Desco may  
16 seek to modify this Consent Judgment pursuant to Section 12. Nothing in this Consent Judgment shall  
17 be interpreted to relieve Desco from its obligation to comply with any pertinent state or federal law or  
18 regulation.

19    **8. NOTICE**

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

23    For Desco:

24    Sophia Castillo, Esq.  
25    Keller & Heckman LLP  
26    3 Embarcadero Center, Suite 1420  
   San Francisco, CA 94111

23    For BSF:

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

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

1     **9. COUNTERPARTS AND PDF SIGNATURES**

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

5     **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

8     **11. ENTIRE AGREEMENT**

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

17     **12. MODIFICATION**


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

1 **13. AUTHORIZATION**

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

4 **AGREED TO:**

5 Date: 4/11/2025

6 By:   
7 Anthony Nguyen, CEO  
8 Blue Sky Forever

**AGREED TO:**

Date: 2025-04-10

By:   
John Brake, CEO  
Desco Industries, Inc.