

SETTLEMENT AGREEMENT

1. INTRODUCTION

This Agreement is entered into by and between Blue Sky Forever (“**BSF**”) and Blackburn Mfg. Co. (“**Blackburn**”), with BSF and Blackburn each individually referred to as a “**Party**” and collectively, as the “**Parties**,” to resolve the allegations in the November 19, 2024 Supplemental 60-Day Notice of Violation concerning vinyl flagging tape in compliance with the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6 *et seq.* (“**Proposition 65**”).

1.1 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 or eliminated from consumer products sold in California. BSF alleges that Blackburn 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 Blackburn manufactures, imports, sells, or distributes for sale in California vinyl flagging tape containing di(2ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, *Tundra Heavy Flagging Tape 150’-12 per box, Fluorescent Lime, Item No. 17777*, without providing the health hazard warnings BSF alleges are required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). All such vinyl flagging tape is referred to hereinafter, collectively, as the “**Products**.” DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

1.3 Notice of Violation

On November 19, 2024, BSF served Blackburn, the California Attorney General, and the requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation (the “**Notice**”), alleging Blackburn violated Proposition 65 by failing to warn its customers and consumers in California that the Products can expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced or is diligently prosecuting an action to enforce the allegations set forth in the Notice.

1.4 No Admission

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

1.5 Effective Date

The term "Effective Date" means the date by which the Agreement is signed on behalf of both parties.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

Commencing within 30 days following the Effective Date and continuing thereafter, all Products Blackburn 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 clear and reasonable warnings pursuant to Section 2.3.

2.2 Reformulation Standard Defined

For purposes of this Agreement, "**Reformulated Products**" are defined as Products which contain a maximum concentration of 0.1 percent (1,000 parts per million) DEHP when analyzed by a laboratory certified or accredited by the State of California, the United States Food and Drug Administration/Environmental Protection Agency, the National Environmental Laboratory Accreditation Program, or a member accreditation body of the International Laboratory Accreditation Cooperation ("**ILAC**").

For purposes of compliance with this reformulation standard, testing samples shall be prepared and extracted using Consumer Product Safety Commission ("**CPSC**") methodology CPSC

CH-C1001.09.4 and analyzed using U.S. Environmental Protection Agency methodology 8270D, or other methodologies utilized by federal or state government agencies to determine phthalate content in a solid substance. (“**Reformulation Standard**”). Blackburn may rely on testing it conducts, or that has been provided by any supplier(s) of Products, to comply with this Section.

2.3 Clear and Reasonable Warnings

Commencing within 30 days following the Effective Date, for all Products that are not Reformulated Products, sold to consumers in California or offered for sale in California, Blackburn shall provide clear and reasonable warnings to customers in California in accordance with this Section pursuant to Title 27 California Code of Regulations § 25600, et seq. Blackburn shall provide one of the following warning statements, pursuant to Cal. Code Regs. tit. 27 § 25603, as it exists as of the date of execution of this Agreement, or as it may be amended in the future.

2.3.1 Warnings

Option 1: ⚠️**WARNING [or] CA WARNING [or] CALIFORNIA WARNING:** This product can expose you to chemicals including di(2-ethylhexyl) phthalate (DEHP), 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.

Option 2: ⚠️**WARNING [or] CA WARNING [or] CALIFORNIA WARNING:** Risk of cancer and reproductive harm from exposure to di(2-ethylhexyl) phthalate (DEHP). See www.P65Warnings.ca.gov.

Option 3: ⚠️**WARNING [or] CA WARNING [or] CALIFORNIA WARNING:** Can expose you to di(2-ethylhexyl) phthalate (DEHP), a carcinogen and reproductive toxicant. See www.P65Warnings.ca.gov.

Option 4—for Covered Products manufactured and labeled prior to January 1, 2028:

⚠️**WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

Warnings may be provided as set forth herein or as specified in the Proposition 65 implementing regulations as they may be 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.

2.3.2 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.

2.3.3 On-Product Warnings. Blackburn 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, nationwide distribution, or e-commerce platforms. 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 2.3.1 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 be set off from other surrounding information, enclosed in a box and appear in at least 6-point type but no smaller than the largest type size used for other consumer information on the Products.

2.3.4 Internet Warnings. For all Products sold in or into California through websites under the exclusive control of Blackburn, Blackburn shall display an online warning that complies with the requirements of Title 27 California Code of Regulations § 25603 by one of the following methods: (1) A warning on the product display page; (2) A clearly marked hyperlink using the word “WARNING” or the words “CA WARNING” or “CALIFORNIA WARNING” on the product display page that links to the warning; or (3) An otherwise prominently displayed warning provided to the purchaser prior to completing the purchase. If a short-form warning is provided on the Product label, then pursuant to Section 25602(a)(4), the warning provided on the website may use the same content. For purposes of this section, a warning is not prominently displayed if the purchaser must search for it in the general content of the website. Where Blackburn has actual knowledge that a third-party retailer or distributor to which it directly sells Products is offering

Products for sale in California through an e-commerce platform, Blackburn will advise them of the internet warning requirements under this Agreement as a condition of sale of the Products.

2.3.5 There shall be no obligation for Blackburn to provide a warning for Products that Blackburn sold prior to 30 days following the Effective Date, and the Section 4 release applies to all such Covered Products.

3. MONETARY AGREEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Blackburn agrees to pay a civil penalty of \$1,000 within thirty (30) days of the Effective Date. Blackburn'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. Blackburn shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$750; and (b) "Seven Hills LLP in Trust for Blue Sky Forever" in the amount of \$250. BSF's counsel shall deliver to OEHHA and BSF their respective portions of the penalty payment.

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 Agreement 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 and entry of Judgment pursuant its terms, but exclusive of fees and costs on appeal, if any. Within thirty (30) days of the Effective Date, Blackburn shall issue a check in the amount of \$15,900 and made payable to "Seven Hills LLP" for all fees and other costs incurred investigating, bringing this matter to Blackburn's attention, litigating, negotiating an Agreement in the public interest, obtaining the Court's approval of its terms pursuant to Section 5,

and reporting to the California Attorney General. Blackburn shall deliver its payment to the address listed in Section 3.3.

3.3 Payments

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

Seven Hills LLP
Attn: Laralei Paras
1 Embarcadero Center, Suite 1200
San Francisco, CA 94111

4. CLAIMS COVERED AND RELEASED

4.1 BSF's Release of Blackburn

This Agreement is a full, final and binding resolution between BSF, as an individual and not on behalf of the public, and Blackburn, of any violation 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 Blackburn, its directors, officers, employees, attorneys, and each entity to whom Blackburn directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, including, without limitation Blackburn, retailers, franchisees, cooperative members, and licensees (collectively, Releasees), based on alleged exposures to DEHP and the failure to provide a warning under Proposition 65 about exposure to DEHP contained in Products manufactured prior to 30 days following the Effective Date.

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, expenses, investigation fees,

expert fees, and attorneys' fees arising under Proposition 65 with respect to products sold by Blackburn prior to 30 days following the Effective Date.

4.2 Blackburn's Release of BSF

Blackburn, on behalf of itself, its past and current officers, agents, shareholders, employees, predecessors, 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, 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 California Civil Code Section 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 Blackburn on behalf of itself only, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through 30 days following the Effective Date. The Parties acknowledge that the claims released in Sections 4.1 and 4.2 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 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 Blackburn each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5. SEVERABILITY

If, subsequent to the Effective Date, 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 Blackburn 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 Blackburn:

Willis Wagner, Esq.
Greenberg Traurig, LLP
400 Capitol Mall, Suite 2400
Sacramento, CA 95814

For BSF:

Laralei Paras, Esq.
Seven Hills LLP
1 Embarcadero Center, Suite 1200
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. ENFORCEMENT

Should either Party wish to enforce future alleged violations of this Agreement, it must first provide written notice to the other Party and allow thirty (30) days to expire, during which the other Party is entitled to cure the alleged breach.

9. COUNTERPARTS 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.

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 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.

12. MODIFICATION

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

13. AUTHORIZATION

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

AGREED TO:

Date: 3/24/2026

By: 
Anthony Nguyen, CEO
Blue Sky Forever

AGREED TO:

Date: 3/24/2026

By: Jennifer Blackburn-Nielsen
Jennifer Blackburn-Nielsen,
President/CEO
Blackburn Mfg. Co.