

1 **NICHOLAS & TOMASEVIC, LLP**  
2 Craig M. Nicholas (SBN 178444)  
3 Shaun Markley (SBN 291785)  
4 225 Broadway, 19<sup>th</sup> Floor  
5 San Diego, California 92101  
6 Tel: (619) 325-0492  
7 Fax: (619) 325-0496

8 **GLICK LAW GROUP, PC**  
9 Noam Glick (SBN 251582)  
10 225 Broadway, Suite 2100  
11 San Diego, California 92101  
12 Tel: (619) 382-3400  
13 Fax: (619) 615-2193

14 Attorneys for Plaintiff  
15 Arthur Zivkovic

**ELECTRONICALLY  
FILED**  
*Superior Court of California,  
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**12/22/2016**  
**Clerk of the Court**  
BY: DAVID YUEN  
Deputy Clerk

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
17 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

18 ARTHUR ZIVKOVIC, an individual

19 Plaintiff,

20 v.

21 TEKNOR APEX COMPANY, a Delaware  
22 corporation; and DOES 1 through 100,  
23 inclusive;

24 Defendant.

Case No.: CGC-16-555270

**FIRST AMENDED COMPLAINT FOR  
CIVIL PENALTIES AND INJUNCTIVE  
RELIEF**

(Cal. Health & Safety Code § 25249.6 et seq.)

**I.**  
**INTRODUCTION**

1  
2           1.       This Complaint is a representative action brought by Plaintiff in the public interest of  
3 the citizens of the State of California. Plaintiff seeks to enforce the People’s right to be informed of the  
4 presence of Di(2-ethylhexyl)phthalate (“DEHP”), Di-isodecyl phthalate (“DIDP”), and Diisononyl  
5 phthalate (“DINP”), toxic chemicals known to the state of California to cause cancer or reproductive  
6 toxicity found in garden hoses manufactured, distributed, and/or otherwise sold by Defendants in  
7 California including, but not limited to, the following:\*

<b>Product</b>	<b>UPC No.</b>	<b>Exposure</b>
Green Thumb Reinforced 3-Ply Vinyl Garden Hose 5/8” x 50’	052088077597	DEHP DIDP DINP
Teknor Apex 5/8” x 50’ Medium Duty Water Hose	031724853559	DEHP DINP
NeverKink 5/8” x 25’ Heavy Duty Water Hose	031724860526	DEHP DIDP DINP
NeverKink 5/8” x 50’ Premium Duty Hose	031724869253	DEHP DIDP DINP
Green Thumb NeverKink Garden Hose 5/8” x 25’	052088874332	DEHP DINP

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18       \*All such products containing DEHP, DIDP, and/or DINP (“Listed Chemicals”) shall hereinafter be referred to  
19 as the “PRODUCTS.”

20           2.       Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California  
21 Health & Safety Code Section 25249.6 et seq. (“Proposition 65”), “[n]o person in the course of doing  
22 business shall knowingly and intentionally expose any individual to a chemical known to the state to  
23 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such  
24 individual. . . .” (Cal. Health & Safety Code § 25249.6.)

25           3.       On January 1, 1988, the State of California identified and listed DEHP as a carcinogen  
26 or known developmental/reproductive toxin. DEHP became subject to the warning requirement one  
27 year later and was therefore subject to the “clear and reasonable warning” requirements of Proposition  
28 65, beginning on January 1, 1989. (27 CCR § 27001(b); *Cal. Health & Safety Code* § 25249.8.)

1           4.        On April 20, 2007, the State of California identified and listed DIDP as a carcinogen or  
2 known developmental/reproductive toxin. DIDP became subject to the warning requirement one year  
3 later and was therefore subject to the “clear and reasonable warning requirements of Proposition 65,  
4 beginning on April 20, 2008. (27 CCR § 27001(b); *Cal. Health & Safety Code* § 25249.8.)

5           5.        On December 20, 2013, the State of California identified and listed DINP as a  
6 carcinogen or known developmental/reproductive toxin. DINP became subject to the warning  
7 requirement one year later and was therefore subject to the “clear and reasonable warning” requirements  
8 of Proposition 65, beginning on December 20, 2014. (27 CCR § 27001(b); *Cal. Health & Safety Code*  
9 § 25249.8.)

10          6.        Significant levels of DEHP, DIDP, and/or DINP have been discovered in or on certain  
11 materials comprising the hoses that Defendants manufacture, distribute, and/or offer for sale to  
12 consumers throughout the State of California, including, but not limited to the PRODUCTS named in  
13 this Complaint. (*See supra* at ¶ 1.)

14          7.        Defendants’ failure to warn consumers and/or other individuals in the State of California  
15 about their exposures to DEHP, DIDP, and DINP in conjunction with the Defendant’s sale of the  
16 PRODUCTS is a violation of Proposition 65.

17          8.        Plaintiff seeks injunctive relief compelling Defendants to provide consumers and  
18 individuals in California with sufficient warning pursuant to Proposition 65 and related Regulations.  
19 (Cal. Health & Safety Code § 25249.7(a).) Plaintiff also seeks civil penalties against Defendants for  
20 their violations of Proposition 65. (Cal. Health & Safety Code § 25249.7(b).)

## 21                                   II.

### 22                                   PARTIES

23          9.        ARTHUR ZIVKOVIC (“Plaintiff”) is a citizen of the State of California dedicated to  
24 protecting the health of California citizens through the elimination or reduction of toxic exposure from  
25 consumer products. He brings this action in the public interest pursuant to Cal. Health & Safety Code  
26 § 25249.7.

27          10.       Defendant TEKNOR APEX COMPANY (“Teknor Apex”) is a corporation organized  
28 and existing under the laws of the State of Delaware. Teknor Apex does business in California, County

1 of San Francisco, within the meaning of the California Health & Safety Code section 25249.11. Teknor  
2 Apex manufactures, imports, sells, or distributes Products in California and San Francisco County.

3 11. The true names of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff.  
4 Plaintiff sues these Defendants by fictitious names. Plaintiff is informed and believes, and on that basis  
5 alleges, that each fictitiously named defendant is responsible for the acts and occurrences herein  
6 alleged. When ascertained, their true names shall be reflected in an amended complaint.

7 12. At all times mentioned, Teknor Apex and DOES 1 through 100, inclusive (collectively  
8 “Defendants”) were the agents, alter egos, servants, joint venturers, joint employers, or employees for  
9 each other. Defendants acted with the consent of the other Co-Defendants and acted within the course,  
10 purpose, and scope of their agency, service, or employment. All conduct was ratified by Defendants,  
11 and each of them.

### 12 III.

#### 13 VENUE AND JURISDICTION

14 13. California Constitution Article VI, Section 10 grants the Superior Court original  
15 jurisdiction in all cases except those given by statute to other trial courts. The Health & Safety Code  
16 statute upon which this action is based does not give jurisdiction to any other court. As such, this Court  
17 has jurisdiction.

18 14. Venue is proper in San Francisco County Superior Court pursuant to Code of Civil  
19 Procedure Sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this  
20 County. Defendant conducted and continues to conduct business in this County as it relates to Products.

21 15. Defendant has sufficient minimum contacts in the State of California or otherwise  
22 purposefully avails itself of the California market. Exercising jurisdiction over Defendant would be  
23 consistent with traditional notions of fair play and substantial justice.

#### 24 **FIRST CAUSE OF ACTION**

##### 25 **(Violation of Proposition 65 – Against all Defendants)**

26 16. Plaintiff incorporates by reference each and every allegation contained above.

27 17. Proposition 65 mandates that citizens be informed about exposures to chemicals that  
28 cause cancer, birth defects, and other reproductive harm.

1           18. Defendants manufactured, imported, sold, and/or distributed PRODUCTS containing  
2 Listed Chemicals in violation of California Health & Safety Code Section 25249.6 et seq. Plaintiff is  
3 informed and believes such violations have continued after receipt of the Notice and will continue to  
4 occur into the future.

5           19. In manufacturing, importing, selling, and/or distributing the PRODUCTS, Defendants  
6 failed to provide a clear and reasonable warning to consumers and individuals in California who may  
7 be exposed to the Listed Chemicals through reasonably foreseeable use of the Products.

8           20. The Products expose individuals to the Listed Chemical through dermal absorption,  
9 ingestion, and inhalation.

10           21. Defendants knew or should have known that the PRODUCTS contain Listed Chemicals  
11 and expose individuals to Listed Chemicals in the ways provided above.

12           22. Defendants' actions in this regard were deliberate and not accidental.

13           23. On August 10, 2016, Plaintiff provided Defendant a 60-Day Notice of Violation  
14 ("Notice") for each of the PRODUCTS listed in this Complaint, as required by and in compliance with  
15 Proposition 65. These Notices were provided to the various required public enforcement agencies and  
16 contained a certificate of merit. The Notices alleged that Defendants violated Proposition 65 by failing  
17 to sufficiently warn consumers in California of the health hazards associated with exposure to Listed  
18 Chemicals contained in the PRODUCTS.

19           24. The appropriate public enforcement agencies provided with the Notices failed to  
20 commence and diligently prosecute a cause of action against Defendant.

21           25. Individuals exposed to the Listed Chemicals contained in the PRODUCTS through  
22 dermal absorption, ingestion, and inhalation resulting from reasonably foreseeable use of the  
23 PRODUCTS have suffered and continue to suffer irreparable harm. There is no other plain, speedy, or  
24 adequate remedy at law.

25           26. Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation  
26 of Proposition 65 pursuant to Health & Safety Code Section 252497(b). Injunctive relief is also  
27 appropriate pursuant to Health & Safety Code Section 25249.7(a).

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1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff prays for judgment against Defendants, and each of them, as follows:

- 3 1. Civil penalties in the amount of \$2,500 per day for each violation;
- 4 2. A preliminary and permanent injunction against Defendants from manufacturing,
- 5 importing, selling, and/or distributing PRODUCTS in California without providing a
- 6 clear and reasonable warning as required by Proposition 65 and related Regulations;
- 7 3. Reasonable attorney's fees and costs of suit; and
- 8 4. Such other and further relief as may be just and proper.

9 Respectfully submitted:

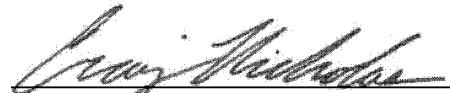
10 Dated: December 20, 2016

**NICHOLAS & TOMASEVIC, LLP**

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13 By:



14 Craig Nicholas  
Shaun Markley

15 Attorneys for Plaintiff

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