1 GLICK LAW GROUP, PC Noam Glick (SBN 251582) 2 Kelsey McCarthy (SBN 305372) 225 Broadway, Suite 2100 Superior Court of California County of San Francisco 3 San Diego, California 92101 Tel: (619) 382-3400 MAR 03 2017 4 Fax: (619) 615-2193 CLERK OF THE COURT 5 NICHOLAS & TOMASEVIC, LLP BY: ARLENE RAMOS Craig M. Nicholas (SBN 178444) Deputy Clerk 6 Shaun Markley (SBN 291785) 225 Broadway, 19th Floor 7 San Diego, California 92101 Tel: (619) 325-0492 8 Fax: (619) 325-0496 9 Attorneys for Plaintiff 10 Arthur Živkovic 11 SUPERIOR COURT OF THE STATE OF CALIFORNIA 12 IN AND FOR THE COUNTY OF SAN FRANCISCO 13 CGC-17-557401 ARTHUR ZIVKOVIC, an individual Case No.: 14 COMPLAINT FOR CIVIL PENALTIES Plaintiff, 15 AND INJUNCTIVE RELIEF v. 16 (Cal. Health & Safety Code § 25249.6 et seq.) SWAN PRODUCTS, INC., SWAN 17 PRODUCTS, LLC, and DOES 1 through 100, inclusive; 18 Defendant. 19 ONE LEGAL LLC 20 I. 21 INTRODUCTION 22 This Complaint is a representative action brought by ARTHUR ZIVKOVIC 1. ("Plaintiff") in the public interest of the citizens of the State of California against SWAN PRODUCTS. 23 24 INC., SWAN PRODUCTS, LLC, and DOES 1 through 100, inclusive ("Defendants"). Plaintiff seeks 25 to enforce the People's right to be informed of the presence of Di-isodecyl phthalate ("DIDP") and Diisononyl phthalate ("DINP") (collectively "Listed Chemicals") found in garden hoses manufactured, 26 27 distributed, and/or otherwise sold by Defendants in California including, but not limited to, the Element 28 Industrial Pro 5/8 in. Dia x 50 ft. Lead Free Garden Hose.

- 2. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code Section 25249.6 et seq. ("Proposition 65"), "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual. . . ." (Cal. Health & Safety Code § 25249.6.)
- 3. California identified and listed DIDP as a chemical known to cause birth defects or other reproductive harm as early as April 20, 2007. Likewise, California identified and listed DINP as a chemical known to cause cancer as early as December 20, 2013.
- 4. Certain materials comprising garden hoses manufactured, distributed, and/or otherwise sold by Defendants in California including, but not limited to, the Element Industrial Pro 5/8 in. Dia x 50 ft. contain prohibited levels of Listed Chemicals ("Products").
- 5. Defendant failed to sufficiently warn consumers and individuals in California about potential exposure to Listed Chemicals in connection with Defendant's manufacture, import, sale, or distribution of Products. This is a violation of Proposition 65.
- 6. Plaintiff seeks injunctive relief compelling Defendants to eliminate Listed Chemicals from its Products and/or provide consumers and individuals in California with sufficient warning pursuant to Proposition 65 and related Regulations. (Cal. Health & Safety Code § 25249.7(a).) Plaintiff also seeks civil penalties against Defendants for their violations of Proposition 65. (Cal. Health & Safety Code § 25249.7(b).)

II.

PARTIES

- 7. ARTHUR ZIVKOVIC is a citizen of the State of California dedicated to protecting the health of California citizens through the elimination or reduction of toxic exposure from consumer products. He brings this action in the public interest pursuant to Cal. Health & Safety Code § 25249.7.
- 8. Defendant SWAN PRODUCTS, INC. ("Swan Products Inc.") is a corporation organized and existing under the laws of the State of California. Swan Products Inc. does business in California, County of San Francisco, within the meaning of the California Health & Safety Code

section 25249.11. Swan Products Inc. manufactures, imports, sells, or distributes Products in California and San Francisco County.

- 9. Defendant SWAN PRODUCTS, LLC ("Swan Products LLC") is a corporation organized and existing under the laws of the State of Deleware. Swan Products LLC does business in California, County of San Francisco, within the meaning of the California Health & Safety Code section 25249.11. Swan Products LLC manufactures, imports, sells, or distributes Products in California and San Francisco County.
- 10. The true names of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff. Plaintiff sues these Defendants by fictitious names. Plaintiff is informed and believes, and on that basis alleges, that each fictitiously named defendant is responsible for the acts and occurrences herein alleged. When ascertained, their true names shall be reflected in an amended complaint.
- 11. At all times mentioned, Defendants were the agents, alter egos, servants, joint venturers, joint employers, or employees for each other. Defendants acted with the consent of the other Co-Defendants and acted within the course, purpose, and scope of their agency, service, or employment. All conduct was ratified by Defendants, and each of them.

III.

VENUE AND JURISDICTION

- 12. California Constitution Article VI, Section 10 grants the Superior Court original jurisdiction in all cases except those given by statute to other trial courts. The Health & Safety Code statute upon which this action is based does not give jurisdiction to any other court. As such, this Court has jurisdiction.
- 13. Venue is proper in San Francisco County Superior Court pursuant to Code of Civil Procedure Sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this County. Defendants conducted and continues to conduct business in this County as it relates to Products.
- 14. Defendant have sufficient minimum contacts in the State of California or otherwise purposefully avails itself of the California market. Exercising jurisdiction over Defendants would be consistent with traditional notions of fair play and substantial justice.

	4
	5
	6
	7
	8
	9
1	0
1	1
1	2
1	3
1	4
1	5
1	6
1	7
1	8
1	9
2	0
2	1
2	2
2	3
2	4

1

2

3

IV.

FIRST CAUSE OF ACTION

(Violation of Proposition 65 – Against all Defendants)

- 15. Plaintiff incorporates by reference each and every allegation contained above.
- 16. Plaintiff brings this cause of action as a representative action in the public interest of the citizens of the State of California.
- 17. Proposition 65 mandates that citizens be informed about exposures to chemicals that cause cancer, birth defects, and other reproductive harm.
- 18. Defendants manufactured, imported, sold, and/or distributed Products containing Listed Chemicals in violation of California Health & Safety Code Section 25249.6 et seq. Plaintiff is informed and believes such violations have continued after receipt of the Notice and will continue to occur into the future.
- 19. In manufacturing, importing, selling, and/or distributing Products, Defendants failed to provide a clear and reasonable warning to consumers and individuals in California who may be exposed to the Listed Chemicals through reasonably foreseeable use of the Products.
- 20. The Products exposes individuals to the Listed Chemicals through dermal absorption, ingestion, and inhalation.
- 21. Defendants knew or should have known that the Products contains Listed Chemicals and exposes individuals to Listed Chemicals in the ways provided above.
 - 22. Defendants' actions in this regard were deliberate and not accidental.
- 23. On November 4, 2016, Plaintiff provided a 60-Day Notice of Violation ("Notice"), as required by and in compliance with Proposition 65 and related Regulations. This Notice was provided to the various required public enforcement agencies and contained a certificate of merit. The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposure to Listed Chemicals contained in the Products.
- 24. The appropriate public enforcement agencies provided with the Notice failed to commence and diligently prosecute a cause of action against Defendants.

25

26

27

28