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

19 ARTHUR ZIVKOVIC, an individual

20 Plaintiff,

21 v.

22 SWAN PRODUCTS, INC., SWAN  
23 PRODUCTS, LLC, and DOES 1 through 100,  
24 inclusive;

25 Defendant.

Case No.:

**CGC-17-557401**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

**BY FAX**  
**ONE LEGAL LLC**

**I.**

**INTRODUCTION**

1. This Complaint is a representative action brought by ARTHUR ZIVKOVIC (“Plaintiff”) in the public interest of the citizens of the State of California against SWAN PRODUCTS, INC., SWAN PRODUCTS, LLC, and DOES 1 through 100, inclusive (“Defendants”). Plaintiff seeks 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, 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. Lead Free Garden Hose.



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

3 9. Defendant SWAN PRODUCTS, LLC (“Swan Products LLC”) is a corporation  
4 organized and existing under the laws of the State of Delaware. Swan Products LLC does business in  
5 California, County of San Francisco, within the meaning of the California Health & Safety Code  
6 section 25249.11. Swan Products LLC manufactures, imports, sells, or distributes Products in  
7 California and San Francisco County.

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

12 11. At all times mentioned, Defendants were the agents, alter egos, servants, joint venturers,  
13 joint employers, or employees for each other. Defendants acted with the consent of the other Co-  
14 Defendants and acted within the course, purpose, and scope of their agency, service, or employment.  
15 All conduct was ratified by Defendants, and each of them.

### 16 III.

#### 17 VENUE AND JURISDICTION

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

22 13. Venue is proper in San Francisco County Superior Court pursuant to Code of Civil  
23 Procedure Sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this  
24 County. Defendants conducted and continues to conduct business in this County as it relates to  
25 Products.

26 14. Defendant have sufficient minimum contacts in the State of California or otherwise  
27 purposefully avails itself of the California market. Exercising jurisdiction over Defendants would be  
28 consistent with traditional notions of fair play and substantial justice.

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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.

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