

## State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1500  
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

**REPORT OF CIVIL COMPLAINT FILING**

Please print or type required information

☒ Original Filing ☐ Supplemental Filing ☐ Corrected Filing

PARTIES TO THE ACTION	PLAINTIFF(S) <b>Jennifer Fishman</b>		
	DEFENDANT(S) <b>Swisher International, Inc.</b>		
CASE INFO	COURT DOCKET NUMBER <b>37-2019-00044381-CU-MC-CTL</b>	COURT NAME <b>Superior Court of California, County of San Diego</b>	
	SHORT CASE NAME <b>Fishman v Swisher International, Inc.</b>		
REPORT INFO	TYPE OF CLAIM (Check All That Apply) <input type="checkbox"/> Proposition 65 Unlawful Discharge <input checked="" type="checkbox"/> Proposition 65 Failure to Warn <input type="checkbox"/> B&P Code section 17200 <input type="checkbox"/> Other _____		RELIEF SOUGHT (Check All That Apply) <input checked="" type="checkbox"/> Warning <input type="checkbox"/> Discharge Ban <input checked="" type="checkbox"/> Civil Penalty
	COPY OF COMPLAINT MUST BE ATTACHED		For Internal Use Only
FILER INFO	NAME OF CONTACT <b>Jack Fitzgerald</b>		
	ORGANIZATION <b>The Law Office of Jack Fitzgerald, PC</b>		TELEPHONE NUMBER <b>((619)) 692-3840</b>
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	CITY <b>San Diego</b>	STATE <b>CA</b>	ZIP <b>92101</b>
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**FILING INSTRUCTIONS:** This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the complaint to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.

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**ELECTRONICALLY FILED**

Superior Court of California,  
County of San Diego

**08/22/2019** at 12:38:55 PM

Clerk of the Superior Court  
By Erika Engel, Deputy Clerk

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **COUNTY OF SAN DIEGO**

16 JENNIFER FISHMAN,

17 Plaintiff,

18 v.

19 SWISHER INTERNATIONAL, INC.

20 Defendant.

Case No.: 37-2019-00044381-CU-MC-CTL

21 **COMPLAINT FOR CIVIL PENALTIES**  
22 **AND INJUNCTIVE RELIEF**

23 Cal. Health & Safety Code §§ 25249.5, *et seq.*

1 Plaintiff Jennifer Fishman, in the public interest, by and through her undersigned  
2 counsel, alleges the following based on information and belief, or where she lacks personal  
3 knowledge, upon information and belief including the investigation of her counsel.

#### 4 **INTRODUCTION & FACTUAL ALLEGATIONS**

5 1. Plaintiff brings this representative action on behalf of all California citizens to  
6 remedy Defendant Swisher International, Inc. (“Swisher” or “Defendant”) failure to warn  
7 California consumers that they are being exposed to carbon monoxide, a substance known to  
8 the State of California to cause birth defects and other reproductive harm, and Soot, a known  
9 carcinogen (hereinafter, the “Listed Chemicals”).

10 2. Such exposures have occurred and continue to occur through the use of  
11 combustible paper products (sometimes called “rolling papers”) sold under the brand name,  
12 “Hempire” (“Products”) that Swisher distributes and/or sells in the State. The burning and  
13 inhalation of the Products exposes those using them to the Listed Chemicals.

14 3. The use of the Products causes exposures to the Listed Chemicals that require a  
15 “clear and reasonable warning” under California's Safe Drinking Water and Toxic  
16 Enforcement Act of 1986, Health & Safety Code §§ 25249.5, *et seq.* (“Proposition 65”).

17 4. Swisher has failed to provide a clear and reasonable warning on the Products.  
18 Swisher’s introduction of the Products into the California marketplace therefore causes  
19 individuals to be involuntarily and unwittingly exposed to the Listed Chemicals in violation  
20 of Proposition 65.

21 5. Plaintiff seeks injunctive relief enjoining Swisher from the continued  
22 manufacturing, packaging, distributing, marketing and/or sale of the Products in California  
23 without provision of clear and reasonable warnings regarding the risks of birth defects, other  
24 reproductive harm, and cancer posed by exposure to the Listed Chemicals through the use of  
25 the Products.

26 6. Plaintiff seeks an injunctive order compelling Swisher to bring its business  
27 practices into compliance with Proposition 65 by providing a clear and reasonable warning  
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1 to each individual who in the future may be exposed to the Listed Chemicals from the use of  
2 the Products.

3 7. In addition to injunctive relief, Plaintiff seeks civil penalties authorized by  
4 Proposition 65 to remedy Swisher's failure to provide clear and reasonable warnings  
5 regarding exposures to the Listed Chemicals.

### 6 **THE PARTIES**

7 8. Plaintiff Jennifer Fishman is a citizen of the State of California acting in the  
8 public interest to promote awareness of toxic chemicals in products sold in California and to  
9 improve public health through the reduction of hazardous substances contained in such items  
10 or to inform consumers of their presence. She brings this action in the public interest pursuant  
11 to Cal. Health & Safety Code § 25249.7(d).

12 9. Defendant Swisher International Inc. manufactures, distributes, imports, sells,  
13 markets and/or offers the Products for sale or use in the State of California, or implies by its  
14 conduct that it manufactures, distributes, imports, sells, markets and/or offers the Products  
15 for sale or use in the State of California.

16 10. Swisher is a person doing business within the meaning of California Health &  
17 Safety Code § 25249.11(a).

18 11. Swisher employs more than ten people.

### 19 **JURISDICTION AND VENUE**

20 12. This Court has jurisdiction over this action pursuant to California Constitution  
21 Article VI, Section 10, which grants the Superior Court "original jurisdiction in all causes  
22 except those given by statute to other trial courts." The statute under which this action is  
23 brought does not specify any other basis for jurisdiction.

24 13. This Court has jurisdiction over Swisher because, based on information and  
25 belief, Swisher has sufficient minimum contacts with California, or has otherwise  
26 intentionally availed itself of the California market through the distribution and sale of the  
27 Products in the State of California. Such purposeful availment has rendered the exercise of  
28

jurisdiction by California courts consistent and permissible with traditional notions of fair play and substantial justice.

14. The California Superior Court also has jurisdiction in this matter because there is no federal question at issue, as the issues herein are based solely on California statutes and law.

15. Venue in this action is proper in the San Diego Superior Court because Swisher has violated California law in the County of San Diego.

### **CAUSE OF ACTION**

#### **VIOLATIONS OF CALIFORNIA**

#### **HEALTH AND SAFETY CODE §§ 25249.5 *ET SEQ.***

16. Plaintiff realleges and incorporates the preceding allegations as if fully set forth herein.

17. The Citizens of California have expressly stated in the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5, *et seq.* (Proposition 65), that they must be informed “about exposures to chemicals that cause cancer, birth defects and other reproductive harm.” Cal. Health & Safety Code § 25249.6.

18. Swisher, at all times relevant to this action, and continuing through the present, has violated Cal. Health & Safety Code § 25249.6 by, in the course of doing business, knowingly and intentionally exposing individuals who use the Products set forth in the Notice to the Listed Chemicals, without first providing a clear and reasonable warning to such individuals pursuant to Health & Safety Code § 25249.6.

19. On or about April 30, 2019, Plaintiff sent a 60-day Notice and Certificate of Merit to Swisher, as well as the State Attorney General and additional district and city attorney generals, pursuant to Cal. Health & Safety Code § 25249.7(a) & (d)(1) (“Notice”).

20. Swisher has engaged in the manufacture, distribution, import, selling, marketing or offering of the Products for sale or use in violation of Cal. Health & Safety Code § 25249.6, and Swisher’s manufacture, distribution, import, selling, marketing and offering of the

1 Products for sale or use in violation of Cal. Health & Safety Code § 25249.6 has continued  
2 to occur beyond Swisher’s receipt of plaintiff’s Notice. Such violations are likely to continue  
3 to occur in the future.

4 21. After receipt of Plaintiff’s Notice, the appropriate public enforcement agencies  
5 have not commenced and diligently prosecuted a cause of action against Swisher under  
6 Proposition 65.

7 22. Swisher knew or should have known that the Products manufactured,  
8 distributed, imported, sold, marketed and offered in the State of California produce the Listed  
9 Chemicals through typical use and exposes individuals through inhalation through typical  
10 use.

11 23. Typical and reasonably foreseeable use of the Products has caused and continues  
12 to cause exposure to the Listed Chemicals.

13 24. Swisher knew that typical and reasonably foreseeable use of the Products would  
14 expose individuals to the Listed Chemicals and failed to provide a “clear and reasonable  
15 warning” to those individuals.

16 25. Continuing commission by Swisher of the acts alleged above have harmed and  
17 will continue to irreparably harm the citizens of the State of California, for which harm they  
18 have no plain, speedy, or adequate remedy at law.

19 26. By the above-described acts, Swisher is liable, pursuant to Cal. Health & Safety  
20 Code § 25249.7(b), for a civil penalty for each unlawful exposure to the Listed Chemicals  
21 from the Products.

22 27. Cal. Health & Safety Code § 25249.7(b) also specifically authorizes the Court  
23 to grant injunctive relief against Swisher as a consequence of the above-described acts.

24 **PRAYER FOR RELIEF**

25 28. Wherefore, Plaintiff accordingly prays for the following relief:

26 a. An assessment of civil penalties pursuant to Cal. Health & Safety Code §  
27 25249.7(b), against Swisher for each violation alleged herein;  
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1           b.     A preliminary and permanent injunction, pursuant to Cal. Health & Safety  
2 Code § 25249.7(b), enjoining Swisher from distributing or selling the Products in  
3 California without first providing a clear and reasonable warning that the users of the  
4 Products are exposed to the Listed Chemicals;

5           c.     An award to Plaintiff of her reasonable attorney's fees and costs of suit;

6           d.     Such other and further relief as may be just and proper.  
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8 Dated: August 22, 2019

/s/ Jack Fitzgerald

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