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FILED
ALAMEDA COUNTY
NOV 25 2015
CLERK OF THE SUPERIOR COURT
By Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED CIVIL JURISDICTION

MICHAEL DIPIRRO,

Plaintiff,

v.

SWAN PRODUCTS, LLC; LOWE'S COMPANIES, INC.; LOWE'S HIW, INC.; and DOES 1-150, inclusive,

Defendants.

Case No. RG15779713

~~[PROPOSED]~~ **JUDGMENT PURSUANT TO TERMS OF PROPOSITION 65 SETTLEMENT AND CONSENT JUDGMENT**

Date: November 10, 2015
Time: 9:00 a.m.
Dept. 16
Judge: Hon. Lawrence Appel

Reservation No. R-1656237

Plaintiff, Michael DiPirro, and defendant, Swan Products, LLC, having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a Consent Judgment, and following this Court's issuance of an Order approving this Proposition 65 settlement and Consent Judgment,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health and Safety Code section 25249.7(f)(4) and Code of Civil Procedure section 664.6, judgment is hereby entered in accordance with the terms of the Consent Judgment attached hereto as Exhibit 1. By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure section 664.6.

IT IS SO ORDERED.

Dated: 11/25/15

JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

David R. Bush, State Bar No. 154511
Jennifer Henry, State Bar No. 208221
Bush & Henry
3270 Mendocino Ave. #2E
Santa Rosa, CA 95403
Telephone: (707) 541-6255
Facsimile: (707) 676-4301

Attorneys for Plaintiff
Michael DiPirro

SUPERIOR COURT OF THE STATE OF CALIFORNIA

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[PROPOSED] CONSENT JUDGMENT

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

1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between plaintiff, Michael DiPirro ("DiPirro"), and Swan Products, LLC ("Defendant" or "Swan"), with DiPirro and Defendant individually referred to as a "Party" and collectively as the "Parties."

1.2 Plaintiff

DiPirro is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products.

1.3 Defendant

Defendant employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* ("Proposition 65").

1.4 General Allegations

DiPirro alleges that Defendant manufactures, imports, sells, or distributes for sale in the state of California, garden hoses containing phthalates known as DEHP and DINP without first providing the clear and reasonable exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical that is known to the State of California to cause cancer, birth defects and other reproductive harm. DINP is listed pursuant to Proposition 65 as a chemical that is known to the State of California to cause cancer.

1.5 Product Description

The products covered by this Consent Judgment are garden hoses containing DEHP and DINP that are manufactured, sold, or distributed for sale in California by Defendant, including, but not limited to, the *Swan Soft & Supple 5/8 in x 50 Ft Hose (UPC# 0 78627 85332 9)* ("Products").

1.6 Notice of Violation

On or about April 4, 2015, DiPirro served Defendant and certain requisite public enforcement agencies with a "60-Day Notice of Violation" ("Notice"), a document that informed the recipients of DiPirro's allegation that Defendant violated Proposition 65 by failing to warn its customers and

consumers in California that the Products expose users to DEHP and DINP. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.7 Complaint

On or about July 27, 2015, DiPirro filed the instant action against Defendant ("Complaint") for the alleged violations of Health & Safety Code § 25249.6 that are the subject of the Notice.

1.8 No Admission

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

1.9 Consent to Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in Alameda County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

1.10 Effective Date

For purposes of this Consent Judgment, the term "Effective Date" shall mean August 7, 2015.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Reformulation Commitment

Commencing on July 1, 2016 and continuing thereafter, except for Products bearing a warning as described in Section 2.3 below, Defendant shall only manufacture for sale or distribute for sale in California, Products that are reformulated ("Reformulated Products"). For purposes of this

Consent Judgment, Reformulated Products are Products that meet the Reformulation Standards of Section 2.2 below.

2.2 Reformulation Standard

For purposes of this Consent Judgment, "Reformulated Products" are defined as Products containing no more than 1,000 parts per million (0.1%) DEHP and no more than 1,000 parts per million (0.1%) DINP when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP or DINP content in a solid substance.

2.3 Product Warnings

Commencing on October 1, 2015 (the "Warning Effective Date"), for all Products that contain a chemical listed pursuant to Proposition 65, and are manufactured and shipped for sale in California by Defendant, Defendant shall provide a clear and reasonable warning as set forth below. Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which specific Product the warning applies, so as to minimize the risk of consumer confusion. Defendant shall use the following warning language beginning on the Effective Date:

WARNING: This product contains one or more chemicals known to the State of California to cause cancer, birth defects and other reproductive harm.

3. MONETARY PAYMENTS

3.1 Initial Civil Penalty. Defendant shall pay an initial civil penalty in the amount of $3,500 on or before the Effective Date. The penalty payment will be allocated by DiPirro's counsel in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to DiPirro. The initial penalty payment shall be delivered to the address listed in Section 3.3 below.

3.2 Final Civil Penalty. Defendant shall pay a final civil penalty of $7,500 on or before July 1, 2016. The final civil penalty shall be waived in its entirety, however, if, no later than July 1, 2016, an officer of Defendant provides DiPirro with written certification that, as of the date of such certification and continuing into the future, Defendant has met the reformulation standard specified in Section 2 above, such that all Products manufactured for sale in California by Defendant are Reformulated Products. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. The penalty payment will be allocated by DiPirro's counsel in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to DiPirro. The penalty payment or certification shall be delivered to the address listed in Section 3.3 below.

3.3 Payments Held in Trust. Payments shall be delivered to the Law Offices of David R. Bush, 3270 Mendocino Avenue, Suite 2E, Santa Rosa, CA 95403, and shall be in the form of three checks for the following amounts made payable to:

(a) "Law Office of David R. Bush" in the amount of $2,625 for payment to OEHHA. Law Office of David R. Bush agrees to forward such funds to OEHHA in a timely manner.

(b) "Law Office of David R. Bush" in the amount of $875 as payment to Michael DiPirro. David R. Bush agrees to forward such funds in a timely manner; and

(c) "Law Offices of David R. Bush" in the amount of $34,000, as payment for attorneys' fees and costs pursuant to Section 4 below.

3.3 Issuance of 1099 Forms. Defendant shall provide DiPirro's counsel with a separate 1099 forms for each of its payments under this Agreement as follows:

(a) "Office of Environmental Health Hazard Assessment", P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid;

(b) "Michael DiPirro," whose address and tax identification number shall be furnished upon request after this Agreement has been fully executed by the Parties for his portion of the civil penalties paid; and

(c) "Law Offices of David R. Bush," for fees and costs reimbursed pursuant to Section 4.

4. REIMBURSEMENT OF FEES AND COSTS

The parties acknowledge that DiPirro and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. The parties then attempted to (and did) reach an accord on the compensation due to OEHHA, DiPirro and his 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 of this agreement. Defendant shall pay $34,000 for fees and costs incurred as a result of investigating, bringing this matter to Defendant' attention, and negotiating a settlement in the public interest. Defendant shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the check payable to "David R. Bush, Attorney at Law" and shall deliver payment to the address listed in Section 3.3 above in two equal payments, as follows: $17,000 due on or before August 7, 2015; and $17,000 due on or before September 7, 2015.

5. CLAIMS COVERED AND RELEASED

5.1 DiPirro's Public Release of Proposition 65 Claims

DiPirro, acting on his own behalf and in the public interest, releases Defendant, and its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, and attorneys ("Defendant Releasees"), and each entity to whom it directly or indirectly distributes or sells Products, including, but not limited to, distributors, wholesalers, customers, retailers, specifically including Lowe's Companies, Inc., franchisees, cooperative members, licensors, and licensees ("Downstream Defendant Releasees"), from all claims for violations of Proposition 65 based on exposures to DEHP and DINP from Products manufactured by Defendant prior to the Warning Effective Date. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to DEHP and DINP from the Products sold by Defendant before the Warning Effective Date.

5.2 DiPirro's Individual Release of Claims

DiPirro, in his individual capacity only and *not* in his representative capacity, also provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of DiPirro of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to DEHP and DINP in the Products imported, manufactured, sold or distributed for sale by Defendant before the Effective Date.

In further consideration of the promises and agreements herein contained, DiPirro, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that he may have against Defendant and Defendant Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to DEHP and DINP from Products shipped from Defendant's manufacturing location for sale in California prior to the Warning Effective Date.

In addition, DiPirro, on behalf of himself, his attorneys, and his agents, waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims whether known or unknown, arising under Proposition 65, with respect to the Products.

5.3 Defendant's Release of DiPirro

Defendant, on their own behalf and on behalf of their past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have against DiPirro and his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by DiPirro and his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

6. COURT APPROVAL

This Consent Judgment is not effective until it is approved and entered by the Court and shall

be null and void if, for any reason, it is not approved and entered by the Court within one year after it has been fully executed by all Parties.

7. SEVERABILITY

If, subsequent to the execution of this Consent Judgment, any provision of this Consent Judgment is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

8. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the state of California and apply within the state of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Defendant may provide written notice to DiPirro of any asserted change in the law, and have no further obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products are so affected.

9. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Consent Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; or (iii) a recognized overnight courier on any party by the other party at the following addresses:

For Defendant Swan Products, LLC:

Robert S. Nicksin, Esq.
O'Melveny & Myers LLP
400 South Hope Street, Suite 1961
Los Angeles, CA 90071-2899

For DiPirro:

Bush & Henry
3270 Mendocino Avenue, Suite 2E
Santa Rosa, CA 95403

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.

10. COUNTERPARTS; FACSIMILE SIGNATURES

This Consent Judgment may be executed in counterparts, and by facsimile or 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.

11. POST EXECUTION ACTIVITIES

DiPirro agrees to comply with the reporting form requirements referenced in Health & Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety Code § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance of obtaining such approval, DiPirro and Defendant agree to mutually employ their best efforts, and that of their counsel, to support the entry of this agreement as a Consent Judgment, and to obtain judicial approval of the settlement in a timely manner.

12. ENFORCEMENT

Any Party may, after meeting and conferring, by motion or application for an order to show cause before this Court, enforce the terms and conditions contained in this Consent Judgment.

13. MODIFICATION

This Consent Judgment may be modified only by: (i) a written agreement of the Parties and upon entry of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or application of any Party and the entry of a modified consent judgment by the Court. Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to modify the Consent Judgment.

14. AUTHORIZATION

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

AGREED TO:

Date: 8-7-15

By: _____
Michael DiPirro

AGREED TO:

Date: _____

By: _____
_____, President
Swan Products, LLC

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AGREED TO:	**AGREED TO:**
Date:_____	Date: AUG 6, 2015
By:_____	By:_____
Michael DiPirro	MIGUEL NISTAL, President + CEO
	Swan Products, LLC