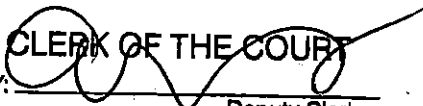


12  
Nicholas & Tomasevic, LLP  
Craig M. Nicholas (SBN 178444)  
Shawn A. Markley (SBN 291785)  
225 Broadway, 19th Floor  
San Diego, CA 92101  
Tel: 619-325-0492  
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Glick Law Group, PC.  
Noam Glick (SBN 251582)  
Kelsey McFarthy (SBN 365372)  
225 Broadway, Suite 2100  
San Diego, Ca. 92101  
Tel: 619-282-3400  
Attorneys for Plaintiff

**FILED**  
San Francisco County Superior Court

MAR 14 2017

CLERK OF THE COURT  
BY:   
Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

10 ARTHUR ZIVKOVIC, an individual  
11 Plaintiff,  
12 v.  
13 TEKNOR APEX COMPANY, a Delaware  
14 corporation; and DOES 1 through 100,  
15 inclusive  
16 Defendant.

Case No.: CGC 16-555270  
*HK*  
**[PROPOSED] JUDGMENT  
PURSUANT TO TERMS OF  
PROPOSITION 65 SETTLEMENT  
AND CONSENT JUDGMENT**  
Reservation No.: 01120314-09  
Date: March 14, 2017  
Time: 9:30 a.m.  
Dept.: 302  
Judge: Hon. Harold E. Kahn  
Case Filed: December 19, 2016  
Trial Date: None set

1 Plaintiff Arthur Zivkovic and defendant Teknor Apex Company, agreed through their  
2 respective counsel to enter judgment pursuant to the terms of their settlement in the form of a  
3 stipulated judgment ("Consent Judgment"). This Court's issued an Order approving the  
4 Proposition 65 settlement and Consent Judgment on March 14, 2017.

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

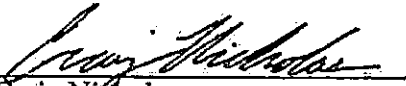
10  
11 **IT IS SO ORDERED.**

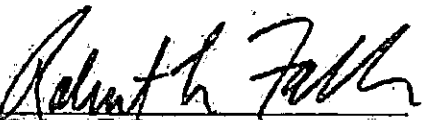
12  
13  
14 Dated: 3/14/17

  
\_\_\_\_\_  
Hon. Harold E. Kahn  
JUDGE OF THE SUPERIOR COURT

15  
16  
17 Approved as to form:  
18 **NICHOLAS & TOMASEVIC, LLP**

**MORRISON & FOERSTER LLP**

19  
20 By:   
21 Craig Nicholas  
Attorney for Plaintiff

By:   
Robert Falk  
Jerimiah Levine  
Attorneys for Defendant

CER-16-555290

# **EXHIBIT A**

1 **NICHOLAS & TOMASEVIC, LLP**  
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3 Shaun Markley (SBN 291785)  
4 225 Broadway, 19<sup>th</sup> Floor  
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6 Tel: (619) 325-0492  
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8 **GLICK LAW GROUP, PC**  
9 Noam Glick (SBN 251582)  
10 Kelsey McCarthy (SBN 305372)  
11 225 Broadway, Suite 2100  
12 San Diego, California 92101  
13 Tel: (619) 382-3400  
14 Fax: (619) 615-2193

15 Attorneys for Plaintiff  
16 Arthur Zivkovic

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 TEKNOR APEX COMPANY, a Delaware  
23 corporation, and DOES 1 through 100,  
24 inclusive,

25 Defendant.

Case No. CGC 16-555270

[PROPOSED] CONSENT JUDGMENT  
AS TO TEKNOR APEX COMPANY

1     **1. INTRODUCTION**

2             **1.1 Parties**

3             This Consent Judgment is entered into by and between plaintiff, Arthur Zivkovic,  
4     ("Zivkovic") on the one hand, and Teknor Apex Company ("Defendant") on the other hand, with  
5     Zivkovic and Defendant individually referred to as a "Party" and collectively as the "Parties."

6             **1.2 Plaintiff**

7             Zivkovic is an individual residing in California who seeks to promote awareness of  
8     exposures to chemicals.

9             **1.3 Defendant**

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

13            **1.4 General Allegations**

14            Zivkovic alleges that Defendant manufactures, imports, sells, or distributes for sale to  
15     consumers in the State of California garden hoses containing phthalates including Di(2-  
16     ethylhexyl)phthalate ("DEHP"); Di-isodecyl Phthalate ("DIDP"); Diisononyl Phthalate ("DINP")  
17     ("the Chemicals") without first providing the clear and reasonable exposure warning required by  
18     Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical that is known to the  
19     State of California to cause cancer and birth defects and other reproductive harm. DIDP is listed  
20     pursuant to Proposition 65 as a chemical that is known to the State of California to cause birth  
21     defects and other reproductive harm. DINP is listed pursuant to Proposition 65 as a chemical that  
22     is known to the State of California to cause cancer.

23            **1.5 Product Description**

24            The products covered by this Consent Judgment are garden hoses containing some or all  
25     of the Chemicals that are manufactured and/or distributed for authorized sale to consumers in  
26     California by Defendant, including, but not limited to:

27            Green Thumb Reinforced 3-Ply Vinyl Garden Hose 5/8" x 50' UPC # 305946

28            NeverKink 5/8" x 50' Premium Duty Hose UPC # 031724869253

1 NeverKink 5/8" x 25' Heavy Duty Hose UPC # 031724860526

2 Apex 5/8" x 50' Medium Duty Water Hose UPC # 031724853559

3 Green Thumb NeverKink Garden Hose 5/8" x 25' UPC # 156212

4 ("Products"). The Products include Products sold in Defendant's brand names (including those  
5 set forth above) and Products Defendant manufactures and/or distributes for authorized sale in  
6 California under private label arrangements entered into with retailers or others.<sup>1</sup>

7 **1.6 Notices of Violation**

8 On or about August 10, 2016, Zivkovic served Defendant and certain requisite public  
9 enforcement agencies with "60-Day Notices of Violation" ("Notices"), documents that informed  
10 the recipients of Zivkovic's allegation that Defendant violated Proposition 65 by failing to warn  
11 its customers and consumers in California that the Products expose users to the Chemicals.

12 **1.7 Complaint**

13 After the 60-day notice period was exhausted without an authorized public prosecutor of  
14 Proposition 65 having asserted such claims, Zivkovic filed the instant action against Defendant  
15 ("Complaint") for the alleged violations of Health & Safety Code § 25249.6 that are the subjects  
16 of the Notices.

17 **1.8 No Admission**

18 Defendant denies the material, factual, and legal allegations contained in the Notices and  
19 maintains that all of the products it has manufactured, or distributed for authorized sale in  
20 California, including the Products, have been, and are, in compliance with all laws, including  
21 Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by  
22 Defendant of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall  
23 compliance with this Consent Judgment constitute or be construed as an admission by Defendant  
24 of any fact, finding, conclusion of law, issue of law, or violation of law, the same being  
25  
26

27 <sup>1</sup> The latter include the Room Essentials Blue 50' Light-Duty Garden Hose UPC # 490842000069 ("Room Essentials  
28 Hose") marketed by Target Brands, Inc. ("Target"), which was the subject of a 60-day notice that Zivkovic issued to  
Target pursuant to Proposition 65 on or about November 4, 2016.

1 specifically denied by Defendant. This section shall not, however, diminish or otherwise affect  
2 Defendant's obligations, responsibilities, and duties under this Consent Judgment.

3 **1.9 Consent to Jurisdiction**

4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
5 jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in the City  
6 and County of San Francisco, and that this Court has jurisdiction to enter and enforce the  
7 provisions of this Consent Judgment.

8 **1.10 Effective Date**

9 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date on  
10 which Zivkovic serves notice on the Defendant and the Office of the California Attorney General  
11 that the Court has approved and entered this Consent Judgment.

12 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

13 By no later than the Compliance Date, and continuing thereafter, Defendant shall only  
14 manufacture and package for shipment to California, Products that meet the Reformulation  
15 Standard set forth in Section 2.1 below ("Reformulated Products") or which meet the warning  
16 requirements set forth in Section 2.2 below.<sup>2</sup>

17 **2.1 Reformulation Standard**

18 For purposes of this Consent Judgment, Reformulated Products are defined as Products  
19 for which the accessible portions of their poly vinyl chloride ("PVC") components (i.e., those that  
20 can be mouthed or touched by an ordinary consumer during reasonably foreseeable use) contain  
21 no more than 1,000 parts per million (0.1%) each of any of the following chemicals: Di-n-butyl  
22 Phthalate ("DBP"), DEHP, DIDP, DINP, Butyl benzyl phthalate ("BBP"), and Di-n-hexyl  
23 Phthalate ("DnHP") ("Listed Phthalates"). For purposes of determining compliance with this  
24 Consent Judgment, the content of Listed Phthalates shall be analyzed pursuant to EPA testing

25  
26 <sup>2</sup> Given seasonal design, manufacturing, and shipping cycles associated with garden hoses, to allow for the orderly  
27 implementation of the injunctive relief requirements set forth in this Consent Judgment, the "Compliance Date" shall  
28 mean July 31, 2017, or six (6) months following the Effective Date, whichever arises earlier. Products manufactured  
and packaged by Defendant prior to the Compliance Date are exempted from the requirements set forth in Sections  
2.1 and 2.2 above and may be offered for sale in California and sold through by downstream distributors, dealers, and  
retailers as is.

1 methodologies 3580A and 8270C or equivalent methodologies utilized by state or federal  
2 agencies for the purpose of determining Listed Phthalate content in a solid substance.

3 **2.2 Product Warnings**

4 For all Products that contain a Listed Phthalate in an amount exceeding the Reformulation  
5 Standard set forth in Section 2.1 above, and which are manufactured and packaged for shipment  
6 to California following the Compliance Date, Defendant shall provide the following Proposition  
7 65 warning:

8 **WARNING:** This product contains chemicals known to the State of California to  
9 cause cancer, and birth defects or other reproductive harm.<sup>3</sup>

10 The above warning statement shall be placed on the Product's package in at least ten (10) point  
11 font and either set within a box or separated from other warning text by at least one line so as to  
12 be able to be read and understood by an ordinary individual prior to purchase or use.

13 **2.3 Required Certification and Potential Penalty for Delay in Compliance**

14 By no later than October 31, 2017, Defendant shall provide a certification to Zivkovic  
15 confirming compliance with the injunctive relief provisions of this Consent Judgment in the  
16 manner specified above. In the event that Defendant fails to provide Zivkovic with the required  
17 certification, it shall, by no later than December 31, 2017, fully address any outstanding  
18 compliance requirements or terminate further distribution to California of the product lines in  
19 question and make an additional payment of \$15,000 to the Nicholas & Tomasevic, LLP Client  
20 Trust Account, which shall be paid in a single lump sum. The full \$15,000 shall constitute a  
21 penalty pursuant to California Health & Safety Code section 25249.7(b), such money to be  
22 apportioned by Plaintiff in accordance with California Health & Safety Code Section 25249.12.

23 **3. STATUTORY PENALTY PAYMENTS**

24 **3.1 Civil Penalty** Defendant shall pay \$5,000 in civil penalties pursuant to California  
25 Health & Safety Code § 25249.7(b) in accordance with this Section. This penalty payment shall

26 \_\_\_\_\_  
27 <sup>3</sup> Where only one Listed Phthalate exceeds the Reformulation Standard, Defendant may elect to have this warning  
28 statement refer to the word "chemical" in the singular. To the extent Defendant needs to address a requirement of a  
previous consent judgment, Defendant may also elect to include a reference to lead in the foregoing warning  
statement.



1 be allocated in accordance with California Health & Safety Code § 25249.12(c)(l) and (d), with  
2 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment  
3 (“OEHHA”) and the remaining 25% of the penalty remitted to Zivkovic. More specifically,  
4 within ten (10) business days of the Effective Date, Defendant shall issue two separate checks  
5 for the civil penalty payment to (a) “OEHHA” in the amount of \$3,750 and with the memo line  
6 on the check indicating “Prop 65 Penalties Zivkovic v. Teknor” (Defendant may reference  
7 OEHHA’s Tax Identification Number of 68-0284486 for this check); and (b) Nicholas &  
8 Tomasevic LLP Trust Account” in the amount of \$1,250 (for which Zivkovic shall provide  
9 Defendant a completed IRS Form W-9 with a tax identification number within two days  
10 following the Effective Date, if not beforehand). These checks shall be delivered to the  
11 addresses listed in Section 3.3 below.

12 **3.2 Payment Delivery**

13 (a) Payment to Zivkovic shall be delivered to the following address:

14 Craig Nicholas  
15 Nicholas & Tomasevic  
16 225 Broadway, 19th Floor  
San Diego, CA 92101

17 (b) Payment to OEHHA shall be delivered to one of the following addresses:

18 For United States Postal Service Delivery:

19 Mike Gyurics  
20 Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
21 P.O. Box 4010  
Sacramento, CA 95812-4010

22 Or

23 For Non-United States Postal Service Delivery:

24 Mike Gyurics  
25 Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
26 1001 I Street  
Sacramento, CA 95814

1     **4. REIMBURSEMENT OF FEES AND COSTS**

2             Defendant shall pay Zivkovic \$45,000 for fees and costs incurred as a result of  
3     investigating, bringing this matter to Defendant’s attention, and negotiating a settlement in the  
4     public interest. Defendant shall make its checks payable to Nicholas & Tomasevic, LLP and shall  
5     deliver payment to the address listed in Section 3(a) above within ten (10) business days of the  
6     Effective Date. To facilitate timely payment, Zivkovic shall provide Defendant with a completed  
7     IRS Form W-9 with Nicholas & Tomasevic’s tax identification number within two days  
8     following the Effective Date if not beforehand.

9     **5. CLAIMS COVERED AND RELEASED**

10            **5.1 Zivkovic’s Public Release of Proposition 65 Claims**

11            Zivkovic, acting on his own behalf and in the public interest, releases Defendant, and its  
12     affiliated entities, directors, officers, employees, and attorneys (“Defendant Releasees”), and each  
13     entity to whom they directly or indirectly distribute or sell Products, including, but not limited to,  
14     distributors, wholesalers, dealers, customers, retailers, franchisees, cooperative members,  
15     licensors, and licensees (including, without limitation, Lowe’s Home Centers, LLC, True Value  
16     Company, and The Home Depot) (“Downstream Defendant Releasees”), from all claims for  
17     violations of Proposition 65 based on exposures to the Chemicals from Products manufactured  
18     and packaged by Defendant prior to the Effective Date.<sup>4</sup>

19            **5.2 Zivkovic’s Private Releases of Claims**

20            Zivkovic, in his individual capacity only, also provides a release herein which shall be  
21     effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,  
22     obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of  
23     any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising out  
24     of alleged or actual exposures to any of the chemicals listed under Proposition 65 (including but  
25     not limited to the Listed Phthalates) in the Products. In this regard, Zivkovic hereby

26  
27  
28     <sup>4</sup> Following the Effective Date, compliance with the terms of this Consent Judgment shall be deemed compliance with Proposition 65 with respect to exposures to the Chemicals from the Products.

1 acknowledges that he is familiar with Section 1542 of the California Civil Code, which provides  
2 as follows:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
4 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE  
5 TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST  
6 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

7 **5.3 Defendant's Release of Zivkovic**

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

14 **6. COURT APPROVAL**

15 This Consent Judgment is not effective until it is approved and entered by the Court and  
16 shall be null and void if, for any reason, it is not approved and entered by the Court within one  
17 year after it has been fully executed by all Parties unless the Parties mutually agree to extend that  
18 time period due to what they mutually agree are reasonably unforeseeable circumstances.

19 **7. SEVERABILITY**

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

23 **8. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the State of  
25 California and apply within the State of California. In the event that Proposition 65 is repealed or  
26 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then  
27 Defendant may provide written notice to Zivkovic of any asserted change in the law and have no  
28

1 further obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the  
2 Products are so affected.

3 9. **NOTICES**

4 Unless specified herein, all correspondence and notices required to be provided pursuant  
5 to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class  
6 (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any  
7 Party by the other Party to the following addresses:

8 For Defendant Teknor Apex Company:

9 Gilles F. Blanchette  
10 Teknor Apex Company  
11 505 N Central Avenue  
12 Pawtucket, RI 02852

13 *With a copy to:*

14 Robert Falk  
15 RFalk@mofo.com  
16 Morrison & Foerster LLP  
17 425 Market Street, 32nd Floor  
18 San Francisco, CA 94105

19 For Zivkovic:

20 Noam Glick  
21 Glick Law Group  
22 225 Broadway, Suite 2100  
23 San Diego, CA 92101

24 *AND:*

25 Craig Nicholas  
26 Nicholas & Tomasevic, LLP  
27 225 Broadway, 19th Floor  
28 San Diego, CA 92101

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.

1    **10. COUNTERPARTS; FACSIMILE SIGNATURES**

2           This Consent Judgment may be executed in counterparts and by facsimile or portable  
3 document format (PDF) signature, each of which shall be deemed an original, and all of which,  
4 when taken together, shall constitute one and the same document.

5    **11. POST EXECUTION ACTIVITIES**

6           Zivkovic agrees to comply with the reporting form requirements referenced in Health &  
7 Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety  
8 Code § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement  
9 manifested in this Consent Judgment. In furtherance of obtaining such approval, Zivkovic shall  
10 file and serve a noticed motion for approval of this Consent Judgment within sixty (60) days of its  
11 execution by all Parties and assure that the Office of the California Attorney General is served  
12 with said motion and all supporting papers at least forty-five (45) days prior to the scheduled  
13 hearing thereon. Defendant agrees to support the entry of this Consent Judgment once such  
14 motion has been filed.

15   **12. ENFORCEMENT**

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

19   **13. MODIFICATION**

20           This Consent Judgment may be modified only by: (i) a written agreement of the Parties  
21 and upon entry, following at least twenty-one (21) days' notice to the Office of the Attorney  
22 General, of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or  
23 application of any Party, which shall also be served on the Office of the California Attorney  
24 General with at least twenty-one (21) days' notice, and the entry of a modified consent judgment  
25 by the Court. Any Party seeking to modify this Consent Judgment shall attempt in good faith to  
26 meet and confer with all affected Parties prior to filing a motion to modify the Consent Judgment.  
27  
28

1 14. **AUTHORIZATION**

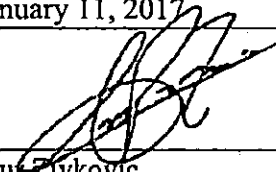
2 The undersigned are authorized to execute this Consent Judgment on behalf of their  
3 respective Parties and have read, understood and agreed to all of the terms and conditions of this  
4 Consent Judgment.

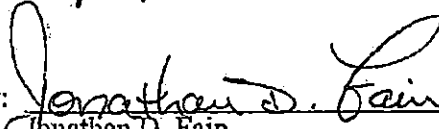
5 **AGREED TO:**

**AGREED TO:**

6 Date: January 11, 2017

6 Date: 1/12/17

7  
8 By:   
9 Arthur Zivkovic

8 By:   
9 Jonathan D. Fain  
10 Chairman and Chief Operating Officer  
11 Teknor Apex Company

13 **IT IS SO ORDERED:**

14  
15 Dated: \_\_\_\_\_

\_\_\_\_\_ Judge of the Superior Court

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