

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 1501  
(03-01)

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

**REPORT OF SETTLEMENT**

Please print or type required information

Original Filing     Supplemental Filing     Corrected Filing

<b>PARTIES TO THE ACTION</b>	PLAINTIFF(S) <b>Arthur Zivkovic, an individual</b>		
	DEFENDANT(S) INVOLVED IN SETTLEMENT <b>Wells Lamont LLC, a Delaware corporation</b>		
<b>CASE INFO</b>	COURT DOCKET NUMBER <b>CGC-16-556079</b>		COURT NAME <b>San Francisco Superior Court</b>
	SHORT CASE NAME <b>Zivkovic v. Wells Lamont LLC</b>		
<b>REPORT INFO</b>	INJUNCTIVE RELIEF <b>Placement of a clear and reasonable warning label on covered products</b>		
	PAYMENT: CIVIL PENALTY <b>\$5,000.00</b>	PAYMENT: ATTORNEYS FEES <b>\$50,000</b>	PAYMENT: OTHER 
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL	DATE SETTLEMENT SIGNED <b>01 / 17 / 2017</b>
	<b>COPY OF SETTLEMENT MUST BE ATTACHED</b>		
<b>FILER INFO</b>	NAME OF CONTACT <b>Cassandra Inzunza</b>		
	ORGANIZATION <b>Glick Law Group, P.C.</b>		TELEPHONE NUMBER <b>((619)) 382-3400</b>
	ADDRESS <b>225 Broadway, Suite 2100</b>		FAX NUMBER <b>((619)) 615-2193</b>
	CITY <b>San Diego</b>	STATE    ZIP <b>CA 92101-5014</b>	E-MAIL ADDRESS <b>cassie@glicklawgroup.com</b>

**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 settlement 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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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 WELLS LAMONT LLC, a Delaware  
23 corporation

24 Defendant.

25 Case No. CGC-16-556079

26 **[PROPOSED] CONSENT JUDGMENT**

27 (Health & Safety Code § 25249.6 *et seq.* and  
28 Code Civ. Proc. § 664.6 )

1     **1. INTRODUCTION**

2             **1.1 Parties**

3             This Consent Judgment is entered into by and between Arthur Zivkovic (“Zivkovic”) and Wells  
4 Lamont LLC (“Wells Lamont”) (collectively the “Parties”).

5             **1.2 Plaintiff**

6             Zivkovic is an individual residing in California and acting in the interest of the general public.  
7 He seeks to promote awareness of exposures to toxic chemicals and to improve human health by  
8 reducing or eliminating hazardous substances contained in consumer products.

9             **1.3 Defendant**

10            Wells Lamont employs ten or more individuals and is a “person in the course of doing business”  
11 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code  
12 section 25249.6 *et seq.* (“Proposition 65”).

13            **1.4 General Allegations**

14            Zivkovic alleges that Wells Lamont manufactures, imports, sells, and distributes for sale in  
15 California PVC Work Gloves, Winter Lining, Blue that contain Diisononyl phthalate (“DINP”).  
16 Zivkovic further alleges that Wells Lamont does so without providing a sufficient health hazard  
17 warning as required by Proposition 65 and related Regulations. Pursuant to Proposition 65, Diisononyl  
18 phthalate (“DINP”) is listed as a chemical known to cause cancer.

19            **1.5 Product Description**

20            For purposes of this Consent Judgment “Products” are defined as PVC Work Gloves, Winter  
21 Lining, Blue containing DINP that are manufactured, imported, sold, or distributed for sale in  
22 California by Wells Lamont.

23            **1.6 Notices of Violation**

24            On August 10, 2016, Zivkovic served Wells Lamont, True Value Company, the California  
25 Attorney General, and all other required public enforcement agencies with a 60-Day Notice of  
26 Violation of California Health and Safety Code section 25249.6 *et seq.* (“Notice”). The Notice alleged  
27 that Wells Lamont violated Proposition 65 by failing to sufficiently warn consumers in California of  
28 the health hazards associated with exposures to DINP contained in the Products.

1 No public enforcer has commenced or is otherwise prosecuting an action to enforce the  
2 violations alleged in the Notice.

3 **1.7 Complaint**

4 On 12/20/2016, Zivkovic filed a Complaint against Wells Lamont for the alleged violations  
5 of Health and Safety Code section 25249.6 that are the subject of the Notice (“Complaint”).

6 **1.8 No Admission**

7 Wells Lamont denies the material, factual, and legal allegations in the Notices and Complaint,  
8 and maintains that all of the products it has manufactured, imported, sold, and/or distributed for sale in  
9 California, including the Products, have been, and are, in compliance with all laws. Nothing in this  
10 Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of  
11 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an admission  
12 of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not,  
13 however, diminish or otherwise affect Wells Lamont’s obligations, responsibilities, and duties under  
14 this Consent Judgment.

15 **1.9 Jurisdiction**

16 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this  
17 Court has jurisdiction over Wells Lamont as to the allegations in the Complaint, that venue is proper  
18 in the County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions  
19 of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

20 **1.10 Effective Date**

21 For purposes of this Consent Judgment, the term “Effective Date” means the date on which the  
22 Court grants the motion for approval of this Consent Judgment, as discussed in Section 5.

23 **2. INJUNCTIVE RELIEF**

24 **2.1 Reformulation of the Product**

25 Commencing six (6) months after the Effective Date, and continuing thereafter, Wells Lamont  
26 shall only ship, sell, or offer for sale in California, reformulated Product pursuant to Section 2.2 or  
27 Product that is labeled with clear and reasonable warning pursuant to Section 2.3. For purposes of this  
28

1 Consent Judgment, a “Reformulated Product” is Product that meets the standard set forth in Section  
2 2.2 below.

### 3 **2.2 Reformulation Standard**

4 “Reformulated Product” shall mean Product that contains less than or equal to 1,000 parts per  
5 million (“ppm”) of DINP when analyzed pursuant to CPSC-CH-C1001-09.3 Standard Operating  
6 Procedure for Determination of Phthalates method.

### 7 **2.3 Clear and Reasonable Warnings**

8 Commencing six (6) months after the Effective Date and continuing thereafter, Wells Lamont  
9 shall, for all Product it sells or distributes and which is intended for sale in California that is not a  
10 Reformulated Product, or which Wells Lamont has reason to believe will be shipped or sold in  
11 California, provide clear and reasonable warnings as set forth in Proposition 65 and related Regulations.  
12 The warning shall be prominently placed with such conspicuousness as compared with other words,  
13 statements, designs, or devices as to render it likely to be read and understood by an ordinary individual  
14 under customary conditions before purchase or use. Each warning shall be provided in a manner such  
15 that the consumer or user is reasonably likely to understand to which Product the warning applies, so  
16 as to minimize confusion.

17 With new Regulations set to take effect in 2018, Wells Lamont has the option, without  
18 limitation, to use the language set forth in the current Regulations<sup>1</sup> or the language set forth in the 2018  
19 Regulations.<sup>2</sup> In the event that the Office of Environmental Health Hazard Assessment promulgate one  
20 or more regulations requiring or permitting warning text and/or methods of transmission different than  
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26 <sup>1</sup> 27 CCR § 25603.2 [Repealed Operative August 30, 2018]: “**WARNING:** This product may  
27 contain a chemical known to the State of California to cause cancer or birth defects or other  
28 reproductive harm.”

<sup>2</sup> 27 CCR § 25603 [Operative August 30, 2018]: “**WARNING:** This product can expose you  
to chemicals, including DINP. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).”

1 those set forth above, Wells Lamont shall be entitled to use, at its discretion, such other warning text  
2 and/or method of transmission without being deemed in breach of this Consent Judgment.

3 **2.4 Sell-Through Period**

4 Notwithstanding anything else in this Settlement Agreement, the Products that were  
5 manufactured prior to six (6) months after the Effective Date shall be subject to the release of liability  
6 pursuant to Section 4 of this Consent Judgment, without regard to when such Products were, or are in  
7 the future, distributed or sold to customers. As a result, the obligations of Wells Lamont, or any of its  
8 parents, subsidiaries, affiliates, or downstream retailers as set forth in this Consent Judgment, including  
9 but not limited to Section 2, do not apply to these products manufactured prior to six (6) months after  
10 the Effective Date.

11 **3. MONETARY SETTLEMENT TERMS**

12 **3.1 Settlement Amount**

13 Wells Lamont shall pay fifty-five thousand dollars (\$55,000) in settlement and total satisfaction  
14 of all the claims referred to in the Notice, the Complaint, and this Consent Judgment. This includes  
15 civil penalties in the amount of five thousand dollars (\$5,000) pursuant to Health and Safety Code  
16 section 25249.7(b) and attorney's fees and costs in the amount of fifty thousand dollars (\$50,000)  
17 pursuant to Code of Civil Procedure section 1021.5.

18 The portion of the settlement attributable to civil penalties shall be allocated according to Health  
19 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid  
20 to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining  
21 twenty-five percent (25%) of the penalty paid to Zivkovic.

22 The portion of the settlement attributable to attorney's fees and costs shall be paid to Zivkovic's  
23 counsel. Zivkovic is entitled to all attorney's fees and costs incurred by him in this action, including  
24 but not limited to investigating potential violations, bringing this matter to Wells Lamont's attention,  
25 as well as litigating and negotiating a settlement in the public interest.

26 Wells Lamont shall provide its payment in one check payable to Nicholas & Tomasevic, LLP,  
27 Zivkovic's counsel. Zivkovic's counsel shall be responsible for delivering OEHHA's and Zivkovic's  
28 portions of the penalty paid under this Consent Judgment.

1           **3.2     Payment Procedures**

2           **(a)     Issuance of Payments.** Payments shall be delivered as follows:

3           No later than fourteen (14) calendar days from the Effective Date, all payments required by  
4 this Consent Judgment shall be delivered to:

5                               Nicholas & Tomasevic, LLP  
6                               225 Broadway, 19<sup>th</sup> Floor  
7                               San Diego, CA 92101

8           **(b)     Copy of Payments to OEHHA.** Zivkovic’s counsel agrees to provide Wells  
9 Lamont with a copy of the checks payable to OEHHA, as proof of payment to OEHHA.

10          **4.     CLAIMS COVERED AND RELEASED**

11           **4.1     Zivkovic’s Public Release of Proposition 65 Claims**

12           For any claim or violation arising under Proposition 65 alleging a failure to warn about  
13 exposures to DINP from Products manufactured, imported, sold, or distributed by Wells Lamont prior  
14 to the Effective Date, Zivkovic, acting on his own behalf and in the public interest, releases Wells  
15 Lamont of any and all liability. This includes Wells Lamont’s parents, subsidiaries, affiliated entities  
16 under common ownership, its directors, officers, agents, employees, attorneys, and each entity to  
17 whom Wells Lamont directly or indirectly distributes or sells the Products, including but not limited  
18 to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and  
19 licensees (collectively, the “Releasees”). Compliance with the terms of this Consent Judgment  
20 constitutes compliance with Proposition 65 with respect to the alleged or actual failure to warn about  
21 exposures to DINP from Products manufactured, imported, sold, or distributed by Wells Lamont after  
22 the Effective Date. This Consent Judgment is a full, final and binding resolution of all claims that  
23 were or could have been asserted against Wells Lamont and/or Releasees for failure to provide  
24 warnings for alleged exposures to DINP contained in Products.

25           **4.2     Zivkovic’s Individual Release of Claims**

26           Zivkovic, in his individual capacity, also provides a release to Wells Lamont and/or Releasees,  
27 which shall be a full and final accord and satisfaction of as well as a bar to all actions, causes of action,  
28 obligations, costs, expenses, attorney’s fees, damages, losses, claims, liabilities, and demands by

1 Zivkovic of any nature, character, or kind, whether known or unknown, suspected or unsuspected,  
2 arising out of alleged or actual exposures to DINP in Products manufactured, imported, sold, or  
3 distributed by Wells Lamont before the Effective Date.

4 **4.3 Wells Lamont's Release of Zivkovic**

5 Wells Lamont, on its own behalf, and on behalf of Releasees as well as its past and current  
6 agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against  
7 Zivkovic and his attorneys and other representatives, for any and all actions taken or statements made  
8 by Zivkovic and his attorneys and other representatives, whether in the course of investigating claims,  
9 otherwise seeking to enforce Proposition 65 against it, in this matter or with respect to the Products.

10 **5. COURT APPROVAL**

11 This Consent Judgment is not effective until it is approved and entered by the Court and shall  
12 be null and void if it is not approved and entered by the Court within one year after it has been fully  
13 executed by the Parties, or by such additional time as the Parties may agree to in writing.

14 **6. SEVERABILITY**

15 Subsequent to the Court's approval and entry of this Consent Judgment, if any provision is held  
16 by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

17 **7. GOVERNING LAW**

18 The terms of this Consent Judgment shall be governed by the laws of the state of California and  
19 apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise  
20 rendered inapplicable for reason, including but not limited to changes in the law, then Wells Lamont  
21 may provide written notice to Zivkovic of any asserted change, and shall have no further injunctive  
22 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are  
23 so affected.

24 **8. NOTICE**

25 Unless specified herein, all correspondence and notice required by this Consent Judgment shall  
26 be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail, return receipt  
27 requested; or (iii) a recognized overnight courier to the following addresses:  
28



1 For Wells Lamont:

2 George Gigounas, Esq.  
3 DLA PIPER LLP  
4 555 Mission Street, Suite 2400  
San Francisco, California 94105-2933

For Zivkovic:

Nicholas & Tomasevic, LLP  
225 Broadway, 19th Floor  
San Diego, CA 92101

5 Any Party may, from time to time, specify in writing to the other, a change of address to  
6 which all notices and other communications shall be sent.

7 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

8 This Consent Judgment may be executed in counterparts and by facsimile signature, each of  
9 which shall be deemed an original, and all of which, when taken together, shall constitute one and the  
10 same document.

11 **10. POST EXECUTION ACTIVITIES**

12 Zivkovic agrees to comply with the reporting form requirements referenced in Health and  
13 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety  
14 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement,  
15 which motion Zivkovic shall draft and file. In furtherance of obtaining such approval, the Parties agree  
16 to mutually employ their best efforts, including those of their counsel, to support the entry of this  
17 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For  
18 purposes of this Section, "best efforts" shall include, at a minimum, supporting the motion for approval,  
19 responding to any objection that any third-party may make, and appearing at the hearing before the  
20 Court if so requested.

21 **11. MODIFICATION**

22 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and  
23 entry of a modified consent judgment thereon by the Court; or (ii) a successful motion or application  
24 of any Party, and the entry of a modified consent judgment thereon by the Court.

25 **12. AUTHORIZATION**

26 The undersigned are authorized to execute this Consent Judgment and acknowledge that they  
27 have read, understand, and agree to all of the terms and conditions contained herein.  
28

1 **AGREED TO:**

2 Date: January 17, 2017

3  
4 By:   
5 ARTHUR ZIVKOVIC

**AGREED TO:**

Date: JANUARY 17, 2017

By:   
MICHAEL SETTEEDUCATE [print name]  
Wells Lamont LLC

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