

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Arthur Zivkovic and Swan Products, LLC.

This Settlement Agreement is entered into by and between Arthur Zivkovic (“Zivkovic”) and Swan Products, LLC (“Swan”), each a “Party” and collectively the “Parties.” Zivkovic is an individual that resides in the State of California, and seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products.

For purposes of this settlement, Swan stipulates that it is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code section 25249.6, et seq. (“Proposition 65”).

1.2 General Allegations

Zivkovic alleges that Swan has manufactured, distributed, and/or sold in the State of California hoses containing Di-isodecyl phthalate (“DIDP”), Diisononyl phthalate (“DINP”), and/or Di(2-ethylhexyl)phthalate (“DEHP”) (“Listed Chemicals”), chemicals known to the State of California as chemicals that cause cancer and/or reproductive harm, without the requisite Proposition 65 warning.

1.3 Product Description

The products covered by this Settlement Agreement are hoses, including, but not limited to, the Element Industrial Pro 5/8 in. Dia x 50 ft. Lead Free Garden Hose, HDX 5/8 in. Dia x 50ft. Light-Duty Water Hose, and DHX 5/8 in. Dia x 15ft. Remnant Garden Hose (the “Products”), manufactured, distributed, sold and/or offered for sale in California by Swan or other Releasees (defined below) that contain the Listed Chemicals.



1.4 Notices of Violation

On December 30, 2016 and February 13, 2017, Zivkovic served Swan and various public enforcement agencies with documents entitled "Proposition 65 Notice of Violation" (the "Notices") regarding the Products. The Notices provided Swan and others, including public enforcers, with notice that alleged that Swan was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that the Products expose users in California to the Listed Chemicals. No public enforcer has diligently prosecuted the allegations set forth in the Notices.

1.5 No Admission

Swan denies the material factual and legal allegations contained in the Notices, and maintains that, to the best of its knowledge, all products that are or have been sold and distributed in California, including the Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Swan of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Swan of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Swan. Notwithstanding the allegations in the Notices, Swan maintains that it has not knowingly and intentionally violated Proposition 65.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is fully executed by all of the Parties.



2. **INJUNCTIVE RELIEF**

2.1 **Compliance Date**

Beginning six months from the Effective Date, Swan shall, for Products that Swan manufactures, assembles, distributes, supplies, sells or procures after the Effective Date that are distributed, marketed, sold or shipped for sale in the State of California, comply with the requirements of Section 2.2 or 2.3 of this Agreement. Notwithstanding any other provision of this agreement, this section shall not apply to Products that are already in the stream of commerce as of the Effective Date.

2.2 **Reformulation Option**

The Products shall be deemed to comply with Proposition 65 with regard to the Listed Chemicals and be exempt from any Proposition 65 warning requirements for the Listed Chemicals if the Products contain the Listed Chemicals in a concentration less than or equal to 1,000 parts per million ("ppm") (0.1%) for any accessible component part. For purposes of this Settlement Agreement, accessible component part shall mean components of the Product to which a person would be exposed to the Listed Chemicals by direct contact during normal use of the Products.

2.3 **Warning Alternative**

In the alternative, the Products shall be deemed to comply with Proposition 65 with regard to the Listed Chemicals if the Products are accompanied by a "Compliant Warning," as described below in this section.

The Parties agree that any of the following warnings shall constitute a Compliant Warning for the Listed Chemical in the Products:



(a) the text, "**WARNING: This product contains a chemical known to the State of California to cause cancer, birth defects or other reproductive harm**" as provided by existing regulations; or

(b) the text, "**WARNING: This product can expose you to chemicals including DEHP, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov**." accompanied by and placed to the right of a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline sized to be no smaller than the word, "WARNING" as provided by regulations adopted on or about August 30, 2016; or

(d) the text, "**WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov**." accompanied by and placed to the right of a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline sized to be no smaller than the word, "WARNING" as provided by regulations adopted on or about August 30, 2016.

(e) the yellow equilateral triangle required of sections 3.3(b) and (c) of this Settlement Agreement shall resemble the following:



The Parties agree that the Compliant Warnings are consistent with Proposition 65 and its regulations as of the date of this Settlement Agreement and regulations adopted on or about August 30, 2016 to become effective August 30, 2018, and that the provision of

A handwritten signature in blue ink, located in the bottom right corner of the page. The signature is stylized and appears to be a single name.

a warning required of this Settlement Agreement constitutes compliance with Proposition 65 as to the Listed Chemicals in the Products distributed and/or sold by Releasees (as defined below) after the Effective Date. If modifications or amendments to Proposition 65 or its regulations after the Effective Date are inconsistent with, or provide warning specifications or options different from, the Compliant Warnings, Swan may modify the content and delivery methods of its warnings to conform to the modified or amended provisions of Proposition 65 or its regulations. If Proposition 65 warnings for the Listed Products should no longer be required, Swan shall have no further obligations pursuant to this Settlement Agreement.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Swan shall pay a total of \$1,000 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (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 Zivkovic. Each penalty payment shall be delivered to the addresses listed in Section 3.2 below.

3.1 Civil Penalty

Within ten (10) business days of the Effective Date, Swan shall issue two separate checks for the initial civil penalty payment (a) to “OEHHA” in the amount of \$750 and (b) to “Glick Law Group” for Zivkovic in the amount of \$250. All penalty payments shall be delivered to the addresses listed in Section 3.2 below.



3.2 Payment Procedures

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

(i) All payments owed to Zivkovic, pursuant to Section 3.1 shall be delivered to the following payment address:

Noam Glick
Glick Law Group
225 Broadway, Suite 2100
San Diego, CA 92101

(ii) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 3.1 shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

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

(b) Copy of Payments to OEHHA. Swan agrees to provide, upon request, Zivkovic's counsel with a copy of the checks payable to OEHHA, simultaneous with its penalty payments to Zivkovic, to be delivered to the address provided in Section 3.2(a)(i), as proof of payment to OEHHA.



(c) **Tax Documentation.** Swan agrees to provide a completed IRS 1099 for its payments to, and Zivkovic agrees to provide IRS W-9 forms for, each of the following payees under this Settlement Agreement:

(i) “Arthur Zivkovic” whose address and tax identification number shall be provided within five (5) business days after the Effective Date;

(ii) “Glick Law Group” (EIN: 47-1838518) at the address provided in Section 3.2(a)(i); and

(iii) “Office of Environmental Health Hazard Assessment” 1001 I Street, Sacramento, CA 95814.

4. REIMBURSEMENT OF FEES AND COSTS

Swan shall reimburse Zivkovic’s counsel \$19,000 for Zivkovic’s fees and costs incurred as a result of investigating and bringing this matter to Swan’s attention, and negotiating a settlement in the public interest. The Payment shall be made payable by check to Glick Law Group and sent no later than ten (10) business days after the Effective Date to the following addresses:

Noam Glick
Glick Law Group
225 Broadway, Suite 2100
San Diego, CA 92101

5. RELEASE OF ALL CLAIMS

5.1 Release of Swan

This Settlement Agreement is a full, final and binding resolution between Zivkovic, acting on his own behalf, and Swan, of any violation of Proposition 65 that was or could have been asserted by Zivkovic or on behalf of his past and current agents,



representatives, attorneys, successors, and/or assigns (“Releasers”) for failure to provide warnings for alleged exposures to the Listed Chemicals contained in the Products, and Releasers hereby release any such claims against Swan and its parents, subsidiaries, affiliated entities, divisions, shareholders, members, marketplaces, directors, officers, agents, employees, insurers, attorneys, predecessors, successors and assignees, and each entity to whom Swan directly or indirectly distributes or sells the Products, including, but not limited to, any upstream or downstream distributors, wholesalers, customers, retailers including, but not limited to, The Home Depot (collectively, the “Releasees”), from all claims for violations of Proposition 65 based on their failure to warn about alleged exposures to the Listed Chemicals contained in Products manufactured, distributed, sold and/or offered for sale by Swan to customers and consumers in the State of California before the Effective Date, including Products sold by a non-Swan Releasee after the Effective Date. As to alleged exposure to the Listed Chemicals from the Products, compliance with the terms of this Settlement Agreement resolves any issue, now and in the future, concerning compliance by Swan and the Releasees, with the requirements of Proposition 65 with respect to the Products and any alleged resulting exposure.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section 3 and 4 above, Zivkovic, on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that he may have, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys’ fees, expert fees, and



investigation fees, and costs), damages, losses, liabilities and demands against any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged or actual exposure to the Listed Chemicals in the Products.

5.2 Swan's Release of Zivkovic

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

5.3 California Civil Code Section 1542

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notices and relating to the Products will develop or be discovered. Zivkovic on behalf of himself only, on one hand, and Swan on behalf of itself only, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in Sections 5.1 and 5.2 above may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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



Zivkovic and Swan each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

5.4 Deemed Compliance with Proposition 65

As noted in Section 5.1, compliance by Swan with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to the Listed Chemicals in the Products.

5.5 Public Benefit

It is Swan's understanding that the commitments it has agreed to herein, and actions to be taken by Swan under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure section 1021.5 and Cal. Admin. Code tit. 11, section 3201. As such, it is the intent of Swan that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Swan's failure to provide a warning concerning exposure to the Listed Chemicals with respect to the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that Swan is in material compliance with this Settlement Agreement.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected but only to the extent the deletion of the provision deemed unenforceable does not materially



affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the law 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, Swan shall provide written notice to Zivkovic of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

8. NOTICES

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

For Swan:

Sean Newland
Greenberg Traurig, LLP
1201 K Street, Suite 1100
Sacramento, CA 95814

Michael Klaes, CFO
Swan Products, LLC
 7840 ROSWELL ROAD, B100, SUITE 130
 SANDY SPRINGS, GA 30340

For Zivkovic:

Noam Glick
Glick Law Group, P.C.
225 Broadway, Suite 2100
San Diego, CA 92101

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

9. COUNTERPARTS: SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or .pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Zivkovic agrees to comply with the reporting requirements referenced in Health & Safety Code section 25249.7(f).

11. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the Parties.

12. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the subject matter hereof, and any and all prior discussions, negotiations, commitments, and understandings related thereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

13. PUBLICITY

Each Party agrees that, except as required by law, it will not issue any statements or releases of any kind regarding this Settlement Agreement without the prior written consent of the other Party.



14. AUTHORIZATION

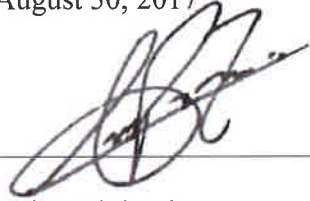
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

AGREED TO:


AGREED TO:

Date: August 30, 2017

Date: 9/21/17

By: 

Arthur Zivkovic

By: 

Swan Products, LLC