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ENDORSED
FILED
ALAMEDA COUNTY
MAY 17 2016

CLERK OF THE SUPERIOR COURT
By *S. P. Sko*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,

12 Plaintiff,

13 vs.

14 FLEXIBLE TECHNOLOGIES, INC.
15 d/b/a HI-TECH DURAVENT,

16 Defendant.

Case No.:

JP
RG16816115

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

(Violation of Health & Safety Code §25249.5
et seq.)

17 Plaintiff Anthony Ferreiro ("Plaintiff" or "Ferreiro"), by and through his attorneys,
18 alleges the following cause of action in the public interest of the citizens of the State of
19 California.

20 **BACKGROUND OF THE CASE**

21 1. Plaintiff brings this representative action on behalf of all California citizens to
22 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified
23 at the Health and Safety Code § 25249.5 *et seq.* ("Proposition 65"), which reads, in relevant part,
24 "[n]o person in the course of doing business shall knowingly and intentionally expose any
25 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
26 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

27 2. This complaint is a representative action brought by Plaintiff in the public interest
28 of the citizens of the State of California to enforce the People's right to be informed of the health
hazards caused by the exposure to Di(2-ethylhexyl) phthalate (DEHP) and Diisononyl phthalate

1 (DINP), toxic chemicals found in hoses sold and/or distributed by defendant Flexible
2 Technologies, Inc. d/b/a Hi-Tech Duravent (“Flexible Technologies” or “Defendant”) in
3 California.

4 3. DEHP is a harmful chemical known to the State of California to cause cancer and
5 reproductive toxicity. On January 1, 1988 the State of California listed DEHP as a chemical
6 known to the State to cause cancer and it has come under the purview of Proposition 65
7 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§
8 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical
9 known to cause reproductive toxicity. *Id.*

10 4. DINP is a harmful chemical known to the State of California to cause cancer. On
11 December 20, 2013, the State of California listed DINP as a chemical known to cause cancer and
12 it has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit.
13 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

14 5. Proposition 65 requires all businesses with ten (10) or more employees that
15 operate within California or sell products therein to comply with Proposition 65 regulations.
16 Included in such regulations is the requirement that businesses must label any product containing
17 a Proposition 65-listed chemical with a “clear and reasonable” warning before “knowingly and
18 intentionally” exposing any person to it.

19 6. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
20 to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety
21 Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin
22 the actions of a defendant which “violate or threaten to violate” the statute. Health & Safety
23 Code § 25249.7.

24 7. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,
25 and/or offers for sale, without the required warning, vacuum and/or ducting hoses containing
26 DINP and/or DEHP, specifically including, but not limited to, (1) Dura Flex 8025CVD ducting
27 hoses, and (2) Metro Vac ‘N’ Blo 500 Jr. vacuum hoses, UPC No. 031275105213 (the
28 “Products”).

1 California citizens to DINP and DEHP contained in the Products without proper warning, subject
2 to a private action to Defendant and to the California Attorney General's office and the offices of
3 the County District attorneys and City Attorneys for each city with a population greater than
4 750,000 persons wherein the herein violations allegedly occurred

5 19. The Notice complied with all procedural requirements of Proposition 65 including
6 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at
7 least one person with relevant and appropriate expertise who reviewed relevant data regarding
8 DEHP and DINP exposure, and that counsel believed there was meritorious and reasonable cause
9 for a private action.

10 20. After receiving the Notice, and to Plaintiff's best information and belief, none of
11 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted
12 a cause of action against Defendant under Proposition 65 to enforce the alleged violations which
13 are the subject of Plaintiff's notice of violation.

14 21. Plaintiff is commencing this action more than sixty (60) days from the date of her
15 notice to Defendant, as required by law.

16 **FIRST CAUSE OF ACTION**

17 **(By Plaintiff against Defendant for the Violation of Proposition 65)**

18 22. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 21 of
19 this complaint as though fully set forth herein.

20 23. Defendant has, at all times mentioned herein, acted as a manufacturer, distributor,
21 and/or retailer of the Products.

22 24. The Products contain either DEHP or DINP, both a hazardous chemical found on
23 the Proposition 65 list of a chemicals known to be hazardous to human health.

24 25. The Products do not comply with the Proposition 65 warning requirements.

25 26. Plaintiff, based on his best information and belief, avers that at all relevant times
26 herein, and at least since June 4, 2015, continuing until the present, that Defendant has continued
27 to knowingly and intentionally expose California users and consumers of the Products to DEHP
28 and/or DINP without providing required warnings under Proposition 65.

1 27. The exposures that are the subject of the July 7 Notice result from the purchase,
2 acquisition, handling and recommended use of the Metro Vac 'N' Blo 500 Jr. Consequently, the
3 primary route of exposure to these chemicals is through skin exposure. Skin Exposure to DINP
4 through the user's hands is likely to occur when the user attaches and manipulates the hose
5 during vacuuming. The exhaust air containing DINP is discharged from the vacuum exhaust
6 during use and the vapor phase DINP can potentially be ingested by the user. DINP from the
7 flexible hose can absorb onto dust, soils, or debris passing through the hose which potentially
8 can be resuspended in the air and ingested during removal and changing the paper bag filter from
9 the vacuum canister. Finally, while mouthing of the product does not seem likely, some amount
10 of exposure through ingestion can occur by handling the product during use and removal with
11 subsequent touching of the user's hand to mouth.

12 28. The exposures that are the subject of the July 27 Notice result from the purchase,
13 acquisition, handling and recommended use of the Dura Flex 8025CVD ducting hoses.
14 Consequently, the primary route of exposure to these chemicals is through direct skin contact
15 with the product during installation. Skin exposure through the user's hands is likely to occur
16 when the user installs the flexible hose during without adequate glove protection. Should the
17 ducting hose be used to vent air into an indoor environment, exposure and subsequent intake of
18 gas-phase DEHP that has leached from the inside of the ducting hose into the air stream is
19 possible. This discharged air containing gas-phase DEHP can also absorb DEHP to fine
20 particulates (dust) in the indoor space. This dust containing DEHP can be suspended in the air
21 and subsequently ingested by people occupying the interior space. If the discharge hose is
22 installed in a space that is accessible to interior air circulation (i.e., if not installed in the interior
23 of a wall or under subflooring) DEHP exposure is possible as the ducting hose will slowly emit
24 DEHP into the air or DEHP product. Finally, while mouthing of the product does not seem
25 likely, some amount of exposure through ingestion can occur by handling the product during
26 installation with subsequent touching of the user's hand to mouth.

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