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ENDORSED  
FILED  
San Francisco County Superior Court

DEC 22 2016

CLERK OF THE COURT

BY: DE LA VEGA-NAVARRO, Rossaly  
Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF SAN FRANCISCO**

ARTHUR ZIVKOVIC, an individual

Plaintiff,

v.

FLEXON INDUSTRIES CORPORATION, a  
New Jersey corporation; and DOES 1 through  
100, inclusive;

Defendant.

Case No.:

**CGC 16-556136**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

**I.**  
**INTRODUCTION**

1. This Complaint is a representative action brought by Plaintiff in the public interest of the citizens of the State of California. Plaintiff seeks to enforce the People's right to be informed of the presence of Di(2-ethylhexyl)phthalate ("DEHP"), Di-n-butyl phthalate ("DBP"), Di-isodecyl phthalate ("DIDP"), and Diisononyl phthalate ("DINP"), toxic chemicals known to the state of California to cause cancer or reproductive toxicity found in garden hoses manufactured, distributed, and/or otherwise sold by Defendants in California including, but not limited to, the following:\*

Product	UPC No.	Exposure
FLEXON 5/8" x 50' Light Duty Garden Hose	04488266053	DEHP; DBP DIDP DINP

\*All such products containing DEHP, DIDP, DBP, and/or DINP ("Listed Chemicals") shall hereinafter be referred to as the "PRODUCT."

**BY FAX**



1 consumer products. He brings this action in the public interest pursuant to Cal. Health & Safety Code  
2 § 25249.7.

3 11. Defendant FLEXON INDUSTRIES CORPORATION (“Flexon”) is a corporation  
4 organized and existing under the laws of the State of New Jersey. Flexon does business in California,  
5 County of San Francisco, within the meaning of the California Health & Safety Code section 25249.11.  
6 Flexon manufactures, imports, sells, or distributes Products in California and San Francisco County.

7 12. The true names of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff.  
8 Plaintiff sues these Defendants by fictitious names. Plaintiff is informed and believes, and on that basis  
9 alleges, that each fictitiously named defendant is responsible for the acts and occurrences herein  
10 alleged. When ascertained, their true names shall be reflected in an amended complaint.

11 13. At all times mentioned, Flexon and DOES 1 through 100, inclusive (collectively  
12 “Defendants”) were the agents, alter egos, servants, joint venturers, joint employers, or employees for  
13 each other. Defendants acted with the consent of the other Co-Defendants and acted within the course,  
14 purpose, and scope of their agency, service, or employment. All conduct was ratified by Defendants,  
15 and each of them.

16 **III.**  
17 **VENUE AND JURISDICTION**

18 14. California Constitution Article VI, Section 10 grants the Superior Court original  
19 jurisdiction in all cases except those given by statute to other trial courts. The Health & Safety Code  
20 statute upon which this action is based does not give jurisdiction to any other court. As such, this Court  
21 has jurisdiction.

22 15. Venue is proper in San Francisco County Superior Court pursuant to Code of Civil  
23 Procedure Sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this  
24 County. Defendant conducted and continues to conduct business in this County as it relates to Products.

25 16. Defendant has sufficient minimum contacts in the State of California or otherwise  
26 purposefully avails itself of the California market. Exercising jurisdiction over Defendant would be  
27 consistent with traditional notions of fair play and substantial justice.

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1 **FIRST CAUSE OF ACTION**

2 **(Violation of Proposition 65 – Against all Defendants)**

3 17. Plaintiff incorporates by reference each and every allegation contained above.

4 18. Proposition 65 mandates that citizens be informed about exposures to chemicals that  
5 cause cancer, birth defects, and other reproductive harm.

6 19. Defendants manufactured, imported, sold, and/or distributed the PRODUCT containing  
7 Listed Chemical in violation of California Health & Safety Code Section 25249.6 et seq. Plaintiff is  
8 informed and believes such violations have continued after receipt of the Notice and will continue to  
9 occur into the future.

10 20. In manufacturing, importing, selling, and/or distributing the PRODUCT, Defendants  
11 failed to provide a clear and reasonable warning to consumers and individuals in California who may  
12 be exposed to the Listed Chemicals through reasonably foreseeable use of the PRODUCT.

13 21. The PRODUCT exposes individuals to the Listed Chemicals through dermal absorption,  
14 ingestion, and inhalation.

15 22. Defendants knew or should have known that the PRODUCT contains Listed Chemicals  
16 and exposes individuals to Listed Chemicals in the ways provided above.

17 23. Defendants' actions in this regard were deliberate and not accidental.

18 24. On August 10, 2016, Plaintiff provided Defendant a 60-Day Notice of Violation  
19 ("Notice"), as required by and in compliance with Proposition 65. This Notice was provided to the  
20 various required public enforcement agencies and contained a certificate of merit. The Notice alleged  
21 that Defendants violated Proposition 65 by failing to sufficiently warn consumers in California of the  
22 health hazards associated with exposure to Listed Chemicals contained in the PRODUCT.

23 25. The appropriate public enforcement agencies provided with the Notice failed to  
24 commence and diligently prosecute a cause of action against Defendant.

25 26. Individuals exposed to the Listed Chemicals contained in the PRODUCT through  
26 dermal absorption, ingestion, and inhalation resulting from reasonably foreseeable use of the  
27 PRODUCT have suffered and continue to suffer irreparable harm. There is no other plain, speedy, or  
28 adequate remedy at law.

