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Attorneys for Plaintiff
Arthur Zivkovic

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

ARTHUR ZIVKOVIC, an individual

Plaintiff,

v.

METROPOLITAN VACUUM CLEANER
COMPANY, INC., a New Jersey corporation,
and DOES 1 through 100, inclusive,

Defendant.

Case No.: **CGC 17-557831**
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

BY FAX
ONE LEGAL LLC

**ENDORSED
FILED**
Superior Court of California
County of San Francisco
MAR 29 2017
CLERK OF THE COURT
BY: **ROSSALY DELAVEGA**
Deputy Clerk

1 **I. INTRODUCTION**

2 1. This Complaint is a representative action brought by Plaintiff Arthur Zivkovic
3 (“Zivkovic”) in the public interest of the citizens of the State of California. Plaintiff seeks to enforce
4 the People’s right to be informed of the presence of di(2-ethylhexyl) phthalate (“DEHP”), di-isodecyl
5 phthalate (“DIDP”), and diisononyl phthalate (“DINP”) (collectively “Listed Chemicals”) found in
6 certain PVC air hoses that are manufactured, imported, sold, or distributed for sale in California by
7 Defendant.

8 2. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California
9 Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of doing
10 business shall knowingly and intentionally expose any individual to a chemical known to the state to
11 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
12 individual. . . .” (Health & Saf. Code, § 25249.6.)

13 3. California identified and listed DEHP as a chemical known to cause birth defects or
14 other reproductive harm as well as cancer as early as January 1, 1988. California listed DIDP as a
15 chemical known to cause birth defects as early as April 20, 2007. California also identified and listed
16 DINP as a chemical known to cause cancer and birth defects as early as December 20, 2013.

17 4. The PVC air hoses manufactured, imported, sold, and/or distributed in California
18 contain prohibited levels of the Listed Chemicals. This includes the Metro Air Force PVC Standard
19 Flexible Hose, 6 ft., Black Item Model # P101-276, ASIN B003WGUMTI. All such air hoses
20 containing the Listed Chemicals shall be referred to as “Products.”

21 5. Defendant failed to sufficiently warn consumers and individuals in California about
22 potential exposure to the Listed Chemicals in connection with Defendant’s manufacture, import, sale,
23 and/or distribution of Products. This is a violation of Proposition 65.

24 6. Plaintiff seeks injunctive relief compelling Defendant to provide consumers and
25 individuals in California with sufficient warning pursuant to Proposition 65 and related Regulations.
26 (Health & Saf. Code, § 25249.7, subd. (a).) Plaintiff also seeks civil penalties against Defendant for
27 its violations of Proposition 65. (Health & Saf. Code, § 25249.7, subd. (b).)
28

1 **II. PARTIES**

2 7. Plaintiff is a citizen of the State of California dedicated to protecting the health of
3 California citizens through the elimination or reduction of toxic exposure from consumer products. He
4 brings this action in the public interest pursuant to California Health and Safety Code section 25249.7.

5 8. Defendant Metropolitan Vacuum Cleaner Company, Inc. (“Metropolitan Vacuum” or
6 “Defendant”) is a corporation organized and existing under the laws of the state of New Jersey.
7 Metropolitan Vacuum does business in the County of San Francisco, California, within the meaning of
8 California Health and Safety Code section 25249.11. Metropolitan Vacuum manufactures, imports,
9 sells, and/or distributes Products in California and San Francisco County.

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

14 10. At all times mentioned, Defendants were the agents, alter egos, servants, joint venturers,
15 joint employers, or employees for each other. Defendants acted with the consent of the other Co-
16 Defendants and acted within the course, purpose, and scope of their agency, service, or employment.
17 All conduct was ratified by Defendants, and each of them.

18 **III. VENUE AND JURISDICTION**

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

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

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

FIRST CAUSE OF ACTION
(Violation of Proposition 65 – Against all Defendants)

14. Plaintiff incorporates by reference each and every allegation contained above.

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

16. Defendant manufactured, imported, sold, and/or distributed Products containing the Listed Chemicals in violation of California Health and Safety Code section 25249.6 *et seq.* Plaintiff is informed and believes that such violations have continued after receipt of the Notice and will continue to occur into the future.

17. In manufacturing, importing, selling, and/or distributing Products, Defendant failed to provide a clear and reasonable warning to consumers and individuals in California who may be exposed to the Listed Chemicals through reasonably foreseeable use of the Products.

18. The Products expose individuals to the Listed Chemicals through dermal absorption, ingestion, and inhalation.

19. Defendant knew or should have known that the Products contain the Listed Chemicals and exposed individuals to the Listed Chemicals in the ways provided above.

20. Defendant's actions in this regard were deliberate and not accidental.

21. On December 7, 2016, Plaintiff provided Defendant a 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. The Notice was provided to the various required public enforcement agencies and contained a certificate of merit. The Notice alleged that Defendant violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to the Listed Chemicals contained in the Products.

22. The appropriate public enforcement agencies that were provided with the Notice failed to commence and diligently prosecute a cause of action against Defendant.

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

1 24. Defendant is liable for a maximum civil penalty of \$2,500 per day for each violation of
2 Proposition 65 pursuant to California Health and Safety Code section 252497, subdivision (b).
3 Injunctive relief is also appropriate pursuant to California Health and Safety Code section 25249.7,
4 subdivision (a).

5 **PRAYER FOR RELIEF**

6 Wherefore, Plaintiff prays for judgment against Defendants, and each of them, as follows:

- 7 1. Civil penalties in the amount of \$2,500 per day for each violation;
 - 8 2. A preliminary and permanent injunction against Defendant from manufacturing,
9 importing, selling, and/or distributing Products in California without providing a clear
10 and reasonable warning as required by Proposition 65 and related Regulations;
 - 11 3. Reasonable attorney's fees and costs of suit; and
 - 12 4. Such other and further relief as may be just and proper.
- 13

14 Dated: March 29, 2017

GLICK LAW GROUP, P.C.



17 By: _____

Noam Glick
Kelsey D. McCarthy

Attorneys for Plaintiff

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