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ENDORSED
FILED
San Francisco County Superior Court

AUG 12 2004

GORDON PARK-LI, Clerk
BY: GREG CHUCK
Deputy Clerk

9 Attorneys for Plaintiff
10 CENTER FOR ENVIRONMENTAL HEALTH

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO
14

15 CENTER FOR ENVIRONMENTAL HEALTH,)
16 a non-profit corporation, in the public interest)
17 and on behalf of the general public,)
18 Plaintiff)
19 v.)
20 TEKNI-PLEX, INC., et al.,)
21 Defendants.)

22 Case No.: CGC-03-424940
23
24 NOTICE OF ENTRY OF ORDER AND
25 CONSENT JUDGMENT AS TO
26 CERTAIN DEFENDANTS
27 Date: August 6, 2004
28 Dept.: 302
Judge: Hon. Ronald E. Quidachay
Complaint Filed: September 30, 2003

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1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 Please take notice that on August 6, 2004, the Court granted Plaintiff's Motion
3 For Approval and Entry of Proposition 65 Consent Judgment as to Defendants Tekni-Plex, Inc.,
4 Plastic Specialties and Technologies, Inc., Flexon Industries Corporation, and Teknor Apex
5 Company in the above-referenced case. Please take further notice that on August 10, 2004, the
6 Court entered the Consent Judgment Regarding Defendants Tekni-Plex, Inc., Plastic Specialties
7 and Technologies, Inc., Flexon Industries Corporation, and Teknor Apex Company. A copy of
8 the Order and Consent Judgment are attached as Exhibits A and B, respectively.

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11 Dated: August 10, 2004

Respectfully submitted,

12 LEXINGTON LAW GROUP, LLP

13
14 

15 Eric S. Somers, Esq.
16 Attorneys for Plaintiff
17 CENTER FOR ENVIRONMENTAL HEALTH

EXHIBIT A

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10 CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED
FILED
San Francisco County Superior Court
AUG 10 2004
BY: GORDON PARK-LI, Clerk
Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO

13 CENTER FOR ENVIRONMENTAL HEALTH,)
14 a non-profit corporation, in the public interest)
15 and on behalf of the general public,)
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Plaintiff,

v.

TEKNI-PLEX, INC.; *et al.*,

Defendants.

Case No. CGC-03-424940

~~PROPOSED~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR
APPROVAL AND ENTRY OF
PROPOSITION 65 CONSENT
JUDGMENT AS TO CERTAIN
DEFENDANTS

Date: August 6, 2004
Time: 9:30 a.m.
Dept.: 302
Judge: Honorable Ronald E. Quidachay

Complaint Filed: September 30, 2003

1 On August 6, 2004, at 9:30 a.m., Plaintiff Center for Environmental Health's
2 ("CEH's") Motion for Approval of Settlement and Entry of Judgment As To Defendants Tekni
3 Plex, Inc., Plastic Specialities and Technologies, Inc., Flexon Industries Corporation, and Teknor
4 Apex Company (collectively, "Settling Defendants") came on regularly for hearing before this
5 court in Department 302, the Honorable Ronald E. Quidachay, presiding. After full
6 consideration of the points and authorities and related pleadings submitted, and having heard oral
7 arguments of counsel, the Court rules as follows:

8 IT IS HEREBY ORDERED that CEH's Motion for Approval and Entry of
9 Consent Judgment is GRANTED. Pursuant to, and in accordance with Health & Safety Code
10 §25249.7(f)(4), the Court makes the following findings with respect to the Consent Judgment
11 agreed to by the parties, a copy of which is attached hereto as Exhibit 1:

- 12 1. The warnings required by this Consent Judgment comply with the requirements of
13 Proposition 65;
- 14 2. The attorneys' fee award in the Consent Judgment is reasonable under California
15 law; and
- 16 3. The payment in lieu of penalty in the Consent Judgment is reasonable based on
17 the criteria listed in Health & Safety Code §25249.7(b)(2).

18
19 In light of the findings set forth herein, the Consent Judgment is hereby APPROVED.

20
21 **IT IS SO ORDERED.**

22
23 Dated: August 10, 2004

24
25 **DONALD S. MITCHELL**
26 _____
27 JUDGE OF THE SUPERIOR COURT
28

EXHIBIT A

Sampling Method for Assuring Compliance

1. This compliance assurance method will apply to all Products the Settling Defendants manufacture except those that are not manufactured with materials potentially capable of leaching lead into the internal water carrying cavity of the Product pursuant to the attached testing protocol (e.g., Products which do not have a material containing lead lying adjacent to their internal water carrying cavity).
2. The initial demonstration that a specified reformulation criterion has been achieved by the required date will be based on twelve months of test data collected pursuant to the attached protocol prior to the compliance date in question (the "Initial Demonstration"). Once compliance has initially been demonstrated at a level of <50 ppb (assuming a Proposition 65 warning will continue to be given) or <25 ppb (in the event that the Settling Defendant elects not to continue to provide a Proposition 65 warning), the compliance demonstration at that level will need to continue to be made for four (4) subsequent annual periods pursuant to a reduced testing schedule, at which point it will be deemed to be sustained (the "Confirmatory Demonstration").
3. Except as provided below, demonstration that a specified reformulation criterion has been achieved pursuant to the Initial Demonstration or sustained pursuant to the Confirmatory Demonstration will be based on a compilation of *all* test data from the Products tested within each annual period pursuant hereto.
4. For purposes of the Initial Demonstration and Confirmatory Demonstration, Products of the same materials composition whose internal water carrying cavity is manufactured in the same manner and which differ only in size or external appearance, will be deemed to be the same Product.
5. The Initial Demonstration. To ensure consistency in manufacturing and quality control, initially, for each reformulation compliance date (July 2005, 2006 and 2007), a minimum of five (5) samples per month will be collected during the preceding 12-month period. To further account for any differences in manufacturing variability, random samples will initially be collected during each four (4) month period in accordance with the schedule.

identified below. The same schedule will then be repeated for two (2) ensuing four (4) month periods. When individual sampling dates fall on a "non-operating" day (including days on which sampling equipment or personnel are unavailable), samples for that date will be collected the next "operating" day, with no other change in the sampling schedule.

<u>Month</u>	<u>Calendar Dates</u>
First	1, 5, 12, 18, 24
Second	2, 6, 13, 19, 25
Third	3, 8, 14, 20, 26
Fourth	4, 9, 15, 22, 27

[Same Sampling Cycle Repeats for Months 5-8 and 9-12]

6. The Confirmatory Demonstration. To ensure ongoing consistency in manufacturing and quality control, following the Initial Demonstration relative to achievement of the <50 ppb compliance level (assuming a Proposition 65 warning will continue to be given) or the <25 ppb compliance level (in the event that the Settling Defendant elects not to continue to provide a Proposition 65 warning), a minimum of four (4) random samples per month will be collected during at least three (3) non-consecutive months of each subsequent 12-month period for the next four (4) years.
7. Compliance with the applicable reformulation criterion will be deemed initially achieved when at least 90% of twelve prior months of test data produces a concentration of not greater than the reformulation criterion specified for the forthcoming time period in question. Further testing under this Sampling Method will not be required when at least 90% of each of five (5) prior years of test data (collected from the Initial and Confirmatory Demonstrations described above) produces a concentration of not greater than the reformulation criterion in question. However, a Settling Defendant will still required to ensure through their own quality assurance method/program that the Products will continue to be compliant with the lead leaching limit set forth in Section 2.4 or 2.1 of this Consent Judgment as applicable.

8. If, subsequent to completing this effort, a Settling Defendant intends to introduce a Product which is not of the same materials composition as Products for which compliance has already been assured, they will assess such Product(s) separately pursuant to this Sampling Method to ensure that the applicable reformulation criteria will be met. Also if a Settling Defendant ever wishes to sell a Product without a Proposition 65 warning, they will initially need to assess such Product(s) pursuant to the above to ensure that it consistently meets a criterion of <25 ppb for at least twelve prior months; once the warning is discontinued, the Settling Defendant will need to sustain that showing for four (4) subsequent years pursuant to the Confirmatory Demonstration.
9. This compliance assurance program may be discontinued for any Product (or family of Products) for which data has demonstrated that the requirements set forth in Paragraph 7 above has been met at a level of <50 ppb (assuming a Proposition 65 warning will continue to be given) or <25 ppb (in the event that the Settling Defendant elects not to continue to provide a Proposition 65 warning).
10. Settling Defendants shall maintain records concerning their compliance with the terms of this method, including all test data and associated laboratory reports, for at least 3 years following the date on which compliance has been deemed sustained.

Testing Protocol

I. **Objective:** To standardize the evaluation of lead concentration resulting in water that remains standing in water hoses. This protocol does not produce data that characterizes lead content in water that flows freely through water hoses.

II. **Method:**

A. **Length of Hose** - Approximately 1 liter of water is desired for laboratory analysis. Difficulty in filling test hoses is likely when the test water used is not introduced under pressure. A 5/8" inner diameter hose of 25 feet has the potential to produce approximately 1.5 liters of test water, and will be used under this protocol. If excess test water is produced, it may be discarded.

B. **Hose Preparation** - Pre-conditioning of test hoses will be accomplished as follows:

1. Flush the hose to be tested for thirty minutes with tap water.
2. Fill the hose, and hold for one hour. Hoses and test water are to be tested at 90° F ($\pm 4^\circ$ F allowing for variability within the lab) during the holding period.
3. Flush the hose again for thirty minutes again.
4. Repeat steps 1 - 3 twice more, for a total of three complete flush cycles.
5. Fill the hose with distilled or de-ionized water having a pH of 7.5 ± 0.5 ("test water"), discard, and proceed to step C below.

C. **Test Sample** - Immediately following the pre-conditioning steps described above, a test sample will be obtained as follows:

1. Begin the test by filling the hose with test water. Hoses and test water are to be tested at 90° F ($\pm 4^\circ$ F allowing for variability within the lab). Record the time that filling has been completed ("test start time").
2. Cap both ends of the hose. To avoid having an influence on test results, end caps should be of a material that is "lead free."
3. At sixteen (16) hours after test start time, drain the test water

from the hose into a laboratory-supplied sample container. If a funnel or other device is used to facilitate transfer into the sample container, ensure that it is "lead free" and that it has been thoroughly rinsed and cleaned with distilled or de-ionized water prior to use.

- D. Test Parameter - Laboratory analysis will be for lead.
- E. Test Method - The analytical test procedures employed will be EPA approved test methods for determining lead concentrations in drinking water supplies [ASTM D 3559-96D (furnace atomic absorption), SM 3113.B (electro thermal atomic absorption spectrometry or EPA Method 200.8 (ICP-MS)]. Test results are to be reported as parts per billion (ppb) of lead.

EXHIBIT B

WARNING

This hose contains chemicals,
including lead, known to the state
of California to cause cancer,
birth defects and other
reproductive harm.

*Do not drink water from this hose.
Wash hands after use.*

WARNING: This hose contains chemical(s), including lead, known to the State of California to cause cancer, birth defects and other reproductive harm.
Do not drink water from this hose. Wash hands after use.

EXHIBIT C

WARNING

This product contains a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

Formula 27[®]

All-Weather Rubber/Vinyl Reinforced Garden Hose

For watertight connections, be sure weather
hoses are cut and is made properly before
connecting to water supply.

DO NOT USE WITH HOT WATER.

The manufacturer will replace this product if any
defect in workmanship or materials prevents its
ordinary use despite reasonable care.

STOCK NO. SNZ768050 FS42061
©2003 Calcoflex Plastics Co.



MADE IN U.S.A.



0 73627 58272 8
NOTICE BEFORE USE, SEE BACK OF PACKAGE
FOR IMPORTANT PRODUCT INFORMATION.

swan[®]



50FT 5/8IN

Formula 27[®] All-Weather Rubber/Vinyl Reinforced Garden Hose



This product is made
of recycled materials.

Warning: This product contains lead, a chemical known to the
State of California to cause cancer and birth defects or other
reproductive harm. Wash hands after handling.

Strong, durable construction
Lifetime warranty



COLOXITE
WaterWorks
 AMERICA'S #1 GARDEN HOSE MANUFACTURER

Colortite Plastics Co.
 Ridgeland, NJ 07657
 Style WM69558075

\$22.88

Premium Garden Hose

Super Flex

COMMERCIAL
OCTAGONAL
SNAP-ON COUPLING

Kink free

Super flexible year round for easy handling
 Potential finer hose construction for continuous water flow

Strong, durable construction

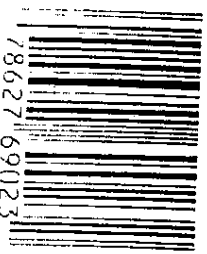
Lifetime warranty

WARNING: This product contains lead, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm. *Wash hands after handling.*



The Recycled Content of this product is 100%.

75'
5/8"



For more information
on this product, call 800 331-6849

Pour tout renseignement supplémentaire sur
ce produit, appelez le: 800 331-6849.

Para más información sobre este producto,
llamar al 800 331-6849.



This product is made
in whole or part from
recycled materials.

Ce produit est
fabriqué en tout ou
partie à partir de
matériaux recyclés.

Este producto está
hecho en su totalidad
o en parte con
materiales reciclados.

WARNING: Do not spray water into an electrical outlet. Severe electrical shock could result.

WARNING: Many garden hoses are manufactured partially from recycled materials and require brass or metal components. As a result, the State of California requires the following statement:

WARNING: This product contains a chemical known to the State of California to cause cancer, birth defects and other reproductive harm.

WARNING: **△ DO NOT DRINK FROM THIS HOSE**, because all garden hoses can come into contact with harmful chemicals sometimes used with nozzles, garden sprayers, or chemicals used on lawns. The inside of the hose is dark, damp and warm and bacteria can form. Therefore we suggest that you run water through the hose until the water is cool before use.

Backed by Swan's **NON-COMMERCIAL WARRANTY**

When used for residential, non-commercial purposes, this product is warranted against any defect in workmanship or materials

EXCEPT AS EXPRESSLY STATED, SWAN MAKES NO WARRANTY, EXPRESS OR IMPLIED, WHETHER OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE. Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you.

IN NO EVENT SHALL SWAN BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

This warranty gives you specific legal rights, and you may also have other rights which vary from state to state

This offer is valid for non-commercial use only

NCW

AVERTISSEMENT: N'aspergez pas une prise électrique avec de l'eau. Il pourrait en résulter une commotion électrique sévère.

AVERTISSEMENT: Beaucoup de tuyaux de jardin sont fabriqués à partir de matériaux recyclés et comportent des composants en laiton ou autre métal. En conséquence l'état de Californie demande l'émission de cet avertissement:

AVERTISSEMENT: Ce produit contient un produit chimique catalogué par l'état de Californie comme pouvant provoquer cancer, anomalie congénitale ou dommages affectant la reproduction.

AVERTISSEMENT: **△ NE BUVEZ PAS** à ce tuyau, car tous les tuyaux de jardin peuvent entrer en contact avec des produits chimiques dangereux parfois utilisés avec les lances, les pulvérisateurs de jardin, ou avec des produits utilisés pour les gazons. L'intérieur du tuyau est sombre, humide et chaud, et des bactéries peuvent s'y développer. C'est pourquoi nous vous suggérons de faire couler l'eau dans le tuyau jusqu'à ce qu'elle sorte fraîche avant de l'utiliser.

Supporté par la garantie NON-commerciale de Swan

Quando il est utilisé à des fins résidentielles, non commerciales, ce produit est garanti contre tous défauts dus aux matériaux ou à la main d'œuvre

Sauf comme expressément exprimé, Swan ne donne aucune garantie, formelle ou tacite, quant à la valeur marchande ou à l'adéquation à un usage particulier. Certaines provinces ne permettant pas la limitation sur la durée des garanties tacites, la limitation précédente peut ne pas être applicable pour vous.

En aucun cas Swan ne pourra être tenu pour responsable pour tous dommages spéciaux, indirects, accessoires ou imprévus. Certaines provinces ne permettant pas l'exclusion ou la limitation des dommages accessoires ou imprévus, la limitation ou l'exclusion précédente peut ne pas être applicable pour vous.

Cette garantie vous octroie des droits légaux spécifiques, et vous pourriez également avoir d'autres droits qui varient d'une province à l'autre.

Cette offre n'est valide que pour l'utilisation non commerciale uniquement.



ADVERTENCIA: No rocíe agua dentro de los tomacorrientes. Puede producir una descarga eléctrica grave.

ADVERTENCIA: Muchas mangueras de jardín están construidas parcialmente con materiales reciclados y requieren componentes de latón o metal. Como resultado, el Estado de California requiere se efectúe la declaración que sigue.

ADVERTENCIA: Este producto contiene un producto químico que el Estado de California reconoce como causante de cáncer, defectos de nacimiento y otros daños reproductivos.

ADVERTENCIA: **△ NO BEBA DESDE ESTA MANGUERA**, porque todas las mangueras de jardín pueden entrar en contacto con productos químicos a veces usados en las boquillas y rociadores de jardín o productos químicos usados en los parques. El interior de la manguera es oscuro, húmedo y caliente, lo que puede generar bacterias. Por lo tanto, sugerimos que, antes de usarla, haga correr agua a través de la manguera hasta que se enfríe.

Respaldo por la GARANTIA NO COMERCIAL de Swan

Quando lo use con fines residenciales no comerciales, este producto está garantizado contra todo defecto de mano de obra o materiales

EXCEPTO LO EXPRESAMENTE ESTIPULADO, SWAN NO GARANTIZA, EN FORMA EXPLICITA O IMPLICITA, SU COMERCIALIZACION O ADECUACION PARA UN USO DETERMINADO. Algunos estados no autorizan limitaciones en cuanto a la duración de una garantía implícita, por lo que la limitación precedente puede no serle aplicable.

EN NINGUN CASO SWAN SERA RESPONSABLE POR LOS DAÑOS ESPECIALES, INDIRECTOS, FORTUITOS O RESULTANTES. Algunos estados no autorizan la exclusión o limitación de los daños fortuitos o resultantes, por lo que la limitación o exclusión precedente puede no serle aplicable.

Esta garantía le otorga derechos legales específicos, y usted puede tener otros derechos que de estado a estado

Esta oferta es válida para uso no comercial.

One year warranty on garden hose only. The manufacturer is not liable for incidental or consequential damages.

Usage and Storage hints: Clean the threads on the nozzle, removing any debris or rust. This also ensures a tight seal and eliminates leakage. Two or more shorter hoses attached to different faucets provide more coverage than one long hose. Drain your hose in the summer when you are not using it and keep it shaded as much as possible. Water left in a hose in the sun will expand, damaging the hose.

Be sure to drain the hose completely before storage as water remaining in the hose can freeze, damaging the hose. Protect your hose from harsh winter weather by storing it indoors.

For more information call 1-800-800-HOSE

Colorite Plastics Company, Ridgefield, NJ 07657
Hose Made in U.S.A.
Nozzle Made in China.
Package assembled in U.S.A.

RS 41881

WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

WARNING: This hose is not for drinking water use. This hose is made from recycled materials.

This garden hose is **NOT** intended for drinking water use.

WARNING: This product contains a chemical known to the State of California to cause cancer.

WARNING: This product contains a chemical known to the State of California to cause birth defects or other reproductive harm.

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PROOF OF SERVICE

I declare that:

I am employed in San Francisco County, California. I am over the age of 18 years and not a party to the within cause; my business address is 1627 Irving Street, San Francisco, CA 94122.

On August 10, 2004, I served a true copy of the following document by U.S. Mail:

NOTICE OF ENTRY OF ORDER AND CONSENT JUDGMENT AS TO CERTAIN DEFENDANTS

I placed a true copy of this paper in an envelope addressed to:

Robert L. Falk, Esq.
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105-2482
Attorney for Defendants Tekni-Plex, Inc., Plastic Specialties and Technologies, Inc., Flexon Industries Corporation, Teknor Apex Company, and Sears Roebuck Company

Michael J. Steel
Pillsbury Winthrop LLP
50 Fremont Street
San Francisco, CA 94120-7880
Attorney for Defendants Kmart Corporation and Martha Stewart Living Omnimedia, Inc.

I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with the United States Postal Service, to wit, that correspondence will be deposited with the United States Postal Service this same day in the ordinary course of business. I placed the envelope containing the above-mentioned document for collection and mailing on August 10, 2004 following the ordinary business practice.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on August 10, 2004, at San Francisco, California.

Signed:

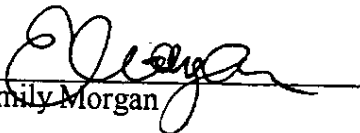

Emily Morgan

EXHIBIT B

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TEKNI-PLEX, INC.; PLASTIC SPECIALTIES AND
11 TECHNOLOGIES, INC., TEKNOR APEX COMPANY,
And FLEXON INDUSTRIES CORPORATION
12
13

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN FRANCISCO
16

17 CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation.)
18)
Plaintiff,)
19)
v.)
20)
TEKNI-PLEX, INC.; et al.,)
21)
Defendants.)
22)
23)

Case No. CGC-03-424940
[PROPOSED] CONSENT JUDGMENT
REGARDING DEFENDANTS TEKNI-
PLEX, INC., PLASTIC SPECIALTIES
AND TECHNOLOGIES, INC.,
FLEXON INDUSTRIES
CORPORATION, and TEKNOR
APEX COMPANY

ENDORSED
FILED
San Francisco County Superior Court
AUG 10 2004
GORDON PARK-LI, Clerk
By: Deputy Clerk

1 **1. INTRODUCTION**

2 1.1 On September 30, 2003, on behalf of itself and the general public, plaintiff
3 the Center for Environmental Health (“CEH”), a non-profit corporation, filed a complaint in San
4 Francisco County Superior Court, entitled *Center for Environmental Health v. Tekni-Plex, Inc.,*
5 *et al.*, for civil penalties and injunctive relief pursuant to the provisions of Cal. Health & Safety
6 Code §§ 25249.5 *et seq.* (“Proposition 65”) and Cal. Business & Professions Code §§ 17200 *et*
7 *seq.* (the “Unfair Competition Law”) (the “Action”). CEH’s original Complaint named, *inter*
8 *alia*, Tekni-Plex, Inc. (“Tekni-Plex”), and Plastic Specialties and Technologies, Inc. (“Plastic
9 Specialties”) as Defendants, as well as various unnamed “Doe” Defendants.

10 1.2 On January 28, 2004, CEH filed a Doe Amendment to the Complaint
11 naming certain additional entities as Defendants to the Action who are not a party to this Consent
12 Judgment. On or about June 7, 2004, CEH filed a Doe Amendment naming Flexon Industries
13 Corporation (“Flexon”) and Teknor Apex Company (“Teknor Apex”) as Defendants to the
14 Action. Tekni-Plex, Plastic Specialties, Flexon and Teknor Apex are hereinafter referred to as
15 “Settling Defendants.” CEH and the Settling Defendants are hereinafter collectively referred to
16 as the “Parties.”

17 1.3 Each of the Settling Defendants is a corporation that employs more than
18 10 persons and that manufactured, distributed and/or sold water hoses made of materials
19 containing lead and/or lead compounds in the State of California (the “Products”). Lead is
20 present in the flexible tubing and/or leaded brass components of the Products.

21 1.4 On or about June 19, 2003 (with respect to Settling Defendants Tekni-Plex
22 and Plastic Specialties) and September 19, 2003 (with respect to Settling Defendants Flexon and
23 Teknor Apex), CEH served Settling Defendants and the appropriate public enforcement agencies
24 with the requisite 60-day notice that the Settling Defendants were in violation of Proposition 65.
25 CEH’s notices and its Complaint allege that Settling Defendants discharge and release lead
26 and/or lead compounds (referred to interchangeably herein as “Lead”), chemicals known to the
27 State of California to cause cancer, birth defects and other reproductive harm, into sources of
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1 drinking water through the sale and use of the Products, in violation of Cal. Health & Safety
2 Code (“Health & Safety Code”) § 25249.5.

3 1.5 CEH’s notices and its Complaint also allege that Settling Defendants did
4 not provide a clear and reasonable warning to purchasers of the Products regarding the
5 carcinogenicity and reproductive toxicity of Lead, in violation of Health & Safety Code
6 § 25249.6.

7 1.6 The Complaint further alleges that the violations of both Health & Safety
8 Code § 25249.5 and Health & Safety Code § 25249.6 constitute unlawful acts and thus unfair
9 competition in violation of Business & Professions Code §§ 17200 *et seq.*

10 1.7 For purposes of this Consent Judgment only, the Parties stipulate that this
11 Court has jurisdiction over the allegations of violations contained in CEH’s Complaint and
12 personal jurisdiction over Settling Defendants as to the acts alleged in CEH’s Complaint, that
13 venue is proper in the County of San Francisco, and that this Court has jurisdiction to enter this
14 Consent Judgment as a full and final resolution of all claims which were or could have been
15 raised in the Complaint based on the facts alleged therein.

16 1.8 The Parties enter into this Consent Judgment pursuant to a settlement of
17 all disputed claims between the Parties as alleged in the Complaint and for the purpose of
18 avoiding prolonged and costly litigation between the Parties hereto. By execution of this
19 Consent Judgment, the Parties and each of them do not admit any facts or conclusions of law,
20 including, but not limited to, any facts or conclusions of law suggesting or demonstrating any
21 violations of Proposition 65, the Unfair Competition Act or any other statutory, common law or
22 equitable requirements relating to the Products. Nothing in this Consent Judgment shall be
23 construed as an admission by any of the Parties; nor shall compliance with the Consent Judgment
24 constitute or be construed as an admission by any of the Parties. Except as otherwise provided
25 herein, nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy,
26 argument or defense the Parties may have in this or any other or future legal proceedings
27 unrelated to the matters covered by this Consent Judgment. This Consent Judgment is the
28 product of negotiation and compromise and is accepted by the Parties and the Court for purposes

1 2.1.2 Notwithstanding the provisions of Paragraph 2.1 above, the phrase
2 “Wash hands after use” may be deleted from the required warning statement for Products
3 meeting the following requirements: (a) the surface contact layer of the brass components
4 and outer plastic jacket/skin have no Lead as an intentionally added constituent; and
5 (b) the surface contact layer of any brass components does not contain more than 0.03%
6 (300 parts per million (“ppm”)) Lead as determined by a test method having a level of
7 quantification of at least 300 ppm.

8 2.1.3 Notwithstanding the provisions of Paragraph 2.1 above, the phrase
9 “Do not drink water from this hose” may be deleted from the required warning statement
10 for Products when Lead leaches from those Products in concentrations of 25 parts per
11 billion (“ppb”) or less using the sampling and testing protocol attached hereto as Exhibit A
12 (“Protocol”).

13 2.2 As of July 31, 2005, Settling Defendants shall not manufacture, distribute,
14 ship, or sell, or cause to be manufactured, distributed, or sold, with or without the warning
15 required by Paragraph 2.1 above, any Products containing sufficient quantities or concentrations
16 of Lead such that Lead leaches from the Products in concentrations greater than 300 ppb
17 pursuant to the Protocol.

18 2.3 As of July 31, 2006, Settling Defendants shall not manufacture, distribute,
19 ship, or sell, or cause to be manufactured, distributed, or sold, with or without the warning
20 required by Paragraph 2.1 above, any Products containing sufficient quantities or concentrations
21 of Lead such that Lead leaches from the Products in concentrations greater than 150 ppb
22 pursuant to the Protocol.

23 2.4 As of July 31, 2007, Settling Defendants shall not manufacture, distribute,
24 ship, or sell, or cause to be manufactured, distributed, or sold, with or without the warning
25 required by Paragraph 2.1 above, any Products containing sufficient quantities or concentrations
26 of Lead such that Lead leaches from the Products in concentrations greater than 50 ppb pursuant
27 to the Protocol.

1 **3. SETTLEMENT PAYMENT**

2 3.1 On or before July 31, 2004, Settling Defendants shall collectively pay
3 ninety-five thousand dollars (\$95,000.00) to CEH at the offices of the Lexington Law Group,
4 LLP; provided, however, that any such payment will not then be due and payable if this Consent
5 Judgment has not then been approved by the Court for any reason and will otherwise become due
6 and payable fifteen (15) days following entry of this Consent Judgment by the Court. The
7 payment shall be apportioned by CEH as follows:

8 3.1.1 Monetary Payment in Lieu of Penalty: Twenty-five thousand
9 dollars (\$25,000.00) shall be retained by CEH in lieu of any penalty pursuant to Health
10 and Safety Code § 25249.7(b). CEH shall use such funds to continue its work protecting
11 people from exposures to toxic chemicals. Some of the projects CEH is currently
12 working on include research and public education aimed at protecting children and other
13 consumers from products that expose them to toxic chemicals; research and advocacy
14 promoting public policies aimed at reducing exposures to persistent bioaccumulative
15 toxins and heavy metals; supporting community-based organizations in their work
16 protecting people from toxic chemicals; and participation in and leadership of national
17 coalitions dedicated to protecting public health, such as the Collaboration on Health and
18 the Environment, the Childproofing Our Communities Campaign, the Coming Clean
19 Coalition, the Healthy Building Network and the Healthcare Without Harm coalition.

20 3.1.2 Attorneys' Fees and Costs: Seventy thousand dollars (\$70,000.00)
21 of such payment shall be allocated by CEH to reimburse it and its attorneys pursuant to
22 Cal. Code Civ. Pro. § 1021.5 for their reasonable investigation fees and costs, attorneys'
23 fees, and any other costs incurred as a result of investigating, bringing this matter to the
24 Settling Defendants' attention, litigating and negotiating a settlement in the public
25 interest.

26 3.1.3 Except as set forth in Paragraphs 3.1.1 and 3.1.2 above and 5.1
27 below, no Party shall have any payment obligations, including to CEH or CEH's
28 attorneys, related to this Action or the matters covered by this Consent Judgment.

1 **4. MODIFICATION OF CONSENT JUDGMENT**

2 4.1 This Consent Judgment may be modified by written agreement of CEH
3 and the Settling Defendant to whom the modification applies, after noticed motion, and upon
4 entry of a modified consent judgment by the Court, or upon noticed motion of CEH or Settling
5 Defendant as provided by law and upon entry of a modified consent judgment by the Court. The
6 California Attorney General shall be served with any motion or application filed pursuant to this
7 Section.

8 **5. ENFORCEMENT OF CONSENT JUDGMENT**

9 5.1 In the event CEH believes in good faith that a Settling Defendant is not in
10 compliance with the terms of this Consent Judgment, CEH shall provide written notice to that
11 Settling Defendant, pursuant to Paragraph 12.1 below, setting forth its belief and the reasons
12 therefore. The Settling Defendant receiving such notice shall meet and confer with CEH within
13 fifteen (15) days of receiving the written notice to attempt to address CEH's concerns. If CEH
14 and the Settling Defendant which received the written notice are unable to resolve CEH's
15 concerns within the fifteen (15) day period, CEH may by motion or application for an order to
16 show cause before the Superior Court of the County of San Francisco, enforce the terms and
17 conditions contained in this Consent Judgment.

18 **6. APPLICATION OF CONSENT JUDGMENT**

19 6.1 The obligations of this Consent Judgment shall apply to and be binding
20 upon the Parties hereto, their divisions, subdivisions and subsidiaries, and the successors or
21 assigns of any of them.

22 **7. CLAIMS COVERED/RELEASE OF LIABILITY**

23 7.1 This Consent Judgment is a full, final and binding resolution between
24 CEH, acting on behalf of itself and the general public, and Settling Defendants of any violation
25 of Proposition 65, the Unfair Competition Law or any other statutory or common law claim that
26 was or could have been asserted in the Complaint against Settling Defendants or each of their
27 parents, subsidiaries, affiliates, directors, officers, employees, agents, attorneys, distributors,
28 retailers or customers (collectively, "Defendant Releasees") based on failure to warn about

1 exposure to Lead contained in the Products, as well as any discharge of Lead into a source of
2 drinking water from such Products, with respect to any Products manufactured, distributed or
3 sold by any or all of the Settling Defendants on or prior to the date of entry of this Consent
4 Judgment. Compliance with this Consent Judgment by a Settling Defendant shall hereinafter
5 constitute compliance with Proposition 65 by that Settling Defendant and their Defendant
6 Releasees with respect to Lead in that Settling Defendant's Products. Nothing in this Paragraph
7 shall be read to limit the obligations of any Settling Defendant as set forth under this Consent
8 Judgment.

9 **8. SEVERABILITY**

10 8.1 In the event that any of the provisions of this Consent Judgment are held
11 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
12 affected.

13 **9. SPECIFIC PERFORMANCE**

14 9.1 The Parties expressly recognize that Settling Defendants' obligations
15 under this Consent Judgment are unique. In the event that any Settling Defendant is found to be
16 in breach of this Consent Judgment for failure to comply with the provisions of Section 2 hereof,
17 the Parties agree that it would be extremely impracticable to measure the resulting damages.
18 Accordingly, CEH, in addition to any other available rights or remedies, may, pursuant to
19 Paragraph 5.1 above, seek specific performance, and Settling Defendants expressly waive the
20 defense that a remedy in damages will be adequate.

21 **10. GOVERNING LAW**

22 10.1 The terms of this Consent Judgment shall be governed by the laws of the
23 State of California and apply to Products sold in the State of California.

24 **11. RETENTION OF JURISDICTION**

25 11.1 This Court shall retain jurisdiction of this matter to implement this
26 Consent Judgment and supervise the injunctive relief to be provided pursuant to Section 2 above.

1 **12. PROVISION OF NOTICE**

2 12.1 All notices required pursuant to this Consent Judgment and
3 correspondence shall be sent to the following:

4 For CEH:

5 Eric S. Somers, Esq.
6 Lexington Law Group, LLP
7 1627 Irving Street
8 San Francisco, CA 94122

8 For Settling Defendants:

9 Robert L. Falk, Esq.
10 Morrison & Foerster LLP
11 425 Market Street
12 San Francisco, CA 94105

12 and

13 For Tekni-Plex and Plastic Specialties:

14 Robert Mitchell
15 Colorite Polymers
16 101 Railroad Avenue
17 Ridgefield, NJ 07657

17 For Flexon:

18 David Rauch
19 Flexon Industries Corporation
20 366 Frelinghuysen Avenue
21 Newark, New Jersey 07114

21 For Teknor Apex:

22 David Yopak
23 Director of EH&S
24 Teknor Apex Company
25 505 Central Avenue
26 Pawtucket, Rhode Island 02861

25 12.2 CEH shall provide copies of this Consent Judgment and its motion for
26 approval and entry by the Court to the California Attorney General as required by Health &
27 Safety Code § 25249.7(f).

28

1 **13. COURT APPROVAL**

2 13.1 CEH shall file a noticed motion seeking the Court's approval and entry of
3 this Consent Judgment as required by Health & Safety Code § 25249.7(f). If this Consent
4 Judgment is not approved and entered by the Court, it shall be of no further force or effect.

5 **14. EXECUTION AND COUNTERPARTS**

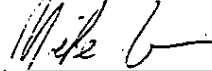
6 14.1 The stipulations to this Consent Judgment may be executed in
7 counterparts and by means of facsimile, which taken together shall be deemed to constitute one
8 document.

9 **15. AUTHORIZATION**

10 15.1 Each signatory to this Consent Judgment certifies that he or she is fully
11 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter
12 into and execute the Consent Judgment on behalf of the Party represented and legally bind that
13 Party. The undersigned have read, understand and agree to all of the terms and conditions of this
14 Consent Judgment. Except as explicitly provided herein, each Party is to bear its own fees and
15 costs.

16
17 **AGREED TO:**

18 **CENTER FOR ENVIRONMENTAL HEALTH**

19 
20 _____
21 Michael Green, Executive Director
22 Center for Environmental Health

Dated: 6/8/04

23 **TEKNI-PLEX, INC. and PLASTIC SPECIALTIES AND TECHNOLOGIES, INC.**

24 _____

Dated: _____

25 _____
26 Printed Name

27 _____
28 Title

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3 this Consent Judgment as required by Health & Safety Code § 25249.7(f). If this Consent
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14 Consent Judgment. Except as explicitly provided herein, each Party is to bear its own fees and
15 costs.

16
17 **AGREED TO:**

18 **CENTER FOR ENVIRONMENTAL HEALTH**

19 _____ Dated: _____
20 Michael Green, Executive Director
21 Center for Environmental Health

22 **TEKNI-PLEX, INC. and PLASTIC SPECIALTIES AND TECHNOLOGIES, INC.**

23 Robert F. Mitchell Dated: 6-2-04

24 ROBERT F. MITCHELL
25 Printed Name

26 VICE PRESIDENT & GENERAL MGR.
27 Title

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3 and by means of facsimile, which taken together shall be deemed to constitute one document.

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9 Consent Judgment. Except as explicitly provided herein, each Party is to bear its own fees and
10 costs.

11
12 **AGREED TO:**

13 CENTER FOR ENVIRONMENTAL HEALTH

14 _____
15 Michael Green, Executive Director
Center for Environmental Health

Dated: _____

17 TEKNI-PLEX, INC. and PLASTIC SPECIALTIES AND TECHNOLOGIES, INC.

18 _____ Dated: _____
19 _____

20 _____
Printed Name

21 _____
Title

23 FLEXON INDUSTRIES CORPORATION

24 _____
25 _____ Dated: 6/11/04

26 DAVID RAUCH
Printed Name

27 PRESIDENT
28 _____
Title

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TEKNOR APEX COMPANY

Jonathan D. Fair

Dated: June 7, 2007

Jonathan D. Fair
Printed Name

President
Title

APPROVED AS TO FORM:

For Plaintiff:

ERIC S. SOMERS
LEXINGTON LAW GROUP LLP

Dated: _____

For Defendants:

ROBERT L. FALK
MORRISON & FOERSTER LLP

Dated: _____

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FLEXON INDUSTRIES CORPORATION

Dated: _____

Printed Name

Title

TEKNOR APEX COMPANY

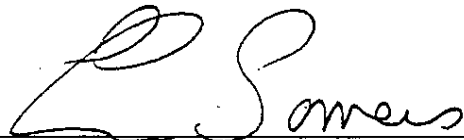
Dated: _____

Printed Name

Title

APPROVED AS TO FORM:

For Plaintiff:



ERIC S. SOMERS
LEXINGTON LAW GROUP LLP

Dated: 6/21/09

For Defendants:

ROBERT L. FALK
MORRISON & FOERSTER LLP

Dated: _____

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FLEXON INDUSTRIES CORPORATION

Dated: _____

Printed Name

Title

TEKNOR APEX COMPANY

Dated: _____

Printed Name

Title

APPROVED AS TO FORM:

For Plaintiff:

Dated: _____

ERIC S. SOMERS
LEXINGTON LAW GROUP LLP

For Defendants:

Robert L. Falk

Dated: *6/21/04*

ROBERT L. FALK
MORRISON & FOERSTER LLP

