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**FILED**  
ALAMEDA COUNTY

JUL 15 2016

CLERK OF THE SUPERIOR COURT

By [Signature] Deputy

5 *Attorneys for Plaintiff*

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

10 ANTHONY FERREIRO,

11 Plaintiff,

12 vs.

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

15 Defendant.

Case No. RG16816115

T.C. ~~[PROPOSED]~~ CONSENT JUDGMENT

Judge: Victoria Kolakowski

Dept.: 23

Hearing Date: July 14, 2016

Hearing Time: 3:00 PM

Reservation #: R-1745702

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1           **1. Introduction**

2           1.1    On July 7, 2015, Anthony Ferreiro ("Ferreiro") served Metropolitan Vacuum  
3 Cleaner Co. ("Metropolitan"), Bed Bath & Beyond, Inc. ("BB&B"), and various public  
4 enforcement agencies with a document entitled "Notice of Violation of California Health &  
5 Safety Code § 25249.6, *et seq.*" (the "July 7 Notice") with respect to the Metro Vac 'N' Blo 500  
6 Jr. vacuum hoses, UPC No. 031275105213.

7           On July 27, 2015, Ferreiro served a "Notice of Violation of California Health & Safety  
8 Code § 25249.6, *et seq.*" on Flexible Technologies, Inc. d/b/a Hi-Tech Duravent ("Flexible  
9 Technologies"); Hi-Tech Duravent; W. W. Grainger, Inc. ("Grainger"); and various public  
10 enforcement agencies (the "July 27 Notice") with respect to the Dura Flex 8025CVD ducting  
11 hoses.

12           On September 22, 2015, the products identified in the July 7 Notice and July 27 Notice  
13 were renoticed and served on Metropolitan, BB&B, Flexible Technologies, Hi-Tech Duravent,  
14 Grainger, and various public enforcement agencies (the "Notice"). The Notice provided Flexible  
15 Technologies and such others, including public enforcers, with notice that alleged that Flexible  
16 Technologies was in violation of California Health & Safety Code § 25249.5, for failing to warn  
17 consumers and customers that hoses containing Diisononyl phthalate ("DINP") and/or Di(2-  
18 ethylhexyl) phthalate ("DEHP") exposed users in California to DINP and/or DEHP. The Flexible  
19 Technologies products that are covered by this Consent Judgment are defined as vacuum and/or  
20 ducting hoses containing DINP and/or DEHP, specifically including, but not limited to, (1) Dura  
21 Flex 8025CVD ducting hoses, and (2) Metro Vac 'N' Blo 500 Jr. vacuum hoses, UPC No.  
22 031275105213 ("Covered Products"). No public enforcer has diligently prosecuted the  
23 allegations set forth in the Notice

24           1.2    On May 17, 2016, Ferreiro filed a Complaint for Civil Penalties and Injunctive  
25 Relief ("Complaint") in Alameda County Superior Court, Case No. RGI68816115, against  
26 Flexible Technologies alleging violations of Proposition 65.

27           1.3    Ferreiro's Complaint alleges, among other things, that Flexible Technologies has  
28 manufactured or distributed for sale in the State of California the Covered Products, that the

1 Covered Products contain DEHP and/or DINP, and that the resulting exposure violated provisions  
2 of Proposition 65, by knowingly and intentionally exposing persons to chemicals known to the  
3 State of California to cause both cancer and reproductive toxicity, developmental, male, without  
4 first providing a clear and reasonable warning to such individuals.

5 1.5 For purposes of this Consent Judgment only, the parties stipulate that this Court  
6 has jurisdiction over the allegations of violations contained in the Complaint and personal  
7 jurisdiction over Flexible Technologies as to the acts alleged in the Complaint, that venue is  
8 proper in the County of Alameda, and that this Court has jurisdiction to enter this Consent  
9 Judgment as a resolution of the allegations contained in the Complaint.

10 1.6 The parties enter into this Consent Judgment pursuant to a full settlement of  
11 disputed claims between the parties as alleged in the Complaint for the purpose of avoiding  
12 prolonged litigation. By execution of this Consent Judgment, Flexible Technologies does not  
13 admit any violation of Proposition 65 and specifically denies that it has committed any such  
14 violation. Nothing in this Consent Judgment shall be construed as an admission by Flexible  
15 Technologies of any fact, issue of law or violation of law, nor shall compliance with the Consent  
16 Judgment constitute or be construed as an admission by Flexible Technologies of any fact, issue  
17 of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive, or impair  
18 any right, remedy or defense that Flexible Technologies may have in any other future legal  
19 proceeding. However, this paragraph shall not diminish or otherwise affect the obligations,  
20 responsibilities and duties of Flexible Technologies under this Consent Judgment.

21 1.7 For purposes of this Consent Judgment, the term "Effective Date" shall mean the  
22 date that the Consent Judgment is entered by the Court.

23 **2. Injunctive Relief**

24 2.1 Commencing on the Effective Date, and continuing thereafter, Flexible  
25 Technologies shall only ship, sell, or offer for sale in California, reformulated Covered Products  
26 pursuant to Section 2.2 or Covered Products that are labeled with a clear and reasonable warning  
27 pursuant to Section 2.3. For purposes of this Settlement Agreement, a "Reformulated Covered  
28 Products" is a Covered Product that meets the standard set forth in Section 2.2 below.

1           2.2    "Reformulated Covered Products" shall mean Covered Products that contain less  
2 than or equal to 1,000 parts per million ("ppm") of DINP or of DEHP when analyzed pursuant to  
3 U.S. Environmental Protection Agency testing methodologies 3580A and 8270C.

4           2.3    Commencing on the Effective Date, Flexible Technologies agrees to only  
5 manufacture for distribution or sale in California (1) Reformulated Covered Products or (2)  
6 Covered Products that provide clear and reasonable warnings as set forth in subsection 2.3.1  
7 below. The warning shall be prominently placed with such conspicuousness as compared with  
8 other words, statements, designs, or devices as to render it likely to be read and understood by an  
9 ordinary individual under customary conditions before purchase or use. Each warning shall be  
10 provided in a manner such that the consumer or user is reasonably likely to understand to which  
11 specific Covered Products the warning applies, so as to minimize the risk of consumer confusion.

12           In the event that the Office of Environmental Health Hazard Assessment promulgates one  
13 or more regulations requiring or permitting warning text and/or methods of transmission different  
14 than those set forth above, Flexible Technologies shall be entitled to use, at its discretion, such  
15 other warning text and/or method of transmission without being deemed in breach of this  
16 Agreement.

17           **2.3.1 Downstream Manufacturers/Distributors/Retailers:** Flexible  
18 Technologies manufactures the Covered Products as component parts for distribution or sale, and  
19 does not market the Covered Products, which are component parts, directly to consumers in  
20 California via the internet or "brick and mortar" stores in California. In the event that Flexible  
21 Technologies sells Covered Products that are not Reformulated Covered Products after the  
22 Effective Date to downstream manufacturers for use as component parts in other products  
23 intended for sale in California, or in the event that Flexible Technologies sells Covered Products  
24 that are not Reformulated Covered Products after the Effective Date to downstream  
25 distributors/retailers who market, sell or otherwise distribute such Covered Products to customers  
26 in California, Flexible Technologies shall provide a warning to its downstream  
27 manufacturer/distributor/retailer customers for such Covered Products. The following warning  
28

1 shall be included in the written purchase/sale agreement, included in the packaging material, or  
2 otherwise affixed or stamped directly onto the Covered Products:

3 **[PROPOSITION 65] WARNING:**

4 This product contains chemicals known to the State of California to cause cancer  
and birth defects or other reproductive harm.

5 The bracketed text may, but is not required to, be used.

6  
7 **3. Entry of Consent Judgment**

8 3.1 The parties hereby request that the Court promptly enter this Consent Judgment.  
9 Upon entry of this Consent Judgment, Ferreiro and Flexible Technologies waive their respective  
10 rights to a hearing or trial on the allegations of the Ferreiro Complaint and 60-Day Notice.

11 3.2 In the event that the Attorney General objects or otherwise comments on one or  
12 more provisions of this Consent Judgment, Ferreiro and Flexible Technologies agree to take  
13 reasonable steps to satisfy such concerns or objections.

14 **4. Matters Covered and Released By This Consent Judgment**

15 **4.1 Ferreiro's Public Release of Proposition 65 Claims**

16 Ferreiro, acting on his own behalf and in the public interest, releases Flexible  
17 Technologies and its parents, subsidiaries, affiliated entities under common ownership, directors,  
18 officers, employees, owners, shareholders, agents and attorneys ("Releasees"), and each entity to  
19 whom it directly or indirectly distributes or sells the Covered Products, including, but not limited  
20 to Metropolitan, BB&B, and Grainger, and its other downstream distributors, wholesalers,  
21 customers, retailers, franchisers, cooperative members, licensors, and licensees ("Downstream  
22 Releasees") for violations arising under Proposition 65 for unwarned exposure to DEHP and/or  
23 DINP relating to the Covered Products manufactured for distribution or sale by Flexible  
24 Technologies prior to the Effective Date. Compliance with the terms of this Consent Judgment  
25 constitutes compliance with Proposition 65 with respect to exposures to DEHP and/or DINP from  
26 the Covered Products manufactured for distribution or sale by Flexible Technologies, as set forth  
27 in the Notice.  
28

1           **4.2 Ferreiro's Individual Release of Claims**

2           Ferreiro, in his individual capacity only and *not* in his representative capacity, also  
3 provides a release to Flexible Technologies, Releasees and Downstream Releasees that shall be  
4 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,  
5 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of  
6 Ferreiro of any nature, character or kind, whether known or unknown, suspected or unsuspected,  
7 arising out of alleged or actual exposure to DEHP and/or DINP from the Covered Products  
8 manufactured for distribution or sale by Flexible Technologies before the Effective Date.  
9 Ferreiro further acknowledges that compliance with the terms of this Consent Judgment  
10 constitutes compliance with Proposition 65 with respect to exposures to DEHP and/or DINP from  
11 the Covered Products manufactured for distribution or sale by Flexible Technologies after the  
12 Effective Date.

13           **4.3 Civil Code § 1542 Waiver**

14           In furtherance of the foregoing, as to alleged exposures to the Covered Products, Ferreiro,  
15 his past and current agents, representatives and attorneys, acknowledges that they are familiar  
16 with Section 1542 of the California Civil Code, which provides as follows:

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

22           Ferreiro, on behalf of himself and his past and current agents, representatives, attorneys,  
23 successors, and/or assignees expressly waive and relinquish any and all rights and benefits that  
24 they may have under, or which may be conferred on them by the provisions of Civil Code § 1542.  
25 Ferreiro, on behalf of himself and his past and current agents, representatives, attorneys,  
26 successors, and/or assignees, understands and acknowledges that the significance and  
27 consequence of this waiver of California Civil Code § 1542 is that even if Ferreiro suffers future  
28 damages arising out of or resulting from, or related directly or indirectly to, in whole or in part,

1 the Covered Products, including but not limited to any exposure to, or failure to warn with respect  
2 to exposure to, the Covered Products, Ferreiro will not be able to make any claim for those  
3 damages against Flexible Technologies.

4 **5. Enforcement of Judgment**

5 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties  
6 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of  
7 Alameda County, giving the notice required by law, enforce the terms and conditions contained  
8 herein. In any proceeding brought by either party to enforce this Consent Judgment, such party  
9 may seek whatever fines, costs, penalties or remedies as may be provided by law for any violation  
10 of Proposition 65 or this Consent Judgment.

11 **6. Modification of Judgment**

12 6.1 This Consent Judgment may be modified only by written agreement of the parties  
13 upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as  
14 provided by law and upon an entry of a modified Consent Judgment by the Court.

15 6.2 Should any court enter final judgment in a case brought by Ferreiro or the People  
16 involving the Covered Products that sets forth standards defining when Proposition 65 warnings  
17 will or will not be required ("Alternative Standards"), or if the California Attorney General's  
18 office otherwise provides written endorsement (i.e., a writing that is circulated by the Attorney  
19 General that is not intended for the purpose of soliciting further input or comments) of Alternative  
20 Standards applicable to the products that are of the same general type and function as the Covered  
21 Products and constructed from the same materials, Flexible Technologies shall be entitled to seek  
22 a modification of this Consent Judgment on sixty (60) days' notice to Ferreiro so as to be able to  
23 utilize and rely on such Alternative Standards in lieu of those set forth in Section 7 of this  
24 Consent Judgment. Ferreiro shall not unreasonably contest any proposed application to effectuate  
25 such a modification provided that the Covered Products for which such a modification is sought  
26 are of the same general type and function as those to which the Alternative Standards apply.

1           7.     Settlement Payment

2           7.1     In settlement of all the claims referred to in this Consent Judgment, and without  
3 any admission of liability therefore, Flexible Technologies shall make the following monetary  
4 payments:

5                 7.1.1   Flexible Technologies shall pay a total of \$6,000.00 in civil penalties in  
6 accordance with this Section. The civil penalty payment will be allocated in accordance with  
7 California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the funds remitted to the  
8 California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining  
9 25% of the civil penalty remitted to Ferreiro.

10                7.1.2   Within ten (10) business days of the Effective Date, Flexible Technologies  
11 shall issue two separate checks for the civil penalty payment to (a) "OEHHA" in the amount of  
12 \$4,500.00; and (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$1,500.00.  
13 Payment owed to Ferreiro pursuant to this Section shall be delivered to the following payment  
14 address:

15                                 Evan J. Smith, Esquire  
16                                 Brodsky & Smith, LLC  
17                                 Two Bala Plaza, Suite 510  
18                                 Bala Cynwyd, PA 19004

19 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly  
20 to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

21                     For United States Postal Service Delivery:

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

27                     For Non-United States Postal Service Delivery:

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

A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith, LLC at the address

1 set forth above as proof of payment to OEHHA.

2 7.1.3 In addition to the payment above, Flexible Technologies shall pay  
3 \$45,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for Plaintiff  
4 Ferreiro's attorneys' fees and costs, including any investigation and laboratory costs or expert  
5 fees, incurred in the course of bringing the Ferreiro action, and in enforcing Proposition 65,  
6 including without limitation, preparation of the 60-Day Notice letter and discussions with the  
7 office of the Attorney General. Payment shall be made within ten (10) business days of the  
8 Effective Date and sent to the address for Brodsky & Smith set forth in section 7.1.2, above.

9 **8. Notices**

10 8.1 Any and all notices between the parties provided for or permitted under this  
11 Agreement, or by law, shall be in writing and personally delivered or sent by: (i) first-class  
12 (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any  
13 party by the other party to the following addresses:

14 For Flexible Technologies:

15  
16 Sarah Bell  
Farella Braun + Martel LLP  
235 Montgomery Street  
17 San Francisco, CA 94104  
sbell@fbm.com  
18 415-954-4450

19 For Ferreiro:

20 Eyan J. Smith  
21 BRODSKY & SMITH, LLC  
9595 Wilshire Blvd., Suite 900  
22 Beverly Hills, CA 90212  
T: 877.354.2590

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

25 **9. Authority to Stipulate**

26 9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
27 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of  
28 the party represented and legally to bind that party.

1           10.    Counterparts

2           10.1   This Stipulation may be signed in counterparts and shall be binding upon the  
3 parties hereto as if all said parties executed the original hereof.

4           11.    Retention of Jurisdiction

5           11.1   This Court shall retain jurisdiction of this matter to implement the Consent  
6 Judgment.

7           12.    Service on the Attorney General

8           12.1   Ferreiro shall serve a copy of this Consent Judgment, signed by both parties, on the  
9 California Attorney General on behalf of the parties so that the Attorney general may review this  
10 Consent Judgment prior to its submittal to the Court for Approval. No sooner than forty-five (45)  
11 days after the Attorney General has received the aforementioned copy of this Consent Judgment,  
12 and in the absence of any written objection by the Attorney General to the terms of this Consent  
13 Judgment, the parties may then submit it to the Court for Approval.

14          13.    Entire Agreement

15          13.1   This Consent Judgment contains the sole and entire agreement and understanding  
16 of the parties with respect to the entire subject matter hereof, and any and all discussions,  
17 negotiations, commitment and understandings related thereto. No representations, oral or  
18 otherwise, express or implied, other than those contained herein have been made by any party  
19 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed  
20 to exist or to bind any of the parties.

21          14.    Governing Law and Construction

22          14.1   The validity, construction and performance of this Consent Judgment shall be  
23 governed by the laws of the State of California, without reference to any conflicts of law  
24 provisions of California law.

25          15.    Court Approval

26          15.1   If this Consent Judgment is not approved by the Court, it shall be of no force or  
27 effect, and cannot be used in any proceeding for any purpose.

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1           **16.    Post Execution Activities**

2           15.1   Ferreiro agrees to comply with the reporting requirements referenced in Health and  
3   Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and  
4   Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the  
5   settlement, and that such motions shall be prepared by Ferreiro's counsel. In furtherance of  
6   obtaining such approval, Ferreiro and Flexible Technologies agree to mutually employ their best  
7   efforts, and that of their counsel, to support the entry of this agreement as judgment, and to obtain  
8   judicial approval of their settlement in a timely manner. For purposes of this Section, "best  
9   efforts" shall include, at a minimum, cooperating with the drafting and filing of the necessary  
10  moving papers, and supporting the motion for judicial approval.

11           **IT IS SO STIPULATED:**

12  
13   Dated: May 19, 16

          Dated: May 25, 2016

14  
15   By: Anthony Ferreiro  
16       Anthony Ferreiro

          By: Robert M. Spivey  
              Flexible Technologies, Inc.

17  
18           **IT IS SO ORDERED, ADJUDGED AND DECREED:**

19           Dated: July 15, 2016

Victoria S. Kolakowski  
          Judge of Superior Court  
          Victoria S. Kolakowski