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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

[PROPOSED] CONSENT JUDGMENT  
AS TO METROPOLITAN VACUUM  
CLEANER COMPANY, INC.

1     **1. INTRODUCTION**

2             **1.1 Parties**

3             This Consent Judgment is entered into by and between plaintiff, Arthur Zivkovic,  
4     ("Zivkovic") on the one hand, and Metropolitan Vacuum Cleaner Company, Inc., otherwise known  
5     as Metrovac ("Defendant") on the other hand, with Zivkovic and Defendant individually referred  
6     to as a "Party" and collectively as the "Parties."

7             **1.2 Plaintiff**

8             Zivkovic is an individual residing in California who seeks to promote awareness of  
9     exposures to chemicals.

10            **1.3 Defendant**

11            Defendant employs ten or more persons and is a person in the course of doing business for  
12     purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code  
13     section 25249.6 *et seq.* ("Proposition 65").

14            **1.4 General Allegations**

15            Zivkovic alleges that Defendant manufactures, imports, sells, or distributes for sale to  
16     consumers in the State of California hoses containing phthalates including Di(2-  
17     ethylhexyl)phthalate ("DEHP"); di-isodecyl phthalate ("DIDP"); and Diisononyl Phthalate  
18     ("DINP"); ("the Chemicals") without first providing the clear and reasonable exposure warning  
19     required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical that is known  
20     to the State of California to cause cancer and birth defects and other reproductive harm. DIDP is  
21     listed pursuant to Proposition 65 as a chemical that is known to the State of California to cause  
22     birth defects and other reproductive harm. DINP is listed pursuant to Proposition 65 as a chemical  
23     that is known to the State of California to cause cancer.

24            **1.5 Product Description**

25            The products covered by this Consent Judgment are hoses containing some or all of the  
26     Chemicals that are manufactured and/or distributed for authorized sale to consumers in California  
27     by Defendant, including, but not limited to, the Metro Air Force PVC Standard Flexible Hose, 6  
28     ft., Black Item Model # P101-276, ASIN B003WGUMTI ("Products"). The Products include

1 Products sold in Defendant's brand names (including those set forth above) and Products Defendant  
2 manufactures and/or distributes for authorized sale in California under private label arrangements  
3 entered into with retailers or others.

4 **1.6 Notice of Violation**

5 On or about December 7, 2016, Zivkovic served Defendant and certain requisite public  
6 enforcement agencies with a "60-Day Notice of Violation" ("Notice"), a document that informed  
7 the recipients of Zivkovic's allegation that Defendant violated Proposition 65 by failing to warn its  
8 customers and consumers in California that the Products expose users to the Chemicals.

9 **1.7 Complaint**

10 After the 60-day notice period was exhausted without an authorized public prosecutor of  
11 Proposition 65 having asserted such claims, Zivkovic filed the instant action against Defendant  
12 ("Complaint") for the alleged violations of Health and Safety Code section 25249.6 that are the  
13 subject of the Notice.

14 **1.8 No Admission**

15 Defendant denies the material, factual, and legal allegations contained in the Notice and  
16 maintains that all of the products it has manufactured, or distributed for authorized sale in  
17 California, including the Products, have been, and are, in compliance with all laws, including  
18 Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by Defendant  
19 of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with  
20 this Consent Judgment constitute or be construed as an admission by Defendant of any fact, finding,  
21 conclusion of law, issue of law, or violation of law, the same being specifically denied by  
22 Defendant. This section shall not, however, diminish or otherwise affect Defendant's obligations,  
23 responsibilities, and duties under this Consent Judgment.

24 **1.9 Consent to Jurisdiction**

25 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
26 jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in the City  
27 and County of San Francisco, and that this Court has jurisdiction to enter and enforce the provisions  
28 of this Consent Judgment.

1           1.10   **Effective Date**

2           For purposes of this Consent Judgment, the term “Effective Date” shall mean the date on  
3 which Zivkovic serves notice on the Defendant and the Office of the California Attorney General  
4 that the Court has approved and entered this Consent Judgment.

5   **2.    INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

6 By no later than the Effective Date, and continuing thereafter, Defendant shall provide clear and  
7 reasonable warnings for all Products as set forth in subsections 1.5 for all products that do not  
8 currently have warnings and that do not qualify as reformulated products. Each warning shall be  
9 prominently placed with such conspicuousness as compared with other words, statements,  
10 designs, or devices as to render it likely to be read and understood by an ordinary individual  
11 under customary conditions before purchase or use. Each warning shall be provided in a manner  
12 such that the consumer or user understands to which *specific* Product the warning applies, so as to  
13 minimize the risk of consumer confusion.

14           **(a)   Retail Store Sales.**

15           **(i)    Product Labeling.** Defendant shall affix a warning to the packaging,  
16 labeling, or directly on each Product packaging provided for sale in retail outlets in California that  
17 states:

18           "Warning: This product contains one or more chemicals known to the State of California  
19 to cause cancer , birth defects or other reproductive harm."

20           On or before June 30, 2018, Defendant shall provide labeling that states as follows:

21  
22           **⚠️ WARNING:** This product can expose you to chemicals including DEHP, DINP, and /or DIDP  
23 which are known to the State of California to cause cancer and birth defects or  
24 other reproductive harm. For more information go  
to [www.P65Warnings.ca.gov/product](http://www.P65Warnings.ca.gov/product).

25           **(ii)   Point-of-Sale Warnings.** Alternatively, Defendant may provide warning  
26 signs in the form below to its customers in California with instructions to post the warnings in  
27 close proximity to the point of display of the Products. Such instruction sent to Defendant  
28 customers shall be sent by certified mail, return receipt requested.

1           "Warning: This product contains one or more chemicals known to the State of  
2 California to cause cancer , birth defects or other reproductive harm."

3           On or before June 30, 2018, the labels shall state:

4           ⚠ **WARNING:** This product can expose you to chemicals including DEHP, DINP,  
5 and /or DIDP which are known to the State of California to cause cancer and  
6 birth defects or other reproductive harm. . For more information go  
to [www.P65Warnings.ca.gov/product](http://www.P65Warnings.ca.gov/product).

7           **(b) Internet Website Warning.** A warning shall be given in conjunction with  
8 the sale of the Products via the internet by Defendant, which warning shall appear either: (a) on  
9 the same web page on which a Product is displayed; (b) on the same web page as the order form  
10 for a Product; (c) on the same page as the price for any Product; or (d) on one or more web pages  
11 displayed to a purchaser during the checkout process. The following warning statement shall be  
12 used and shall appear in any of the above instances adjacent to or immediately following the  
13 display, description, or price of the Product for which it is given in the same type size or larger  
14 than the Product description text:

15           "Warning: This product contains one or more chemicals known to the State of  
16 California to cause cancer , birth defects or other reproductive harm."

17           Alternatively, the designated symbol may appear adjacent to or immediately following the  
18 display, description, or price of the Product for which a warning is being given, provided that the  
19 following warning statement also appears elsewhere on the same web page, as follows:

20           Warning: This product contains chemicals known to the State of California to cause cancer and/or  
21 reproductive harm."

22           On or before June 30, 2018, the Warning shall be changed to state:


23           ⚠ **WARNING:** This product can expose you to chemicals including DEHP, DINP, and /or DIDP  
24 which are known to the State of California to cause cancer and birth defects or other reproductive harm. .  
25 For more information go to [www.P65Warnings.ca.gov/product](http://www.P65Warnings.ca.gov/product).  
26  
27

28           **c. Distributors:**

1 Defendant shall inform its distributors of the labeling requirement for any product being  
2 sold in or sent to California. They will advise the Distributors that each product, as defined in  
3 Section 1.5, shall be labeled as follows:

4 "Warning: This product contains one or more chemicals known to the State of California to cause  
5 cancer, birth defects or other reproductive harm."

6 On or before June 30, 2018, Defendant will advise the Distributors that the Warning shall  
7 be changed to state:

8  **WARNING:** This product can expose you to chemicals including DEHP, DINP, and /or  
9 DIDP which are known to the State of California to cause cancer and birth defects or other  
10 reproductive harm. .

### 12 3. STATUTORY PENALTY PAYMENTS

13 3.1 **Initial Civil Penalty** Defendant shall pay \$4,000 in civil penalties pursuant to  
14 California Health and Safety Code section 25249.7(b) in accordance with this section. This  
15 penalty payment shall be allocated in accordance with California Health & Safety Code sections  
16 25249.12(c)(l) and (d), with 75% of the funds remitted to the California Office of Environmental  
17 Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to  
18 Zivkovic. More specifically, within ten (10) business days of the Effective Date, Defendant shall  
19 issue two separate checks for the civil penalty payment to (a) "OEHHA" in the amount of \$3,000  
20 and with the memo line on the check indicating "Prop 65 Penalties—Zivkovic v. Metropolitan  
21 Vacuum Cleaner Co." (Defendant may reference OEHHA's Tax Identification Number of 68-  
22 0284486 for this check); and (b) Nicholas & Tomasevic LLP Trust Account" in the amount of  
23 \$1,000 (for which Zivkovic shall provide Defendant a completed IRS Form W-9 with a tax  
24 identification number within two days following the Effective Date, if not beforehand). These  
25 checks shall be delivered to the addresses listed in Section 3.3 below.

#### 26 3.2 **Payment Delivery**

27 (a) Payment to Zivkovic shall be delivered to the following address:

28 Craig Nicholas

1 Nicholas & Tomasevic  
2 225 Broadway, 19th Floor  
3 San Diego, CA 92101

4 (b) Payment to the OEHHA shall be delivered to one of the following addresses:

5 For United States Postal Service Delivery:

6 Mike Gyurics  
7 Fiscal Operations Branch Chief  
8 Office of Environmental Health Hazard Assessment  
9 P.O. Box 4010  
10 Sacramento, CA 95812-4010

11 Or

12 For Non-United States Postal Service Delivery:

13 Mike Gyurics  
14 Fiscal Operations Branch Chief  
15 Office of Environmental Health Hazard Assessment  
16 1001 I Street  
17 Sacramento, CA 95814

18 4. **REIMBURSEMENT OF FEES AND COSTS**

19 Defendant shall pay Zivkovic \$31,000 for fees and costs incurred as a result of investigating,  
20 bringing this matter to Defendant's attention, and negotiating a settlement in the public interest.  
21 Defendant shall make its checks payable to Nicholas & Tomasevic, LLP and shall deliver payment  
22 to the address listed in Section 3(a) above within ten (10) business days of the Effective Date. To  
23 facilitate timely payment, Zivkovic shall provide Defendant with a completed IRS Form W-9 with  
24 Nicholas & Tomasevic's tax identification number within two days following the Effective Date if  
25 not beforehand.

26 5. **CLAIMS COVERED AND RELEASED**

27 5.1 **Zivkovic's Public Release of Proposition 65 Claims**

28 Zivkovic, acting on his own behalf and in the public interest, releases Defendant, and its  
affiliated entities, directors, officers, employees, and attorneys ("Defendant Releasees"), and each  
entity to whom they directly or indirectly distribute or sell Products, including, but not limited to,  
distributors, wholesalers, dealers, customers, retailers, franchisees, cooperative members, licensors,  
and licensees (including, without limitation, Amazon.com, Inc.) (collectively, "Downstream

1 Defendant Releasees”), from all claims for violations of Proposition 65 based on exposures to the  
2 Chemicals from Products manufactured and packaged by Defendant prior to the Effective Date.<sup>1</sup>

3 **5.2 Zivkovic’s Private Releases of Claims**

4 Zivkovic, in his individual capacity only, also provides a release herein which shall be  
5 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,  
6 obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of  
7 any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising out  
8 of alleged or actual exposures to any of the chemicals listed under Proposition 65 (including but  
9 not limited to the Listed Phthalates) in the Products. In this regard, Zivkovic hereby acknowledges  
10 that he is familiar with and waives the provisions of Section 1542 of the California Civil Code,  
11 which provides as follows:

12 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR  
13 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF  
14 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE  
15 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

16 **5.3 Defendant’s Release of Zivkovic**

17 Defendant, on its own behalf and on behalf of its past and current agents, representatives,  
18 attorneys, successors, and assignees, hereby waives any and all claims that it may have against  
19 Zivkovic and his attorneys and other representatives for any and all actions taken or statements  
20 made (or those that could have been taken or made) by Zivkovic and his attorneys and other  
21 representatives, whether in the course of investigating claims, otherwise seeking to enforce  
22 Proposition 65 against Defendant in this matter, or with respect to the Products.

23 **6. COURT APPROVAL**

24 This Consent Judgment is not effective until it is approved and entered by the Court and  
25 shall be null and void if, for any reason, it is not approved and entered by the Court within one year

26 \_\_\_\_\_  
27 <sup>1</sup> Following the Effective Date, compliance with the terms of this Consent Judgment shall  
28 be deemed compliance with Proposition 65 with respect to exposures to the Chemicals from the  
Products.



1 after it has been fully executed by all Parties unless the Parties mutually agree to extend that time  
2 period due to what they mutually agree are reasonably unforeseeable circumstances.

3 7. **SEVERABILITY**

4 If, subsequent to the execution of this Consent Judgment, any provision of this Consent  
5 Judgment is held by a court to be unenforceable, the validity of the remaining provisions shall not  
6 be adversely affected.

7 8. **GOVERNING LAW**

8 The terms of this Consent Judgment shall be governed by the laws of the State of California  
9 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise  
10 rendered inapplicable by reason of law generally, or as to the Products, then Defendant may provide  
11 written notice to Zivkovic of any asserted change in the law and have no further obligations  
12 pursuant to this Consent Judgment, with respect to, and to the extent that, the Products are so  
13 affected.

14 9. **NOTICES**

15 Unless specified herein, all correspondence and notices required to be provided pursuant to  
16 this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class  
17 (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any  
18 Party by the other Party to the following addresses:

19 For Defendant Metropolitan Vacuum Cleaner Company:

20 Kenneth Stern  
21 Metropolitan Vacuum Cleaner Co.  
22 5 Raritan Road  
23 Oakland, NJ 07436

24 *With a copy to:*

25 Barbara Adams  
26 badams@adamsnye.com  
27 Adams Nye Becht LLP  
28 222 Kearny St., 7th Floor  
San Francisco, CA 94108

1 For Zivkovic:

2 Noam Glick  
3 Glick Law Group, P.C.  
4 225 Broadway, Suite 2100  
5 San Diego, CA 92101

6 *AND:*

7 Craig Nicholas  
8 Nicholas & Tomasevic, LLP  
9 225 Broadway, 19th Floor  
10 San Diego, CA 92101

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

13 10. **COUNTERPARTS; FACSIMILE SIGNATURES**

14 This Consent Judgment may be executed in counterparts and by facsimile or portable  
15 document format (PDF) signature, each of which shall be deemed an original, and all of which,  
16 when taken together, shall constitute one and the same document.

17 11. **POST EXECUTION ACTIVITIES**

18 Zivkovic agrees to comply with the reporting form requirements referenced in Health and  
19 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and  
20 Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the  
21 settlement manifested in this Consent Judgment. In furtherance of obtaining such approval,  
22 Zivkovic shall file and serve a noticed motion for approval of this Consent Judgment within sixty  
23 (60) days of its execution by all Parties and assure that the Office of the California Attorney General  
24 is served with said motion and all supporting papers at least forty-five (45) days prior to the  
25 scheduled hearing thereon. Defendant agrees to support the entry of this Consent Judgment once  
26 such motion has been filed.

27 12. **ENFORCEMENT**

28 Any Party may, after meeting and conferring, by motion or application for an order to show  
cause before this Court, enforce the terms and conditions contained in this Consent Judgment.

13. **MODIFICATION**

This Consent Judgment may be modified only by: (i) a written agreement of the Parties and

1 upon entry, following at least twenty-one (21) days' notice to the Office of the Attorney General,  
2 of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or application  
3 of any Party, which shall also be served on the Office of the California Attorney General with at  
4 least twenty-one (21) days' notice, and the entry of a modified consent judgment by the Court. Any  
5 Party seeking to modify this Consent Judgment shall attempt in good faith to meet and confer with  
6 all affected Parties prior to filing a motion to modify the Consent Judgment.

7 **14. AUTHORIZATION**

8 The undersigned are authorized to execute this Consent Judgment on behalf of their  
9 respective Parties and have read, understood and agreed to all of the terms and conditions of this  
10 Consent Judgment.

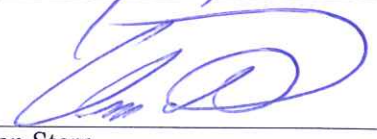
12 **AGREED TO:**

13 Date: April 24, 2017

14  
15 By:   
16 Arthur Zivkovic

**AGREED TO:**

13 Date: May 2, 2017

14  
15 By:   
16 Ken Stern  
17 Vice President – National Sales  
18 Metropolitan Vacuum Cleaner Company

19 **IT IS SO ORDERED:**

20  
21 Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of the Superior Court

28