

ENDORSED  
FILED  
SAN FRANCISCO COUNTY  
SUPERIOR COURT

2010 DEC -8 AM 1:06

CLEARED FOR COURT  
BY: ~~DEAN BURR~~

1 Philip T. Emmons, Esq. (SBN: 124902)  
2 Law Office of Philip T. Emmons  
208 Normandy Lane  
3 Walnut Creek, CA 94598  
T: (925) 349-4029  
4 F: (925) 349-4029

CASE MANAGEMENT CONFERENCE SET

MAY 13 2011 9<sup>00</sup>AM

5 Attorney for Plaintiff  
6 Environmental Research Center

DEPARTMENT 212

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF SAN FRANCISCO**

10 ENVIRONMENTAL RESEARCH  
11 CENTER, a California non-profit  
corporation,

12 Plaintiff,

13 v.

14 SPORTRON INTERNATIONAL, INC.,  
15 and DOES 1-100, inclusive,

16 Defendants.  
17

Case No. **808-10-505926**

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**

[Health & Safety Code §25249.5, *et seq.*]

18 Plaintiff Environmental Research Center brings this action in the interests of the general  
19 public and, on information and belief, hereby alleges:

20 **INTRODUCTION**

21 1. This action seeks to remedy Defendants' continuing failure to warn consumers in  
22 California that they are being exposed to lead, a substance known to the State of California to  
23 cause cancer, birth defects and other reproductive harm. Defendants manufacture, package,  
24 distribute, market, and/or sell in California a certain products containing lead and/or lead  
25 compounds (referred to hereinafter as the "PRODUCTS").  
26

1           2.       Lead and lead compounds (hereinafter, the "LISTED CHEMICALS") are  
2 substances known to the State of California<sup>1</sup> to cause cancer, birth defects and other reproductive  
3 harm.

4           3.       The use and/or handling of the PRODUCTS causes exposures to the LISTED  
5 CHEMICALS at levels requiring a "clear and reasonable warning" under California's Safe  
6 Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code ("H&S Code")  
7 §25249.5, *et. seq.* (also known as "Proposition 65"). Defendants have failed to provide the  
8 health hazard warnings required by Proposition 65.

9           4.       Defendants' continued manufacturing, packaging, distributing, marketing and/or  
10 sales of the PRODUCTS without the required health hazard warnings, causes individuals to be  
11 involuntarily and unwittingly exposed to levels of the LISTED CHEMICALS that violate  
12 Proposition 65.

13           5.       Plaintiff seeks injunctive relief enjoining Defendants from the continued  
14 manufacturing, packaging, distributing, marketing and/or selling of the PRODUCTS in  
15 California without provision of clear and reasonable warnings regarding the risks of cancer, birth  
16 defects and other reproductive harm posed by exposure to the LISTED CHEMICALS through  
17 the use and/or handling of the PRODUCTS. Plaintiff seeks an injunctive order compelling  
18 Defendants to bring their business practices into compliance with Proposition 65 by providing a  
19 clear and reasonable warning to each individual who may be exposed to LISTED CHEMICALS  
20 from the use and/or handling of the PRODUCTS.  
21  
22

23           6.       In addition to injunctive relief, Plaintiff seeks an assessment of civil penalties to  
24 remedy Defendants' failure to provide clear and reasonable warnings regarding exposures to the  
25

---

26 <sup>1</sup> All statutory and regulatory references herein are to California law, unless otherwise specified.

1 LISTED CHEMICALS.

2 **JURISDICTION AND VENUE**

3 7. This Court has jurisdiction over this action pursuant to California Constitution  
4 Article VI, Section 10, which grants the Superior Court “original jurisdiction in all causes except  
5 those given by statute to other trial courts.” The statute under which this action is brought does  
6 not specify any other basis for jurisdiction.

7 8. This Court has jurisdiction over Defendants because, based on information and  
8 belief, Defendants are businesses having sufficient minimum contacts with California, or  
9 otherwise intentionally availing themselves of the California market through the marketing,  
10 distribution and/or sale of the PRODUCTS in the State of California to render the exercise of  
11 jurisdiction over them by the California courts consistent with traditional notions of fair play and  
12 substantial justice.

13 9. This Court is the proper venue for this action because the Defendants have  
14 violated California law in the County of San Francisco. Furthermore, this Court is the proper  
15 venue under Code of Civil Procedure §395.5 and H&S Code §25249.7(a), which provides that  
16 any person who violates or threatens to violate H&S Code §§25249.5 or 25249.6 may be  
17 enjoined in any court of competent jurisdiction.  
18

19 **PARTIES**

20 10. Plaintiff Environmental Research Center (“ERC”) is a non-profit corporation  
21 organized under California’s Non-Profit Benefit Corporation Law. ERC is dedicated to, among  
22 other causes, reducing the use and misuse of hazardous and toxic substances, consumer  
23 protection, worker safety and corporate responsibility.  
24

25 11. ERC is a person within the meaning of H&S Code §25118 and brings this  
26

enforcement action in the public interest pursuant to H&S Code §25249.7(d).

12. Defendant SPORTRON INTERNATIONAL, INC. is a corporation and a person within the meaning of H&S Code §25249.11(a). Defendant SPORTRON INTERNATIONAL, INC. manufactures, packages, distributes, markets and/or sells the PRODUCTS for sale or use in California.

13. Defendants Does 1-100 are named herein under fictitious names, as their true names and capacities are unknown to Plaintiff. ERC is informed and believes, and thereon alleges, that each of said Does manufactures, packages, distributes, markets and/or sells the PRODUCTS for sale or use in California, and/or is responsible, in some actionable manner, for the events and happenings referred to herein, either through its conduct or through the conduct of its agents, servants or employees, or in some other manner, causing the harms alleged herein. Plaintiff will seek leave to amend this Complaint to set forth the true names and capacities of Does when ascertained.

### **STATUTORY BACKGROUND**

14. The People of the State of California have declared in Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.” (Section 1(b) of Initiative Measure, Proposition 65).

15. To effect this goal, Proposition 65 requires that individuals be provided with a “clear and reasonable warning” before being exposed to substances listed by the State of California as causing cancer or reproductive toxicity. H&S Code §25249.6 states, in pertinent part:

No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual....



1 business within the meaning of H&S Code §25249.11(b), individuals throughout the State of  
2 California, including in the County of San Francisco, have been exposed to the LISTED  
3 CHEMICALS without clear and reasonable warning. The individuals subject to exposures to the  
4 LISTED CHEMICALS include normal and foreseeable users of the PRODUCTS, as well as all  
5 other persons exposed to the PRODUCTS.

6 21. At all times relevant to this action, Defendants have knowingly and intentionally  
7 exposed the users and/or handlers of the PRODUCTS to the LISTED CHEMICALS without first  
8 giving a clear and reasonable warning to such individuals.

9 22. Individuals using and/or handling the PRODUCTS are exposed to the LISTED  
10 CHEMICALS in excess of the “maximum allowable daily” and “no significant risk” levels  
11 determined by the State of California, as applicable.

12 23. At all times relevant to this action, Defendants have, in the course of doing  
13 business, failed to provide individuals using and/or handling the PRODUCTS with a clear and  
14 reasonable warning that the PRODUCTS expose individuals to the LISTED CHEMICALS.  
15

16 24. The PRODUCTS continue to be marketed, distributed, and/or sold in California  
17 without the requisite clear and reasonable warning.  
18

19 **FIRST CAUSE OF ACTION**

20 **(Injunctive Relief for Violations of Health and Safety Code §25249.5, et seq. concerning the**  
21 **PRODUCTS described in Plaintiff’s August 17, 2010 60-Day Notice of Violations)**

22 25. Plaintiff realleges and incorporates by reference Paragraphs 1 through 24,  
23 inclusive, as if specifically set forth herein.

24 26. On August 17, 2010, Plaintiff sent a 60-Day Notice of Proposition 65 violations  
25 to the requisite public enforcement agencies and to Defendant SPORTRON INTERNATIONAL,  
26 INC. (“First Notice”). The First Notice was issued pursuant to, and in compliance with, the

1 requirements of H&S Code §25249.7(d) and the statute's implementing regulations regarding the  
2 notice of the violations to be given to certain public enforcement agencies and to the violator.

3 The notice was issued as follows:

- 4 a. Defendant SPORTRON INTERNATIONAL, INC. and the California  
5 Attorney General were provided copies of the First Notice by Certified  
6 Mail.  
7  
8 b. Defendant SPORTRON INTERNATIONAL, INC. was provided a copy  
9 of a document entitled "The Safe Drinking Water and Toxic Enforcement  
10 Act of 1986 (Proposition 65): A Summary," which is also known as  
11 Appendix A to Title 27 of CCR §25903.  
12  
13 c. The California Attorney General was provided with a Certificate of  
14 Merit by the noticing party or the attorney for the noticing party,  
15 stating that there is a reasonable and meritorious cause for this action,  
16 and attaching factual information sufficient to establish a basis for  
17 the certificate, including the identity of the persons consulted with and  
18 relied on by the certifier, and the facts, studies, or other data reviewed  
19 by those persons, pursuant to H&S Code §25249.7(h)(2).

20 27. The appropriate public enforcement agencies have failed to commence and  
21 diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against Defendants  
22 based on the allegations herein.

23 28. By committing the acts alleged in this Complaint, Defendants at all times relevant  
24 to this action, and continuing through the present, have violated H&S Code §25249.6 by, in the  
25 course of doing business, knowingly and intentionally exposing individuals who use and/or  
26

1 handle the PRODUCTS set forth in the First Notice to the LISTED CHEMICALS, without first  
2 providing a clear and reasonable warning to such individuals pursuant to H&S Code §§ 25249.6  
3 and 25249.11(f).

4 29. By the above-described acts, Defendants have violated H&S Code §25249.6 and  
5 are therefore subject to an injunction ordering Defendants to stop violating Proposition 65, and to  
6 provide required warnings to consumers and other individuals who will purchase, use and/or  
7 handle the PRODUCTS.

8 30. An action for injunctive relief under Proposition 65 is specifically authorized by  
9 Health & Safety Code §25249.7(a).

10 31. Continuing commission by Defendants of the acts alleged above will irreparably  
11 harm the citizens of the State of California, for which harm they have no plain, speedy, or  
12 adequate remedy at law.

13  
14 Wherefore, plaintiff prays judgment against Defendants, as set forth hereafter.

15 **SECOND CAUSE OF ACTION**

16 **(Civil Penalties for Violations of Health and Safety Code §25249.5, et seq. concerning the**  
17 **PRODUCTS described in Plaintiff's August 17, 2010 60-Day Notice of Violations)**

18 32. Plaintiff realleges and incorporates by reference Paragraphs 1 through 31,  
19 inclusive, as if specifically set forth herein.

20 33. On August 17, 2010, Plaintiff sent a 60-Day Notice of Proposition 65 violations  
21 to the requisite public enforcement agencies and to Defendant SPORTRON INTERNATIONAL,  
22 INC. ("First Notice"). The First Notice was issued pursuant to, and in compliance with, the  
23 requirements of H&S Code §25249.7(d) and the statute's implementing regulations regarding the  
24 notice of the violations to be given to certain public enforcement agencies and to the violator.

25 The notice was issued as follows:  
26

- 1 a. Defendant SPORTRON INTERNATIONAL, INC. and the California  
2 Attorney General were provided copies of the First Notice by Certified  
3 Mail.  
4 b. Defendant SPORTRON INTERNATIONAL, INC. was provided a copy  
5 of a document entitled "The Safe Drinking Water and Toxic Enforcement  
6 Act of 1986 (Proposition 65): A Summary," which is also known as  
7 Appendix A to Title 27 of CCR §25903.  
8 c. The California Attorney General was provided with a Certificate of  
9 Merit by the noticing party or the attorney for the noticing party,  
10 stating that there is a reasonable and meritorious cause for this action,  
11 and attaching factual information sufficient to establish a basis for  
12 the certificate, including the identity of the persons consulted with and  
13 relied on by the certifier, and the facts, studies, or other data reviewed  
14 by those persons, pursuant to H&S Code §25249.7(h)(2).  
15

16 34. The appropriate public enforcement agencies have failed to commence and  
17 diligently prosecute a cause of action under H&S Code §25249.35, *et seq.* against Defendants  
18 based on the allegations herein.  
19

20 35. By committing the acts alleged in the Complaint, Defendants at all times relevant  
21 to this action, and continuing through the present, have violated H&S Code §25249.6 by, in the  
22 course of doing business, knowingly and intentionally exposing individuals who use and/or  
23 handle the PRODUCTS set forth in the First Notice to the LISTED CHEMICALS, without first  
24 providing a clear and reasonable warning to such individuals pursuant to H&S Code §25249.6  
25 and 25249.11(f).  
26



1 of Civil Procedure §1021.5 or the substantial benefit theory;

2 D. An award of costs of suit herein; and

3 E. Such other and further relief as may be just and proper.

4  
5 Dated: December 8, 2010

LAW OFFICE OF PHILIP T. EMMONS

6  
7 By: 

Philip T. Emmons, Esq.

Attorney for Plaintiff

Environmental Research Center