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FILED

JUL 31 2012

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT

By: T. Fraguero, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,

Plaintiff,

v.

TEXTRON, INC., GREENLEE TEXTRON, INC.
and DOES 1-150,

Defendants.

Case No. CW 1203485 ^{d1}

COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF

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

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2. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code Section 25249.6 *et seq.* (“Proposition 65”), “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. . . .” (*Cal. Health & Safety Code* § 25249.6.)

4. DEHP shall hereinafter be referred to as the "LISTED CHEMICAL."

6. Defendants' failure to warn consumers and/or other individuals in the State of California about their exposures to the LISTED CHEMICAL in conjunction with defendants' sale of the PRODUCTS is a violation of Proposition 65.

7. For defendants' violations of Proposition 65, plaintiff seeks preliminary and permanent injunctive relief to compel defendants to provide purchasers or users of the

1 PRODUCTS with the required warning regarding the health hazards of the LISTED
2 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

3 8. Plaintiff also seeks civil penalties against defendants for their violations of
4 Proposition 65, as provided for by California Health & Safety Code Section 25249.7(b).

5 **PARTIES**

6 9. Plaintiff JOHN MOORE is a citizen of the State of California who is dedicated to
7 protecting the health of California citizens through the elimination or reduction of toxic
8 exposures from consumer products, and brings this action in the public interest pursuant to
9 California Health & Safety Code Section 25249.7.

10 10. Defendants TEXTRON, INC. and GREENLEE TEXTRON, INC. (hereafter,
11 collectively "TEXTRON") are each a person doing business within the meaning of California
12 Health & Safety Code Section 25249.11.

13 11. Defendant TEXTRON manufactures, distributes, and/or offers the PRODUCTS
14 for sale or use in the State of California or implies by its conduct that it manufactures,
15 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

16 12. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons
17 doing business within the meaning of California Health & Safety Code Section 25249.11.

18 13. MANUFACTURER DEFENDANTS engage in the process of research, testing,
19 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
20 engage in the process of research, testing, designing, assembling, fabricating, and/or
21 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

22 14. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons
23 doing business within the meaning of California Health & Safety Code Section 25249.11.

24 15. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process and/or
25 transport one or more of the PRODUCTS to individuals, businesses or retailers for sale or use
26 in the State of California.

27 16. Defendants DOES 101-150 ("RETAIL DEFENDANTS") are each persons doing
28 business within the meaning of California Health & Safety Code Section 25249.11.

17. RETAIL DEFENDANTS offer the PRODUCTS for sale to individuals in the State of California.

18. At this time, the true names of Defendants DOES 1 through 150, inclusive, are unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to Code of Civil Procedure Section 474. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences herein alleged. When ascertained, their true names shall be reflected in an amended complaint.

19. TEXTRON, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAIL DEFENDANTS shall, where appropriate, collectively be referred to hereinafter as “DEFENDANTS”.

VENUE AND JURISDICTION

20. Venue is proper in the Marin County Superior Court, pursuant to Code of Civil Procedure Sections 394, 395, and 395.5, because this Court is a court of competent jurisdiction, because one or more instances of wrongful conduct occurred, and continues to occur, in the County of Marin and/or because DEFENDANTS conducted, and continue to conduct, business in this County with respect to the PRODUCTS.

21. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all causes except those given by statute to other trial courts.” The statute under which this action is brought does not specify any other basis of subject matter jurisdiction.

22. The California Superior Court has jurisdiction over DEFENDANTS based on plaintiff's information and good faith belief that each defendant is a person, firm, corporation or association that either are citizens of the State of California, have sufficient minimum contacts in the State of California, or otherwise purposefully avail themselves of the California market. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California courts consistent with traditional notions of fair play and substantial justice.

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1 FIRST CAUSE OF ACTION

2 (Violation of Proposition 65 - Against All Defendants)

3 23. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 22, inclusive.

5 24. The citizens of the State of California have expressly stated in the Safe Drinking
6 Water and Toxic Enforcement Act of 1986, California Health & Safety Code Section 25249.5, *et*
7 *seq.* (Proposition 65) that they must be informed "about exposures to chemicals that cause
8 cancer, birth defects and other reproductive harm." (*Cal. Health & Safety Code* § 25249.6.)

9 25. On January 31, 2012, a sixty-day notice of violation ("60-Day Notice"), together
10 with the requisite Certificate of Merit, was provided to TEXTRON and various public
11 enforcement agencies stating that as a result of the TEXTRON's manufacture, distribution and
12 sales of the PRODUCTS, purchasers and users in the State of California are being exposed to
13 lead resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual
14 purchasers and users first having been provided with a "clear and reasonable warning"
15 regarding such toxic exposures.

16 26. DEFENDANTS have engaged in the manufacture, distribution, and/or offering
17 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section
18 25249.6 and DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for
19 sale or use in violation of California Health & Safety Code Section 25249.6 has continued to
20 occur beyond TEXTRON's receipt of plaintiff's 60-Day Notice. Plaintiff further alleges and
21 believes that such violations will continue to occur into the future.

22 27. After receipt of the claims asserted in the 60-Day Notice, the appropriate public
23 enforcement agencies have failed to commence and diligently prosecute a cause of action
24 against DEFENDANTS under Proposition 65.

25 28. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
26 California by DEFENDANTS, contain the LISTED CHEMICAL.

27 29. DEFENDANTS knew or should have known that the PRODUCTS contained the
28 LISTED CHEMICAL.

30. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to expose individuals to the LISTED CHEMICAL, as such exposure is defined by 27 CCR Section 25602(b), through dermal contact and/or ingestion during or as a consequence of the reasonably foreseeable use of the PRODUCTS.

31. DEFENDANTS knew or should have known that the reasonably foreseeable use of the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact and/or ingestion.

32. DEFENDANTS' participation in the manufacture, distribution and/or offer for sale or use of PRODUCTS to individuals in the State of California was deliberate and non-accidental.

33. DEFENDANTS failed to provide a “clear and reasonable warning” to those consumers and/or other individuals in the State of California who were or who could become exposed to the LISTED CHEMICAL during the reasonably foreseeable use of the PRODUCTS.

34. Contrary to the express policy and statutory prohibition of Proposition 65, individuals exposed to the LISTED CHEMICAL through dermal contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS, sold by DEFENDANTS without a "clear and reasonable warning", have suffered, and continue to suffer, irreparable harm, for which harm they have no other plain, speedy or adequate remedy at law.

35. As a consequence of the above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day for each violation of Proposition 65 pursuant to California Health & Safety Code Section 25249.7(b).

36. As a consequence of the above-described acts, California Health & Safety Code Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as follows:

1 1. That the Court, pursuant to California Health & Safety Code Section 25249.7(b),
2 assess civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation
3 alleged herein;

4 2. That the Court, pursuant to California Health & Safety Code Section 25249.7(a),
5 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
6 offering the PRODUCTS for sale or use in California, without providing "clear and reasonable
7 warnings" as defined by 27 CCR Section 25601, as to the harms associated with exposures to
8 the LISTED CHEMICAL;

9 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

10 4. That the Court grant such other and further relief as may be just and proper.

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12 Dated: July __, 2012

Respectfully submitted,

13 THE CHANLER GROUP

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15 By: _____
16 Gregory M. Sheffer
17 Attorneys for Plaintiff
18 JOHN MOORE
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