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FILED

MAR 12 2013

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF MARIN
10 UNLIMITED CIVIL JURISDICTION
11

12 JOHN MOORE,

13 Plaintiff,

14 v.

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

17 Defendants.
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Case No. CIV 1203485

**[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AGREEMENT**

Action Filed : July 31, 2012

1 In the above-entitled action, Plaintiff JOHN MOORE and Defendant GREENLEEE TEXTRON,
2 INC., having agreed through their respective counsel that a judgment be entered pursuant to the
3 terms of the Consent To Judgment entered into by the parties in resolution of this Proposition 65
4 action, and following the issuance of an order approving the Parties' Consent to Judgment on this day,
5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Health & Safety Code §
6 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered in accordance with the
7 terms of the Consent To Judgment attached hereto as Exhibit A. By stipulation of the parties, the
8 Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.
9

10 **IT IS SO ORDERED.**

11 **MAR 12 2013**

12 **LYNN DURYEE**

13 Dated: _____

14 _____
15 Hon. M. Lynn Duryee
16 Judge Of The Superior Court
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EXHIBIT A

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Attorneys for Plaintiff
JOHN MOORE

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF MARIN

UNLIMITED CIVIL JURISDICTION

JOHN MOORE,

Plaintiff,

v.

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

Defendants.

Case No. CIV 1203485

**CONSENT TO JUDGMENT AS TO
DEFENDANT GREENLEE TEXTRON INC.**

Action Filed: July 31, 2012
Trial Date: Not Assigned

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent To Judgment is entered into by and between Plaintiff John Moore (“Moore”
4 or “Plaintiff”) and Defendant Greenlee Textron Inc. (“Defendant” or “Greenlee Textron”),
5 collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

7 Moore is an individual residing in the State of California who seeks to promote
8 awareness of exposure to toxic chemicals and improve human health by reducing or eliminating
9 hazardous substances contained in consumer products.

10 **1.3 Defendant**

11 Greenlee Textron employs 10 or more persons and is a person in the course of doing
12 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California
13 Health & Safety Code §§ 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that Greenlee Textron manufactured, distributed and/or sold, in the State
16 of California, certain types of hand tools with grips containing DEHP and DBP, including, but
17 not limited to, Greenlee Side-Cutting Long Nose Pliers, Item #0351-06D, and pliers and cutters
18 from Paladin Tools Computer Service Kit, Item #4370, that exposed users to DEHP and DBP
19 without first providing “clear and reasonable warning” under Proposition 65. DEHP and DBP
20 are listed as a reproductive and developmental toxicant pursuant to Proposition 65 and are
21 collectively referred to hereinafter as the “Listed Chemical.”

22 **1.5 Notice of Violation**

23 On January 31, 2012, Moore served Greenlee Textron and various public enforcement
24 agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided public
25 enforcers and these entities with notice of alleged violations of Health & Safety Code § 25249.6
26 for failing to warn consumers of the presence of DEHP and DBP, toxic chemicals found in and
27 on their hand tool products sold in California. Greenlee Textron received such 60-Day Notice of
28 Violation. Greenlee Textron represents that, as of the date it executes this Consent Judgment, it

1 believes that no public enforcer is diligently prosecuting a Proposition 65 enforcement action
2 related to the Proposition 65 listed phthalate chemicals in its products, as identified in the
3 Notice.

4 **1.6 Complaint**

5 On July 31, 2012, Moore, acting in the interest of the general public in California, filed a
6 Complaint in the Superior Court of the State of California for the County of Marin, alleging
7 violations by Greenlee Textron of Health & Safety Code § 25249.6 based, *inter alia*, on the alleged
8 exposures to DEHP and DBP contained in the referenced hand tool products (the “Action”).

9 **1.7 No Admission**

10 This Consent To Judgment resolves claims that are denied and disputed by Greenlee
11 Textron. The Parties enter into this Consent To Judgment pursuant to a full and final settlement
12 of any and all claims between the Parties for the purpose of avoiding prolonged litigation.
13 Greenlee Textron denies the material factual and legal allegations contained in the Notice and
14 Action, maintains that it did not knowingly or intentionally expose California consumers to
15 DEHP and DBP through the reasonably foreseeable use of the Covered Products and otherwise
16 contends that all Covered Products it has manufactured, distributed and/or sold in California
17 have been and are in compliance with all applicable laws. Nothing in this Consent To Judgment
18 shall be construed as an admission by Greenlee Textron of any fact, finding, issue of law, or
19 violation of law; nor shall compliance with this Consent To Judgment constitute or be construed
20 as an admission by the Greenlee Textron of any fact, finding, conclusion, issue of law, or
21 violation of law, such being specifically denied by Greenlee Textron. However, notwithstanding
22 the foregoing, this section shall not diminish or otherwise affect Greenlee Textron’s obligations,
23 responsibilities, and duties under this Consent To Judgment.

24 **1.8 Consent to Jurisdiction**

25 For purposes of this Consent To Judgment only, the Parties stipulate that this Court has
26 jurisdiction over Greenlee Textron as to the allegations contained in the Complaint, that venue is
27 proper in the County of Marin, and that this Court has jurisdiction to enter and enforce the
28 provisions of this Consent To Judgment. As an express part of this Agreement, pursuant to

1 C.C.P. § 664.6 the Court in which this action was filed shall retain jurisdiction over the parties to
2 enforce the settlement until performance in full of the terms of the settlement.

3 **2. DEFINITIONS**

4 2.1 The term “Complaint” shall mean the July 31, 2012, Complaint.

5 2.2 The term “Covered Products” means single or multiple types of, or kits of any
6 hand tools with grips containing DEHP and/or DBP, including, but not limited to, Greenlee
7 Side-Cutting Long Nose Pliers, Item #0351-06D.

8 2.3 The term “Noticed Product” means the pliers and cutters from Paladin Tools
9 Computer Service Kit, Item #4370.

10 2.4 The term “Effective Date” shall mean December 31, 2012.

11 2.5 “Accessible Component” means a metal or a poly vinyl chloride or other soft
12 plastic, vinyl, or synthetic leather component of a Covered Product that could be touched by a
13 person during reasonably foreseeable use.

14 2.6 The term “DEHP and DBP Free” Covered Products shall mean Covered Products
15 containing Accessible Components, materials or other components that may be handled,
16 touched or mouthed by a consumer, and which components contain less than or equal to 1,000
17 parts per million (“ppm”) of both DEHP and DBP as determined by a minimum of duplicate
18 quality controlled test results using Environmental Protection Agency (“EPA”) testing
19 methodologies 3580A and 8270C or equivalent methodologies utilized by state or federal
20 agencies for the purpose of determining DEHP or DBP content in a solid substance.

21 2.7 “Vendor” means a person or entity that Manufactures, imports, distributes, or
22 otherwise supplies a Covered Product or Noticed Product to Defendant, and that is not itself a
23 Defendant.

24 2.8 “Manufactured” and “Manufactures” have the meaning defined in Section
25 3(a)(10) of the Consumer Product Safety Act (“CPSA”) [15 U.S.C. § 2052(a)(10)], as amended
26 from time to time.

27 **3. INJUNCTIVE RELIEF**

28 3.1 **Formulation Commitment**

1 **3.1.1** No later than the Effective Date, and to the extent that it has not already
2 been accomplished, Greenlee Textron shall provide the DEHP and DBP Free phthalate
3 concentration standard of Section 2.6 to its then-current Vendors of Covered Products and
4 Noticed Product and instruct its Vendors not to incorporate any raw or component materials
5 into Covered Products that do not meet or exceed the DEHP and DBP Free concentration
6 standard of Section 2.6. In addressing the obligation set forth in the preceding sentence,
7 Greenlee Textron shall not employ statements that will encourage a Vendor to delay compliance
8 with the Reformulation Standard.

9 **3.1.2** Upon request, Greenlee Textron shall provide Plaintiff with copies of such
10 Vendor notification and Plaintiffs shall regard such copies as confidential business information.

11 **3.1.3** Commencing on March 15, 2013, Greenlee Textron shall not order, cause
12 to be ordered, manufacture or cause to be manufactured any Covered Product, except for the
13 Noticed Product, that is not DEHP and DBP Free.

14 **3.1.4** For every Covered Product or Noticed Product ordered, caused to be
15 ordered, manufactured or caused to be manufactured after the Effective Date, Greenlee Textron
16 shall maintain copies of all testing of such products demonstrating compliance with this section,
17 shall maintain copies of all Vendor correspondence relating to the DEHP and DBP concentration
18 standard and shall produce such copies to Moore within fifteen (15) days of receipt of a written
19 request from Moore.

20 **3.2 Product Warnings**

21 **3.2.1 Noticed Product**

22 No later than thirty (30) days after the Effective Date, Greenlee Textron shall not
23 distribute, cause to be distributed, sell or cause to be sold, in California or for distribution to or
24 sale to any retailer that Defendant reasonably understand maintains retail outlets in California,
25 any Noticed Product unless such Noticed Product is DEHP and DBP Free under Section 2.6 or is
26 sold or shipped with one of the clear and reasonable warnings set forth hereafter.

27 Each warning shall be prominently placed with such conspicuousness as compared with
28 other words, statements, designs, or devices as to render it likely to be read and understood by

1 an ordinary individual under customary conditions *before* purchase or use. Each warning shall
2 be provided in a manner such that the consumer or user understands to which *specific* Noticed
3 Product the warning applies, so as to minimize the risk of consumer confusion.

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

5 (i) **Product Labeling.** Greenlee Textron may affix a warning to the
6 packaging, labeling, or directly on any Noticed Product sold at a retail outlet in California that
7 states:

8 **WARNING:** This product contains DEHP and DBP,
9 chemicals known to the State of California to
10 cause birth defects and other reproductive
11 harm.

12 (ii) **Point-of-Sale Warnings.** Alternatively, Greenlee Textron may
13 provide warning signs in the form below to retail outlets in California, which stores it is
14 reasonably aware of having sold the Noticed Product or having inventory or orders of the
15 Noticed Product, with instructions to post the signs *in immediate proximity* to the point of
16 display of any and all such Noticed Product for the benefit of its customers.

17 **WARNING:** This product contains DEHP and DBP,
18 chemicals known to the State of California to
19 cause birth defects and other reproductive
20 harm.

21 (b) **Mail Order Catalog and Internet Sales.** Greenlee Textron may satisfy its
22 Proposition 65 warning obligations for Noticed Product sold by mail order catalogue or from the
23 internet by providing a warning: (1) in the mail order catalogue as specified in Section 3.2.1(b)(i);
24 on the website as specified in Section 3.2.1(b)(ii); and/or by affixing the warning specified in
25 Section 3.2.1(a)(i) to the packaging, labeling, or directly on any Noticed Product.

26 (i) **Mail Order Catalog Warning.** Any warning provided in a mail
27 order catalog must be in the same type size or larger than the Noticed Product description text
28 within the catalog. The following warning shall be provided on the same page and in the same
location as the display and/or description of the Noticed Product:

1 **WARNING:** This product contains DEHP and DBP,
2 chemicals known to the State of California to
3 cause birth defects and other reproductive
4 harm.

5 Where it is impracticable to provide the warning on the same page and in the same
6 location as the display and/or description of the Noticed Product, Greenlee Textron may utilize
7 a designated symbol to cross-reference the applicable warning and shall define the term
8 “designated symbol” with the following language on the inside of the front or back cover of the
9 catalog or on the same page as any order form for the Noticed Product:

10 **WARNING:** Certain products identified with this
11 symbol ▼ and offered for sale in this
12 catalog contain DEHP and DBP, chemicals
13 known to the State of California to cause
14 birth defects and other reproductive harm.

15 The designated symbol must appear on the same page and in close proximity to the
16 display and/or description of the Noticed Product. On each page where the designated symbol
17 appears, Greenlee Textron must provide a header or footer directing the consumer to the
18 warning language and definition of the designated symbol.

19 If Greenlee Textron elects to provide warnings in any mail order catalog, then the
20 warnings must be included in all catalogs offering to sell one or more Noticed Product printed
21 after the Effective Date.

22 (ii) **Internet Website Warning.** A warning may be given in
23 conjunction with the sale of any Noticed Product via the Internet, provided it appears either: (a)
24 on the same web page on which a Noticed Product is displayed; (b) on the same web page as the
25 order form for a Noticed Product; (c) on the same page as the price for any Noticed Product; or
26 (d) on one or more web pages displayed to a purchaser during the checkout process. The
27 following warning statement shall be used and shall appear in any of the above instances
28 adjacent to or immediately following the display, description, or price of the Noticed Product for
29 which it is given in the same type size or larger than the Noticed Product description text:

30 **WARNING:** This product contains DEHP and DBP,
31 chemicals known to the State of California to

1 cause birth defects and other reproductive
2 harm.

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

7
8 **WARNING:** Products identified on this page with the
9 following symbol ▼ contain DEHP and
10 DBP, chemicals known to the State of
11 California to cause birth defects and other
12 reproductive harm.

13 **3.2.2 Covered Products**

14 Commencing on June 15, 2013, Greenlee Textron shall not distribute, cause to be
15 distributed, sell or cause to be sold, in California or for distribution to or sale to any retailer that
16 Defendant reasonably understand maintains retail outlets in California, any Covered Products
17 that were ordered or caused to be ordered by Greenlee Textron prior to March 15, 2013, unless
18 such Covered Product is DEHP and DBP Free under Section 2.6 or is sold or shipped with one of
19 the clear and reasonable warnings set forth hereafter.

20 Each warning shall be prominently placed with such conspicuousness as compared with
21 other words, statements, designs, or devices as to render it likely to be read and understood by
22 an ordinary individual under customary conditions *before* purchase or use. Each warning shall
23 be provided in a manner such that the consumer or user understands to which *specific* Covered
24 Product the warning applies, so as to minimize the risk of consumer confusion.

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

26 (i) **Product Labeling.** Greenlee Textron may affix a warning to the
27 packaging, labeling, or directly on any Covered Product sold at a retail outlet in California that
28 states:

WARNING: This product contains DEHP and DBP,
chemicals known to the State of California to
cause birth defects and other reproductive
harm.

1 (ii) **Point-of-Sale Warnings.** Alternatively, Greenlee Textron may
2 provide warning signs in the form below to retail outlets in California, which stores it is
3 reasonably aware of having sold the Covered Product or having inventory or orders of the
4 Covered Product, with instructions to post the signs *in immediate proximity* to the point of
5 display of any and all such Covered Product for the benefit of its customers.
6

7 **WARNING:** This product contains DEHP and DBP,
8 chemicals known to the State of California to
9 cause birth defects and other reproductive
10 harm.

11 (b) **Mail Order Catalog and Internet Sales.** Greenlee Textron may satisfy its
12 Proposition 65 warning obligations for Covered Product sold by mail order catalogue or from
13 the internet by providing a warning: (1) in the mail order catalogue as specified in Section
14 3.2.1(b)(i); on the website as specified in Section 3.2.1(b)(ii); and/or by affixing the warning
15 specified in Section 3.2.1(a)(i) to the packaging, labeling, or directly on any Covered Product.

16 (i) **Mail Order Catalog Warning.** Any warning provided in a mail
17 order catalog must be in the same type size or larger than the Covered Product description text
18 within the catalog. The following warning shall be provided on the same page and in the same
19 location as the display and/or description of the Covered Product:

20 **WARNING:** This product contains DEHP and DBP,
21 chemicals known to the State of California to
22 cause birth defects and other reproductive
23 harm.

24 Where it is impracticable to provide the warning on the same page and in the same
25 location as the display and/or description of the Covered Product, Greenlee Textron may utilize
26 a designated symbol to cross-reference the applicable warning and shall define the term
27 “designated symbol” with the following language on the inside of the front or back cover of the
28 catalog or on the same page as any order form for the Covered Product:

1 DBP, chemicals known to the State of
2 California to cause birth defects and other
3 reproductive harm.

4 **3.2.3** Textron shall maintain records of compliance correspondence, inventory
5 reports or other communication confirming compliance with §§ 3.2.1 and 3.2.2 for three (3) years
6 from the Effective Date and shall produce copies of such records upon written request by Moore.

7 **4. MONETARY PAYMENTS**

8 **4.1** Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)

9 Greenlee Textron shall make a payment of \$26,000.00 to be apportioned in accordance
10 with Health & Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds
11 earmarked for the State of California's Office of Environmental Health Hazard Assessment
12 ("OEHHA") and the remaining 25% of these penalty monies earmarked for Moore.

13 **4.2 Augmentation of Penalty Payments**

14 For purposes of the penalty assessment under this Consent To Judgment, plaintiff is
15 relying entirely upon defendant and its counsel for accurate, good faith reporting to plaintiff of
16 the nature and amounts of relevant sales activity. If within nine (9) months of the Effective Date,
17 plaintiff discovers and presents to Defendant evidence that the Covered Products have been
18 distributed by Textron in sales volumes materially different than those identified by Defendant
19 prior to execution of this Agreement, then Defendant shall be liable for an additional penalty
20 amount of \$10,000.00. Defendant shall also be liable for any reasonable, additional attorney fees
21 expended by plaintiff in discovering such additional retailers or sales. Plaintiff agrees to provide
22 Defendant with a written demand for all such additional penalties and attorney fees under this
23 Section. After service of such demand, defendant shall have thirty (30) days to agree to the
24 amount of fees and penalties owing by Defendant and submit such payment to plaintiff in
25 accordance with the method of payment of penalties and fees identified in Sections 4.5. Should
26 this thirty (30) day period pass without any such resolution between the parties and payment of
27 such additional penalties and fees, plaintiff shall be entitled to file a formal legal claim for
28 damages for breach of this contract and shall be entitled to all reasonable attorney fees and costs

1 relating to such claim.

2 **4.3 Reimbursement of Plaintiff's Fees and Costs**

3 The Parties acknowledge that Moore and his counsel offered to resolve this dispute
4 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
5 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
6 Greenlee Textron then expressed a desire to resolve the fee and cost issue shortly after the other
7 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
8 the compensation due to Moore and his counsel under general contract principles and the
9 private attorney general doctrine codified at California Code of Civil Procedure section 1021.5,
10 for all work performed in this matter, except fees that may be incurred on appeal. Under these
11 legal principles, Greenlee Textron shall pay the amount of \$42,500.00 for fees and costs incurred
12 investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet
13 to be incurred) negotiating, drafting, and obtaining the Court's approval of this Consent
14 Judgment in the public interest.

15 **4.4 Payment Procedures**

16 **4.4.1 Funds for Moore in Trust:** All payments required by Sections 4.1 and 4.3
17 shall delivered on or before January 15, 2013, to either The Chanler Group or the attorney of
18 record for Greenlee Textron, and shall be held in trust pending the Court's approval of this
19 Consent To Judgment.

20 Payments delivered to The Chanler Group shall be made payable, as follows:

- 21 (a) One check made payable to "The Chanler Group in Trust for OEHHA" in
22 the amount of \$19,500.00 (or 75% of any contractually reduced penalty);
- 23 (b) One check made payable to "The Chanler Group in Trust for Moore" in
24 the amount of \$6,500.00 (or 25% of any contractually reduced penalty); and
- 25 (c) One check made payable to "The Chanler Group in Trust" in the amount
26 of \$42,500.00.

27 Payments delivered to Orrick, Herrington & Sutcliffe LLP shall be made payable,
28 as follows:

1 (a) One check made payable to "Orrick, Herrington & Sutcliffe LLP in Trust
2 for OEHHA" in the amount of \$19,500.00 (or 75% of any contractually reduced
3 penalty);

4 (b) One check made payable to "Orrick, Herrington & Sutcliffe LLP in Trust
5 for Moore" in the amount of \$6,500.00 (or 25% of any contractually reduced
6 penalty); and

7 (c) One check made payable to "Orrick, Herrington & Sutcliffe LLP in Trust
8 for The Chanler Group" in the amount of \$42,500.00.

9 If Greenlee Textron elects to deliver payments to its attorney of record, such
10 attorney of record shall: (a) confirm in writing within five days of receipt that the funds
11 have been deposited in a trust account; and (b) within two days of the date of the
12 hearing on which the Court approves the Consent To Judgment, deliver the payment to
13 The Chanler Group in three separate checks, as follows:

14 (a) One check made payable to "The Chanler Group in Trust for OEHHA" in
15 the amount of \$19,500.00 (or 75% of any contractually reduced penalty);

16 (b) One check to "The Chanler Group in Trust for Moore" in the amount of
17 \$6,500.00 (or 75% of any contractually reduced penalty); and

18 (c) One check to "The Chanler Group" in the amount of \$42,500.00.

19 Any failure by defendant to deliver the above-referenced payments to The
20 Chanler Group within two days of the date of the hearing on which the Court approves
21 the Consent To Judgment shall result in imposition of a 10% simple interest assessment
22 on the undelivered payment(s) until delivery.

23 **4.4.2 Issuance of 1099 Forms.** After the Consent To Judgment has been
24 approved and the settlement funds have been transmitted to plaintiff's counsel, Greenlee
25 Textron shall issue three separate 1099 forms, as follows:

26 (a) The first 1099 shall be issued to the Office of Environmental Health
27 Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in
28 the amount of \$19,500.00 (or 75% of any contractually reduced penalty);

1 (b) The second 1099 shall be issued to Moore in the amount of \$6,500.00 (or
2 25% of any contractually reduced penalty), whose address and tax identification
3 number shall be furnished upon request; and

4 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-3171522) in
5 the amount of \$42,500.00.

6 **4.4.3 Payment Address:** All payments to The Chanler Group shall be
7 delivered to the following payment address:

8 The Chanler Group
9 Attn: Proposition 65 Controller
10 2560 Ninth Street
11 Parker Plaza, Suite 214
12 Berkeley, CA 94710

11 **5. CLAIMS COVERED AND RELEASE**

12 **5.1 Moore's Releases of Greenlee Textron**

13 **5.1.1** This Consent To Judgment is a full, final, and binding resolution between
14 Moore, on behalf of himself, his past and current agents, representatives, attorneys, successors,
15 and/or assignees, and in the interest of the general public, and Greenlee Textron and its parents
16 (including Textron Inc.), subsidiaries, attorneys, successors, licensors and assigns ("Defendant
17 Releasees"), and all entities to whom Greenlee Textron directly or indirectly distributes or sells
18 Covered Products, including but not limited to distributors, wholesalers, customers, retailers,
19 franchisees, cooperative members, and licensees ("Downstream Defendant Releasees") of any
20 violation of Proposition 65 that has been or could have been asserted against Defendant
21 Releasees and Downstream Defendant Releasees regarding the failure to warn about exposure to
22 the Listed Chemical arising in connection with Covered Products and Noticed Products
23 manufactured, sourced, distributed, or sold by Defendant Releasees prior to the Effective Date.
24 Greenlee Textron's compliance with this Consent To Judgment shall constitute compliance with
25 Proposition 65 with respect to the Listed Chemical in the Covered Products and Noticed
26 Products after the Effective Date.

27 **5.1.2** Moore on behalf of himself, his past and current agents, representatives,
28 attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives

1 with respect to Covered Products and Noticed Products all rights to institute or participate in,
2 directly or indirectly, any form of legal action and releases all claims, including, without
3 limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,
4 obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to,
5 investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or
6 unknown, fixed or contingent (collectively "claims"), against Defendant Releasees and
7 Downstream Defendant Releasees that arise under Proposition 65 or any other statutory or
8 common law claims that were or could have been asserted in the public interest, as such claims
9 relate to Defendant Releasees' and Downstream Defendant Releasees' alleged failure to warn
10 about exposures to the Listed Chemical contained in the Covered Products and Noticed
11 Products.

12 **5.1.3** Moore also, in his individual capacity only and *not* in his representative
13 capacity, provides a general release herein which shall be effective as a full and final accord and
14 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
15 damages, losses, claims, liabilities and demands of Moore of any nature, character or kind,
16 known or unknown, suspected or unsuspected, arising out of the subject matter of the
17 Complaint as to Covered Products and Noticed Products manufactured, distributed or sold by
18 Defendant Releasees. Moore acknowledges that he is familiar with Section 1542 of the California
19 Civil Code, which provides as follows:

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

23 Moore, in his individual capacity only and *not* in his representative capacity, expressly
24 waives and relinquishes any and all rights and benefits which he may have under, or which may
25 be conferred on him by the provisions of Section 1542 of the California Civil Code as well as
26 under any other state or federal statute or common law principle of similar effect, to the fullest
27 extent that he may lawfully waive such rights or benefits pertaining to the released matters. In
28 furtherance of such intention, the release hereby given shall be and remain in effect as a full and

1 complete release notwithstanding the discovery or existence of any such additional or different
2 claims or facts arising out of the released matters.

3 This Section 5.1 release is expressly limited to those claims that arise under Proposition
4 65, as such claims relate to Greenlee Textron's alleged failure to warn about exposures to or
5 identification of the Listed Chemical contained in the Covered Products and Noticed Products
6 and as such claims are identified in the Proposition 65 60-Day Notice to Defendant.

7 This Section 5.1 release is expressly limited to any alleged violations that occur prior to
8 thirty (30) days after the Effective Date and does not release any person, party or entity from any
9 liability for any violation of Proposition 65 regarding the Covered Products or Noticed Products
10 that occur more than thirty (30) days after the Effective Date.

11 The Parties further understand and agree that this Section 5.1 release shall not extend
12 upstream to any entities, other than Greenlee Textron, that manufactured the Covered Products
13 or Noticed Products or any component parts thereof, or any distributors or suppliers who sold
14 the Covered Products or Noticed Products or any component parts thereof to Greenlee Textron.

15 **5.1.4** Upon court approval of the Consent To Judgment, the Parties waive their
16 respective rights to a hearing or trial on the allegations of the Complaint.

17 **5.2 Greenlee Textron's Release of Moore**

18 **5.2.1** Greenlee Textron waives any and all claims against Moore, his attorneys,
19 and other representatives for any and all actions taken or statements made (or those that could
20 have been taken or made) by Moore and his attorneys and other representatives, whether in the
21 course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in
22 this matter, and/or with respect to the Covered Products and Noticed Products.

23 **5.2.2** Greenlee Textron also provides a general release herein which shall be
24 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
25 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of
26 Greenlee Textron of any nature, character or kind, known or unknown, suspected or
27 unsuspected, arising out of the subject matter of the Action. Greenlee Textron acknowledges
28 that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

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

6 Greenlee Textron expressly waives and relinquishes any and all rights and
7 benefits that it may have under, or which may be conferred on it by the provisions of
8 Section 1542 of the California Civil Code as well as under any other state or federal
9 statute or common law principle of similar effect, to the fullest extent that it may lawfully
10 waive such rights or benefits pertaining to the released matters. In furtherance of such
11 intention, the release hereby given shall be and remain in effect as a full and complete
12 release notwithstanding the discovery or existence of any such additional or different
13 claims or facts arising out of the released matters.

14 **6. SEVERABILITY**

15 If, subsequent to court approval of this Consent To Judgment, any of the provisions of
16 this Consent To Judgment are found by a court to be unenforceable, the validity of the
17 enforceable provisions remaining shall not be adversely affected, unless the Court finds that any
18 unenforceable provision is not severable from the remainder of the Consent To Judgment.

19 **7. COURT APPROVAL**

20 This Consent To Judgment is effective upon execution but must also be approved by the
21 Court. If this Consent To Judgment is not approved by the Court in its entirety, the Parties
22 shall meet and confer to determine whether to modify the terms of the Consent To Judgment
23 and to resubmit it for approval. In meeting and conferring, the Parties agree to undertake any
24 actions reasonably necessary to amend and/or modify this Consent To Judgment in order to
25 further the mutual intention of the Parties in entering into this Consent Judgment.

26 The Consent To Judgment shall become null and void if, for any reason, it is not
27 approved and entered by the Court within one year after it has been fully executed by all Parties.
28 If the Consent To Judgment becomes null and void after any payment of monies under this
agreement to The Chanler Group in trust, such monies shall be returned to Defendant by
payment of such monies to its counsel, in trust for Greenlee Textron.

1 If this Consent To Judgment is not entered by the Court, and the Parties have exhausted
2 their meet and confer efforts pursuant to this Section, upon 15 days' written notice, the law firm
3 holding Greenlee Textron's funds in trust shall refund any and all payments made into its trust
4 account by Defendant as requested.

5 **8. GOVERNING LAW**

6 The terms of this Consent To Judgment shall be governed by the laws of the State of
7 California.

8 **9. NOTICES**

9 When any Party is entitled to receive any notice under this Consent To Judgment, the
10 notice shall be sent by certified mail and electronic mail to the following:

11 For Greenlee Textron Inc. to:

12
13 President
14 Greenlee Textron Inc.
15 4455 Boeing Drive
16 Rockford, IL 61109

17 With copy to their counsel at

18 Kathryn H. Edwards, Esq.
19 Orrick, Herrington & Sutcliffe LLP
20 405 Howard Street
21 San Francisco, CA 94105-2669

22 For Moore to:

23 Proposition 65 Coordinator
24 The Chanler Group
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710-2565

28 Any Party may modify the person and address to whom the notice is to be sent by sending each
other Party notice by certified mail and/or other verifiable form of written communication.

29 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

30 Moore agrees to comply with the reporting form requirements referenced in California
31 Health & Safety Code § 25249.7(f) and to file a motion for approval of this Consent Judgment.

1 **11. MODIFICATION**

2 This Consent To Judgment may be modified only: (1) by written agreement of the
3 Parties; or (2) upon a successful motion of any Party and entry of a modified Consent To
4 Judgment by the Court.

5 **12. ADDITIONAL POST-EXECUTION ACTIVITIES**

6 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed
7 motion is required to obtain judicial approval of this Consent To Judgment. In furtherance of
8 obtaining such approval, Moore and Greenlee Textron and their respective counsel agree to
9 mutually employ their best efforts to support the entry of this agreement as a Consent To
10 Judgment and obtain approval of the Consent To Judgment - sufficient to render a formal
11 judgment approving this agreement - by the Court in a timely manner. Any effort by plaintiff or
12 Greenlee Textron to impede judicial approval of this Consent To Judgment shall subject such
13 impeding party to liability for attorney fees and costs incurred by plaintiff or his counsel in their
14 efforts to meet or oppose Greenlee Textron's impeding conduct.

15 **13. ENTIRE AGREEMENT**

16 This Consent To Judgment contains the sole and entire agreement and understanding of
17 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
18 negotiations, commitments, and understandings related hereto. No representations, oral or
19 otherwise, express or implied, other than those contained herein have been made by any Party
20 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
21 deemed to exist or to bind any of the Parties. No supplementation, modification, waiver, or
22 termination of this Consent To Judgment shall be binding unless executed in writing by the
23 Party to be bound. No waiver of any of the provisions of this Consent To Judgment shall be
24 deemed or shall constitute a waiver of any of the other provisions whether or not similar, nor
25 shall such waiver constitute a continuing waiver.

26 **14. ATTORNEY'S FEES**

27 14.1 Should Moore prevail on any motion, application for order to show cause or other
28 proceeding to enforce a violation of this Agreement, Moore shall be entitled to his reasonable

1 attorney fees and costs incurred as a result of such motion, order or application, consistent with
2 C.C.P. § 1021.5. Should Greenlee Textron prevail on any motion, application for order to show
3 cause or other proceeding to enforce a violation of this Consent To Judgment, Greenlee Textron
4 may be entitled to its reasonable attorney fees and costs incurred as a result of such motion,
5 order or application upon a finding that Moore’s prosecution of the motion or application lacked
6 substantial justification. For purposes of this Agreement, the term substantial justification shall
7 carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§
8 2016, *et seq.*

9 14.2 Except as specifically provided in the above paragraph and in Section 4.3, each
10 Party shall bear its own costs and attorneys’ fees in connection with this action.

11 14.3 Nothing in this Section 14 shall preclude a Party from seeking an award of
12 sanctions pursuant to law.

13 **15. NEUTRAL CONSTRUCTION**

14 Both Parties and their counsel have participated in the preparation of this Consent To
15 Judgment and this Consent To Judgment is the result of the joint efforts of the Parties. This
16 Consent To Judgment was subject to revision and modification by the Parties and has been
17 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
18 uncertainty or ambiguity existing in this Consent To Judgment shall not be interpreted against
19 any Party as a result of the manner of the preparation of this Consent To Judgment. Each Party
20 to this Consent To Judgment agrees that any statute or rule of construction providing that
21 ambiguities are to be resolved against the drafting Party should not be employed in the
22 interpretation of this Consent To Judgment and, in this regard, the Parties hereby waive
23 California Civil Code Section 1654.

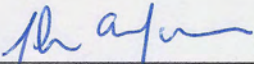
24 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

25 This Consent To Judgment may be executed in counterparts and by facsimile or portable
26 document format (PDF), each of which shall be deemed an original, and all of which, when taken
27 together, shall constitute one and the same document.
28

1 **17. AUTHORIZATION**

2 The undersigned parties and their counsel are authorized to execute this Consent To
3 Judgment on behalf of their respective Parties and have read, understood, and agree to all of the
4 terms and conditions of this Consent To Judgment.

5 **IT IS SO AGREED.**

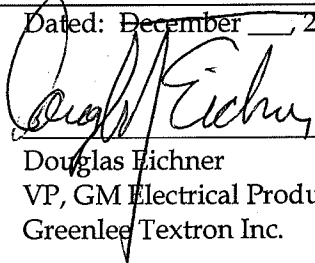
<p>6 Dated: December <u>31</u>, 2012</p> <p>7 </p> <p>8 _____ Plaintiff John Moore</p>	<p>Dated: December __, 2012</p> <p>_____</p> <p>Douglas Eichner VP, GM Electrical Products Greenlee Textron Inc.</p>
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4 terms and conditions of this Consent To Judgment.

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<p>6 Dated: December __, 2012</p> <p>7</p> <p>8 _____ Plaintiff John Moore</p> <p>9</p>	<p>Dated: December __, 2012 1/15/13</p> <p></p> <p>Douglas Eichner VP, GM Electrical Products Greenlee Textron Inc.</p>
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