

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

<p>GMO FREE USA d/b/a TOXIN FREE USA, P.O. Box 458, Unionville, CT 06085, and</p> <p>BEYOND PESTICIDES, 701 E Street SE, Suite 200, Washington, DC 20003,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>NOOK SLEEP SYSTEMS, LLC, 1840 Maryland St., Houston, TX 77006,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">COMPLAINT</p> <p style="text-align: center;"><u>DEMAND FOR JURY TRIAL</u></p>
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Plaintiffs GMO Free USA d/b/a Toxin Free USA (“Toxin Free USA”) and Beyond Pesticides (collectively, “Plaintiffs”) bring this action against Defendant Nook Sleep Systems, LLC (“Nook” or “Defendant”) regarding the false and deceptive marketing and sale of “Pure Organic” crib mattresses (the “Products”).¹ Nook represents to District of Columbia consumers that the Products are safe and natural. The Products are not safe or natural. Instead, they contain per- and polyfluoroalkyl substances (“PFAS”), a group of synthetic chemicals that are extremely resistant to degradation, persist indefinitely in the environment, bioaccumulate in blood and body tissues, and can be harmful to humans and the environment, even at very low levels. This Complaint is on behalf of the general public of the District of Columbia, in the interest of consumers. This is not a class action, and no class certification will be sought. Plaintiffs allege

¹Plaintiffs allege that any Nook products that contain PFAS and are represented as “pure,” “organic,” “natural,” “safe,” and/or “non-toxic,” or are represented with any environmental sustainability language, are within the scope of this Complaint. The Products include, but are not limited to, Pure Organic 2.0 Two-Stage Crib Mattress, Organic Mini Crib Mattress, and Pure Organic Crib Mattress for Stokke® Sleepi™ V2. Plaintiffs reserve right to add future Products as a result of further discovery.

the following based upon personal knowledge, information, belief, and the investigation of Counsel:

INTRODUCTION

1. This is a consumer-protection case alleging deceptive marketing representations about crib mattresses. The case is brought by Toxin Free USA and Beyond Pesticides, which are nonprofit, public-interest organizations dedicated to consumer protection and education. Plaintiffs seek to end the deceptive marketing and advertising at issue. Plaintiffs do not seek money damages.

2. Defendant Nook manufactures and sells mattresses for children, including infant crib mattresses, both in stores and online, including to consumers in the District of Columbia.

3. Nook markets these Products as “pure,” “organic,” “natural,” “non-toxic,” and “safe.”

4. Nook also uses third-party certifications to market itself as a sustainable company.

5. In reality, the Products contain synthetic chemicals that are not organic or natural, are not safe for humans or the environment, and would not be expected in an “pure,” organic” and/or “non-toxic” mattress.

6. Testing of the Products revealed high levels of fluorine, which is an indicator of PFAS. Further testing found two precise PFAS chemicals, 6:2 fluorotelomer alcohol (6:2 FTOH) and perfluorohexanoic acid (PFHxA).

7. PFAS are a group of synthetic chemicals that are used in household products, including bedding and other textiles, for stain and water resistance. PFAS are entirely manmade and do not occur in nature.

8. PFAS are known to be toxic to humans, even at very low levels.²
9. Furthermore, PFAS are considered “forever chemicals,” meaning they do not break down naturally in the environment. Use of PFAS in manufacturing textiles and other products leads to the accumulation of PFAS in soil, water, humans, and elsewhere in the environment, threatening other organisms.³
10. Consumers have grown increasingly aware of and concerned about PFAS and the presence of PFAS in their bodies, the environment, and the products they use.⁴
11. As a result, there is a growing consumer-advocacy movement to eliminate PFAS from various products.⁵
12. On October 18, 2021, underscoring the gravity of the PFAS threat, the Biden-Harris Administration announced accelerated efforts to protect Americans from PFAS on the basis that these substances can cause “severe health problems” and persist in the environment once released, “pos[ing] a serious threat across rural, suburban, and urban areas.”⁶
13. Nook’s representations mislead D.C. consumers into believing that the Products are *not* made with synthetic, environmentally damaging, unsafe chemicals like PFAS, when in fact,

² See Abrahm Lustgarten et al., *Suppressed Study: The EPA Underestimated Dangers of Widespread Chemicals*, ProPublica (June 20, 2018), <https://www.propublica.org/article/suppressed-study-the-epa-underestimated-dangers-of-widespread-chemicals>.

³ Nat’l Inst. of Env’t Health Sciences (“NIEHS”), *Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS)*, Nat’l Insts. of Health U.S. Dept. of Health and Human Servs., <https://www.niehs.nih.gov/health/topics/agents/pfc/index.cfm> (last visited Mar. 24, 2023); Francisca Pérez et al., *Accumulation of Perfluoroalkyl Substances in Human Tissues*, 59 *Env’t Int’l* 354 (2013), 10.1016/j.envint.2013.06.004.

⁴ LastWeekTonight, *PFAS: Last Week Tonight with John Oliver (HBO)*, YouTube (Oct. 4, 2021), <https://www.youtube.com/watch?v=9W74aeuqsiU> (demonstrating consumer awareness of issue).

⁵ Elicia Mayuri Cousins et al., *Risky Business? Manufacturer and Retailer Action to Remove Per- and Polyfluorinated Chemicals from Consumer Products*, *NEW SOLUTIONS: A J. of Env’t & Occupational Health Policy* 29(2), 242–65 (2019), <https://doi.org/10.1177/1048291119852674>.

⁶ *FACT SHEET: Biden-Harris Administration Launches Plan to Combat PFAS Pollution*, The White House (Oct. 18, 2021), <https://bit.ly/3DZvZba>; see also *FACT SHEET: Biden-Harris Administration Combatting PFAS Pollution to Safeguard Clean Drinking Water for All Americans*, The White House (June 15, 2022), <https://bit.ly/3Hf4Vt0>.

the Products *are* made with such chemicals. Thus, Nook’s marketing of the Products is false and misleading to D.C. consumers.

STATUTORY FRAMEWORK

14. This action is brought under the District of Columbia Consumer Protection Procedures Act (“CPPA”), D.C. Code § 28-3901, *et seq.*

15. The CPPA makes it a violation for “any person” to, *inter alia*:

Represent that goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have;

Represent that goods or services are of a particular standard, quality, grade, style, or model, if in fact they are of another;

Misrepresent as to a material fact which has a tendency to mislead;

Fail to state a material fact if such failure tends to mislead;

Use innuendo or ambiguity as to a material fact, which has a tendency to mislead; or

Advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered.

D.C. Code § 28-3904(a), (d), (e), (f), (f-1), (h).

16. A violation of the CPPA may occur regardless of “whether or not any consumer is in fact misled, deceived or damaged thereby.” *Id.* § 28-3904.

17. The CPPA “establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia.” *Id.* § 28-3901(c). The statute “shall be ***construed and applied liberally*** to promote its purpose.” *Id.* (emphasis added).

18. Because Plaintiffs are public interest organizations, they may act on behalf of the general public and bring any action that an individual consumer would be entitled to bring:

[A] public interest organization may, on behalf of the interests of a consumer or a class of consumers, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District if the consumer or class could bring an action under subparagraph (A) of this paragraph for relief from such use by such person of such trade practice.

Id. § 28-3905(k)(1)(D)(i). Subparagraph (A) provides: “A consumer may bring an action seeking relief from the use of a trade practice in violation of a law of the District,” and pursuant to § 28-3901(c), placing misinformation into the D.C. marketplace is a trade practice in violation of the CPPA. Accordingly, Plaintiffs have standing to challenge Nook’s misrepresentations about the Products in the District.

19. A public interest organization may act on behalf of the interests of consumers, *i.e.*, the general public of the District of Columbia, so long as the organization has “sufficient nexus to the interests involved of the consumer or class to adequately represent those interests.” *Id.* § 28-3905(k)(1)(D)(ii). As set forth in this Complaint, *see infra* ¶¶ 81-84, 88-91, both Toxin Free USA and Beyond Pesticides are organizations dedicated to consumer advocacy and have previously represented consumers in similar actions under the CPPA. Each Plaintiff has a sufficient nexus to D.C. consumers to adequately represent their interests.

20. Alternatively, Toxin Free USA is a nonprofit organization that has purchased or received the Products in order to test or evaluate their qualities, and therefore has standing under the CPPA to act on behalf of itself and the general public and bring an action as a “tester” organization:

A nonprofit organization may, on behalf of itself or any of its members, or on any such behalf and on behalf of the general public, bring an action seeking relief from the use of a trade practice in violation of a law of the District, including a violation involving consumer goods or services that the organization purchased or received in order to test or evaluate qualities pertaining to use for personal, household, or family purposes.

Id. § 28-3905(k)(1)(C).

21. This is not a class action, or an action brought on behalf of any specific consumer, but an action brought by Plaintiffs on behalf of the general public, *i.e.*, D.C. consumers generally. No class certification will be requested.

22. This action does not seek damages. Instead, Plaintiffs seek to end the unlawful conduct directed at D.C. consumers, *i.e.*, Nook’s false and deceptive labeling and marketing of the Products. Remedies available under the CPPA include “[a]n injunction against the use of the unlawful trade practice.” *Id.* § 28-3905(k)(2)(D), (F). Plaintiffs also seek declaratory relief in the form of an order holding Nook’s conduct to be unlawful in violation of the CPPA, and their attorneys’ fees and costs incurred in bringing this action.

FACT ALLEGATIONS

I. Defendant Represents that the Products Are Safe, Non-Toxic, Organic, Natural, Pure, and Sustainable.

23. On its website, Nook markets its “Organic Pure” crib mattresses with representations such as “Non-Toxic Polyester” and “All Natural.”

24. As shown in the screenshot below,⁷ Nook’s Amazon.com storefront displays representations that its Pure Pebble Crib Mattress, one of the Products, is an “all Organic Sleep System,” “100% organic,” “the most natural place to lay your baby down to sleep,” and “[s]o pure, so healthy.” Nook’s Amazon.com Product listing also repeats that “[t]he Pebble Pure’s organic elements aren’t just in the core, they’re right where it matters most—next to your baby’s delicate skin,” and “[e]very inch of the Pebble Pure is organic and supremely breathable.”

⁷ *Nook Sleep Pure Organic (Cloud) - 2-Stage Non-Toxic Crib Mattress - Organic - 28x53x4*, Amazon, <https://www.amazon.com/Nook-Pebble-Pure-Mattress-Cloud/dp/B005SHV0MW> (last visited Mar. 24, 2023).

From the manufacturer



Nook Sleep Systems Pebble Pure Crib Mattress

The all Organic Sleep System

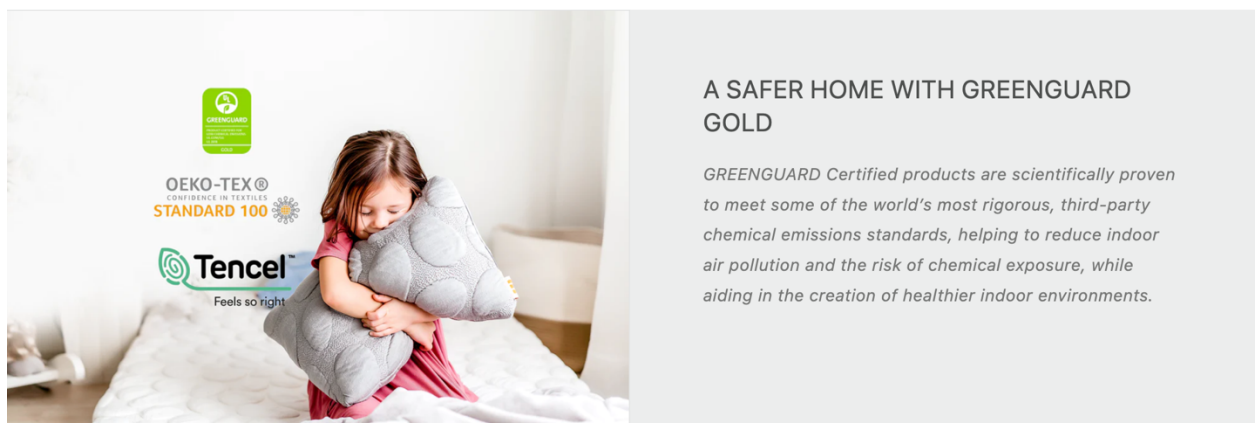
100% organic, breathable, premium crib mattress: A better night's sleep for your baby starts here!

Nook's premium crib mattress is the most natural place to lay your baby down to sleep. So pure, so healthy, so breathable, you have peace of mind knowing your baby is resting safely at nighttime and nap time. The Pebble Pure's organic elements aren't just in the core, they're right where it matters most – next to your baby's delicate skin.

- We don't hide our organic materials beneath non-porous plastics and toxic fire-retardants. Every inch of the Pebble Pure is organic and supremely breathable. Just see for yourself!

25. Nook's advertising on Amazon.com further represents that the Products have a “[n]aturally water resistant cover.”⁸

26. Additionally, as seen in the image below, Nook advertises its Products generally as “GREENGUARD Certified,”⁹ which according to Nook means that its Products “are scientifically proven to meet some of the world’s most rigorous, third-party chemical emissions standards,” reduce the risk of chemical exposure and indoor air pollution, and aid “in the creation of healthier indoor environments.”¹⁰



⁸ *Id.*

⁹ *A SAFER HOME WITH GREENGUARD GOLD*, Nook, <https://nooksleep.com/> (last visited Mar. 24, 2023).

¹⁰ *UL GREENGUARD Certification*, UL Solutions, <https://bit.ly/3FTsITz> (last visited Mar. 24, 2023).

27. Nook also advertises that it sources the fibers for its Products from Tencel, which is a brand focused on “sustainable production.”¹¹

28. In addition, Nook markets its “OEKO-TEX® STANDARD 100” certification, which “is one of the world’s best-known labels for textiles tested for harmful substances. It stands for customer confidence and high product safety.”¹²

II. The Products Are Neither Safe, Non-Toxic, Organic, Natural, Pure, nor Sustainable Because They Contain PFAS.

29. Contrary to Nook’s representations, the Products are neither safe, non-toxic, organic, natural, pure, nor sustainable because they contain synthetic PFAS chemicals, which pose risks to human health and the environment.

30. Toxin Free USA conducted a test on a sample of the outer layer of the cover on the Nook Pure Organic crib mattress and found 896 parts per million (ppm) of fluorine.¹³ Fluorine is an indicator that a product contains PFAS.¹⁴

31. Subsequent testing on a different part of the mattress cover revealed 1185 ppm of organic fluorine. Products with more than 100 ppm of organic fluorine are generally considered as containing PFAS.¹⁵

¹¹ *About*, Tencel, <https://www.tencel.com/about> (last visited Mar. 24, 2023).

¹² *OEKO-TEX® STANDARD 100*, Oeko-Tex, <https://www.oeko-tex.com/en/our-standards/oeko-tex-standard-100> (last visited Mar. 24, 2023).

¹³ For additional context, products intended for children under age 12, including crib mattresses, containing more than 100 ppm of organic fluorine have recently been banned by statute in California due to the toxic and environmentally destructive nature of these compounds. *See* Cal. Health & Safety Code §§ 108945-6.

¹⁴ *See, e.g.*, Heather D. Whitehead et al., *Fluorinated Compounds in North American Cosmetics*, *Env't Sci. Tech. Ltrs.* 2021, 8, 7, 538–544, <https://doi.org/10.1021/acs.estlett.1c00240> (PFAS concentrations were detected by screening for total fluorine); Jen Dickman et al., *Packaged in Pollution: Are food chains using PFAS in packaging?*, <https://saferchemicals.org/packaged-in-pollution/> (last visited Mar. 24, 2023) (testing for PFAS using total fluorine amounts).

¹⁵ *Supra* note 13.

32. Further testing revealed that PFAS are not just indicated but definitively present in the Products. This testing of the outer layer of the mattress cover found 130 parts per billion (ppb) of 6:2 FTOH 130, and 88 ppb of the PFAS chemical perfluorohexanoic acid (PFHxA).

33. PFAS are known as “forever chemicals” because their carbon-fluorine bonds are extremely strong and not appreciably degraded under environmental conditions. The continued use of PFAS is, by the nature of these chemicals, unsustainable, because it will necessarily lead to a greater concentration of PFAS in the environment.¹⁶

34. Additionally, “[f]luorine is regarded as an environmental and industrial contaminant.”¹⁷

35. The PFAS family of chemicals was accidentally discovered in 1938 by a scientist working at E.I. du Pont de Nemours and Company (“DuPont”). In the decades following that discovery, DuPont and The 3M Company (“3M”) became the primary manufacturers of PFAS.

36. For decades, DuPont, 3M, and other manufacturers were aware that PFAS persist indefinitely in the environment, they bioaccumulate in blood, and they pose a substantial threat to human health and the environment.

37. The manufacturers concealed and downplayed the threat to human health and the environment presented by PFAS. They withheld data and research regarding the toxicity of PFAS from the public and from regulators. Regulators continue to play catch-up in addressing the threat to human health and the environment presented by PFAS because DuPont and other manufacturers concealed the dangers associated with these substances.

¹⁶ Zhanyun Wang et al., *A Never-Ending Story of Per- and Polyfluoroalkyl Substances (PFASs)?*, 51 *Env't Sci. Technol.* 2508, 2508 (2017), <https://doi.org/10.1021/acs.est.6b04806>.

¹⁷ Elżbieta Bombik et al., *The influence of environmental pollution with fluorine compounds on the level of fluoride in soil, feed and eggs of laying hens in Central Pomerania, Poland*, 192 *Env't Monitoring and Assessment* 178 (2020), <https://doi.org/10.1007/s10661-020-8143-3>.

38. Though much of the toxicological research to date has focused on types of PFAS, DuPont and other manufacturers themselves state that the PFAS family of chemicals as a whole, not just specific types, are “hazardous substances.”¹⁸

39. The U.S. Environmental Protection Agency (“EPA”) also currently advises the public about the health threats presented by PFAS as a whole family: “peer-reviewed scientific studies have shown that exposure to certain levels of PFAS may lead to:

- Reproductive effects such as decreased fertility or increased high blood pressure in pregnant women.
- Developmental effects or delays in children, including low birth weight, accelerated puberty, bone variations, or behavioral changes.
- Increased risk of some cancers, including prostate, kidney, and testicular cancers.
- Reduced ability of the body’s immune system to fight infections, including reduced vaccine response.
- Interference with the body’s natural hormones.
- Increased cholesterol levels and/or risk of obesity.”¹⁹

40. In addition, EPA advises that “[b]ecause children are still developing, they may be more sensitive to the harmful effects of chemicals such as PFAS.”²⁰

41. The oldest kinds of PFAS developed and used in consumer products are referred to as “long-chain” PFAS.

42. Long-chain PFAS have been “banned in the European Union and phased out by major U.S. manufacturers,” largely due to their health risks.²¹

¹⁸ *N.J. Dept. of Env’t. Protection, et al. v. E. I. duPont de Nemours and Co., et al.*, 2:19-cv-14758, ECF No. 118 at 12

¹⁹ *Our Current Understanding of the Human Health and Environmental Risks of PFAS*, EPA, <https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas> (last visited March 30, 2023.)

²⁰ *Id.*

²¹ Erika Schreder & Matthew Goldberg, *Toxic Convenience: The hidden costs of forever chemicals in stain- and water-resistant products*, Toxic Free Future (Jan. 2022), <https://toxicfreefuture.org/wp-content/uploads/2022/08/toxic-convenience.pdf>.

43. As a result of widespread concern regarding the environmental and health impacts of long-chain PFAS and greater regulation of these substances, many manufacturers have switched to using “short-chain” PFAS.

44. The 6:2 FTOH found in the Products is a short-chain PFAS and a common impurity in and degradation product of short-chain PFAS polymers.²²

45. Although short-chain PFAS were once thought to be a safer alternative to long-chain PFAS, more and more research indicates that the human health risks of short-chain PFAS have been gravely underestimated.²³ Thus, while Nook might not use long-chain PFAS—this is not yet clear to Plaintiffs—the presence of short-chain PFAS in the Products is also concerning.

46. In fact, in 2022, the EPA recently released a drinking water health advisory for GenX, a short-chain PFAS, based on animal toxicity studies that have linked GenX with “health effects on the liver, the kidney, the immune system, and developmental effects, as well as cancer.”²⁴

47. On March 14, 2023, EPA announced proposed National Primary Drinking Water Regulation for six PFAS, including GenX.

48. After 6:2 FTOH detaches from the polymer, it transforms into persistent PFAS including PFHxA and perfluoroheptanoic acid (PFHpA).²⁵

²² Penelope Rice et al., *Comparative analysis of the toxicological databases for 6:2 fluorotelomer alcohol (6:2 FTOH) and perfluorohexanoic acid (PFHxA)*, Food and Chemical Toxicology, Volume 138 (2020) 111210, <https://doi.org/10.1016/j.fct.2020.111210>.

²³ See, e.g., David Andrews, *FDA Studies: ‘Short-chain’ PFAS Chemicals More Toxic Than Previously Thought*, Env’t Working Grp. (Mar. 9, 2020), <https://www.ewg.org/news-insights/news/fda-studies-short-chain-pfas-chemicals-more-toxic-previously-thought>.

²⁴ 87 Fed. Reg. 36848 at 36849 (Jun. 21, 2022). The EPA has subsequently released a proposed that sets the Maximum Contaminant Levels for certain PFAS at *4 parts per trillion* and is using a Hazard Index approach for Gen X chemicals. See 88 Fed. Reg. 18638 (March 29, 2023),

²⁵ Schreder & Goldberg, *supra* n.21, at 27.

49. Furthermore, recent studies suggest that 6:2 FTOH has a similar toxicological profile to long-chain PFAS and persists in the body.²⁶

50. Based on these studies, FDA announced in 2020 that manufacturers of certain food contact substances had agreed to voluntarily discontinue the use of 6:2 FTOH.²⁷

51. Materials treated with PFAS degrade over time, releasing the chemicals into the air, household dust, and for washable materials like the Nook mattress cover, into laundry water, which enters the environment and potentially drinking water. PFAS also enter the environment when products containing them are disposed in landfills.²⁸

52. People may be exposed to PFAS by ingesting household dust. The risk of such exposure is greater for infants and young children who spend more time on the floor and tend to put things in their mouths.²⁹

53. Exposures may also occur through inhalation of PFAS in air and through skin absorption from direct contact with PFAS materials, such as bedding.³⁰

54. Children are more vulnerable to the harmful effects of PFAS than adults.³¹

III. Defendant's Representations Mislead Reasonable Consumers.

55. Reasonable consumers encountering Nook's representations emphasizing that the Products are "pure," "organic," "natural," "non-toxic," "safe," and sustainable do not expect the Product to contain unsafe, unnatural, and unsustainable chemicals.

56. Reasonable consumers would consider PFAS to be unsafe for humans.

²⁶ See Rice et al., *supra* n.22.

²⁷ U.S. Food & Drug Administration, *FDA Announces the Voluntary Phase-Out by Industry of Certain PFAS Used in Food Packaging* (July 31, 2020), <https://www.fda.gov/food/cfsan-constituent-updates/fda-announces-voluntary-phase-out-industry-certain-pfas-used-food-packaging>.

²⁸ Schreder & Goldberg, *supra* n.21, at 5-6.

²⁹ See Rice, *supra* n.22, at 2.

³⁰ Schreder & Goldberg, *supra* n.21, at 5.

³¹ American Academy of Pediatrics, *Report outlines health effects of PFAS chemicals in children, provides recommendations for testing*, AAP News (Sept. 13, 2022), bit.ly/3h38Hem.

57. Reasonable consumers would consider PFAS to be harmful to the environment.

58. Reasonable consumers would consider PFAS to be unnatural and inconsistent with Nook's unqualified claims that the Products are "organic."

59. In a study on consumer perceptions of "organic" marketing claims for non-food products, including mattresses, the Federal Trade Commission found that "a significant proportion of consumers believe that if a non-food product contains even a small amount of material from a man-made chemical process (as opposed to from plants or animals), even less than 1%, then an unqualified organic claim does not accurately describe that product."³²

60. Nook misleads D.C. consumers by using PFAS in the Products, despite explicitly representing the Products as "all natural," "organic," "pure," "non-toxic," and "safe."

61. Nook also misleads D.C. consumers by using PFAS in the Products, despite touting sustainability representations.

62. Additionally, Nook's omission of the material fact that its Products contain PFAS, which pose risks to human health and the environment, is misleading to reasonable D.C. consumers.

63. Thus, Defendant Nook's conduct in marketing the Products deceives and/or is likely to deceive the public. D.C. consumers have been, and continue to be, deceived into believing that the Products are "safe," "non-toxic," "organic," "natural," "pure," and sustainable when in fact the Products contain "forever chemicals" known to be harmful to humans and to accumulate in the environment.

³² Federal Trade Commission, *Consumer Perception of Recycled Content and Organic Claims*, Joint Staff Report of the Bureau of Economics and Bureau of Consumer Protection Federal Trade Commission, at 31 (Aug. 10, 2016), <https://bit.ly/3gWfTsW>.

64. D.C. consumers cannot discover the true nature of the Products from reading Nook’s websites or marketing materials. Ordinary consumers do not have the ability to test mattresses for PFAS, or sufficient knowledge regarding the risks posed by PFAS.

65. Nook is deceptively and misleadingly concealing material facts about the Products.

66. Nook knows what representations it makes in marketing the Products. Nook also knows how the Products are sourced and produced. Nook thus knew, or should have known, the facts demonstrating that the Products are falsely represented to D.C. consumers.³³

67. In making the false, misleading, and deceptive representations and omissions at issue, Nook also knew and intended that consumers would choose to buy, and would pay more for, products represented to be “pure,” “organic,” “safe,” “non-toxic,” “natural,” and sustainable, furthering Nook’s private interest of increasing sales of the Products and decreasing the sales of its competitors’ mattress products that are truthfully marketed.

68. D.C. Consumers are at risk of real, immediate, and ongoing harm if the Products continue to be sold with the misleading representations.

V. Nook’s Representations Are Material to Consumers.

69. Consumers care about whether or not the products they purchase contain unsafe or unsustainable chemicals.

70. One study found that “93% of voters agree and 62% strongly agree that companies should do a better job of removing harmful chemicals from consumer products.”³⁴

³³ Nook should have known that PFAS were in its supply chain after a public report by an advocacy group also found PFAS in a Nook mattress. *See The Mattress Still Matters*, Clean + Healthy, (Jul. 26, 2020), <https://static1.squarespace.com/static/62f48f662276bf51c7402708/t/6307bf42ba54d21e2cf8ab12/1661453108231/CLEAN-AND-HEALTHY-The-Mattress-Still-Matters>.

³⁴ Program on Reproductive Health and the Env’t, *Public Opinion on Chemicals*, Univ. of Cal., San Francisco, <https://prhe.ucsf.edu/public-opinion-chemicals> (last visited Mar. 24, 2023).

71. In a survey of more than 1000 consumers, nearly all participants (98%) indicated they were interested in knowing about the presence of harmful chemicals in everyday products.³⁵

72. Also, “68% [of Americans] would pay more for sustainable products.”³⁶

73. Even more specifically, “[t]wo-thirds of consumers say they would pay more for a *mattress* manufactured using environmentally sustainable practices or materials.”³⁷

74. Further, “70% [of consumers] expect natural products companies to be transparent about sourcing and ingredients.”³⁸

75. Parents rely on information from manufacturers to identify products that are safe and pose little or no adverse impact on the environment.

76. Purchasing the right crib mattress is important, given that infants sleep from 14 to 19 hours per day.³⁹

JURISDICTION AND VENUE

77. This Court has personal jurisdiction over the parties in this case. Plaintiffs consent to this Court having personal jurisdiction over them.

78. This Court has personal jurisdiction over Defendant Nook because Nook has purposefully directed its conduct to the District and availed itself to the benefits and protections of District of Columbia law.

³⁵ Sabrina Hartmann et al., *Interested Consumers’ Awareness of Harmful Chemicals in Everyday Products*, 29 *Env’t Sci. Eur.* 1, 4 (2017), <https://enveurope.springeropen.com/articles/10.1186/s12302-017-0127-8>.

³⁶ Computer Generated Solutions Inc., *Interest in Sustainability Surges for Consumer Products*, <https://www.cgsinc.com/en/resources/interest-sustainability-surges-consumer-products> (last visited Mar. 24, 2023).

³⁷ David Perry, *Survey: Many Consumers Would Pay More for Sustainable Mattress*, *BedTimes* (Nov. 15, 2022), <https://bedtimesmagazine.com/2022/11/survey-many-consumers-would-pay-more-for-sustainable-mattress/> (emphasis added).

³⁸ Victoria A.F. Camron, *Survey: Consumers expect more from natural products brands*, *New Hope Network* (Oct. 20, 2021), <https://www.newhope.com/market-data-and-analysis/survey-consumers-expect-more-natural-products-brands>.

³⁹ Ben-Joseph, Elana, *Sleep and Your Newborn*, *KidsHealth*, <https://kidshealth.org/en/parents/sleepnewborn.html> (last visited Mar. 24, 2023) (indicating range of hours of sleep for newborns).

79. Nook aims marketing at consumers within the District. The Products can be, and are, purchased in the District by D.C. consumers, who have access to Nook's marketing representations about the Products.

80. This Court has subject-matter jurisdiction over this action under the CPPA, D.C. Code § 28-3901, *et seq.*

PARTIES

81. Plaintiff Toxin Free USA, also known as GMO Free USA, is a 501(c)(3) non-profit organization whose mission is to harness independent science and agroecology concepts to advocate for clean and healthy food and ecological systems. Toxin Free USA educates consumers about the potential hazards of synthetic ingredients, pesticides and biocides, and genetically engineered organisms ("GMOs").

82. In 2020, GMO Free USA expanded its public education mission beyond GMOs and GMO-related pesticides, establishing Toxin Free USA as a complementary arm to the existing organization on the basis that it is impossible to have clean food and a clean environment without addressing the many toxins beyond GMOs and pesticides, such as PFAS chemicals, that have become pervasive in our food system and environment.

83. Toxin Free USA performs its work and advocates for consumers throughout the United States, including in the District of Columbia.

84. Toxin Free USA's website, publications, public education, research, network building, and mobilization activities provide an important service to consumers and community activists every month.

85. On March 25, 2022, Toxin Free USA purchased Nook's "Pure Organic" crib mattress through the Internet.

86. Testing commissioned last year by Toxin Free USA through a third-party lab revealed the presence of fluorine in the Nook Product, as detailed *supra*, and subsequent testing in early 2023 revealed the presence of organic fluorine.

87. In September and October 2022, testing commissioned by Toxin Free USA through a third-party lab revealed the presence of PFAS compounds that are consistent with PFAS textile treatments, 6:2 FTOH and PFHxA.

88. Plaintiff Beyond Pesticides is a 501(c)(3) non-profit, public-interest organization whose mission is to protect the environment and to educate consumers and businesses about the harms that humans have on the environment.

89. Beyond Pesticides is based in the District of Columbia and performs its work throughout the United States, including in the District of Columbia.

90. Beyond Pesticides has an interest in truth in advertising regarding environmental concerns and products marketed as “organic.” The organization diligently works to promote ecological systems that are clean, accessible, and free of contamination.

91. Beyond Pesticides educates the public so consumers can make informed choices when they shop. Beyond Pesticides’ website, publications, public education, research, network building, and mobilization activities provide an important service to consumers and community activists.

92. Defendant Nook is incorporated and headquartered in Texas.

93. Defendant markets and sells the Product in stores and online throughout the United States, including in the District of Columbia.

94. Through its misrepresentations, Defendant has caused harm to the general public of the District of Columbia.

CAUSE OF ACTION

Violations of the District of Columbia Consumer Protection Procedures Act

95. Plaintiffs incorporate by reference all the allegations of the preceding paragraphs of this Complaint.

96. Plaintiffs are nonprofit, public-interest organizations that bring these claims on behalf of the general public of D.C. consumers. *See* D.C. Code §§ 28-3905(k)(1)(D).

97. Through § 28-3905(k)(1)(D), the CPPA explicitly allows for public-interest standing and allows a public-interest organization to stand in the shoes of a consumer to seek relief from any violation of the CPPA.

98. Additionally, pursuant to § 28-3905(k)(1)(C), the CPPA explicitly allows a nonprofit organization acting on behalf of the general public to establish “tester” standing.

99. Defendant Nook is a “person” and a merchant that provides “goods” within the meaning of the CPPA. *See* D.C. Code § 28-3901(a)(1), (3), (7).

100. As alleged in this Complaint, Defendant Nook has falsely and deceptively represented that the Products are safe, non-toxic, organic, natural, pure, and sustainable when, in reality, the Products contain PFAS, which are neither safe nor natural, and which a reasonable consumer would not consider safe or sustainable.

101. Thus, Defendant Nook has violated the CPPA by “represent[ing] that goods . . . have a source . . . [or] characteristics . . . that they do not have”; “represent[ing] that goods . . . are of a particular standard, quality, grade, style, or model, if in fact they are of another”; “misrepresent[ing] as to a material fact which has a tendency to mislead”; “fail[ing] to state a material fact if such failure tends to mislead”; “us[ing] innuendo or ambiguity as to a material fact,

which has a tendency to mislead”; and “advertis[ing] . . . goods . . . without the intent to sell them as advertised.” D.C. Code § 28-3904(a), (d), (e), (f), (f-1), (h).

JURY TRIAL DEMAND

102. Toxin Free USA and Beyond Pesticides hereby demand a trial by jury.

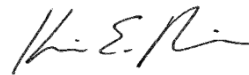
PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for judgment against Defendant Nook and request the following relief:

- A. A declaration that Nook’s conduct is in violation of the CPPA;
- B. An order enjoining Nook’s conduct found to be in violation of the CPPA; and
- C. An order granting Plaintiffs costs and disbursements, including reasonable attorneys’ fees and expert fees, and prejudgment interest at the maximum rate allowable by law.

DATED: March 31, 2023

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