SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

RANDALL R. MANCUSO, **Plaintiff,** **vs.** **THE CLOROX COMPANY, et al.,** **Defendants.**	**No. RG12-651653** **STATEMENT OF DECISION (Tentative)**

In this class action on behalf of similarly situated shareholders of The Clorox Company ("Clorox"), the parties have stipulated to a non-jury trial based on the evidentiary record created in the summary judgment context. Before reaching the merits of the issues on which the case was thus "tried," the court summarizes the history of the case and then enters the following explanation of the factual and legal basis of its Decision on the principal controverted issues. Unless within 10 days of service hereof a

party specifies additional issues or makes a proposal for additional provisions per CRC 3.1590(c)(4), this tentative shall become the Decision of the court in this matter.

1. Initial Filing & Preliminary Injunction: The instant action was originally filed on October 10, 2012, by plaintiff Randall R. Mancuso ("Plaintiff"), individually and on behalf of all other similarly situated shareholders, against Clorox and various officers and directors[1] ("Individual Defendants")(collectively, "Defendants") shortly before a shareholders' meeting scheduled for November 14, 2012, at which certain proposals were to be presented for a shareholders' vote pursuant to the "say-on-pay" provisions of the Dobbs-Frank Wall Street Reform and Consumer Protection Act ("Dobbs-Frank")(Pub.L.No. 111-203, 124 Stat. 1376). (15 U.S.C. §78n-1.) Proposal 2 was an advisory vote on the fiscal year 2012 compensation for Clorox's named executive officers ("NEOs"), and Proposal 4 asked shareholders to approve an amendment to Clorox's 2005 Stock Incentive Plan ("Plan" or "SIP") that would add 2.9 million shares to the 4.2 million shares remaining available for issuance under the SIP, bringing the total to 7.1 million shares out of a total of more than 130 million. Plaintiff alleges that the Proxy Statement ("Proxy") filed by Clorox in advance of the shareholders' meeting omitted material information.

2. On November 13, 2012, this court denied Plaintiff's Motion For Preliminary Injunction, primarily on the basis that Plaintiff had failed to establish that allowing the votes to go forward on November 14, 2012, posed any risk of interim, much less irreparable harm. This conclusion was based on the concession by both parties that

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[1] The individually named defendants are Donald R. Knauss, Daniel Boggan, Jr., Richard H. Carmona, Tully M. Friedman, George Harad, Robert W. Matshullat, Gary G. Michael, Edward A. Mueller, Pamela Thomas-Graham, and Carolyn M. Ticknor.

should Plaintiff ultimately prevail at trial, the shareholder votes could be voided by court order, proxies re-solicited with full disclosure and a new vote taken. The court also found that Plaintiff's evidentiary showing with respect to the merits of his claim was meager, at best. The November 13, 2012 order also indicated that the court was prepared to set a trial date within a short (e.g., 12 week) time period.

3. After conducting discovery, Plaintiff filed the currently operative Second Amended Complaint on April 4, 2013 ("Complaint"). The Complaint contains two causes of action: (1) Breaches of Fiduciary Duties against Individual Defendants and (2) Aiding and Abetting [Breaches of Fiduciary Duties] against Clorox. Although some elements of the prayer in the Complaint are framed in terms of "Declaring," there is no cause of action for declaratory relief, nor factual allegations that would support such a cause of action. The declarations sought simply form the basis for the injunctive relief sought by Plaintiff on behalf of the shareholder class. The court notes that although the prayer includes an alternative remedy of "recissory damages" in section H, Plaintiff no longer appears to be pursuing damages, rescission or any other form of monetary relief.

4. Summary Judgment Proceedings: On May 10, 2013, Defendants filed a motion for summary adjudication of the 1st cause of action on the bases that (a) the information alleged to have been missing from the Proxy was not "material" (denominated issues 1-1, 1-2, 1-3, 1-5, 1-6 and 1-7), (b) that there is no requirement to disclose "fair summaries" of advice from compensation consultants (denominated issue 1-9), (c) that the Proxy accurately describes the compensation targets for the NEOs and the long-term incentive plan (denominated issues 1-4 and 1-8), and (d) that Plaintiff has failed to show legal remedies are inadequate. Issue 2 simply sets forth the uncontested

proposition that a showing that the 1st cause of action has no merit would also dispose the 2nd cause of action. In his opposition, Plaintiff did not dispute any of the facts presented by Defendants in support of issues 1-8, 1-9 and 2, but on the remaining issues he presented evidence to dispute the initial showing by the defense and further contested Defendants' various legal positions.

5. In its tentative ruling, the court inquired whether if the case proceeded to trial either party intended to produce any additional evidence and, if not, whether the parties might stipulate to submitting the matter for trial based on the evidentiary record and legal arguments presented in the summary judgment motion. As observed in the tentative:

> In presenting and opposing the instant Motion, the parties have effectively laid out their entire respective cases. The experts have testified by way of declarations and have been cross-examined by way of deposition, and what appears to be the entire universe of documentary evidence has been submitted. In the court's view, there is no reason why the entire case cannot simply be submitted for decision on the current state of the record, given that there are no jury issues.

6. The parties apparently agreed with these observations and filed a stipulation on June 27, 2013, providing, inter alia, that the proposed class be certified and that the case be tried "on the record as submitted by the parties in connection with Defendants' Motion for Summary Judgment, or in the Alternative, Adjudication." Each party reserved its respective appellate rights with regard to any argument as to whether the claims asserted are derivative or direct, and they waived any right to submit additional evidence. The court accepted the stipulation, and the matter was deemed submitted.

7. Direct/Derivative Claim Issue: Preliminarily, the court rejects Defendants' argument that post-vote equitable relief is not an available remedy. While recognizing that certain Delaware trial courts have commented that after a vote occurs, legal remedies are potentially available (e.g., *David P. Simonetti Rollover IRA v. Margolis* (Del. Ch. June 27, 2008) 2008 WL 5048692, at *13), such decisions are not binding. As reflected in its November 13, 2012 order, referenced above, this court has already concluded that injunctive relief remains a viable alternative to monetary relief in this case. Implicit in this conclusion is the court's rejection of Defendants' argument that Plaintiff's post-vote claims are derivative, not direct. In the court's view, while a claim for damages would clearly be derivative, a claim for injunctive relief regarding disclosures relevant to a say-on-pay vote may not be. Moreover, while the court does not have a transcript available to it, its recollection is that at the time of the preliminary injunction hearing, the court asked the parties why such relief was needed if the court could in the post-trial context void the vote and require the solicitation of new proxies. The court does not recall Defendants at that time arguing that such relief would be unavailable because in the post-vote context all the asserted claims would become derivative. The court thus views Defendants as estopped from now raising that issue.

8. Standard of "Materiality" under Delaware Law: The parties agree that Delaware law applies. (Plaintiff's Memorandum of P&A in Opposition ["Pl.Br."] at 5, fn. 15, citing, e.g., *Pittelman v. Pearce* (1992) 6 Cal.App.4th 1436, 1440; Defendants' Memorandum of P&A in Support ["Df.Op."] at 5, citing *State Farm Auto. Ins. v. Superior Ct.* (2003) 114 Cal.App.4th 434, 442.) They also agree that to establish a breach of fiduciary duty it must be shown that "material" information within the control of the

board of directors was not disclosed. (Pl.Br. at 6, citing, e.g., *Stroud v. Grace* (Del. 1993) 606 A.2d 75, 84; Df.Op. at 5, citing *Loudon v. Archer-Daniels-Midland Co.* (Del. 1997) 700 A.2d 135, 143.) They further agree that "[t]he materiality standard requires that directors disclose all facts which, 'under all the circumstances … would have assumed actual significance in the deliberations of the reasonable shareholder.'" (*McMullin v. Beran* (Del. 2000) 765 A.2d 910, 925, quoting *Arnold v. Society for Sav. Bancorp* (Del. 1994) 650 A.2d 1270, 1277.) "'This standard … does not require proof of a substantial likelihood that disclosure of the omitted fact would have caused the reasonable investor to change his vote. … [Rather], there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available.'" (*Rosenblatt v. Getty Oil Co.* (Del. 1985) 493 A.2d 929, 944, quoting *TSC Indus. v. Northway, Inc.* (1976) 426 U.S. 438, 499.) So far, so good; however, the parties disagree on how these well-established principles apply in the context of say-on-pay proxy materials.

9. Plaintiff relies on cases such as *Shaev v. Saper* (3d Cir. 2003) 320 F.3d 373, 381, for the general proposition that "[m]aterial not included in the proxy … is generally not charged to the knowledge of the stockholders," and *In re TWA, Inc. Shareholders Litig.*, No. 9844 (Del. Ch. Oct. 21, 1988) 1988 WL 111271, at *10, to argue that nondisclosure is not excused if an "energetic shareholder" might have discovered the undisclosed facts in another SEC filing. Defendants, on the other hand, rely on cases such as *Loudon*, supra, to argue that one needs to examine the "actual significance" of the omitted information to see if it would have "altered the 'total mix' of information made available." (700 A.2d at 143; see also *Rosenblatt*, supra.) Not all information considered

by a board is material and subject to disclosure to shareholders. (See *Brehm v. Eisner* (Del. 2000) 746 A.2d 244, 259.) Further, they claim as a matter of Delaware law that publically available information cannot significantly alter the "total mix" (see *Citron v. Fairchild Camera & Instr't Corp.* (Del. 1989) 569 A.2d 53, 71; *In re Micromet, Inc. Shareholders Litig.* (Del. Ch. Feb. 29, 2012) 2012 WL 681785 at *12 & fn. 52) and that if the information is public there is no obligation in the proxy statement to "do the math" for shareholders. (*Wayne County Employees' Retirement Sys. v. Corti* v. (Del. Ch. 2008) 954 A.2d 319, 334.) To be material, the information must be more than simply "helpful" to shareholders. (See *In re Bioclinica, Inc. Shareholders Litig.* (Del. Ch. Feb. 25, 2013) 2013 WL 673736, at *6.) Finally, they argue that federal law imposes thorough disclosure requirement and Delaware courts require "persuasive authority or argument" before "expand[ing] Delaware disclosure requirements beyond those presently mandated by Federal law." (*Skeen v. Jo-Ann Stores, Inc.* (Del. Ch. Sept. 27, 1999) 1999 WL 803974 at *7, aff'd. (Del. 2000) 750 A.2d 1170.)

10. In the court's view, Plaintiff's quotations from the authorities cited lead to an overstatement of the law – especially where the cases relied upon involved proxies soliciting shareholder approvals of change of control transactions, mergers, etc.; however, Defendants' attempt to distill the above authorities to five "rules" applicable in all contexts may also overstate the law or in some instances are of limited utility. For example, it is undoubtedly true that "not every document received by the directors is material" (Df.Op. at 8), but that rule does little to inform one as to which of the documents and information provided to the board *are* material. The bottom line is that at the trial stage a court needs to examine each item of allegedly non-disclosed material

information and make a judgment in the context of the given case whether a plaintiff has shown that the disputed information was indeed "material." With that in mind, the court turns to the categories of contested information considered by Clorox's Management Development and Compensation Committee ("MDCC") when it approved the two compensation-related proposals at issue here.

11. The court notes that it has in the evidentiary record before it the voluminous material considered by the MDCC and also what was disclosed in the Proxy. In addition, both sides have submitted expert declarations and deposition testimony of those experts as to the significance (or insignificance) of the disputed information and where the undisclosed information may nonetheless be publicly available – e.g., in SEC filings or through services such as Morningstar. The experts offer their competing opinions as to the significance of the disputed information and what should be disclosed or need not be disclosed in proxy solicitation materials on a say-on-pay vote. The dispute revolves around seven categories of information and the extent of disclosure required by Defendants under Delaware law. The court briefly reviews each of these categories, summarizes the positions of the parties and their experts, and then makes a judgment on each.[2]

12. Peer Group Analysis: Plaintiff contends (a) that the Proxy discloses the companies considered in the peer group analysis before the MMDC but not the key inputs or metrics observed and reported to it by an independent compensation consultant, Frederik W. Cook & Co. ("Cook") – namely, base salary, short-term cash incentive

[2] The court cites mainly to the reports of the experts and two declarations from persons involved in the MMDC's deliberations. Deposition excerpts for these witnesses are also part of the record and were referenced by the court where excerpts were cited; however, the court finds that for purposes of explaining its Decision there is no need to summarize the additional testimony developed in deposition.

bonus, long-term equity incentives and total direct compensation for the peer group median and 25th and 75th percentiles – and (b) that the Proxy was inaccurate when it referred to "the median of our compensation peer group" as the benchmark for CEO and NEO compensation and further stated that for fiscal year 2012 all base salaries for NEOs "were generally aligned with the median." The true facts were that the Clorox CEO base salary was at the 64th percentile and CFO at the 75th percentile. Plaintiff contends that the information in the Proxy was misleading, and his expert opines[3] that a fair summary of the Cook material presented to the MMDC "would have helped shareholders better understand whether Clorox was paying its CEO the 'market rate' amongst its peers and allowed them to cast informed votes." (Amended Expert Report of Randall Thomas ["Thomas"] at 17:13-17.)

13. Defendants present the testimony of Cook's President, Daniel Ryterband, who explains how Cook identified the Clorox peer group for compensation comparisons and then gathered the data regarding executive compensation at the peer group companies from publicly available sources such as SEC filings. (Declaration of Daniel Ryterband ["Ryterband"] at 3-6.) Defendants' expert notes that the information is publicly available, the details Plaintiff seeks to have disclosed in the Proxy are not typically disclosed by comparable companies, that if fully disclosed the data would likely show a different ranking for each compensation element so as to preclude a determination of an exact overall median, and that there is no indication that sophisticated shareholders and research analysts need or want these details in proxy materials. (Declaration of Robert

[3] The defense raised a number of objections to Plaintiff's evidence, and if the success of Plaintiff's case turned on the admissibility of certain contested testimony, the court would rule on those objections; however, for reasons explained in this Decision, the court concludes that Plaintiff has not carried his burden even if all of his evidence were admitted. Accordingly, the defense objections are overruled.

Daines ["Daines"] at 14-15.) He also disagrees that Plaintiff's percentile critique shows the Proxy was misleading, as other factors such as expertise, responsibilities, position, etc. are also factored in and the peer group median is only a reference. (Daines at 15-16.) The testimony of the chair of the MMDC describes the committee's approach, the metrics it relies on and numerous factors it considers, and then he discusses the extensive "Compensation Discussion and Analysis" ("CD&A") contained in the Proxy. (Declaration of George Harad ["Harad"] at 2-6.)

14. The court has reviewed the Proxy. It states that the MDCC "*generally seeks* to establish base salaries for the CEO and other [NEO] at the median of our compensation peer group," but goes on to state that the MMDC "*considered factors such as* the executive's role, level of experience and sustained performance as well as the compensation peer group market data in determining each named executive officer's base salary." (Emphasis added.) Considering these statements in the context of the entire Proxy, the court finds there are no misrepresentations in the Proxy, that there is a sufficient disclosure of the MMDC's approach to compensation and the reasons for its actions, and that to the extent one wanted to delve into the details further there is publicly available information that would allow a sophisticated shareholder or his advisor to do so and no reason to require all the comparisons before the MMDC to be summarized in the Proxy so as to be "helpful." The court agrees with Daines that given the complexity of modern business and the volumes of information available, there is always additional information that could be added to a proxy. But under Delaware law, "the duty to disclose 'is not a mandate for prolixity.'" (*Ryan v. Lyondell Chemical Co.* (Del. Ch. July 29, 2005) 2008 LW 2923427, at *19, rev'd on other grounds (Del. 2009) 970 A.2d 235.)

Here the "omitted" information would not have changed the "total mix" of information available to the shareholders. The court thus finds that Plaintiff has failed to carry his burden of proving that the Proxy was misleading in the statements regarding the peer group analysis before the MMDC or that the Proxy failed to disclose material information on this subject.

15. TSR Information: Plaintiff argues that the key metric when considering executive compensation is Annualized Total Shareholder Return ("TSR"), that Clorox ranked in the 40th percentile among its peers and that its 1-Tr TSR was 14.1% compared to the median of 22.8% and the 75th percentile of 30.6%. All of this TSR information was among that presented to the MMDC by Cook, relied upon by the MMDC and was material, and yet none of it was disclosed in the Proxy. Plaintiff's expert opines that a "fair summary" of this TSR information should have been presented in the Proxy because research shows that low TSR levels lead to more negative shareholder votes and thus disclosure of TSR information would likely have led to a lower level of shareholder support for the disputed proposals. (Thomas at 17:20-18:10.)

16. First, it must be noted that TSR information is contained in Clorox's Annual Report Executive Summary for the year ending June 30, 2012, which compares TSR for Clorox to a 17-company peer group, and more generally that TSR information is also readily available from public sources such as Morningstar and SEC filings. But availability aside, the defense presented evidence from Cook's Ryterband that TSR is a relatively unreliable metric for making compensation decisions because TSR can be highly volatile. (Ryterband at 6.) The expert testimony of Daines rejects the notion that there should be any connection between TSR and compensation, notes that TSR is often

driven by macroeconomic and industry-wide events rather than executive performance, agrees that in the short-run TSR is volatile and can change significantly depending on the measurement date, provides an illustration of how in a single month the Clorox TSR went from 1% to 11%, and cites supporting literature that rejects TSR as an appropriate measure for executive compensation. (Daines at 9-10.) Harad, the Proxy and other evidence confirm that for these and other reasons Clorox does not rely on TSR for compensation purposes. For these and other reasons, Daines concludes that focusing on TSR in the Proxy's peer group discussion would actually be misleading. (*Id.*, at 11.)

17. The court finds the defense presentation on this issue far more persuasive than Plaintiff's. After reviewing Daines, the court looked to Thomas for more on why TSR information on Clorox compared to its peers should be deemed material and its omission from the Proxy actionable. The court expected a rebuttal to Daines that would show why volatility would not be a problem and executive compensation should be tied to this particular metric or at least an analysis of that metric's application disclosed. As best the court can determine, Thomas' rationale for finding (or at least implying) that TSR comparative data is "material" is that, when such information is disclosed, a low TSR is likely to lead to more negative votes. Putting aside possible difficulties with that research (see Daines at 12 re flaws), it does not prove materiality if the metric itself is volatile, an unreliable measure of executive performance and of little significance to a "reasonable investor." The court finds that the Proxy was not misleading for failing to present more of the TSR comparison data developed by Cook, that the MMDC did not rely on such data in reaching its compensation recommendations, that there were sound reasons for the MMDC not to use TSR as a metric, that any shareholder whose judgment

regarding the utility of TSR in this context differed from that of the board could find the data in public filings and do the analysis, and that the inclusion of additional comparative data based on TSR would not "significantly alter[] the 'total mix' of information made available."

18. ISS CEO Pay-for-Performance Analysis: Plaintiff contends that the Proxy fails to disclose that Cook simulated an Institutional Shareholder Services ("ISS") analysis of Clorox's CEO compensation, determined that under that model the CEO's compensation would likely receive a "medium concern level overall" due to a lack of alignment between CEO pay and TSR compared to Clorox's peer group, and reported this information to the MMDC but that none of the foregoing was disclosed in the Proxy. Plaintiff argues that this information undoubtedly influenced the MMDC and thus should have been disclosed. But this is all argument. Its significance to the MMDC was dismissed by Ryterband and Harad, and the court can find no testimony by Thomas or any other witness explaining why or how this information would have significantly changed the "total mix" of information available to shareholders – especially considering that shareholders would have the *actual* ISS recommendations in time to vote. A stronger evidentiary showing is required before the court can find that this omitted information was material.

19. Share Usage & Dilution ["SUD"] Analysis: A usage analysis illustrates the average number of shares that are granted from a plan as a percent of total outstanding shares; a dilution analysis illustrates the potential dilution [aka "overhang"] the shareholders would absorb as a result of outstanding awards and shares available to grant. Plaintiff contends the Proxy omits the fact that these two types of analysis were

performed and presented to the MMDC by Cook. The results of the analysis indicated that Clorox' 2012/2013 base usage rate of 1.8% as well as its 3-Yr average share usage of 1.8% were above the 75% percentile for Clorox's peer group and the fully diluted overhang of 10.8% – also in 75th percentile. Plaintiff's expert opines that shareholders need this information or a fair summary of it to assess the MMDC's proffered reasons for the increase of shares for the SIP and further that "increased dilution levels adversely affect the level of shareholder support for an equity incentive plan at most companies." (Thomas at 18:20-19:7.)

20. The defense counters that the Proxy contained the data regarding the outstanding awards, the shares available, the number proposed to be added to the Plan, recent share usage and the total number of Clorox shares; thus usage and diluted overhand can be readily calculated from the Proxy materials. Further that same information is publicly available for other companies one might wish to use for comparison. Daines opines based on his research that Clorox's disclosures on these issues was at least as forthcoming as other companies, that the dilution at issue here is below the level that might trigger concern, and that there is no showing of economic harm. (Daines at 17-19.) As for the Thomas comment that increased dilution generally decreases shareholder support for such plans, it is unclear how that establishes materiality where the data on dilution was disclosed and, further, the extent of dilution was below the threshold for "investor concern" noted in Thomas' own research. (*Ibid.*) For all of these reasons, the court concludes that Plaintiff's showing in this area falls well below that which might support an inference that the omitted information significantly changed the "total mix" of that available to shareholders.

21. Fair Value Transfer ["FVT"] Analysis: Such an analysis examines the cost to shareholders (value to the NEOs) of aggregate long-term incentive awards expressed as a percent of each company's capitalization and revenue. Plaintiff contends the Proxy fails to disclose that Cook performed an FVT analysis that shows that Clorox's 2012 FVT as a percent of market cap (0.54%) was higher than 63% of its peers and that the Company's 2012 FVT as a percent of revenue of 0.89% was above the 75th percentile for Clorox's peer group. This allegedly contradicts the Proxy's statement that the MMDC's goal is to establish long-term incentive targets "competitive with the median of our compensation peer group." Plaintiff's expert opines that disclosing these percentiles "would have helped shareholders better understand whether the long term incentives awarded by Clorox were at the market level and would have allowed shareholders to cast informed votes." (Thomas at 19.)

22. Defendants respond that the Proxy disclosed all the data needed to compute FVT and that such data for all Clorox's peers is also available through their public filings. Here, again, the challenge is based on the Proxy's failure to "do the math" on this metric for Clorox and its peers, which Defendants argue can never support an action for material omissions from a Proxy. Further the defense relies on *In re 3Com Corp. Shareholder Litig.* (Del. Ch. Oct. 25, 1999) 1999 LW 1009210, at *6-8, and *Lewis v. Vogelstein* (Del. Ch. 1997) 699 A.2d 327, 333, for the proposition that under Delaware law there is no duty to disclose option values. Perhaps most telling, though, is the argument that at most Thomas opines that including these metrics in the Proxy would be "helpful" and that such an opinion falls short of establishing the information is "material" as that term is defined in Delaware law. The court agrees. To sustain a cause of action

this court needs an explanation of how the omitted information, if it had been disclosed, would have significantly changed the "total mix" of information available to shareholders. Plaintiff has failed to do that.

23. Shareholder Value Transfer ["SVT"] Analysis: Plaintiff contends the Proxy omits the fact that an SVT analysis (i.e., the total cost of the SIP as the sum of the value of outstanding awards, value of shares available for future awards and the value of the new share authorization) was performed by Cook and presented to the MMDC or the results showing that the issuance of 2.9 million additional shares would bring Clorox close to the allowable cap of 5% of market capitalization, and this information should have been provided in the Proxy. Just as these arguments track Plaintiff's position re FVT, Defendants' rejoinder for the most part mirrors its FVT position – namely, that the data is available for both Clorox and its peers in their respective SEC filings and, while it might be "helpful" to summarize all of that in the Proxy, that alone does not prove a material omission. The court's conclusion is also the same: Plaintiff needed to present testimony significantly stronger than an opinion on the possible "helpfulness" of a summary of the SVT analysis.

24. Burn Rate Analysis: The burn rate is the gross number of equity awards granted in a given year divided by the weighted average of common shares outstanding for that year. Plaintiff contends the Proxy fails to disclose that such an analysis was done by Cook and presented to the MMDC or the results showing that Clorox's three-year average burn rate of 2.62% was just below the industry limit of 3.03% to obtain ISS approval for share increase. Here, again, the arguments by both sides cover the same ground – Plaintiff argues the "helpfulness" of the information and Defendants argue it is

in the public domain. While the court does not accept "in-the-public-domain" as a blanket proposition for every situation, a plaintiff must do more to show that the complexity, obscurity and importance of the disputed information are such that disclosure of the analysis given the board would significantly change the "total mix" of information available to shareholders.

25. Conclusion: In the court's view the evidentiary showing by Plaintiff has not improved significantly since the preliminary injunction. The Proxy contains a wealth of information on the two Proposals, the approach of the MMDC, the reasons for its recommendations and the impact these proposals may have on Clorox and its shareholders. Additional information is available in the Company's other SEC filings and those of its peers. What Plaintiff has done is simply discovered what additional information was presented to the MMDC and not included or summarized completely in the Proxy and then described why such information would be "helpful." Were this court to find on this record that material information was withheld, it would be a license to file suit where *anything* was withheld, for any information can always be labeled as potentially "helpful." Delaware law provides no such license.

26. There is no dispute regarding class certification. Numerosity, adequacy of representation, typicality, commonality, etc. are all clearly satisfied. As the action is for injunctive relief only, notice is not required. For the foregoing reasons, it is hereby

ORDERED:

(a) that a class of all owners of common stock of The Clorox Company as of the date of the vote on Proposals 2 and 4 is hereby certified; and

(b) that JUDGMENT shall be entered on all causes of action for Defendants and against Plaintiff and all members of the class.

Dated: August 21, 2013

Judge Wynne Carvill

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

Case Number: RG12-651653
Case Name: Mancuso vs. The Clorox Company, et al.,

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document **STATEMENT OF DECISION (TENTATIVE)** was mailed first class, postage prepaid, in a sealed envelope, addressed as shown at the bottom of this document, and that the mailing of the foregoing and execution of this certificate occurred at 1221 Oak Street, Oakland, California.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 22, 2013.

Executive Officer/Clerk of the Superior Court
By *Diane Williams*, Deputy Clerk

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