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FILED

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CLERK OF SUPERIOR COURT  
COUNTY OF MARIN  
1000 S. GATEWAY BLVD.  
SAN RAFAEL, CA 94901

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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 VENTURE PRODUCTS LLC; SEARS,  
ROEBUCK AND CO.; SEARS HOLDINGS  
16 CORPORATION; and DOES 1-150, inclusive,

17 Defendants.

Case No. CIV 1005991

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

**NATURE OF THE ACTION**

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2           1.     This Complaint is a representative action brought by plaintiff JOHN MOORE, in  
3 the public interest of the citizens of the State of California, to enforce the People’s right to be  
4 informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical found in vinyl  
5 flooring tiles sold in California.

6           2.     By this Complaint, plaintiff seeks to remedy defendants’ continuing failures to  
7 warn California citizens about their exposure to DEHP, present in or on certain vinyl flooring  
8 tiles that defendants manufacture, import, distribute, and/or offer for sale to consumers  
9 throughout the State of California.

10          3.     Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,  
11 California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”), “No person in the course  
12 of doing business shall knowingly and intentionally expose any individual to a chemical known  
13 to the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
14 warning to such individual. . . .” (*Cal. Health & Safety Code § 25249.6.*)

15          4.     On October 23, 2003, California identified and listed DEHP as a chemical known  
16 to cause birth defects and other reproductive harm. DEHP became subject to the warning  
17 requirement one year later and was, therefore, subject to the “clear and reasonable warning”  
18 requirements of Proposition 65, beginning on October 23, 2004. (*27 CCR § 27001 (c); Cal.*  
19 *Health & Safety Code § 25249.8.*)

20          5.     Defendants VENTURE PRODUCTS LLC (“VENTURE PRODUCTS”); SEARS,  
21 ROEBUCK and CO. (“SEARS”); and SEARS HOLDINGS CORPORATION (“SEARS  
22 HOLDINGS”) manufacture, import, distribute, and/or sell vinyl flooring tiles containing DEHP  
23 including, but not limited to, *Best-Step Ultra-Flex Flooring System, Item No. BS 1115 (#8 99530*  
24 *01898 8)*;

25          6.     All such vinyl flooring tiles containing DEHP, as listed in paragraph 5, shall  
26 hereinafter be collectively referred to as the “PRODUCTS.”

27          7.     Defendants’ failure to warn adequately, if at all, a variety of California consumers,  
28 businesses, employees, and other persons not covered by California’s Occupational Safety

1 Health Act, Labor Code § 6300 *et seq.*, in the State of California about their exposure to DEHP  
2 in conjunction with defendants' distribution, importation, manufacturing, and sale of the  
3 PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder of such  
4 conduct as well as civil penalties for each violation.

5 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive  
6 and permanent injunctive relief to compel defendants to provide purchasers or users of the  
7 PRODUCTS with the required warning regarding the health hazards of DEHP. (*Cal. Health &*  
8 *Safety Code § 25249.7(a).*)

9 9. Plaintiff also seeks civil penalties against defendants for their violations of  
10 Proposition 65, as provided for by California Health & Safety Code § 25249.7(b).

11 **PARTIES**

12 10. Plaintiff JOHN MOORE is a citizen of the State of California who is dedicated to  
13 protecting the health of California citizens through the elimination or reduction of toxic  
14 exposures from consumer and commercial products, and brings this action in the public interest  
15 pursuant to California Health & Safety Code § 25249.7.

16 11. Defendants VENTURE PRODUCTS, SEARS, and SEARS HOLDINGS are each  
17 persons doing business within the meaning of California Health & Safety Code § 25249.11.

18 12. Defendants VENTURE PRODUCTS, SEARS, and SEARS HOLDINGS each  
19 manufacture, import, distribute, and/or offer the PRODUCTS for sale or use in the State of  
20 California or implies by its conduct that it manufacture, import, distribute, and/or offer the  
21 PRODUCTS for sale or use in the State of California.

22 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons  
23 doing business within the meaning of California Health & Safety Code § 25249.11.

24 14. MANUFACTURER DEFENDANTS engage in the process of research, testing,  
25 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they  
26 engage in the process of research, testing, designing, assembling, fabricating and/or  
27 manufacturing, e.g. by engaging in private labeling one or more of the PRODUCTS for sale or  
28 use in the State of California.





1 continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day notice of violation.  
2 Plaintiff further alleges and believes that such violations will continue to occur into the future.

3 29. After receipt of the claims asserted in the September 1, 2010 sixty-day notice of  
4 violation, the appropriate public enforcement agencies have failed to commence and diligently  
5 prosecute a cause of action against DEFENDANTS under Proposition 65.

6 30. The PRODUCTS manufactured, imported, distributed, and/or offered for sale or  
7 use in California by DEFENDANTS contained DEHP above the allowable state limits.

8 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
9 imported, distributed, and/or offered for sale or use by DEFENDANTS in California contained  
10 DEHP.

11 32. DEHP was present in or on the PRODUCTS in such a way as to expose  
12 individuals to DEHP through dermal contact ingestion and/or inhalation during the reasonably  
13 foreseeable use of the PRODUCTS.

14 33. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
15 continues to cause consumer and workplace exposures to DEHP, as such exposure is defined by  
16 27 CCR § 25602(b).

17 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
18 the PRODUCTS would expose individuals to the DEHP through dermal contact ingestion and/or  
19 inhalation.

20 35. DEFENDANTS intended that such exposures to DEHP from the reasonably  
21 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation  
22 in the manufacture, importation, distribution, and/or offer for sale or use of PRODUCTS to  
23 individuals in the State of California.

24 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
25 consumers and/or other individuals in the State of California who were or who could become  
26 exposed to DEHP through dermal contact ingestion and/or inhalation during the reasonably  
27 foreseeable use of the PRODUCTS.  
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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: November 12, 2010

Respectfully Submitted,  
THE CHANLER GROUP

By:   
Clifford A. Chanler  
Attorneys for Plaintiff  
JOHN MOORE