



1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff MARK  
3 MOORBERG in the public interest of the citizens of the State of California to enforce the  
4 People’s right to be informed about exposures to di-n-butyl phthalate (“DBP”), a toxic chemical  
5 that is found in and on the vinyl/PVC straps of flip flops that are sold in California.

6 2. By this First Amended Complaint, plaintiff seeks to remedy defendants’  
7 continuing failure to warn California citizens about the risks of exposures to DBP present in and  
8 on the vinyl/PVC straps of flip flops manufactured, distributed, and offered for sale or use to  
9 consumers throughout the State of California.

10 3. Detectable levels of DBP are commonly found in and on the vinyl/PVC straps of  
11 flip flops that defendants import, manufacture, distribute, ship, sell and/or offer for sale to  
12 consumers throughout the State of California.

13 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
14 Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of  
15 doing business shall knowingly and intentionally expose any individual to a chemical known to  
16 the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
17 warning to such individual . . . .” Health & Safety Code § 25249.6.

18 5. On December 2, 2005, California listed DBP pursuant to Proposition 65 as a  
19 chemical that is known to cause birth defects or other reproductive harm. DBP became subject  
20 to the “clear and reasonable warning” requirements of the act one year later on December 2,  
21 2006. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

22 6. Defendants manufacture, distribute, import, sell, and offer for sale without  
23 warning in California, flip flops with vinyl/PVC straps containing DBP, including, but not  
24 limited to, the *Flip Flop, #61539283A, UPC #0 43748 12097 5*. All such flip flops with  
25 vinyl/PVC straps containing DBP are referred to collectively hereinafter as the “PRODUCTS.”  
26 DBP is referred to hereinafter as the “LISTED CHEMICAL.”



1           14.   SAVE MART manufactures, imports, distributes, sells, and/or offers the  
2 PRODUCTS for sale or use in the State of California, or it implies by its conduct that it  
3 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
4 State of California.

5           15.   Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
6 person in the course of doing business within the meaning of Health and Safety Code sections  
7 25249.6 and 25249.11.

8           16.   MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
9 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,  
10 and manufacture one or more of the PRODUCTS offered for sale or use in the State of  
11 California.

12           17.   Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person  
13 in the course of doing business within the meaning of Health and Safety Code sections 25249.6  
14 and 25249.11.

15           18.   DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and  
16 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
17 in the State of California.

18           19.   Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in  
19 the course of doing business within the meaning of Health and Safety Code sections 25249.6  
20 and 25249.11.

21           20.   RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
22 State of California.

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

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1 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
2 harm.”

3 28. Proposition 65 states, “[n]o person in the course of doing business shall  
4 knowingly and intentionally expose any individual to a chemical known to the state to cause  
5 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
6 individual . . . .” Health & Safety Code § 25249.6.

7 29. On April 16, 2014, plaintiff’s sixty-day notice of violation, together with the  
8 requisite certificate of merit, was provided to DIRECT SOURCE, SAVE MART, and certain  
9 public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the  
10 PRODUCTS containing the LISTED CHEMICAL, workers, consumers, and other individuals  
11 in the State of California were being exposed to the LISTED CHEMICAL resulting from their  
12 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first  
13 having received a “clear and reasonable warning” regarding such toxic exposures as required by  
14 Proposition 65.

15 30. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
16 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section  
17 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of  
18 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and  
19 continuous in nature, and will continue to occur in the future.

20 31. After receiving plaintiff’s sixty-day notice of violation, the appropriate public  
21 enforcement agencies have failed to commence and diligently prosecute a cause of action  
22 against DEFENDANTS under Proposition 65.

23 32. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale  
24 or use in California by DEFENDANTS contain the LISTED CHEMICAL in such a way that the  
25 reasonably foreseeable uses of these products result in exposures that require a “clear and  
26 reasonable” warning under Proposition 65.

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1           33. DEFENDANTS knew or should have known that the PRODUCTS they  
2 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED  
3 CHEMICAL.

4           34. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
5 expose individuals through dermal contact and/or ingestion during reasonably foreseeable use.

6           35. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
7 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are  
8 defined by title 27 of the California Code of Regulations, section 25602(b).

9           36. DEFENDANTS have knowledge that the normal and reasonably foreseeable uses  
10 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact  
11 and/or ingestion.

12           37. DEFENDANTS intend for such exposures to the LISTED CHEMICAL from the  
13 reasonably foreseeable uses of the PRODUCTS to occur by their deliberate, non-accidental  
14 participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or  
15 use to individuals in the State of California.

16           38. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
17 workers, consumers and other individuals in California not covered by California's  
18 Occupational Safety Health Act, Labor Code section 6300 *et seq.* who have been, or will be,  
19 exposed to the LISTED CHEMICAL.

20           39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
21 directly by California voters, workers, consumers, and other individuals exposed to the LISTED  
22 CHEMICAL through dermal contact and/or ingestion resulting from the reasonably foreseeable  
23 uses of the PRODUCTS sold by DEFENDANTS without a "clear and reasonable warning,"  
24 have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or  
25 adequate remedy at law.

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