

1 JOHN J. MEEHAN
2 District Attorney of Alameda County
3 MICHEAL O'CONNOR
4 Deputy District Attorney
5 State Bar Number: 124655
6 Consumer & Environmental Protection Division
7 7677 Oakport Street, Suite 400
8 Oakland, CA 94621
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**ENDORSED
FILED
ALAMEDA COUNTY**

JUL 01 1994

**RONALD G. OVERHOLT, Exec. Off./Clerk
By Linda Steffens**

Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

H-177289-8

12 THE PEOPLE OF THE STATE OF CALIFORNIA,)

Docket No.:

13 Plaintiff,)

14 v.)

15 SEARS, ROEBUCK AND CO.,)
16 A New York Corporation,)

STIPULATED FINAL
JUDGMENT

18 Defendant.)
19 _____)

20 Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA, appearing through its attorneys,
21 John J. Meehan, District Attorney of the County of Alameda, and Micheal O'Connor, Deputy District
22 Attorney of the County of Alameda, acting pursuant to the statutory law of the State of California, and
23 Defendant, SEARS, ROEBUCK AND CO., appearing through its attorney, Dennis Hudson, without
24 the taking of proof, and without a trial or adjudication of any facts or law herein, and without any
25 admission of liability by Defendant, hereby stipulate in compromise and settlement of this action that:
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1. Defendant has been served with copies of the complaint herein and acknowledges that the Superior Court, County of Alameda, has personal jurisdiction over Defendant and jurisdiction over the subject matter of this action.

2. Final judgment shall be entered on Plaintiff's complaint in accord with the terms herein and Plaintiff hereby waives and releases any further claims arising out of, relating to, or which may have been asserted as a result of the acts, omissions, transactions, or matters relating thereto, concerning the matters alleged in the complaint.

3. The execution of this stipulation is the result of negotiation and compromise within the meaning of California Evidence Code Sections 1152, et. seq. Plaintiff and Defendant agree that neither this stipulation, nor the entry into this stipulation, nor any performance under this stipulation, shall be construed as a finding or admission of any fact or allegation contained in the complaint or in this stipulation, or of any liability, or admission by Defendant or by its officers, directors, employees and agents. Neither this stipulation, nor any performance hereunder by Defendant, shall create any right on behalf of any person not a party hereto.

4. Notwithstanding the foregoing, Defendant agrees to be bound by and comply with all of the terms and conditions of this stipulation. Defendant expressly reserves any and all rights (including any right to contribution), defenses, claims, demands and causes of action which Defendant may have with respect to any matter, action, event, claim

1 or proceeding relating in any way to the subject matter of the complaint or this
2 stipulation against any person, firm, or corporation except as expressly provided in this
3 stipulation. Defendant does not admit, and retains the right to controvert in any
4 subsequent proceedings, other than proceedings for the purpose of implementing or
5 enforcing this stipulation, the validity of the facts or determinations contained in the
6 complaint or this stipulation.
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10 5. This settlement shall apply only as to Defendant, including its officers, directors, and
11 employees. Plaintiff does not release any person not a party hereto from liability for
12 any violations alleged in or relating to the allegations of the complaint. Plaintiff
13 reserves the right to bring a separate enforcement action against any person not a party
14 hereto.
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17 6. This stipulation is entered into this date between the Alameda County District
18 Attorney and Defendant. The District Attorney warrants that he has the authority to
19 bind all incorporated or unincorporated cities, towns and communities within Alameda
20 County, as well as the Alameda County Department of Environmental Health to the
21 terms of this stipulation. The District Attorney further warrants that he has authority
22 to bind the San Francisco Regional Water Quality Control Board (hereinafter referred
23 to as "the Regional Board") to the terms of this stipulation which deal with its
24 authority to administer the California Underground Tank Law, Chapters 6.7 and 6.75
25 of Division 20 of the California Health and Safety Code and to enforce the California
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2 Underground Tank Law by use of the provisions of the California Water Code Section
3 13000 et. seq. The District Attorney, however, does not warrant that this stipulation
4 shall bind the Board from its independent authority to take actions under the California
5 Water Code except as stated herein.
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8 7. With respect to its operations in Alameda County, Defendant and its officers,
9 directors, employees and agents, and any and all of them, shall be restrained and
10 enjoined from knowingly violating:

- 11 A. the California Hazardous Waste Control Act (Health and Safety Code Section
12 25100, et seq.);
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14 B. the Underground Storage of Hazardous Substances Act (Health and Safety
15 Code Sections 25280, et seq.);
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17 C. the Hazardous Materials Release Response Plans and Inventory Act (Health
18 and Safety Code Sections 25500, et seq.);
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20 D. the Barry Keene Underground Storage Tank Cleanup Trust Fund Act (Health
21 and Safety Code Sections 25299.10 et seq.)

22 8. Defendant shall take corrective action as follows:

- 23 A. With respect to the former Sears facility located at 2633 Telegraph Avenue in
24 Oakland, California ("Oakland site") Defendant shall cooperate with the
25 Alameda County Department of Environmental Health, Hazardous Materials
26 Division ("County Haz Mat") to take and complete corrective action for
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1 underground petroleum hydrocarbon contamination, including any
2 contamination which has migrated off site.
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4 B. With respect to the Sears facility located at 660 West Winton Avenue, in
5 Hayward, California, Defendant shall cooperate with the Hayward Fire
6 Department to take and complete corrective action for underground petroleum
7 hydrocarbon contamination resulting from releases associated with waste oil
8 tanks that are or have been operated by Defendant, including any such
9 contamination which has migrated off site.
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11 C. Defendant will meet with the Alameda County District Attorney, the City of
12 Hayward Fire Department, and CITGO Petroleum Corp. in the Office of the
13 District Attorney to discuss underground petroleum hydrocarbon
14 contamination resulting from releases associated with motor vehicle fuel tanks,
15 maintained in connection with the former retail gasoline facility located at 660
16 West Winton Avenue, in Hayward, California. A representative of the San
17 Francisco Bay Regional Water Quality will be invited to attend the meeting.
18 The purpose of said meeting is to fully apprise Defendant and the City of
19 Hayward Fire Department of the status of remediation efforts at the site. Said
20 meeting will take place as soon as possible following entry of judgment in this
21 case.
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24 D. Defendant shall assume the obligation to cooperate with the Hayward Fire
25 Department to take and complete corrective action for underground petroleum
26 hydrocarbon contamination resulting from releases associated with motor
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1 vehicle fuel tanks maintained in connection with the former retail gasoline
2 facility located at 660 West Winton Avenue, in Hayward, California.

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4 Defendant shall assume said responsibility within 60 days of the meeting
5 referred to in subparagraph C above. Defendant shall cooperate with the City
6 of Hayward Fire Department to promptly develop and implement a plan to
7 remove free product both on and off site.
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9 E. "Corrective action" as used in this stipulation, is defined under Title 23, Article
10 11 ("Article 11") and includes, but is not limited to, remedial activities relating
11 to preliminary site assessment, interim remedial action, soil and water
12 investigation, corrective action plan implementation and verification
13 monitoring as defined in Article 11.
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15 F. Defendant shall act promptly to perform the requirements of this paragraph.
16 Defendant shall work with County Haz Mat and with the Hayward Fire
17 Department to develop a schedule for implementation of remedial actions
18 required above. Within sixty days of the date of the meeting referred to in
19 subparagraph C, Defendant will submit said remedial action schedules to
20 Plaintiff, through John J. Meehan, District Attorney of Alameda County.
21 Defendant shall adhere to said schedules in performance of Defendant's
22 remedial obligations. Plaintiff's agreement to modify these schedules shall not
23 be unreasonably withheld.
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26 9. Within fifteen days of the entry of judgment, Defendant shall pay to Plaintiff, THE
27 PEOPLE OF THE STATE OF CALIFORNIA, through John J. Meehan, District
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1 Attorney of Alameda County, a total of Two Hundred Seventy-Five Thousand Dollars
2 (\$275,000.00), as follows:
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4 A. Civil Penalties.

5 Defendant shall pay One Hundred Seventy-Five Thousand Dollars
6 (\$175,000.00) in civil penalties by delivering to the District Attorney of
7 Alameda County:
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9 i) one check in the amount of \$175,000 payable to the District Attorney
10 of Alameda County for delivery to the county treasury.

11 B. Costs.

12 Defendant shall pay One Hundred Thousand Dollars (\$100,000.00) in costs by
13 delivering to the District Attorney of Alameda County:
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15 i) one check in the amount of Twenty-Five Thousand Dollars (\$25,000)
16 to the City of Hayward, Fire Department, Hazardous Materials
17 Division.

18 ii) one check in the amount of Twenty-Five Thousand Dollars (\$25,000)
19 to the Alameda County Department of Environmental Health,
20 Hazardous Materials Division, Local Oversight Program Account;
21
22 iii) one check in the amount of One Thousand Dollars (\$1,000) to the City
23 of Newark, Hazardous Materials Division.

24 iv) one check in the amount of Nine Thousand Dollars, (\$9,000) payable
25 to Alameda County Hazardous Materials Program Training and
26 Resource Trust Account.
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- v) one check in the amount of Five Thousand Dollars, (\$5,000) to the San Francisco California Regional Water Quality Control Board.
- vi) one check in the amount of Thirty-Five Thousand Dollars (\$35,000) payable to the District Attorney of Alameda County.

10. Prior to instituting any proceedings seeking to enforce compliance with, or to punish Defendant for one or more alleged violations of this stipulation by the filing of a contempt citation in this action, Plaintiff shall provide written notice to Defendant's attorney or to Defendant of the proposed proceedings and the basis therefor. Upon receipt of such written notice, Defendant shall be provided the opportunity to make a good faith effort within the next sixty (60) days to:

- A. satisfy Plaintiff that this Judgment has not been violated; or
- B. correct any practice which is, or reasonably appears to be, in violation of this Judgment; or
- C. commence correction of any practice or problem which cannot be reasonably accomplished within sixty (60) days due to technological difficulties; or
- D. otherwise reach a satisfactory solution of the matters which form the basis of the Plaintiff's notice.

Plaintiff's satisfaction shall not be unreasonably withheld, and, if Defendant satisfies any of the above conditions, no proceeding under this stipulation may be instituted in connection with that allegation.

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11. The Parties waive the right to appeal of the Judgment.

12. Jurisdiction is retained by the Court for the purpose of enabling any party to this stipulation to apply to the Court at any time for such further orders and directives as may be necessary or appropriate.

13. This stipulation may be modified upon written approval of the parties hereto and the Court.

Dated: 7/1/94

JOHN J. MEEHAN
District Attorney

By: *Michael O'Connor*
Micheal O'Connor
Deputy District Attorney

Attorneys for Plaintiff

Dated: 6/28/94

Sears, Roebuck and Co.
SEARS, ROEBUCK AND CO.,
A New York Corporation,
Defendant