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9 Attorneys for Plaintiff
10 JOHN MOORE

FILED

AUG 04 2011

KIM TURNER
MARIN COUNTY SUPERIOR COURT
By: J. Chanler, Plaintiff

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF MARIN

13 UNLIMITED CIVIL JURISDICTION

14 JOHN MOORE,

15 Plaintiff,

16 v.

17 NOVALIS INTERNATIONAL, LIMITED;
18 NOVALIS INTERNATIONAL, LLC; *et al.*,

19 Defendants.

) Case No.: CIV-1101221

) **[PROPOSED] JUDGMENT PURSUANT**
) **TO TERMS OF PROPOSITION 65**
) **SETTLEMENT AND CONSENT**
) **JUDGMENT**

) Date: August 3, 2011

) Time: 8:30 a.m.

) Dept.: B

) Judge: Hon. Roy O. Chernus

1 In the above-entitled action, plaintiff JOHN MOORE and defendants NOVALIS
2 INTERNATIONAL, LIMITED and NOVALIS INTERNAIONAL, LLC, having agreed through their
3 respective counsel that a judgment be entered pursuant to the terms of the Consent Judgment entered
4 into by the parties in resolution of this Proposition 65 action, and following the issuance of an order
5 approving the Parties' settlement agreement on August 3, 2011.

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Health & Safety
7 Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered in accordance
8 with the terms of the Consent Judgment attached hereto as Exhibit 1. By stipulation of the parties,
9 the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

10
11 **IT IS SO ORDERED.**

12
13 Dated: _____

8/4/11

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JUDGE OF THE SUPERIOR COURT

Exhibit 1

1 Clifford A. Chanler, State Bar No. 135534
2 Josh Voorhees, State Bar No. 241436
3 THE CHANLER GROUP
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5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
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9 Attorneys for Plaintiff
10 JOHN MOORE

11 Jay Connolly, State Bar No. 114725
12 Robin M. Cleary, State Bar No. 192489
13 SEYFARTH SHAW, LLP
14 560 Mission Street, Suite 3100
15 San Francisco, CA 94105
16 Telephone: (415) 397-2823
17 Facsimile: (415) 397-8549

18 Attorneys for Defendants
19 NOVALIS INTERNATIONAL, LTD; and
20 NOVALIS INTERNATIONAL, LLC

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA
22 FOR THE CITY AND COUNTY OF MARIN
23 UNLIMITED CIVIL JURISDICTION

24 JOHN MOORE,

25 Plaintiff,

26 v.

27 NOVALIS INTERNATIONAL, LTD; and
28 NOVALIS INTERNATIONAL, LLC, *et al*

Defendants.

Case No. CIV1101221

UNLIMITED JURISDICTION

[PROPOSED] CONSENT JUDGMENT
AS TO NOVALIS INTERNATIONAL
LTD and NOVALIS INTERNATIONAL,
LLC

Dept:
Judge:
Date: None set

Complaint Filed:

1 **1. INTRODUCTION**

2 **1.1 John Moore, Novalis International, LTD and Novalis International, LLC**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore” or
4 “Plaintiff”) on the one hand, and defendants Novalis International, LTD and Novalis International,
5 LLC (collectively “Defendants”), on the other hand, with Moore and Defendants collectively
6 referred to as the “parties.”

7 **1.2 John Moore**

8 Moore is an individual residing in the State of California who seeks to promote awareness of
9 exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous
10 substances contained in consumer and commercial products.

11 **1.3 Novalis International, LTD and Novalis International, LLC**

12 Moore alleges that Defendants each employ ten or more persons and each is a person in the
13 course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of
14 1986, California Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Moore alleges that Defendants have manufactured, imported, distributed and/or sold vinyl
17 flooring containing di(2-ethylhexyl)phthalate (“DEHP”), without the requisite Proposition 65
18 warnings. DEHP is on the Proposition 65 list as known to cause cancer as well as birth defects and
19 other reproductive harm.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as follows: all vinyl
22 flooring containing DEHP including, but not limited to, *18” Copper Slate Vinyl Tile,*
23 *SS1161/Novalis Item 24339 (#6 56380 81161 5) and Novalis Items 34169 (12” Ivory Key Vinyl*
24 *Tile), 146805 (12” Bombay Slate Vinyl Tile), 27488 (18” Harvester Vinyl Tile), 41435 (18”*
25 *Corsica Vinyl Tile), 171374 (18” Almond Slate Vinyl Tile), 171376 (18” Moss Slate Vinyl Tile),*
26 *255731 (18” Riviera Stone Vinyl Tile), 255788 (18” Tuscan Stone Vinyl Tile), 299235 (18”*
27 *Appalachian Slate Vinyl Tile), 36883 (18” Havana Sun Vinyl Tile), 299237 (18” Terracotta Stone*
28

1 *Vinyl Tile*), and 299239 (18" *Verde Slate Vinyl Tile*), manufactured, imported, distributed and/or
2 sold by Defendants. All such vinyl flooring containing DEHP shall be referred to hereinafter as the
3 "Products."

4 **1.6 Notice of Violation**

5 On October 4, 2010, Moore served Novalis International, LTD, Novalis International, LLC,
6 and various public enforcement agencies, with a document entitled "60-Day Notice of
7 Violation" (the "Notice") that provided the recipients with notice of alleged violations of California
8 Health & Safety Code § 25249.6 for failing to warn consumers that the Products sold by Defendants
9 exposed users in California to DEHP. To the best of the parties' knowledge, no public enforcer has
10 prosecuted the allegations set forth in the Notice.

11 **1.7 Complaint**

12 On March 8, 2011, Moore filed a complaint in the Superior Court in and for the County of
13 Marin against Novalis International, LTD, Novalis International, LLC, and Does 1 through 150,
14 *Moore v. Novalis, et al.*, Case No. CIV-1101221 (the "Action"), alleging violations of California
15 Health & Safety Code § 25249.6, based on the alleged exposures to DEHP contained in certain
16 vinyl flooring products sold by Defendants.

17 **1.8 No Admission**

18 Defendants deny the material, factual and legal allegations contained in Moore's Notice and
19 Complaint and maintain that all products that they have sold, manufactured, imported and/or
20 distributed in California, including the Products, have been and are in compliance with all laws.
21 Nothing in this Consent Judgment shall be construed as an admission by Defendants of any fact,
22 finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment
23 constitute or be construed as an admission by Defendants of any fact, finding, conclusion, issue of
24 law, or violation of law. However, this section shall not diminish or otherwise affect Defendants'
25 obligations, responsibilities, and duties under this Consent Judgment.

26 **1.9 Consent to Jurisdiction**

27 For purposes of this Consent Judgment only, the parties stipulate that this Court has
28 jurisdiction over Defendants as to the allegations contained in the Complaint, that venue is proper in

1 the County of Marin and that this Court has jurisdiction to enter and enforce the provisions of this
2 Consent Judgment.

3 **1.10 Effective Date**

4 For purposes of this Consent Judgment, the term "Effective Date" shall mean April 1, 2011.

5 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

6 **2.1 Reformulation Standards**

7 "Reformulated" Products are defined as those Products containing DEHP in concentrations
8 less than 0.1 percent (1,000 parts per million) in each accessible component when analyzed
9 pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any
10 other methodology utilized by federal or state agencies for the purpose of determining DEHP
11 content in a solid substance.

12 **2.2 Reformulation Commitment**

13 Commencing on the Effective Date, Defendants shall distribute, ship or offer to be shipped
14 for sale in California only Reformulated Products.

15 **2.3 Reformulated Products are Deemed to Comply**

16 Reformulated products shall be deemed to comply with Proposition 65 as it relates to the
17 presence of DEHP in the Products and shall be exempt from any Proposition 65 warning
18 requirements regarding exposure to DEHP.

19 **3. PAYMENT OF PENALTIES**

20 In settlement of all the claims referred to in this Consent Judgment, Defendants shall
21 collectively pay \$20,000 in civil penalties, to be apportioned in accordance with California Health
22 & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to the State of California's
23 Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the
24 penalty remitted to John Moore. This civil penalty reflects a credit of \$30,000 based on Defendant's
25 commitment to reformulate. Defendants shall issue two separate checks for the penalty payment:

26 (a) one check made payable to "The Chanler Group in Trust For OEHHA" in the amount of
27 \$15,000, representing 75% of the total penalty; and (b) one check to "The Chanler Group in Trust
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1 for John Moore” in the amount of \$5,000, representing 25% of the total penalty. Two separate
2 1099s shall be issued for the above payments: (a) OEHHA, P.O. Box 4010, Sacramento, CA, 95814
3 (EIN: 68-0284486); and (b) John Moore, whose information shall be provided five calendar days
4 before the payment is due.

5 Payment shall be delivered to Moore’s counsel on or before April 1, 2011, at the following
6 address:

7 The Chanler Group
8 Attn: Proposition 65 Controller
9 2560 Ninth Street
10 Parker Plaza, Suite 214
11 Berkeley, CA 94710

12 **4. REIMBURSEMENT OF ATTORNEY’S FEES AND COSTS**

13 The parties reached an accord on the compensation due to Moore and his counsel under
14 general contract principles and the private attorney general doctrine codified at California Code of
15 Civil Procedure (CCP) § 1021.5. Defendants shall reimburse Moore and his counsel \$50,000 for
16 fees and costs incurred as a result of investigating, bringing this matter to its attention, and
17 negotiating a settlement in the public interest. This figure includes Moore’s future fees and costs
18 including attorney’s fees to be incurred in seeking judicial approval of this Consent Judgment as
19 well as any other legal work performed after the execution of this Consent Judgment incurred in an
20 effort to obtain finality of the case.

21 The check for reimbursement of fees and costs shall be made payable to “The Chanler
22 Group” and shall be delivered on or before April 1, 2011, to the following address:

23 The Chanler Group
24 Attn: Proposition 65 Controller
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710

28 A separate 1099 shall be issued to “The Chanler Group” (EIN: 94-3171522) for the amount
of the reimbursement of Plaintiff’s fees and costs.

1
2 **5. JOINT AND SEVERAL LIABILITY**

3 Defendants shall be jointly and severally liable for the payments required under Sections 3
4 and 4 of this Consent Judgment.

5 **6. RELEASE OF ALL CLAIMS**

6 **6.1 Moore's Release of Defendants**

7 In further consideration of the promises and agreements herein contained, and for the
8 payments to be made pursuant to Sections 3 and 4, Moore, on behalf of himself, his past and current
9 agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general
10 public pursuant to Health & Safety Code § 25249.7(d), hereby waives all rights to institute or
11 participate in, directly or indirectly, any form of legal action and releases all claims, including,
12 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,
13 obligations, agreements, promises, royalties, accountings, damages, costs, fines, penalties, losses, or
14 expenses (including, but not limited to, investigation fees, expert fees, and attorney's fees) of any
15 nature whatsoever, whether known or unknown, fixed or contingent (collectively "claims"), against
16 Defendants and each of their downstream wholesalers, licensors, licensees, auctioneers, retailers –
17 including, but not limited to, Lowe's HIW, Inc. – distributors, franchisees, dealers, customers,
18 owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective
19 officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and
20 parent entities, (collectively "Releasees") that arise under Proposition 65, as such claims relate to
21 Defendants' alleged failure to warn about exposures to DEHP contained in the Products, including
22 those Products distributed, shipped or offered to be shipped for sale in California prior to the
23 Effective Date.

24 Moore also, on behalf of himself and his agents, attorneys, representatives, successors and
25 assigns, in his individual capacity only and *not* in his representative capacity, provides a general
26 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
27 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
28 liabilities and demands of Moore of any nature, character or kind, known or unknown, suspected or

1 unsuspected, arising out of the subject matter of the Complaint and the alleged failure to warn about
2 exposures to DEHP in the Products. Moore acknowledges that he is familiar with Section 1542 of
3 the California Civil Code, which provides as follows:

4 **A general release does not extend to claims which the creditor does not**
5 **know or suspect to exist in his or her favor at the time of executing the**
6 **release, which if known by him or her must have materially affected his or**
7 **her settlement with the debtor.**

8 Moore, in his individual capacity only and *not* in his representative capacity, on behalf of
9 himself and his agents, attorneys, representatives, successors and assigns, expressly waives and
10 relinquishes any and all rights and benefits which he may have under, or which may be conferred on
11 him by the provisions of Section 1542 of the California Civil Code as well as under any other state
12 or federal statute or common law principle of similar effect, to the fullest extent that he may
13 lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such
14 intention, the release hereby given shall be and remain in effect as a full and complete release
15 notwithstanding the discovery or existence of any such additional or different claims or facts arising
16 out of the Complaint and the alleged failure to warn about exposures to DEHP in the Products .

17 The parties further understand and agree that this release shall not extend upstream to any
18 entities that manufactured the Products for Defendants or any component parts thereof or to any
19 distributors or suppliers who sold the Products or any component parts thereof to Defendants.

19 **6.2 Defendants' Release of Moore**

20 Defendants, on behalf of themselves and their Releasees, waive any and all claims against
21 Moore, his attorneys, and other representatives for any and all actions taken by Moore and his
22 attorneys and other representatives, whether in the course of investigating claims or otherwise
23 seeking enforcement of Proposition 65 against them in this matter, and/or with respect to the
24 Products.

25 **7. COURT APPROVAL**

26 This Consent Judgment is not effective until it is approved and entered by the Court and
27 shall be null and void if, for any reason: (a) the Superior Court does not approve the motion to
28 approve this Consent Judgment, and if the parties choose not to pursue a modified Consent

1 Judgment within 45 days after the Court's denial of the motion to approve (and, upon remittitur, all
2 payments made pursuant to this Consent Judgment being returned to counsel for Defendants);
3 and/or (b) this Consent Judgment is not approved and entered by the Court within one year after it
4 has been fully executed by all parties.

5 **8. SEVERABILITY**

6 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
7 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions
8 remaining shall not be adversely affected.

9 **9. GOVERNING LAW**

10 The terms of this Consent Judgment shall be governed by the laws of the State of California
11 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or
12 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
13 Consent Judgment are rendered inapplicable or no longer required as a result of any such repeal or
14 preemption or rendered inapplicable by reason of law generally as to the Products, then Defendants
15 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the
16 extent that, the Products are so affected.

17 **10. ENTIRE AGREEMENT**

18 This Consent Judgment contains the sole and entire agreement and understanding of the
19 parties with respect to the entire subject matter hereof, and any and all prior discussions,
20 negotiations, commitments and understandings related hereto. No representations, oral or
21 otherwise, express or implied, other than those contained herein have been made by any party
22 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
23 to exist or to bind any of the parties.

24 **11. NOTICES**

25 Unless specified herein, all correspondence and notices required to be provided pursuant to
26 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
27 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
28 other party at the following addresses:

1 To Defendants:

2 Jay Connolly, Esq.
3 Seyfarth Shaw, LLP
4 560 Mission Street, Suite 3100
San Francisco, CA 94105

To Moore:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

5 Any party, from time to time, may specify in writing to the other party a change of address
6 to which all notices and other communications shall be sent.

7 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

8 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,
9 each of which shall be deemed an original, and all of which, when taken together, shall constitute
10 one and the same document. A facsimile or pdf signature shall be as valid as the original.

11 **13. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

12 Moore and his attorneys agree to comply with the reporting form requirements referenced in
13 California Health & Safety Code § 25249.7(f).

14 **14. ADDITIONAL POST EXECUTION ACTIVITIES**

15 Moore and Defendants agree to mutually employ their, and their counsel's, best efforts to
16 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
17 Judgment by the Court in a timely manner. The parties acknowledge that, pursuant to California
18 Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this
19 Consent Judgment, which Moore shall prepare and file, and Defendants shall not oppose. If any
20 third party objection to the noticed motion is filed, Moore and Defendants shall work together to file
21 a joint reply and appear at any hearing before the Court. This provision is a material component of
22 the Consent Judgment and shall be treated as such in the event of a breach. If the Superior Court
23 does not approve the motion to approve this Consent Judgment, and if the parties choose not to
24 pursue a modified Consent Judgment within 45 days after the Court's denial of the motion to
25 approve, then, upon remittitur, all payments made pursuant to this Consent Judgment will be
26 returned to counsel for Defendants.

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15. MODIFICATION

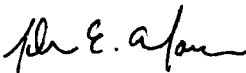
This Consent Judgment may be modified only: (1) by written agreement of the parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any party, as provided by law, and entry of a modified Consent Judgment by the Court.

16. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and to legally bind those parties, and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

Date: MARCH 29, 2011

By: 
Plaintiff, John Moore

AGREED TO:

Date: _____

By: _____
Defendant, Novalis International, LTD

AGREED TO:

Date: _____

By: _____
Defendant, Novalis International, LLC

IT IS SO ORDERED:

JUDGE OF THE SUPERIOR COURT

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15. MODIFICATION

This Consent Judgment may be modified only: (1) by written agreement of the parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any party, as provided by law, and entry of a modified Consent Judgment by the Court.

16. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and to legally bind those parties, and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

Date: _____

By: _____
Plaintiff, John Moore

AGREED TO:

Date: March 27 / 2011

By:  _____
Defendant, Novalis International, LTD

AGREED TO:

Date: March 27 / 2011

By:  _____
Defendant, Novalis International, LLC

IT IS SO ORDERED:

JUDGE OF THE SUPERIOR COURT