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JOHN MOORE  
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF SAN FRANCISCO  
11 UNLIMITED CIVIL JURISDICTION  
12

13 JOHN MOORE,

14 Plaintiff,

15 v.

16 PARIS BUSINESS PRODUCTS, INC.; *et al.*,

17 Defendants.

Case No. CGC-10-501884

**[PROPOSED] CONSENT JUDGMENT**

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

1 **1. INTRODUCTION**

2 **1.1 John Moore and Paris Business Products, Inc.**

3 This Consent Judgment is entered into by and between John Moore (“Moore”) and Paris  
4 Business Products, Inc. (“Paris”), with Moore and Paris collectively referred to as the “Parties.”

5 **1.2 Plaintiff**

6 Moore is an individual residing in California who has brought the instant action as a  
7 private enforcer under the Safe Drinking Water and Toxic Enforcement Act of 1986, California  
8 Health & Safety Code §25249.6 *et seq.* (“Proposition 65”).

9 **1.3 Defendant**

10 Paris employs ten or more persons and is a person in the course of doing business for  
11 purposes of Proposition 65.

12 **1.4 General Allegations**

13 Moore alleges that Paris has manufactured, distributed, and/or sold in the State of  
14 California books with soft covers containing di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed  
15 pursuant to Proposition 65, as a chemical known to the State of California to cause birth defects  
16 and other reproductive harm. DEHP is referred to herein as the “Listed Chemical.” Paris has  
17 denied specifically that it is a manufacturer of the product, and that exposure to DEHP from a  
18 reasonable use of the Products exceeds the safe harbor level established under Proposition 65 for  
19 this toxicant, or that it is liable in any way to Moore or the residents of the State of California.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as books/padfolios  
22 and docket document organizers containing the Listed Chemical including, by way of example  
23 and without limitation, the *Reveal Refillable Padfolio, #00754 (#7 60361 10754 0)*. All such  
24 items sold by Paris shall be referred to herein as the “Products.”

25 **1.6 Notice of Violation**

26 On April 9, 2010, Moore served Paris and various public enforcement agencies with a  
27 document entitled “60-Day Notice of Violation” that provided Paris and such public enforcers  
28 with notice that Paris was alleged to be in violation of Proposition 65 for failing to warn

1 consumers and customers that the Products exposed users in California to the Listed Chemical.  
2 Moore represents that he has complied with the statutory requirements for notice to the public  
3 enforcers and that no public enforcer has commenced or is diligently prosecuting the allegations  
4 set forth in the 60-Day Notice of Violation (“Notice”).

5 **1.7 Complaint**

6 On July 23, 2010, Moore, by and through counsel pursuant to Health & Safety Code  
7 §25249.7(d), filed a complaint in the Superior Court in and for the City and County of San  
8 Francisco, Case No. CGC-10-501884, alleging that Paris violated Proposition 65 through its  
9 manufacture, distribution, and/or sale of the Products, without a clear and reasonable warning, to  
10 consumers in California (“Complaint”).

11 **1.8 No Admission**

12 Paris denies the material, factual, and legal allegations contained in Moore’s Notice and  
13 the Complaint and maintains that all products that it has sold in California, including the Products,  
14 have been, and are, in compliance with Proposition 65 and the regulations thereunder. Nothing in  
15 this Consent Judgment shall be construed as an admission by Paris or any party in privity with  
16 Paris of any fact, finding, conclusion, issue of law, or violation of law; nor shall compliance with  
17 this Consent Judgment constitute or be construed as an admission by Paris or any party in privity  
18 with Paris of any fact, finding, conclusion, issue of law, or violation of law, such being  
19 specifically denied by Paris.

20 **1.9 Consent to Jurisdiction**

21 For purposes of this Consent Judgment only, the parties stipulate that this Court has  
22 jurisdiction over Paris as it relates to this Consent Judgment, that venue is proper in the City and  
23 County of San Francisco, and that this Court has jurisdiction to enter and enforce the provisions  
24 of this Consent Judgment.

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term “Effective Date” shall mean December  
27 15, 2010.

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1 **2. INJUNCTIVE RELIEF**

2 **2.1 Reformulated Products**

3 As of April 1, 2011, Paris shall not sell or offer to sell any Products in California unless  
4 they are “Reformulated Products.” For purposes of this Settlement Agreement, Reformulated  
5 Products shall mean Products that contain no more than 1,000 parts per million of the Listed  
6 Chemical, when analyzed pursuant to Environmental Protection Agency testing methodologies  
7 3580A and 8270C, or equivalent methodologies utilized by federal or state agencies for the  
8 purpose of determining the presence of DEHP in a solid substance.

9 **2.2 Requirements for Products Remaining in Inventory**

10 (a) For its existing inventory of Products that Paris sells between the Effective  
11 Date and March 31, 2011 that are not Reformulated Products, Paris agrees that, prior to selling  
12 those Products, it will provide for the affixing of a warning to the packaging, labeling, or directly  
13 on each Product reasonably likely to be sold or resold in California that states:

14 **WARNING:** This product contains DEHP, a  
15 chemical known to the State of  
16 California to cause birth defects  
or other reproductive harm.

17 The label shall be prominently placed on the packaging, labeling, or directly on the Product  
18 exterior with such conspicuousness as compared with other words, statements, designs or devices  
19 as to render it likely to be read and understood by an ordinary individual under customary  
20 conditions before purchase.

21 (b) For Products that are not Reformulated Products and that were shipped,  
22 distributed, or sold by Paris to a retailer or distributor customer prior to the Effective Date, that  
23 Paris believes remain in inventory with the customer and that are reasonably likely to be sold in  
24 California, Paris agrees that it will, within thirty days of the Effective Date, either:

25 (i) Provide each of those retailer and/or distributor customers with a  
26 letter explaining in detail the customer’s duty to provide clear and reasonable Proposition 65  
27  
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1 The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-  
2 0284486). The second 1099 shall be issued to Moore, whose address and tax identification  
3 number shall be furnished five calendar days prior to the date of payment. The payments shall be  
4 delivered within ten days of the Effective Date to the following address:

5 The Chanler Group  
6 Attn: Proposition 65 Controller  
7 2560 Ninth Street  
8 Parker Plaza, Suite 214  
9 Berkeley, CA 94710-2565

10 **4. REIMBURSEMENT OF FEES AND COSTS**

11 **4.1 Attorney Fees and Costs**

12 The Parties acknowledge that Moore and his counsel offered to resolve this dispute  
13 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
14 this fee issue to be resolved after the material terms of the agreement had been settled. Paris then  
15 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had  
16 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due  
17 to Moore and his counsel under general contract principles and the private attorney general  
18 doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed  
19 before and in this action through the mutual execution of this agreement. Paris, on behalf of itself  
20 and those in its chain of distribution, agrees to pay Moore and his counsel a total of \$29,000 for  
21 fees and costs incurred as a result of investigating, bringing this matter to Paris' attention, and  
22 litigating and negotiating a settlement in the public interest. Moore and his counsel shall not seek  
23 to recover any fees or costs from any other source in connection with this action. Paris shall issue  
24 a separate 1099 for fees and costs (EIN: 94-3171522) and shall make the check payable to "The  
25 Chanler Group." Payment shall be delivered within ten days of the Effective Date to the  
26 following address:

26 The Chanler Group  
27 Attn: Proposition 65 Controller  
28 2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

1 **5. RELEASE OF ALL CLAIMS**

2 **5.1 Moore 's Release of Paris**

3 In further consideration of the promises and agreements herein contained, and for the  
4 payments to be made pursuant to Sections 3 and 4 above, Moore on behalf of himself, his past  
5 and current agents, representatives, consultants, investigators, attorneys, successors, and/or  
6 assignees, and in the interest of the general public, hereby waives all rights to institute or  
7 participate in, directly or indirectly, any form of legal action and releases all claims including,  
8 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,  
9 obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to,  
10 investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or  
11 unknown, fixed or contingent (collectively "Claims"), that were brought or could have been  
12 brought against Paris or any of its parents, subsidiaries or affiliates, and all of its customers  
13 (including, without limitation, Kmart Corporation), distributors, wholesalers, retailers, licensors,  
14 licensees, employees, officers, agents, or any other person in the course of doing business, and the  
15 successors and assigns of any of them, who may use, maintain, manufacture, distribute, advertise,  
16 market or sell Products, and the officers, directors, managers, employees, members, shareholders,  
17 agents, insurers and representatives of each of them (collectively "Releasees") with respect to the  
18 Products and the claims alleged in the Notice and Complaint.

19 Moore also, on behalf of himself and his agents, attorneys, representatives, successors and  
20 assigns, in his individual capacity only and *not* in his representative capacity, provides a general  
21 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all  
22 actions, causes of action, obligations, expenses, costs, attorneys' fees, damages, losses, claims,  
23 liabilities and demands of Moore of any nature, character or kind, known or unknown, suspected  
24 or unsuspected, arising out of the subject matter of this dispute.

25 **5.2 Paris' Release of Moore**

26 Paris waives any and all claims against Moore, his attorneys, and other representatives for  
27 any and all actions taken or statements made (or those that could have been taken or made) by  
28 Moore and his attorneys and other representatives, whether in the course of investigating claims

1 or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with  
2 respect to the Products.

3 **6. COURT APPROVAL; DISMISSAL OF KMART**

4 This Consent Judgment is not effective until it is approved and entered by the Court and  
5 shall be null and void if, for any reason, it is not approved and entered by the Court within one  
6 year after it has been fully executed by all parties, in which event any monies that have been  
7 provided to Moore, or his counsel pursuant to Sections 3.1 and/or 4.1 above shall be refunded  
8 within fifteen days after receiving written notice from Paris that the one-year period has expired.  
9 The Parties further agree and understand that, on the Court's approval and entry of this Consent  
10 Judgment, Moore will file a request for dismissal as to defendant Kmart Corporation.

11 **7. SEVERABILITY**

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

15 **8. GOVERNING LAW**

16 The terms of this Consent Judgment shall be governed by the laws of the State of  
17 California and apply within the State of California. In the event that Proposition 65 is repealed,  
18 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products  
19 specifically, then Paris shall have no further obligations pursuant to this Consent Judgment with  
20 respect to, and to the extent that, the Products are so affected. Nothing in this Consent Judgment  
21 shall be interpreted to relieve Paris from any obligation to comply with any pertinent state or  
22 federal toxics control laws.

23 **9. NOTICES**

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

2 Edmond M. George, Esq.  
3 Obermayer, Rebmann, Maxwell & Hippel, LLP  
4 One Penn Center, 19<sup>th</sup> Floor  
1617 John F. Kennedy Boulevard  
Philadelphia, PA 19103-1895

5 For Moore:

6 Proposition 65 Coordinator  
7 The Chanler Group  
8 2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

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

11 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

12 This Consent Judgment may be executed in counterparts and by facsimile, each of which  
13 shall be deemed an original, and all of which, when taken together, shall constitute one and the  
14 same document.

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

16 Moore agrees to comply with the reporting form requirements referenced in California  
17 Health & Safety Code §25249.7(f).

18 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

19 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed  
20 motion is required to obtain judicial approval of this Consent Judgment. In furtherance of  
21 obtaining such approval, Moore and Paris and their respective counsel agree to mutually employ  
22 their “best efforts” to support the entry of this agreement as a Consent Judgment and obtain  
23 approval of the Consent Judgment by the Court in a timely manner. For purposes of this  
24 paragraph, best efforts shall include, at a minimum, cooperating on the drafting and filing of any  
25 papers in support of the requisite motion for judicial approval.

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1 **13. MODIFICATION**

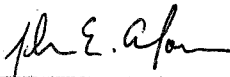
2 This Consent Judgment may be modified only: (1) by written agreement of the parties and  
3 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion  
4 of any party and entry of a modified consent judgment by the Court.

5 **14. AUTHORIZATION**

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

8  
9 **AGREED TO:**

10 **JOHN MOORE**

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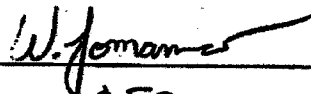
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13 Date: DECEMBER 16, 2010

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**AGREED TO:**

**PARIS BUSINESS PRODUCTS, INC.**

By: 

Its: CFO

Date: 12/15/10

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