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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  
28

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**

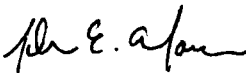
This Consent Judgment may be modified only: (1) by written agreement of the parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any party, as provided by law, and entry of a modified Consent Judgment by the Court.

**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