

Attorneys for Plaintiff
JOHN MOORE

1 and requirements for Colman that are consistent with applicable law and his goals regarding
2 consumer and commercial products.

3 **1.3 The Colman Group, Inc.**

4 Moore alleges that Colman employs ten or more persons and is a person in the course of
5 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
6 California Health & Safety Code § 25249.6, *et seq.* ("Proposition 65"). Colman's principal place of
7 business is not located in California.

8 **1.4 General Allegations**

9 Moore alleges that Colman has manufactured, imported, distributed, sold and/or offered for
10 sale aprons that contain di(2-ethylhexyl)phthalate ("DEHP"), without the requisite Proposition 65
11 health hazard warnings. DEHP is on the Proposition 65 list as known to cause birth defects and
12 other reproductive harm.

13 **1.5 Product Description**

14 The products that are covered by this Consent Judgment are aprons containing DEHP
15 including, but not limited to, *CrewWare Protective Bib Apron, Item: 614DVA-WH8 (#7 24215*
16 *00916 9)*, manufactured, imported, distributed, sold and/or offered for sale by Colman in the State
17 of California, referred to hereinafter as the "Products."

18 **1.6 Notice of Violation**

19 On November 17, 2011, Moore served Colman and various public enforcement agencies
20 with a document entitled "60-Day Notice of Violation" (the "Notice") that provided the recipients
21 with notice of alleged violations of California Health & Safety Code § 25249.6 based on Colman's
22 alleged failure to warn consumers that the Products exposed users in California to DEHP. To the
23 best of the Parties' knowledge, no public enforcer has commenced or diligently prosecuted the
24 allegations set forth in the Notice.

25 **1.7 Complaint and Answer**

26 On March 6, 2012, Moore filed a complaint in the Superior Court in and for the County of
27 Marin ("Court") against The Colman Group, Inc. and Does 1 through 150, *Moore v. Colman, et al.*,
28

Case No. CIV 1201089 (the “Action” or “Complaint”), alleging violations of California Health & Safety Code § 25249.6, based on the alleged exposures to DEHP contained in the Products. On May 8, 2012, Colman filed an answer to the Action.

1.8 No Admission

Colman denies the material, factual and legal allegations contained in Moore’s Notice and Complaint and maintains that all products that it has sold, manufactured, imported, and/or distributed in California, including the Products, have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Colman of any fact, finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Colman of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect Colman’s obligations, responsibilities, and duties under this Consent Judgment with respect to the Products.

1.9 Consent to Jurisdiction

For the limited and express purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Colman as to the allegations contained in the Complaint, that venue is proper in the County of Marin and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

1.10 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that this Consent Judgment is approved and entered by this Court.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Standards

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

1 **2.2 Reformulation Commitment**

2 As of the Effective Date, all Products manufactured, imported, distributed, sold or offered
3 for sale in the State of California by Colman shall either be Products that qualify as Reformulated
4 Products as defined in section 2.1 above, or shall carry the Proposition 65 warnings specified by
5 Moore and identified in this Consent Judgment, as further set forth in Section 2.3 below.

6 **2.3 Product Warnings**

7 The Parties acknowledge and agree that Colman has already implemented a warning
8 program for all non-Reformulated Products manufactured, distributed, and/or sold by Colman that
9 are intended or otherwise known to be sold in California, that provides as follows:

10 **WARNING:** This product contains a chemical known to the
11 State of California to cause cancer, birth defects
12 or other reproductive harm.

13 Colman may continue to sell the Products already in the stream of commerce that contain
14 the above-referenced warning label. For all Products other than Reformulated Products that enter
15 the stream of commerce for sale in California after the Effective Date, and that do not already
16 contain the above-referenced warning, warnings shall be provided as set forth herein at Subsections
17 2.3(a) and (b). Each warning shall be placed on the packaging for the Products in a manner so it is
18 likely to be read and understood by an individual before its purchase or use. Each warning shall be
19 provided as a sticker affixed to the Product packaging.

20 **(a) Retail Store Sales.**

21 Colman shall affix a warning to the packaging, labeling, or directly on each
22 Product provided for sale in retail outlets in California that states:

23 **WARNING:** This product contains chemicals known to the
24 State of California to cause cancer, birth defects
25 and other reproductive harm, including the
26 phthalate chemical DEHP.

27 **(b) Mail Order Catalog and Internet Sales.** In the event that Colman sells
28 Products (that are not Reformulated Products) via its own mail order catalog and/or its internet site
after the Effective Date, to customers identifying a shipping address or domicile located in
California ("California Customers"), Colman shall provide the warning set forth below, either in a

1 manner consistent with the requirements as specified in Section 2.3(a), or prior to the California
2 Customers' purchase of the Products:

3 **WARNING:** This product contains chemicals known to the
4 State of California to cause cancer, birth defects
5 and other reproductive harm, including the
6 phthalate chemical DEHP.

7 **3. MONETARY PAYMENTS**

8 In settlement of all the claims referred to in this Consent Judgment, Colman shall pay
9 \$8,000 in civil penalties as follows:

10 **3.1 Initial Civil Penalty**

11 Colman shall make an initial payment of \$2,000 to be apportioned in accordance with
12 Health & Safety Code section 25249.12, subdivisions (c)(1) and (d), with 75% of these funds
13 earmarked for the State of California's Office of Environmental Health Hazard Assessment
14 ("OEHHA") and the remaining 25% of these penalty monies earmarked for John Moore.

15 **3.2 Final Civil Penalty**

16 Colman shall make a final payment of \$6,000 on or before February 1, 2013, to be
17 apportioned in accordance with Health & Safety Code section 25249.12, subdivisions (c)(1) and
18 (d), with 75% of these funds earmarked for the State of California's Office of Environmental
19 Health Hazard Assessment ("OEHHA") and the remaining 25% of these penalty monies earmarked
20 for John Moore. As incentive to reformulate the Products, however, the final civil penalty
21 identified in this Section 3.2 shall be waived in its entirety if an Officer of Colman or its designee
22 certifies in writing that as of January 1, 2013, Colman will sell, ship, manufacture, import,
23 distribute, and offer for sale in California only Reformulated Products. Such certification must be
24 received by The Chanler Group on or before January 1, 2013.

25 **3.3 Reimbursement of Plaintiff's Fees and Costs**

26 The Parties acknowledge that Moore and his counsel offered to resolve this dispute without
27 reaching agreement on the amount of fees and costs to be reimbursed to them, thereby leaving this
28 fee issue to be resolved after the material terms of the agreement had been settled. Colman then
 expressed a desire to resolve the fee and cost issue, and the Parties then attempted to (and did)

1 reach an accord on the compensation due to Moore and his counsel under general contract
2 principles and the private attorney general doctrine codified at California Code of Civil Procedure
3 section 1021.5, for all work performed in this matter, except fees that may be incurred on appeal.
4 Under these legal principles, Colman shall pay the amount of \$30,000 for fees and costs incurred
5 by Plaintiff investigating, litigating and enforcing this matter, including the fees and costs incurred
6 (and yet to be incurred) negotiating, drafting, and obtaining the Court's approval of this Consent
7 Judgment in the public interest.

8 **3.4 Payment Procedures**

9 **3.4.1 Funds Held In Trust:** All payments required by Sections 3.1 through 3.3
10 shall be delivered on or before July 15, 2012, to McKenna, Long & Aldridge, or the then attorneys
11 of record for Colman, and shall be held in trust pending the Court's approval of this Consent
12 Judgment. Payments shall be made payable, as follows:

- 13 (a) One check made payable to "McKenna Long in Trust for OEHHA"
14 in the amount of \$1,500;
15 (b) One check made payable to "McKenna Long in Trust for John
16 Moore" in the amount of \$500; and
17 (c) One check made payable to "McKenna Long in Trust for The
18 Chanler Group" in the amount of \$30,000.

19 Upon Colman's delivery of payments to McKenna, Long & Aldridge, or its then attorneys
20 of record, such attorney of record shall: (a) confirm in writing within five days of receipt that the
21 funds have been deposited in a trust account; and (b) within two days of the date of the Court's
22 approval and entry of the Consent Judgment, deliver the payment to The Chanler Group in three
23 separate checks, as follows:

- 24 (a) One check made payable to "The Chanler Group in Trust for
25 OEHHA" in the amount of \$1,500;
26
27
28

- (b) One check to "The Chanler Group in Trust for John Moore" in the amount of \$500; and
- (c) One check to "The Chanler Group" in the amount of \$30,000.

3.4.2 Issuance of 1099 Forms. After the Consent Judgment has been approved and the settlement funds have been transmitted to plaintiff's counsel, Colman shall issue three separate 1099 forms, as follows:

- (a) The first 1099 shall be issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$1,500;
- (b) The second 1099 shall be issued to John Moore in the amount of \$500, whose address and tax identification number shall be furnished to Colman within two (2) calendar days of the Effective Date defined herein; and
- (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-3171522) in the amount of \$30,000.

3.4.3 Payment Address: All payments to the Chanler Group and John Moore shall be delivered to the following payment address:

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

4. CLAIMS COVERED AND RELEASED

4.1 Moore's Public Release of Proposition 65 Claims

In further consideration of the promises and agreements herein contained, and for the actions and payments to be made by Colman pursuant to Sections 2 and 3 above, Moore, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general public pursuant to Health & Safety Code § 25249.7(d), hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Moore may have, including, without limitation, all actions, and causes of action, in law

1 or in equity, suits, liabilities, demands, obligations, agreements, promises, royalties, accountings,
2 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees,
3 expert fees, and attorney's fees but exclusive of fees and costs on appeal) of any nature whatsoever,
4 fixed or contingent, against Colman, its sister and parent entities, affiliated entities, and subsidiaries,
5 that are under common ownership, and their respective officers, directors, attorneys,
6 representatives, shareholders, agents, and employees, and any or all or each entity to whom Colman
7 directly or indirectly distributes or sells Products, including but not limited to wholesalers,
8 licensors, licensees, auctioneers, retailers, downstream distributors, franchisees, downstream
9 suppliers, dealers, customers, owners, purchasers, and users (collectively "Downstream Releasees"),
10 and distributors and suppliers, that arise under Proposition 65 with respect to DEHP in the Products
11 manufactured, imported, distributed, sold and/or offered for sale by Colman before the Effective
12 Date (collectively "Claims").

13 **4.2 Moore's Individual Release of Claims**

14 In further consideration of the promises and agreements herein contained, and for
15 the actions and payments to be made by Colman pursuant to Sections 2 and 3 above, Moore, in his
16 individual capacity only and *not* in his representative capacity, provides a release herein which
17 shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
18 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of
19 Moore of any nature, character or kind, known or unknown, suspected or unsuspected, arising out
20 of the subject matter of this dispute and the Action, including but not limited to the Products.
21 Moore acknowledges that he is familiar with Section 1542 of the California Civil Code, which
22 provides as follows:

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

25 Moore, in his individual capacity only and *not* in his representative capacity, expressly waives and
26 relinquishes any and all rights and benefits which he may have under, or which may be conferred on
27 him by the provisions of Section 1542 of the California Civil Code, as well as under any other state
28 or federal statute or common law principle of similar effect, to the fullest extent that he may

1 lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such
2 intention, the release hereby given shall be and remain in effect as a full and complete release
3 notwithstanding the discovery or existence of any such additional or different claims or facts arising
4 out of or associated with the Products, manufactured, distributed, sold and/or offered for sale by
5 Colman before the Effective Date. Compliance with the terms of this Consent Judgment constitutes
6 compliance with Proposition 65 with respect to exposures to DEHP from the Products as set forth in
7 the Notice and Action.

8 **4.3 Colman's Release of Moore**

9 Colman on behalf of itself, its past and current agents, representatives, attorneys, successors,
10 and/or assignees, hereby waives any and all claims against Moore, his attorneys and other
11 representatives, for any and all actions taken or statements made (or those that could have been
12 taken or made) by Moore and his attorneys and other representatives, relating to the enforcement of
13 Proposition 65 claims against it in this matter with respect to the Products.

14 **5. COURT APPROVAL**

15 This Consent Judgment is not effective until it is approved and entered by the Court and
16 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
17 after it has been fully executed by all parties.

18 **6. SEVERABILITY**

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

22 **7. GOVERNING LAW**

23 The terms of this Consent Judgment shall be governed by the local laws of the State of
24 California and apply within the State of California. In the event that Proposition 65 is repealed,
25 preempted or is otherwise rendered inapplicable by reason of law generally, or if any of the
26 provisions of this Consent Judgment are rendered inapplicable or no longer require as a result of
27 any such repeal or preemption or rendered inapplicable by reason of law generally as to the
28

1 Products, then the Parties shall provide written notice to each other, as the case may be, of any
2 asserted change in the law, and shall have no further rights or obligations pursuant to this Consent
3 Judgment with respect to, and to the extent that, the Products are so affected. Nothing in this
4 Consent Judgment shall be interpreted to relieve Colman from applicable obligations to comply
5 with any other pertinent state or federal toxics control law.

6 **8. NOTICES**

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

11 **To Colman:**

12 Andy Sterkowitz, CFO
13 The Colman Group, Inc.
14 555 Koopman Lane
Elkhorn, WI 53121

15 Cordon T. Baesel, Esq.
16 McKenna Long & Aldridge
600 W. Broadway, Ste 2600
17 San Diego, CA 92101

To Moore:

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

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

20 **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

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

24 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

25 Moore and his attorneys shall comply with the statutory and regulatory Proposition 65
26 reporting and settlement notification requirements specified in California Health & Safety Code §
27 25249.7(f) and any other applicable California laws.
28

1 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

2 Moore and Colman agree to mutually employ their reasonable efforts to support the entry of
3 this Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely
4 manner. The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a
5 noticed motion is required to obtain judicial approval of this Consent Judgment, which Moore shall
6 draft and file, and Colman shall join. If any third party objection to the noticed motion is filed,
7 Moore and Colman shall work together in a reasonable manner to file a joint reply and appear at
8 any hearing before the Court to approve this Consent Judgment. This provision, as well as the
9 scope of Section 4 above, are material components of the Consent Judgment and shall be treated as
10 such in the event of a breach.

11 **12. MODIFICATION**

12 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
13 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
14 of any Party and entry of a modified Consent Judgment by the Court.

15 **13. SUCCESSORS AND ASSIGNS**

16 This Consent Judgment shall be binding upon and inure to the benefit of the Parties and their
17 respective successors and assigns.

18 **14. WAIVER**

19 No waiver or failure by either Party to enforce any provision of this Consent Judgment shall
20 be deemed to be a waiver of any other provision of this Consent Judgment or of any subsequent
21 breach of the same or any other provision herein.

22 **15. INTERPRETATION**

23 The Parties acknowledge and agree that they each are aware that they have the right to be
24 advised by counsel with respect to the negotiations, terms and conditions of this Consent Judgment,
25 and that this Consent Judgment shall not be construed in favor of or against either Party by reason
26 of the extent to which each Party participated in its drafting.

1 **16. ENTIRE AGREEMENT**

2 The Parties acknowledge and agree that this Consent Judgment constitutes the complete and
3 entire agreement of compromise and release by and among the Parties hereto and constitutes the
4 complete expression of such terms. All prior and contemporaneous agreements, representations,
5 and negotiations regarding the matters resolved herein are superseded and are otherwise merged
6 into this Consent Judgment. There are no other applicable or enforceable representations,
7 warranties or agreements of the Parties, except as specifically and expressly set forth herein or as
8 otherwise provided under California law.

9 **17. AUTHORIZATION**

10 The undersigned are authorized to execute this Consent Judgment on behalf of their
11 respective Parties and have read, understood, and agree to all of the terms and conditions of this
12 Consent Judgment.

13
14 **AGREED TO:**

14 **AGREED TO:**

15
16 Date: _____

16 Date: _____

17
18 By: _____
19 John Moore

18 By: _____
19 Andy Sterkowitz, , Chief Financial
20 Officer
21 The Colman Group, Inc.

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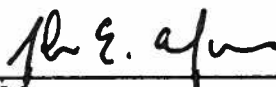
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11 respective Parties and have read, understood, and agree to all of the terms and conditions of this
12 Consent Judgment.

13
14 **AGREED TO:**

14 **AGREED TO:**

15
16 Date: July 5, 2012

16 Date: _____

17
18 By: 
19 John Moore

18 By: _____
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20 Officer
21 The Colman Group, Inc.

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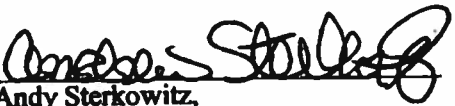
13
14 **AGREED TO:**

15
16 **Date:** _____

17
18 **By:** _____
19 John Moore

AGREED TO:

20 **Date:** 6/29/12

21 **By:** 
22 Andy Sterkowitz,
23 Chief Financial Officer
24 The Colman Group, Inc.
25
26
27
28