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1 Christopher M. Martin, State Bar No. 186021
2 THE CHANLER GROUP
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710
6 Telephone: (510) 848-8880
7 Facsimile: (510) 848-8118

FILED
ALAMEDA COUNTY

OCT 26 2011

CLERK OF THE SUPERIOR COURT
By Nancy A. Poar
Deputy

Attorneys for Plaintiff
JOHN MOORE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

11 JOHN MOORE,

12 Plaintiff,

13 v.

14 PIER 1 IMPORTS (U.S.), INC.; and
15 DOES 1-150, inclusive,

16 Defendants.

Case No. RG10525094

**MODIFIED ~~PROPOSED~~
JUDGMENT PURSUANT TO
TERMS OF PROPOSITION 65
SETTLEMENT AND AMENDED
CONSENT JUDGMENT**

Date: October 26, 2011
Time: 2:30 p.m.
Dept.: 516
Judge: Hon. Brenda Harbin-Forte

Reservation No.: R-1214670

1 Plaintiff, JOHN MOORE, and defendant, PIER 1 IMPORTS (U.S.), Inc., having agreed
2 through their respective counsel that Judgment be entered pursuant to the terms of the Proposition 65
3 settlement agreement memorialized in the mutually executed *Amended* Consent Judgment, and
4 following the issuance of an Order approving the parties' settlement,

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

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11 **IT IS SO ORDERED.**

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13 Dated: October 26, 2011

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15 _____
16 JUDGE OF THE SUPERIOR COURT
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Exhibit 1

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent Judgment is entered into by and between Plaintiff John Moore (“Moore” or
4 “Plaintiff”) and Defendant Pier 1 Imports (U.S.), Inc. (“Pier 1 Imports” or “Defendant”), with
5 Plaintiff and Pier 1 Imports collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Pier 1 Imports employs 10 or more persons and is a person in the course of doing business
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
13 & Safety Code § 25249.6 et seq. (Proposition 65).

14 **1.4 General Allegations**

15 Moore alleges that Pier 1 Imports has manufactured, distributed and/or sold, in the State
16 of California, vinyl coated tape measures that expose users to lead, without first providing “clear
17 and reasonable warning” under Proposition 65. Lead is listed as a reproductive and
18 developmental toxicant pursuant to Proposition 65. In addition, Moore alleges that Pier 1 Imports
19 has manufactured, distributed and/or sold, in the State of California, travel bags with zipper pulls
20 which expose users to di(2-ethylhexyl)phthalate (“DEHP”), without first providing “clear and
21 reasonable warning” under Proposition 65. DEHP is listed as reproductive toxicants under
22 Proposition 65. Lead and DEHP shall be collectively referred to herein as the “Listed
23 Chemicals.”

24 **1.5 Product Description**

25 The products that are covered by this Consent Judgment are defined as Vinyl Coated Tape
26 Measures, including, but not limited to, the product identified as the *Tape Measure, Pink*
27 *Metallic, SKU 2443441*, and travel bags with zipper pulls containing DEHP, including, but not

1 limited to, the *Zebra Travel Set, SKU 2341881*, manufactured, imported, distributed and/or sold
2 in California by Pier 1 Imports which contain one or more of the Listed Chemicals (hereinafter
3 referred to as the “Products”).

4 **1.6 Notice of Violation**

5 On December 15, 2009, Moore served Pier 1 Imports and various public enforcement
6 agencies with a document entitled “60-Day Notice of Violation” that provided public enforcers
7 and Pier 1 Imports with notice of alleged violations of Health & Safety Code § 25249.6 for failing
8 to warn consumers that the travel bag with zipper pull that Pier 1 Imports distributed and/or sold
9 exposed users in California to DEHP. On June 3, 2010, Moore served Pier 1 Imports and various
10 public enforcement agencies with a document entitled “Supplemental 60-Day Notice of
11 Violation” that provided public enforcers and Pier 1 Imports with notice of alleged violations of
12 Health & Safety Code § 25249.6 for failing to warn consumers that the Products that Pier 1
13 Imports distributed and/or sold exposed users in California to the Listed Chemicals (including
14 both DEHP and lead). No public enforcer has diligently prosecuted the allegations set forth in the
15 Notice or Supplemental Notice.

16 **1.7 Complaint**

17 On July 13, 2010, Moore, acting in the interest of the general public in California, filed a
18 complaint in the Superior Court for the County of Alameda, alleging violations of Health &
19 Safety Code § 25249.6 based on the alleged exposures to the Listed Chemicals contained in the
20 Products distributed and/or sold by Pier 1 Imports. This action shall hereinafter be referred to as
21 the “Action.” Upon the Court’s entry of this Consent Judgment, the Complaint in the Action
22 shall be deemed amended to include allegations that the Products herein described contained
23 Listed Chemicals.

24 **1.8 No Admission**

25 This Consent Judgment resolves claims that are denied and disputed by Pier 1 Imports.
26 The Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all
27 claims between the Parties for the purpose of avoiding prolonged litigation. Pier 1 Imports denies
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1 the material factual and legal allegations contained in the Notice and Complaint and maintains
2 that all Products it has manufactured, distributed and/or sold in California have been and are in
3 compliance with all applicable laws. Nothing in this Consent Judgment shall be construed as an
4 admission by Pier 1 Imports, its parents, subsidiaries, affiliates, sister and related companies,
5 employees, shareholders, directors, insurers, attorneys, successors or assigns of any fact, finding,
6 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or
7 be construed as an admission by Pier 1 Imports, its parents, subsidiaries, affiliates, sister and
8 related companies, employees, shareholders, directors, insurers, attorneys, successors or assigns
9 of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied
10 by Pier 1 Imports. However, this Section shall not diminish or otherwise affect Pier 1 Imports'
11 obligations, responsibilities, and duties under this Consent Judgment.

12 **1.9 Consent to Jurisdiction**

13 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
14 jurisdiction over Pier 1 Imports as to the allegations contained in the Complaint, that venue is
15 proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the
16 provisions of this Consent Judgment.

17 **2. INJUNCTIVE RELIEF: REFORMULATION**

18 Commencing on August 15, 2011 (the "Effective Date"), Pier 1 Imports shall not have
19 manufactured or shipped to it Products for sale in California unless such Products are Lead Free
20 and Phthalate Free, as further defined below; provided, however, that Products manufactured or
21 shipped, if any, in fulfillment of purchase orders executed prior to April 13, 2011 shall not be
22 deemed to be a violation of this section 2. For purposes of this Consent Judgment, "Lead Free"
23 Products shall mean Products containing components that may be handled, touched or mouthed
24 by a consumer, and which components yield less than 1.0 microgram of lead when using a wipe
25 test pursuant to NIOSH Test Method 9100, and yield less than 100 parts per million ("ppm") lead
26 when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent
27 methodologies utilized by federal or state agencies for the purpose of determining lead content in

1 a solid substance. Additionally, for purposes of this Consent Judgment, "Phthalate Free" shall
2 mean Products containing less than or equal to 1,000 ppm of DEHP, when analyzed pursuant to
3 any testing methodology selected by Pier 1 Imports that is acceptable to state or federal
4 government agencies in determining compliance with phthalate standards. Products that are Lead
5 Free and Phthalate Free are referred to hereinafter as "Reformulated Products."

6 Pier 1 Imports hereby commits that 100% of the Products that it will have manufactured
7 or shipped to it for sale in California after the Effective Date shall be Reformulated Products.
8 This Consent Judgment shall have no effect on Products sold or offered for sale by Pier 1 Imports
9 to retail customers outside of California.

10 **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)**

11 **3.1 Civil Penalty**

12 Defendant shall pay a civil penalty of \$4,000 to be apportioned in accordance with
13 California Health & Safety Code sections 25249.12(c)(1) and (d), with 75% of these funds
14 remitted to the State of California's Office of Environmental Health Hazard Assessment and the
15 remaining 25% of the initial civil penalty to John Moore, as provided by California Health &
16 Safety Code section 25249.12(d). This civil penalty reflects credits of \$2,000 based on
17 Defendants commitment to reformulate the Products pursuant to Section 2.1 above. Defendants
18 shall issue two separate checks for the penalty payment: (a) one check made payable to "The
19 Chanler Group in Trust For OEHHA" in an amount representing 75% of the total penalty; and
20 (b) one check to "The Chanler Group in Trust for John Moore" in an amount representing 25%
21 of the total penalty. Two separate 1099s shall be issued for the above payments: (a) OEHHA,
22 P.O. Box 4010, Sacramento, CA, 95814 (EIN: 68-0284486); and (b) John Moore, whose
23 information shall be provided fifteen calendar days before the payment is due.

24 The payments shall be delivered to Moore's counsel on or before the Effective Date and
25 Defendants shall deliver the payments to the following address:
26 The Chanler Group
27 Attn: Proposition 65 Coordinator
28 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

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

2 **4.1 Attorney's Fees and Costs**

3 The Parties acknowledge that Moore and his counsel offered to resolve this dispute
4 without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving this fee
5 issue to be resolved until after the other material terms of the agreement had been settled. The
6 Parties then attempted to (and did) reach an accord on the compensation due to Moore and his
7 counsel under general contract principles and the private attorney general doctrine codified at
8 California Code of Civil Procedure ("CCP") section 1021.5, for all work performed through the
9 mutual execution of this agreement. Defendants shall reimburse Moore and his counsel \$32,000
10 for fees and costs incurred to date, as a result of investigating, bringing this matter to their
11 attention, and negotiating a settlement in the public interest. Defendants shall also reimburse
12 Moore and his counsel \$5,000 for future anticipated fees and costs including, but not limited to,
13 attorney's fees to be incurred in seeking judicial approval of this Consent Judgment as well as any
14 other legal work performed after the execution of this Consent Judgment incurred in an effort to
15 obtain finality of the case. However, in the event a third party were to appeal entry of this
16 Consent Judgment, Moore and his counsel shall be entitled to seek their reasonable attorney's
17 fees and costs associated with all appellate work defending the entry of judgment pursuant to
18 CCP section 1021.5.

19 One check for reimbursement of fees and costs, in the amount of \$37,000 shall be made
20 payable to "The Chanler Group" and shall be delivered on or before the Effective Date.

21 Defendants shall deliver the payment to the following address:

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

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

1 **5. CLAIMS COVERED AND RELEASED**

2 **5.1 Full, Final and Binding Resolution of Proposition 65 Allegations.**

3 This Consent Judgment is a full, final and binding resolution between Plaintiff, on behalf
4 of himself and the public, and Defendant, of any violation of Proposition 65 that was or could
5 have been asserted by Plaintiff against Defendant, its parents, subsidiaries, affiliated entities that
6 are under common ownership, directors, officers, employees, attorneys, each entity to whom
7 Defendant directly or indirectly distributes or sells Products, including but not limited to
8 downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members,
9 licensors, and licensees (“Downstream Releasees”), based on their failure to warn about alleged
10 exposures to the Listed Chemicals contained in the Products that were manufactured, distributed
11 or sold by Defendant.

12 **5.2 Plaintiff’s Public Release of Proposition 65 Claims.**

13 In further consideration of the promises and agreements herein contained, Plaintiff on
14 behalf of himself, his past and current agents, representatives, attorneys, successors, and/or
15 assignees, and in the interest of the general public, hereby waives all rights to institute or
16 participate in, directly or indirectly, any form of legal action and releases all claims, including,
17 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
18 demands, obligations, damages, costs, fines, penalties, losses, or expenses – including, but not
19 limited to, investigation fees, expert fees, and attorneys’ fees, but exclusive of fees and costs on
20 appeal – limited to and arising under Proposition 65 with respect to the Listed Chemicals in the
21 Products sold by Defendant (collectively “claims”), against Defendant and Releasees.

22 **5.3 Plaintiff’s Individual Release of Claims.**

23 Plaintiff also, in his individual capacity only and not in his representative capacity,
24 provides a release herein which shall be effective as a full and final accord and satisfaction, as a
25 bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses,
26 claims, liabilities and demands of plaintiff of any nature, character or kind, whether known or
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1 unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to
2 the Listed Chemicals in the Products manufactured, distributed or sold by Defendants.

3 **5.4 Defendant's Release of Plaintiff.**

4 Defendant on behalf of itself, its past and current agents, representatives, attorneys,
5 successors, and/or assignees, hereby waives any and all claims against Plaintiff, his attorneys and
6 other representatives, for any and all actions taken or statements made (or those that could have
7 been taken or made) by Plaintiff and his attorneys and other representatives, whether in the course
8 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter
9 with respect to the Products.

10 **6. SEVERABILITY**

11 If, subsequent to court approval of this Consent Judgment, any of the provisions of this
12 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
13 provisions remaining shall not be adversely affected unless the Court finds that any unenforceable
14 provision is not severable from the remainder of the Consent Judgment.

15 **7. COURT APPROVAL**

16 This Consent Judgment is not effective until it is approved and entered by the Court and
17 shall be null and void if, for any reason, it is not approved and entered by the Court within nine
18 months after it has been fully executed by all Parties. In the event this consent judgment is (a)
19 not entered by this Court within nine months (or thereafter) for any reason whatsoever, or (b) is
20 entered by the Court and subsequently overturned by any appellate court, any monies that have
21 been provided to Moore, or his counsel pursuant to Section 3 and/or Section 4 above, together
22 with interest at the prevailing Federal Funds Rate accruing from the date of payment by Pier 1
23 Imports, shall be refunded within fifteen (15) days after receiving written demand from Pier 1
24 Imports for return of such funds.

25 **8. GOVERNING LAW**

26 The terms of this Consent Judgment shall be governed by the laws of the State of
27 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered

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1 inapplicable by reason of law generally, or as to the Listed Chemical and/or the Products, then
2 Pier 1 Imports shall have no further obligations pursuant to this Consent Judgment with respect
3 to, and to the extent that, the Products are so affected.

4 **9. NOTICES**

5 When any Party is entitled to receive any notice under this Consent Judgment, the notice
6 shall be sent by certified mail and electronic mail to the person(s) identified below:

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8 To Pier 1 Imports:
9 Michael A. Carter
10 Sr. Vice President and General Counsel
11 Pier 1 Imports (U.S.), Inc.
12 100 Pier 1 Imports Place
13 Ft. Worth, TX 76102

14 With copy to:
15 Christopher Martin
16 The McDonald Law Firm
17 7855 Fay Ave., Suite 250
18 La Jolla, CA 92037

19 To Moore:
20 The Chanler Group
21 Attn: Proposition 65 Coordinator
22 2560 Ninth Street
23 Parker Plaza, Suite 214
24 Berkeley, CA 94710-2565

25 Any Party may modify the person and address to whom the notice is to be sent by sending
26 each other Party notice by certified mail and/or other verifiable form of written communication.

27 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

28 Moore agrees to comply with the reporting form requirements referenced, in California
Health & Safety Code §25249.7(f) and to file a motion for approval of this Consent Judgment.

11. MODIFICATION

This Consent Judgment may be modified only: (1) by written agreement of the Parties; or
(2) upon a successful motion of any party and entry of a modified Consent Judgment by the

1 Court. The Attorney General shall be served with notice of any proposed modification to this
2 Consent Judgment at least fifteen (15) days in advance of its consideration by the Court. If
3 Plaintiff permits any reformulation standard and/or test protocol for the Listed Chemicals by way
4 of settlement or compromise with any other person in the course of doing business, or, any other
5 entity, or by way of a reformulation standard and/or test protocol for the Listed Chemicals, which
6 is incorporated by way of final judgment as to any other person in the course of doing business, or
7 any other entity, then Pier 1 Imports shall be entitled to apply any such reformulation standard
8 and/or test protocol to the Products. In the event that Pier 1 Imports elects to use such alternative
9 reformulation standard and/or test protocol, it shall provide notice to Plaintiff and thereafter the
10 restrictions on Products pursuant to Section 2 shall be deemed by the Parties to be modified so
11 that subsequent Products are sold or offered for sale in accordance with such reformulation
12 standard and/or test protocol. Plaintiff and/or The Chanler Group shall provide notice to Pier 1
13 Imports of any such settlement or compromise, as to which either is a party. Pier 1 Imports shall
14 be entitled to a modification to this Consent Judgment to establish a reformulation standard
15 and/or test protocol for either of the Listed Chemicals contained in the Products consistent with
16 any "safe use determination" regarding Listed Chemical content in the Products issued by the
17 California Environmental Protection Agency Office of Environmental Health Hazard
18 Assessment, pursuant to 27 Cal. Code Regs. § 25204 or any successor regulation. In the event of
19 such modification the restrictions on the Products pursuant to Section 2 shall be of no further
20 force or effect.

21 12. ADDITIONAL POST-EXECUTION ACTIVITIES

22 The Parties agree to mutually employ their, and their counsel's, reasonable best efforts to
23 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
24 Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to California
25 Health and Safety Code section 25249.7, a noticed motion is required to obtain judicial approval
26 of this Consent Judgment, which Moore shall file, and which Pier 1 Imports shall not oppose. If
27 any third party objection to the noticed motion is filed, Moore and Pier 1 Imports shall work

1 together to file a joint reply and appear at any hearing before the Court. This provision is a
2 material component of the Consent Judgment and shall be treated as such in the event of a breach.
3 If the Superior Court does not approve the motion to approve this Consent Judgment, and the
4 Parties choose not to pursue a modified Consent Judgment within 30 days of said denial, or in the
5 event that the Superior Court approve this Consent Judgment and any person successfully appeals
6 that approval, all payments made pursuant to this Consent Judgment will be returned to Pier 1
7 Imports.

8 **13. ENTIRE AGREEMENT**

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

15 **14. COUNTERPARTS, FACSIMILE SIGNATURES**

16 This Consent Judgment may be executed in counterparts and by facsimile or portable
17 document format (PDF), each of which shall be deemed an original, and all of which, when taken
18 together, shall constitute one and the same documents.

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15. AUTHORIZATION

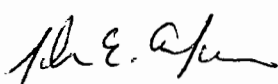
The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: 8/3/11

Date: _____

By: 
Plaintiff John Moore

By: _____
Michael A. Carter
Sr. Vice President and General Counsel
Pier 1 Imports (U.S.), Inc.

IT IS SO ORDERED.

Dated:

By _____
Judge of the Superior Court

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15. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

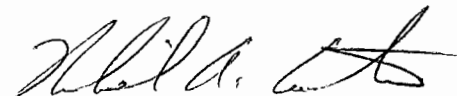

AGREED TO:

AGREED TO:

Date: _____

Date: _____

By: _____
Plaintiff John Moore

By: 
Michael A. Carter
Sr. Vice President and General Counsel
Pier 1 Imports (U.S.), Inc. 

IT IS SO ORDERED.

Dated: _____

By _____
Judge of the Superior Court