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9 Whitney R. Leeman, Ph.D.

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE CITY AND COUNTY OF SAN FRANCISCO

12 WHITNEY R. LEEMAN, Ph.D.,  
13  
14 Plaintiff,  
15  
16 v.  
17  
18 PIER 1 IMPORTS; PIER 1 IMPORTS, INC.;  
19 and DOES 1 through 150,  
20  
21 Defendants.

Case No. CGC-429643

**STIPULATION AND [PROPOSED]  
ORDER RE: CONSENT JUDGMENT**

22 **1. INTRODUCTION**

23 **1.1 Plaintiff and Pier 1**

24 This Consent Judgment is entered into by and between plaintiff Whitney R. Leeman, Ph.D.  
25 (hereafter "Dr. Leeman" or "Leeman" or "Plaintiff") and Pier 1 Imports, Inc. (hereafter "Pier 1" or  
26 "Defendant"), with Plaintiff and Pier 1 collectively referred to as the "Parties" and individually  
27 referred to as a "Party."

28 **1.2 Plaintiff**

Dr. Leeman is an individual residing in Sacramento, California, who seeks to promote  
awareness of exposures to toxic chemicals and improve human health by reducing or eliminating  
hazardous substances contained in consumer and industrial products.

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1           **1.3    Defendant**

2           Pier 1 Imports, Inc., a Delaware corporation, is the parent of Pier 1 Imports (U.S.), Inc., a  
3 Delaware corporation, that sells, among other things, glassware intended to be used for the  
4 consumption of food and beverages to consumers in California. Pier 1 Imports (U.S.), Inc.  
5 operates stores in California under the trade name of Pier 1 Imports.

6           **1.4    General Allegations**

7           Plaintiff alleges that Pier 1 has distributed and/or sold in the State of California certain  
8 tumblers, stemware and other glassware with colored artwork or designs (containing lead) on the  
9 exterior. Lead (and/or lead compounds) are listed pursuant to the Safe Drinking Water and Toxic  
10 Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 et seq. (“Proposition 65”),  
11 to cause cancer and birth defects and other reproductive harm. Lead (and/or lead compounds)  
12 shall be referred to herein as “Listed Chemicals.”

13           **1.5    Products Descriptions**

14           All products identified on Exhibit A are covered by this Consent Judgment (with such  
15 products collectively referred to herein as the “Products”).

16           **1.6    Notices of Violation**

17           On or about September 16, 2003, Dr. Leeman served Pier 1 and various public  
18 enforcement agencies with documents, entitled “60-Day Notice of Violation” (“Notice”) that  
19 provided Pier 1 and such public enforcers with notice that alleged that Pier 1 was in violation of  
20 Health & Safety Code § 25249.6 for failing to warn purchasers that certain products that it sold  
21 expose users in California to lead and lead compounds. On or before August 16, 2004,  
22 Dr. Leeman will be serving a Supplemental Notice on Pier 1 and all required public enforcers  
23 expanding the Plaintiff’s prior allegations concerning the products to include alleged exposures to  
24 cadmium (“Supplemental Notices”).

25           **1.7    Complaint**

26           On March 16, 2004, Dr. Leeman, in the interest of the general public in California, filed a  
27 complaint (hereafter referred to as “Complaint” or the “Action”) in the Superior Court for the City  
28 and County of San Francisco against Pier 1 alleging violations of Health & Safety Code § 25249.6

1 based on the alleged exposures to one or more of the Listed Chemicals contained in certain  
2 products sold by Pier 1. Upon the running of the 60-day period associated with the issuance of the  
3 Supplemental Notice, and provided that no authorized public enforcer of Proposition 65 initiates  
4 an action against Pier 1 based on the additional allegations therein contained in the interim, the  
5 above-captioned Complaint and this Consent Judgment shall be deemed such that the definition of  
6 "Listed Chemicals" as used herein shall likewise be deemed to have been expanded from lead  
7 (and/or lead compounds) to include the listed chemical, cadmium, as well.

8 **1.8 No Admission**

9 Pier 1 denies the material factual and legal allegations contained in Plaintiff's Notice and  
10 Complaint and maintains that all products that it has sold and distributed in California, including  
11 the Products, have been and are in compliance with all laws. Nothing in this Consent Judgment  
12 shall be construed as an admission by Pier 1 or any Defendant Releasee (as defined in subsection  
13 5.1) of any fact, finding, issue of law, or violation of law, nor shall compliance with this  
14 Agreement constitute or be construed as an admission by Pier 1 or any Defendant Releasee of any  
15 fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Pier 1.  
16 However, this section shall not diminish or otherwise affect the obligations, responsibilities and  
17 duties of Pier 1 under this Consent Judgment.

18 **1.9 Consent to Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
20 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction  
21 over Pier 1 as to the acts alleged in the Complaint, that venue is proper in the County of  
22 San Francisco, and that this Court has jurisdiction to enter this Consent Judgment and to enforce  
23 the provisions thereof.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term "Effective Date" shall mean August 13,  
26 2004.

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1 **2. INJUNCTIVE RELIEF**

2 **2.1** After October 31, 2004, Pier 1 shall not sell or offer for sale in California any of the  
3 Products containing the Listed Chemicals in exterior decorations unless such Products comply  
4 with Sections 2.2, 2.3 or 2.4, below.

5 **2.2 Product Warnings**

6 Subject to Section 2.4, after October 31, 2004, Pier 1 shall not sell any of the Products in  
7 its California stores, unless warnings are provided as set forth below in subsection 2.2.1 or 2.2.2.

8 **2.2.1 Warning on the Products or Product Packaging**

9 A warning is affixed to the packaging, labeling or directly to or on a Product by the  
10 manufacturer, importer, or distributor of the Product, unless Pier 1 consents, in writing, to provide  
11 that warning itself, that states:

12 **WARNING: The materials used as colored decorations on the**  
13 **exterior of this product contain lead, a chemical known to the**  
14 **State of California to cause birth defects or other reproductive**  
15 **harm.**

16 or

17 **WARNING: The materials used as colored decorations on the**  
18 **exterior of these products contain lead, a chemical known to the**  
19 **State of California to cause birth defects or other reproductive**  
20 **harm.<sup>1</sup>**

21 or

22 **WARNING: The materials used as colored decorations on the**  
23 **exterior of the following glassware products contain lead, a**  
24 **chemical known to the State of California to cause birth defects**  
25 **or other reproductive harm.**

26 Warnings issued for Products pursuant to this subsection shall be prominently placed with such  
27 conspicuousness as compared with other words, statements, designs, or devices as to render it  
28 likely to be read and understood by an ordinary individual under customary conditions of use or  
purchase. Any changes to the language or format of the warning required by this subsection shall  
only be made following: (1) approval of Plaintiff; or (2) approval from the California Attorney

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<sup>1</sup> This formulation of the warning may only be used with respect to Products when sold as a set.

1 General's Office, provided that written notice of at least fifteen (15) days is given to Plaintiff for  
2 the opportunity to comment; or (3) Court approval pursuant to Section 15.

### 3 2.2.2 Point-of-Sale Warnings

4 Pier 1 may execute its warning obligations, where applicable, through the posting  
5 of signs at retail outlets in the State of California at which Products are sold, in accordance with  
6 the terms specified in subsections (a), (b) and (c), below.

7 (a) Point of Sale warnings may be provided through one or more signs  
8 posted at or near the point of sale or display of the Products that state:

9 **WARNING: The materials used as colored decorations on the**  
10 **exterior of this product contain lead, a chemical known to the**  
11 **State of California to cause birth defects or other reproductive**  
12 **harm.**

13 or

14 **WARNING: The materials used as colored decorations on the**  
15 **exterior of glassware products sold in this store contain lead, a**  
16 **chemical known to the State of California to cause birth defects**  
17 **or other reproductive harm.<sup>2</sup>**

18 or

19 **WARNING: The materials used as colored decorations on the**  
20 **exterior of the following glassware products sold in this store**  
21 **contain lead, a chemical known to the State of California to**  
22 **cause birth defects or other reproductive harm; [list Products**  
23 **here].**

24 (b) In lieu of displaying warning signs with the language set forth  
25 above, Pier 1 may elect to combine any point-of-sale warning signs required under this Consent  
26 Judgment with any warnings it provides for ceramic tableware (as defined in the Consent  
27 Judgment in *Environmental Defense Fund v. Pier 1 Imports (U.S.), Inc.*) or lead crystal (as defined  
28 in the Consent Judgment in *Mateel Environmental Justice Foundation v. T.J. Maxx*), through use  
of the warning signs in the form of Exhibits B or C. If Pier 1 elects to provide combined warnings  
through use of Exhibit B, then Pier 1 shall place the Designated Symbol (the yellow triangle

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<sup>2</sup> This formulation of the warning may only be used where the store in which the Products are sold sells only Products not included in Section 2.4.

1 shown in Exhibit B) next to each display of Products, ceramic tableware, and lead crystal for  
2 which a warning is to be given. If Pier 1 elects to provide combined warnings through use of  
3 Exhibit C, then the Products for which the warning is to be given shall be identified by  
4 manufacturer and pattern in the warning sign, and Designated Symbols need not be displayed. If  
5 Pier 1 elects to combine its Products, ceramic tableware, and lead crystal warnings under this  
6 subsection, display of warnings for ceramic tableware, leaded crystal, and the Products in the  
7 manner set forth in this subsection shall constitute compliance with Proposition 65 for all such  
8 products.

9 (c) A point of sale warning provided pursuant to subsection (a) shall be  
10 prominently placed with such conspicuousness as compared with other words, statements, designs,  
11 or devices as to render it likely to be read and understood by an ordinary individual under  
12 customary conditions of use or purchase and shall be placed or written in a manner such that the  
13 consumer understands to which specific Products the warnings apply so as to minimize, if not  
14 eliminate, the chances that an overwarning situation will arise. Any changes to the language or  
15 format of the warning required for Products by this subsection shall only be made following: (1)  
16 approval of Plaintiff; (2) approval from the California Attorney General's Office, provided that  
17 written notice of at least fifteen (15) days is given to Plaintiff for the opportunity to comment; or  
18 (3) Court approval pursuant to Section 15.

### 19 **2.3 Mail Order and Internet Sales**

20 Subject to Section 2.4, after October 31, 2004, Pier 1 shall not sell or distribute any of the  
21 Products by mail order catalog or the Internet to California residents, unless warnings are provided  
22 as set forth below.

23 For Products that require a warning pursuant to this Consent Judgment and that are sold by  
24 Pier 1 by mail order or from the Internet to California residents, a warning containing the language  
25 in Section 2.2 shall be included, at Pier 1's sole option, either: (a) in the mail order catalog (if  
26 any) or on the website (if any) pursuant to subsection 2.3.1 or 2.3.2; or (b) with the Product when  
27 it is shipped to an address in California pursuant to subsection 2.3.3. Any warnings given in the  
28 mail order catalogs or on the website shall identify the specific Products to which the warning

1 applies so as to minimize, if not eliminate, the chances that an overwarning situation will arise. If  
2 Pier 1 elects to provide warnings in the mail order catalog, then such warnings (at a location  
3 designated in subsection 2.3.1) shall be included in any new galley prints of such catalogs sent to  
4 the printer at least ten (10) business days after notice of entry of this Consent Judgment is served  
5 on Pier 1. Nothing in this Section 2.3 shall require Pier 1 to provide warnings for any Product  
6 ordered from a mail order catalog printed prior to the date notice of entry of this Consent  
7 Judgment is served on Pier 1, or modify any such mail order catalogs.

### 8 **2.3.1 Mail Order Catalog**

9 The Warning Message shall be stated within the catalog, either (a) on the inside  
10 front cover of any catalog, (b) on the same page as any order form, or (c) on the same page as the  
11 price, in the same type size as the surrounding, non-heading text, with the same language as that  
12 appearing in Section 2.2.<sup>3</sup>

### 13 **2.3.2 Internet Web Sites**

14 The warning text, or a link to a page containing the warning text, shall be displayed  
15 either (a) on the same page on which a Product is displayed, (b) on the same page as any order  
16 form for a Product, (c) on the same page as the price for any Product, (d) on one or more pages  
17 displayed to a purchaser over the Internet or via electronic mail during the checkout and order  
18 confirmation process for sale of a Product, or (e) in any manner such that it is likely to be read and  
19 understood by an ordinary individual under customary conditions of purchase of a Product,  
20 including the same language as that appearing in Section 2.2. If a link is used, it shall state  
21 "Warning information for California residents," and shall be of a size equal to the size of other  
22 links on the page.

### 23 **2.3.3 Package Insert or Label**

24 Alternatively, a warning may be provided with the Product when it is shipped  
25 directly to a consumer in California, by (a) product labeling pursuant to Section 2.2, above, (b)  
26 inserting a card or slip of paper measuring at least 4" x 6" in the shipping carton, or (c) including

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28 <sup>3</sup> The restriction set forth in footnote 1 above applies in this context as well.

1 the warning on the packing slip or customer invoice identifying the Product in lettering of the  
2 same size as the description of the Product. The warning shall include the language appearing in  
3 Section 2.2 and shall inform the consumer that he or she may return the product for a full refund  
4 within 30 days of receipt.

5 **2.4 Reformulated Products**

6 The Products shall be deemed to comply with Proposition 65 and be exempt from any  
7 Proposition 65 warning requirements under Sections 2.2 through 2.3, if:

8 **2.4.1** Any such Product was manufactured prior to October 31, 2004.

9 **2.4.2 Exterior Designs (Excluding the Lip and Rim Area)**

10 All designs applied to the exterior surface (excluding the lip and rim area) of  
11 Products manufactured after October 31, 2004, that are reasonably likely to be sold in California  
12 containing less than 0.06% lead by weight in the decoration either before or after the decoration is  
13 applied to the Product, using a test method of sufficient sensitivity to establish a limit of  
14 quantitation of less than 600 ppm.

15 **2.4.3 Exterior Designs Within the Lip and Rim Area, Including Restrictions**  
16 **for Both Lead and Cadmium in Any Decorations**

17 All drinkware Products manufactured after October 31, 2004, that are reasonably  
18 likely to be sold in California, not containing designs on the exterior surface within the top twenty  
19 (20) millimeters of the external rim of the drinkware unless:

20 (a) those designs do not contain any detectable lead or cadmium. For  
21 purposes of this subsection, "no detectable lead or cadmium" shall mean that neither lead nor  
22 cadmium is detected at a level (a) above .02% (for lead) or .08% (for cadmium) by weight,  
23 respectively, either before or after the decoration is applied to the Product, using a test method of  
24 sufficient sensitivity to establish a limit of quantitation of less than 200 ppm, or

25 (b) such drinkware has less than a total of sixty (60) millimeters of  
26 design area below the external rim and which is not "intended or marketed primarily for use by  
27 children" (e.g., shot glasses); provided, however, that to be so excluded, such drinkware shall, as  
28 of October 31, 2004, only be manufactured with decorations containing less than 0.06% lead by



1 weight, either before or after the decoration is applied to the drinkware using a test method of  
2 sufficient sensitivity to establish a limit of quantitation of less than 600 ppm.

#### 3 **2.4.4 Products Supplied by Settling Non-Retailers in *ARC International***

4 Reformulated Products shall include Products manufactured by or purchased from  
5 any Settling Non-Retailer under *Whitney R. Leeman, Ph.D. vs. ARC International North America*  
6 *Inc., et al.*, San Francisco Superior Court Consolidated Case No. CGC-003-418025 on or after  
7 October 31, 2004, except such products under subsection 2.1.E.(i) [Limited Exclusion] of the  
8 consent judgment in that case.

#### 9 **2.4.5 Future Settlements or Standards**

10 Should any court of this state enter an order in a case brought by the People of the  
11 State of California that sets forth standards defining when Proposition 65 warnings will or will not  
12 be required for products substantially similar to the type and function of the Products at issue here  
13 ("Alternative Standards"), or if the California Attorney General's Office or Office of  
14 Environmental Health Hazard Assessment ("OEHHA") otherwise provide written endorsement  
15 (i.e. a writing that is circulated by the Attorney General that is not intended for the purpose of  
16 soliciting further input or comments) of Alternative Standards applicable to products that are of  
17 the same type and function as the Products, Pier 1 shall be entitled to seek a modification of this  
18 Consent Judgment so as to be able to utilize and rely on such Alternative Standards in lieu of those  
19 set forth in subsections 2.4.2 and 2.4.3. Dr. Leeman shall not unreasonably withhold consent to  
20 any proposed stipulation to effectuate such a modification.

### 21 **3. MONETARY PAYMENTS**

#### 22 **3.1 Penalties Pursuant to Health & Safety Code § 25249.7(b)**

23 Pursuant to Health & Safety Code section 25249.7(b), Pier 1 shall pay a total of \$63,000 in  
24 civil penalties in two installments, with the first penalty payment of \$26,500 to be made not later  
25 than ten (10) days following the Effective Date hereof, and made payable to "Chanler Law Group  
26 in Trust For Whitney R. Leeman." The second penalty payment of \$36,500 shall be paid on  
27 January 20, 2006; however, such payment shall be waived in the event that Pier 1 certifies on or  
28 before January 10, 2006, that 80% or more of the Products it sold in California in calendar year

1 2005 were Reformulated Products, provided, however, that Products manufactured before  
2 October 31, 2004, shall not be included in this calculation. Any such certification with respect to  
3 the percentage of Reformulated Products sold shall specify the Product (by Product name, SKU or  
4 UPC Code) and the number of units sold for each such Product.

5 **3.2 Apportionment of Penalties Received**

6 All penalty monies received shall be apportioned by Plaintiff in accordance with Health &  
7 Safety Code § 25192, with 75% of these funds remitted by Plaintiff to the State of California's  
8 Office of Environmental Health Hazard Assessment and the remaining 25% of these penalty  
9 monies retained by Plaintiff as provided by Health & Safety Code § 25249.12(d). Plaintiff shall  
10 bear all responsibility for apportioning and paying to the State of California the appropriate civil  
11 penalties paid in accordance with this Section.

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

13 The Parties have reached an accord on the compensation due to Plaintiff and its counsel  
14 under the private attorney general doctrine codified at Code of Civil Procedure § 1021.5 for all  
15 work performed through the anticipated Court approval of the Agreement. Under the private  
16 attorney general doctrine codified at Code of Civil Procedure § 1021.5, Pier 1 shall reimburse  
17 Plaintiff and its counsel for fees and costs, incurred as a result of investigating, bringing this  
18 matter to Pier 1's attention, litigating and negotiating a settlement in the public interest. Pier 1  
19 shall pay Plaintiff and its counsel \$63,000 for all attorneys' fees, expert and investigation fees, and  
20 litigation costs. The payment should be made payable to the "Chanler Law Group" and shall be  
21 delivered to Plaintiff's counsel at the address set forth in Section 11, below, not later than ten (10)  
22 days following the Effective Date. Except as specifically provided in this Consent Judgment, Pier  
23 1 shall have no further obligation with regard to reimbursement of Plaintiff's attorneys' fees and  
24 costs with regard to the Products covered in this Action.

25 **5. RELEASE OF ALL CLAIMS**

26 **5.1 Release of Pier 1**

27 In further consideration of the promises and agreements herein contained, and for the  
28 payments to be made pursuant to Sections 3 and 4, Plaintiff, on behalf of herself, her past and

1 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the  
2 general public, hereby waives all rights to institute or participate in, directly or indirectly, any  
3 form of legal action and releases all claims, including, without limitation, all actions, causes of  
4 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,  
5 losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys'  
6 fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively  
7 "Claims"), against Pier 1 and each of its vendors, suppliers, distributors, wholesalers, licensors,  
8 licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent  
9 companies, corporate affiliates, subsidiaries and their respective officers, directors, attorneys,  
10 representatives, shareholders, agents, and employees (collectively, "Defendant Releasees") arising  
11 under Proposition 65, Business & Professions Code §§ 17200 et seq. and Business & Professions  
12 Code §§ 17500 et seq., related to Pier 1's or any Defendant Releasee's alleged failure to warn  
13 about exposures to or identification of Listed Chemicals contained in the Products.

14 The Parties further agree and acknowledge that this Consent Judgment is a full, final, and  
15 binding resolution of any violation of Proposition 65, Business & Professions Code §§ 17200 et  
16 seq. and Business & Professions Code §§ 17500 et seq., that have been or could have been  
17 asserted in the Complaint against Pier 1 for its alleged failure to provide clear and reasonable  
18 warnings of exposure to or identification of Listed Chemicals in the Products.

19 In addition, Plaintiff, on behalf of herself, her attorneys, and her agents, waives all rights to  
20 institute or participate in, directly or indirectly, any form of legal action and releases all Claims  
21 against any Defendant Releasee arising under Proposition 65, Business & Professions Code  
22 §§ 17200 et seq. and Business & Professions Code §§ 17500 et seq., related to any Defendant  
23 Releasee's alleged failures to warn about exposures to or identification of Listed Chemicals  
24 contained in the Products and for all actions or statements made by Pier 1 or its attorneys or  
25 representatives, in the course of responding to alleged violations of Proposition 65, Business &  
26 Professions Code §§ 17200 or Business & Professions Code §§ 17500 by Pier 1. Provided  
27 however, Plaintiff shall remain free to institute any form of legal action to enforce the provisions  
28 of this Consent Judgment.

1 It is specifically understood and agreed that the Parties intend that Pier 1's compliance  
2 with the terms of this Consent Judgment resolves all issues and liability, now and in the future (so  
3 long as Pier 1 complies with the terms of the Consent Judgment) concerning Pier 1 and any  
4 Defendant Releasee's compliance with the requirements of Proposition 65, Business and  
5 Professions Code §§ 17200 et seq. and Business & Professions Code §§ 17500 et seq., as to the  
6 Listed Chemicals in the Products.

7 **5.2 Pier 1's Release of Plaintiff**

8 Pier 1 waives all rights to institute any form of legal action against Plaintiff, her attorneys  
9 or representatives, for all actions taken or statements made by Plaintiff and her attorneys or  
10 representatives, in the course of seeking enforcement of Proposition 65, Business & Professions  
11 Code §§ 17200 et seq. or Business & Professions Code §§ 17500 et seq. in this Action.

12 **6. COURT APPROVAL**

13 This Consent Judgment is not effective until it is approved and entered by the Court and  
14 shall be null and void if, for any reason, it is not approved and entered by the Court within one  
15 year after it has been fully executed by all Parties, in which event any monies that have been  
16 provided to Plaintiff or her counsel pursuant to Sections 3 or 4, above, shall be refunded within  
17 fifteen (15) days.

18 **7. SEVERABILITY**

19 If, subsequent to court approval 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  
21 provisions remaining shall not be adversely affected.

22 **8. ATTORNEYS' FEES**

23 In the event that a dispute arises with respect to any provision(s) of this Consent Judgment,  
24 the prevailing party shall, except as otherwise provided herein, be entitled to recover reasonable  
25 and necessary costs and reasonable attorneys' fees incurred from the resolution of such dispute.

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1     **9.    ENFORCEMENT OF CONSENT JUDGMENT WITH REGARD TO RETAIL**  
2     **STORES IN CALIFORNIA**

3           **9.1**    Before moving to enforce the terms and conditions of Section 2 of this Consent  
4 Judgment against Pier 1 with respect to an alleged violation occurring at a retail outlet (defined  
5 below) located in California, Plaintiff and others must follow the procedures set forth in Sections  
6 9.2 through 9.4.

7           **9.2**    In the event that Plaintiff and/or her attorneys, agents, assigns, or any other person  
8 acting in the public interest under Health & Safety Code § 25249.7(d), (hereinafter “Notifying  
9 Person”) identify one or more retail stores in California operated by Pier 1 or a Defendant  
10 Releasee (hereinafter “retail outlet”) at which Products are sold which do not meet the  
11 requirements of this Consent Judgment, such Notifying Person shall notify, in writing, Pier 1 of  
12 such alleged failure to comply (the “Notice of Breach”). Within sixty (60) days of the date the  
13 alleged violation was observed, a Notice of Breach shall be served by first class mail, with proof  
14 of service, to the persons set forth in Section 11, below. The Notice of Breach shall identify the  
15 date the alleged violation was observed and the retail outlet in question, and reasonably describe  
16 the nature of the alleged violation with sufficient detail, to allow Pier 1 to determine the basis of  
17 the claim being asserted and the identities of the type of Products to which those assertions apply,  
18 along with the name of the specific product alleged to violate this Agreement.

19           **9.3**    In the event that the Notifying Person identifies a specific retail outlet, other than  
20 the specific one identified in Section 9.2 of this Consent Judgment, selling other Products not  
21 compliant with this Consent Judgment, such Notifying Person shall serve Pier 1 with another  
22 Notice of Breach in the manner and with the information required in Section 9.2 and provide the  
23 information required in Section 9.2.

24           **9.4**    The Notifying Person shall take no further action against Pier 1 or Defendant  
25 Releasees unless the Notifying Person discovers, no less than thirty (30) days nor greater than six  
26 (6) months after service of the Notices of Breach served pursuant to Sections 9.2 or 9.3, another  
27 failure to comply with the type of Products previously identified by the Notifying Person whether

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1 or not the alleged failure to comply is at the same retail outlet(s) identified in the Notices of  
2 Breach served pursuant to Sections 9.2 and 9.3.

3 **10. GOVERNING LAW**

4 The terms of this Consent Judgment shall be governed by the laws of the State of  
5 California and apply within the State of California. In the event that Proposition 65 is repealed or  
6 is otherwise rendered inapplicable by reason of law generally, or as to the Products specifically,  
7 then Pier 1 shall have no further obligations pursuant to this Consent Judgment with respect to,  
8 and to the extent that, those Products are so affected.

9 **11. NOTICES**

10 All correspondence and notices required to be provided pursuant to this Consent Judgment  
11 shall be in writing and personally delivered or sent by: (1) first-class, registered, certified mail,  
12 return receipt requested, or (ii) overnight courier on any Party by the others at the following  
13 addresses:

14 To Pier 1:

15 Pier 1 Imports  
16 Attn: Senior Manager Merchandise Compliance and Regulations  
17 P. O. Box 961020  
Fort Worth, Texas 76161-0020

18 cc: Pier 1 Imports  
19 Attn.: Legal Department  
20 P. O. Box 961020  
Fort Worth, Texas 76161-0020

21 To Plaintiff:

22 Stephen S. Sayad  
23 Laralei C. Schmohl  
24 Clifford A. Chanler  
25 Chanler Law Group  
655 Redwood Highway, Ste. 216  
Mill Valley, CA 94941

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

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1 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

6 Plaintiff agrees to comply with the reporting form requirements referenced in Health &  
7 Safety Code § 25249.7(f). Pursuant to regulations promulgated under that section, Plaintiff shall  
8 present this Consent Judgment to the California Attorney General's Office within two (2) days  
9 after receiving all of the necessary signatures. A noticed motion to enter the Consent Judgment  
10 will then be served on the Attorney General's Office at least forty-five (45) days prior to the date a  
11 hearing is scheduled on such motion in the Superior Court for the City and County of  
12 San Francisco unless the Court allows a shorter period of time.

13 **14. ADDITIONAL POST EXECUTION ACTIVITIES**

14 The Parties shall mutually employ their best efforts to support the entry of this Agreement  
15 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely  
16 manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed  
17 motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the Parties  
18 agree to file a Joint Motion to Approve the Agreement ("Joint Motion"), the first draft of which  
19 Pier 1 shall prepare, within a reasonable period of time after the Execution Date (i.e., not to exceed  
20 fourteen (14) days unless otherwise agreed to by Plaintiff's counsel based on unanticipated  
21 circumstances). Plaintiff's counsel shall prepare a declaration in support of the Joint Motion  
22 which shall, *inter alia*, set forth support for the fees and costs to be reimbursed pursuant to  
23 Section 6. Pier 1 shall have no additional responsibility to Plaintiff's counsel pursuant to C.C.P.  
24 § 1021.5 or otherwise with regard to reimbursement of any fees and costs incurred with respect to  
25 the preparation and filing of the Joint Motion and its supporting declaration or with regard to  
26 Plaintiff's counsel appearing for a hearing or related proceedings thereon.

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1 **15. MODIFICATION**

2 This Consent Judgment may be modified only by: (1) written agreement of the Parties and  
3 upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of any Party as  
4 provided by law and upon entry of a modified Consent Judgment by the Court. The Attorney  
5 General shall be served with notice of any proposed modification to this Consent Judgment at least  
6 fifteen (15) days in advance of its consideration by the Court.

7 **16. AUTHORIZATION**

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

11 **AGREED TO:**

12 DATE: \_\_\_\_\_

13 \_\_\_\_\_  
14 Plaintiff Whitney R. Leeman, Ph.D.

15 **AGREED TO:**

16 DATE: \_\_\_\_\_

17 \_\_\_\_\_  
18 Defendant Pier 1 Imports, Inc.

19  
20 **APPROVED AS TO FORM:**

21 DATE: \_\_\_\_\_

22 \_\_\_\_\_  
23 Clifford Chanler  
24 Chanler Law Group  
25 Attorneys for Plaintiff Whitney R. Leeman, Ph.D.

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1 **APPROVED AS TO FORM:**

2

DATE: \_\_\_\_\_

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4 \_\_\_\_\_  
Steven P. McDonald  
Luce Forward Hamilton & Scripps LLP  
5 Attorneys for Defendant Pier 1 Imports, Inc.

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5 General shall be served with notice of any proposed modification to this Consent Judgment at least  
6 fifteen (15) days in advance of its consideration by the Court.

7 **16. AUTHORIZATION**

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

11 **AGREED TO:**

12 **DATE:** \_\_\_\_\_

13 \_\_\_\_\_  
14 Plaintiff Whitney R. Leeman, Ph.D.

15 **AGREED TO:**

16 **DATE:** August 11, 2004

17 \_\_\_\_\_  
18 Defendant Pier 1 Imports, Inc. *Exec. Vice President*

20 **APPROVED AS TO FORM:**

21 **DATE:** \_\_\_\_\_

22 \_\_\_\_\_  
23 Clifford Chanler  
24 Chanler Law Group  
25 Attorneys for Plaintiff Whitney R. Leeman, Ph.D.

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1 **15. MODIFICATION**

2 This Consent Judgment may be modified only by: (1) written agreement of the Parties and  
3 upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of any Party as  
4 provided by law and upon entry of a modified Consent Judgment by the Court. The Attorney  
5 General shall be served with notice of any proposed modification to this Consent Judgment at least  
6 fifteen (15) days in advance of its consideration by the Court.

7 **16. AUTHORIZATION**

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

11 **AGREED TO:**

12 DATE: 3/12/04

13 Whitney R. Leeman  
14 Plaintiff Whitney R. Leeman, Ph.D.

15 **AGREED TO:**

16 DATE: \_\_\_\_\_

17 \_\_\_\_\_  
18 Defendant Pier 1 Imports, Inc.

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20 **APPROVED AS TO FORM:**

21 DATE: August 16, 2004

22 Clifford Chanler  
23 Clifford Chanler  
24 Chanler Law Group  
25 Attorneys for Plaintiff Whitney R. Leeman, Ph.D.

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1 APPROVED AS TO FORM:

2 DATE: 8/12/04  
3 [Signature]

4 Steven P. McDonald  
5 Luce Forward Hamilton & Scripps LLP  
6 Attorneys for Defendant Pier 1 Imports, Inc.

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**EXHIBIT A**

Pier 1 SKU Nos. 1873721, 1941945, 1881113, 1934774, 1944005, 1946571, and 1946584, and all products intended for the consumption or storage of food or beverages with designs on the exterior surface containing lead or cadmium.

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EXHIBIT B

Combined Point of Sale Warnings [Yellow Triangle]

PROP 65  
WARNING

Consuming foods or beverages that have been kept or served in leaded crystal products, certain ceramic tableware products, or certain glassware products with colored decorations on the exterior will expose you to lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

The products for which this warning is given are identified with this symbol:



displayed on or next to the product

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EXHIBIT C

Combined Point of Sale Warnings

PROP 65

WARNING

Consuming foods or beverages that have been kept or served in leaded crystal products will expose you to lead, a chemical known to the State of California to cause birth defects or other reproductive harm. [If any of the following products are sold, include: "This warning does not apply to Baccarat decanters, flacons, stoppered pitchers, mustard and jam pots."]

Use of the following ceramic tableware products will expose you to lead, a chemical known to the State of California to cause birth defects or other reproductive harm: [List each manufacturer and pattern name for which a warning is given].

The materials used as colored decorations on the exterior of the following glassware products sold in this store contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm: [List each manufacturer and pattern name for which a warning is given].

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