

1 **KLAMATH ENVIRONMENTAL LAW**
2 **CENTER**

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18 ENVIRONMENTAL JUSTICE FOUNDATION

ENDORSED
FILED
San Francisco County Superior Court

DEC 14 2009

GORDON PARK-LI, Clerk

BY: _____ Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 CITY AND COUNTY OF SAN FRANCISCO
13 UNLIMITED JURISDICTION
14

15 MATEEL ENVIRONMENTAL JUSTICE)
16 FOUNDATION,)

17 Plaintiff,)

18 v.)

19 HSN, Inc., et al. ,)

20 Defendants.)

Case No. CGC-09-492166

CONSENT JUDGMENT
(PIER 1 IMPORTS (U.S.), INC)

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23 **1. INTRODUCTION**

24 1.1 On or about May 7, 2009, plaintiff Mateel Environmental Justice Foundation
25 ("MEJF"), provided a 60-day Notice of Violation to the California Attorney General, the District
26 Attorneys of each county in California, the City Attorneys of every California city with a
27 population greater than 750,000, and defendant Pier 1 Imports (U.S.), Inc., ("Pier 1" or "Settling
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1 Defendant”) (such notices, collectively the “Notice of Violation” or “Notice”), alleging that Pier
2 1, through its sales in California of beverage dispensers with brass spigots that contain lead
3 (“Covered Brass Spigot Products”) was in violation of Proposition 65 by knowingly and
4 intentionally exposing persons to lead, a product known to the State of California to cause cancer
5 and/or birth defects or other reproductive harm, without first providing a clear and reasonable
6 warning. A copy of the Notice is attached hereto as Exhibit A and made a part hereof.
7 Henceforth, the term “Covered Brass Spigot Products” shall refer to those units of beverage
8 dispensers with leaded brass spigots that are or were manufactured, distributed and/or marketed
9 for sale by Settling Defendant.

10 1.2 On or about September 3, 2009, MEJF, acting in the public interest pursuant to
11 Health and Safety Code § 25249.7(d), filed a Complaint for Civil Penalties and Injunctive Relief
12 in San Francisco County Superior Court, Case No. CGC-09-492166 against, inter alia, Pier 1
13 based on the allegations contained in the Notice. MEJF alleges that Pier 1 is a business that
14 employs more than ten persons and manufactures, distributes and/or markets for sale Covered
15 Brass Spigot Products within the State of California. Pursuant to Proposition 65, lead and lead
16 compounds are chemicals known to the State of California to cause cancer and reproductive
17 toxicity. Products containing lead and/or lead compounds that are sold or distributed in the State
18 of California may be, under specified circumstances, subject to the Proposition 65 warning
19 requirement set forth in Health and Safety Code § 25249.6. MEJF further alleges that the
20 Covered Brass Spigot Products that are manufactured, distributed, sold and/or marketed for sale
21 by Pier 1 for use in California require a warning under Proposition 65.

22 1.3 Pier 1 has concluded, despite its belief that it has good defenses to the claims
23 asserted by MEJF in the Notice and the Complaint and is not liable thereof, that it will enter into
24 this Consent Judgment solely to avoid the further expense, inconvenience and burden of further
25 litigation, and the distraction and diversion of its personnel and resources, and thereby to put to
26 rest this controversy.

1 1.4 Pier 1 and MEJF (collectively, the "Parties") enter into this Consent Judgment
2 pursuant to a full and final settlement of disputed claims between the Parties for the purpose of
3 avoiding prolonged litigation. This Consent Judgment and compliance with it shall not constitute
4 an admission with respect to any allegation made in the Notice or the Complaint, each and every
5 allegation of which Settling Defendant denies, nor may this Consent Judgment or compliance
6 with it be used as an admission or evidence of any fact, wrongdoing, misconduct, culpability or
7 liability on the part of the Settling Defendant.

8 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court
9 has jurisdiction over the allegations of violations contained in the Notice and Complaint and
10 personal jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is
11 proper in the County of San Francisco and that this Court has jurisdiction to enter this Consent
12 Judgment as a full and final settlement and resolution of the allegations contained in the
13 Complaint and of all claims which were or could have been raised based on the facts alleged
14 therein or arising therefrom.

15 **2. INJUNCTIVE RELIEF**

16 2.1 After the entry of this judgment (the "Effective Date,") Pier 1 shall not sell, or
17 offer for sale, Covered Brass Spigot Products in California, except where such post Effective
18 Date offer or sale is in compliance with Sections 7.2 or 7.3 hereof.

19 **3. ENFORCEMENT OF JUDGMENT**

20 3.1 A Party may enforce any of the terms and conditions of this Consent Judgment
21 only after that Party first provides 30-days written notice to the Party allegedly failing to comply
22 with the terms and conditions of this Consent Judgment and attempts to resolve such Party's
23 failure to comply in an open and good faith manner. In any such proceeding, the Party may seek
24 whatever fines, costs, penalties or remedies as may be provided by law for any violation of
25 Proposition 65 or this Consent Judgment.

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1 **4. MONETARY RELIEF**

2 4.1 Settling Defendant shall pay a total of \$35,000.00 (the "Settlement Amount") to
3 William Verick, Klamath Environmental Law Center in full and complete settlement of all
4 Claims (as defined in Section 5.3) by MEJF. The Settlement Amount shall be delivered by
5 overnight mail to William Verick, Klamath Environmental Law Center at 424 First Street,
6 Eureka, CA 95501, within ten (10) calendar days after receipt of written notice from MEJF that
7 this Consent Judgment has been approved and entered by the Court. The Settlement Amount
8 shall be allocated by MEJF as follows:

9 4.1.1 \$20,000.00 as a charitable contribution, to be allocated in equal shares to
10 the Ecological Rights Foundation and to the Californians for Alternatives to Toxics. Both
11 organizations are California non profit, public benefit organizations. Such payments shall be
12 expressly used by these entities for reducing exposures to toxic chemicals and other pollutants,
13 and for increasing consumer, worker and community awareness of health hazards posed by lead
14 and other toxic chemicals. Within fifteen (15) days of receipt of the Settlement Amount, William
15 Verick shall (i) deliver the specified amounts set forth above to each respective non profit
16 organization set forth above and (ii) provide Settling Defendant written evidence that such
17 payments were delivered to each non profit organization.

18 4.1.2 \$15,000.00 to Plaintiff's attorneys' for fees and costs.
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20 **5. CLAIMS COVERED AND RELEASE**

21 5.1 As to Covered Brass Spigot Products sold and/or marketed for sale by Settling
22 Defendant prior to the entry of this Consent Judgment this Consent Judgment is a full, final and
23 binding resolution between MEJF, acting on behalf of itself and (as to those matters raised in the
24 Notice) in the public interest, and Settling Defendant and its affiliates, parent or subsidiary
25 corporations or entities, successors, officers, directors, agents, suppliers, distributors,
26 wholesalers, retailers, and/or any other person in the chain of distribution and retail sale of the
27 Covered Brass Spigot Products of: (i) any violation of Proposition 65 (including but not limited to
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1 the claims made in the Complaint and the Notice); and (ii) any other claim, including but not
2 limited to any other statutory or common law claim that could have been asserted by MEJF on its
3 own behalf or as to those claims included in the Notice, in the public interest against the Settling
4 Defendant and its affiliates, parent or subsidiary corporations or entities, successors, officers,
5 directors, agents, suppliers, distributors, wholesalers, retailers, or any other person in the chain of
6 distribution and retail sale of the Covered Brass Spigot Products, based on exposure of persons to
7 lead from such Covered Brass Spigot Products or failure to provide a clear and reasonable
8 warning of such exposure.

9 5.2 As to any claims, violations (except violations of this Consent Judgment, as the
10 same may be amended from time to time), actions, damages, costs, penalties or causes of action
11 which may arise or have arisen after the original date of entry of this Consent Judgment,
12 compliance by Settling Defendant with the terms of this Consent Judgment shall be deemed to be
13 full and complete compliance with the requirements of Proposition 65 as to claims regarding the
14 Covered Brass Spigot Products.

15 5.3 As to Covered Brass Spigot Products sold or marketed for sale by Settling
16 Defendant prior to the Effective Date, MEJF, by and on behalf of itself and its respective agents,
17 attorneys, affiliates, successors and assigns and (as to those matters referenced in the Notice) on
18 behalf of the general public, waives any and all rights to institute any form of legal action, and
19 releases all claims against the Selling Defendant and its affiliates, parent or subsidiary
20 corporations or entities, and their respective successors, officers, directors, agents, suppliers,
21 distributors, wholesalers, retailers, and/or any other person in the chain of distribution and retail
22 sale of Covered Brass Spigot Products based on the facts alleged in the Complaint or the Notice,
23 or facts similar to those alleged (referred to collectively as the "Claims").

24 5.4 In furtherance of the Parties' intention that this Consent Judgment shall be
25 effective as a full and final accord, satisfaction, and release as to the Settling Defendant, MEJF
26 acknowledges familiarity and understanding of California Civil Code § 1542, which provides as
27 follows:
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1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
2 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
3 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
DEBTOR.

4 To the extent that Section 1542 or any similar law or statute may otherwise apply to this Consent
5 Judgment, MEJF, by and on behalf of itself and its respective agents, attorneys, affiliates,
6 successors and assigns and (as to those matters referenced in the Notice of Violation) on behalf of
7 the general public, hereby waives and relinquishes as to all matters released hereunder all rights
8 and benefits it has, or may have, under Section 1542 or the laws of any other jurisdiction to the
9 same or similar effect. MEJF further acknowledges that, subsequent to the execution of this
10 Consent Judgment, it may discover Claims that were unsuspected at the time this Consent
11 Judgment was executed, and which might have materially affected its decision to execute this
12 Consent Judgment, but nevertheless MEJF releases the Settling Defendant from any and all such
13 Claims, whether known or unknown, suspected or unsuspected, at the time of the execution of
14 this Consent Judgment regardless of whether its lack of knowledge is the result of ignorance,
15 oversight, error, negligence or any other cause.

16 **6. APPLICATION OF JUDGMENT**

17 6.1 The obligations of this Consent Judgment shall apply to and be binding upon all
18 plaintiffs acting in the public interest pursuant to Health and Safety Code § 25249.7, and Settling
19 Defendant, and their successors or assigns. The terms contained in this Consent Judgment shall
20 be submitted to the California Attorney General's office prior to the entry of this Consent
21 Judgment by the Court in accordance with subsection (f) of Section 25249.7.

22 6.2 This Consent Judgment shall have no effect on Covered Brass Spigot Products
23 sold or offered for sale by Settling Defendant outside the State of California.

24 **7. MODIFICATION OF JUDGMENT**

25 7.1 This Consent Judgment may be modified only upon written agreement of the
26 Parties and upon entry of a modified Consent Judgment by the Court thereon or upon motion of
27 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

1 7.2 If the Attorney General of the State of California or Plaintiff permit any
2 reformulation standard and/or test protocol for lead in the Covered Brass Spigot Products by way
3 of settlement or compromise with any other person in the course of doing business, or, any other
4 entity, or by way of a reformulation standard and/or test protocol for lead in Covered Brass Spigot
5 Products which is incorporated by way of final judgment as to any other person in the course of
6 doing business, or any other entity, then Settling Defendant shall be entitled to apply any such
7 reformulation standard and/or test protocol to Covered Brass Spigot Products. In the event that
8 Settling Defendant elects to use such alternative reformulation standard and/or test protocol, it
9 shall provide notice to MEJF and thereafter the restrictions on sale and on the offer to sell
10 Covered Brass Spigot Products pursuant to Section 2.1 shall be of no further force or effect
11 provided that subsequent Covered Brass Spigot Products are sold or offered for sale in
12 accordance with such reformulation standard and/or test protocol. MEJF and/or the Klamath
13 Environmental Law Center shall provide notice to Pier 1 of any such settlement or compromise,
14 as to which either is a party.

15 7.3 Settling Defendant shall be entitled to a modification to this Consent Judgment to
16 establish a reformulation standard and/or test protocol for lead content in Covered Brass Spigot
17 Products consistent with any "safe use determination" regarding lead content in Covered Brass
18 Spigot Products issued by the California Environmental Protection Agency Office of
19 Environmental Health Hazard Assessment, pursuant to 27 Cal. Code Regs. § 25204 or any
20 successor regulation. In the event of such modification the restrictions on sale and on the offer to
21 sell Covered Brass Spigot Products pursuant to Section 2.1 shall be of no further force or effect.

22 **8. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(F)**

23 8.1 MEJF agrees to comply with the reporting form and approval requirements
24 referenced in Health & Safety Code Section 25249.7(f) and as implemented by various
25 regulations.

1 **9. COURT APPROVAL**

2 9.1 If the Court does not approve this Consent Judgment, it shall be of no force or
3 effect, and cannot be used in any proceeding for any purpose.

4 **10. RETENTION OF JURISDICTION**

5 10.1 This Court shall retain jurisdiction of this matter to implement this Consent
6 Judgment.

7 **11. GOVERNING LAW**

8 11.1 The laws of the State of California shall govern the validity, construction and
9 performance of this Consent Judgment.

10 **12. NOTICES**

11 12.1 When any Party is entitled to receive any notice under this Consent Judgment, the
12 notice or report shall be sent by U.S. mail or overnight courier service to the following persons:

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1 2 3	If to MEJF: William Verick, Esq. Klamath Environmental Law Center 424 First Street Eureka, CA 95501
4 5 6 7	If to PIER 1: Ray McKown Senior Corporate Counsel Pier 1 Imports (U.S.), Inc. 100 Pier 1 Place Fort Worth, Texas 76102
8 9 10	with a copy to: Steven P. McDonald Law Office of Steven P. McDonald, LC 7855 Fay Avenue, Suite 250 La Jolla, CA 92037

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12 12.2 Any Party may modify the person and address to whom notice is to be sent by
13 sending each other Party notice in accordance with this Section.

14 **13. AUTHORITY TO STIPULATE**

15 13.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
16 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
17 the party represented and legally to bind that party.

18 **14. ENTIRE AGREEMENT**

19 14.1 This Consent Judgment contains the sole and entire, agreement and understanding
20 of the parties with respect to the entire subject matter hereof, and any and all prior discussions,
21 negotiations, commitments and understandings related hereto. No representations, oral or
22 otherwise, express or implied, other than those contained herein have been made by any party
23 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
24 deemed to exist or to bind any of the parties.

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3 **15. EXECUTION IN COUNTERPARTS**

4 15.1 This Consent Judgment may be executed in counterparts and/or by facsimile or
5 portable document format (pdf). Signatures transmitted by facsimile or electronic image shall be
6 considered to be original signature and the executed counterparts taken together shall be deemed
7 to constitute one original document.

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9 IT IS SO STIPULATED:

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11 Dated: Nov. 25, 2009

MATEEL ENVIRONMENTAL JUSTICE
FOUNDATION

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By [Signature]

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16 Dated: November 23 2009

PIER 1 IMPORTS (U.S.), INC.,

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By [Signature]
Printed
Name Christopher L. Make
Title Assistant Secretary

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IT IS SO ORDERED, ADJUDGED AND DECREED:

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Date: **DEC 14 2009**

CHARLOTTE WALTER WOOLARD

JUDGE OF THE SUPERIOR COURT

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