

516



FILED
ALAMEDA COUNTY

NOV 01 2013

CLERK OF THE SUPERIOR COURT
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9 Attorneys for Plaintiff
10 JOHN MOORE

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA
13 UNLIMITED CIVIL JURISDICTION

14 JOHN MOORE,
15 Plaintiff,
16 v.
17 PIER 1 IMPORTS, INC.; PIER 1 IMPORTS
18 (U.S.), INC.; et al.,
19 Defendants.

Case No. RG13662038

**[PROPOSED] JUDGMENT PURSUANT TO
TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT**

Date: October 25, 2013
Time: 2:30 p.m.
Dept. 516
Judge: Hon. Brenda Harbin-Forte

Reservation No. R-1433209

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1 Plaintiff, John Moore, and defendants, Pier 1 Imports, Inc. and Pier 1 Imports
2 (U.S.), Inc., having agreed through their respective counsel that Judgment be entered
3 pursuant to the terms of their settlement agreement in the form of a Consent Judgment, and
4 following this Court's issuance of an Order approving this Proposition 65 settlement and
5 Consent Judgment,

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

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IT IS SO ORDERED.

Dated: NOV 01 2013



JUDGE OF THE SUPERIOR COURT
BRENDA HARBIN-FORTE

1 Jennifer Henry, State Bar No. 208221
2 Josh Voorhees, State Bar No. 241436
3 THE CHANLER GROUP
4 2560 Ninth Street
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14 JOHN MOORE,

15 Plaintiff,

16 v.

17 PIER 1 IMPORTS, INC.; PIER 1 IMPORTS
18 (U.S.), INC.; *et al.*,

19 Defendants.

Case No. RG13662038

Assigned For All Purposes To:
Judge Brenda Harbin-Forte, Dept. 516

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff, John Moore ("Moore"), and
4 defendants, Pier 1 Imports (U.S.), Inc. and Pier 1 Imports, Inc. (collectively, "Pier 1"), with Moore and
5 Pier 1 each individually referred to as a "Party" and collectively as the "Parties."

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Moore alleges that Pier 1 sold vinyl/PVC placemats containing di(2-ethylhexyl)phthalate
16 ("DEHP") without first providing the clear and reasonable warning required by Proposition 65.
17 DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause
18 birth defects and other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are vinyl/PVC placemats that are
21 imported, manufactured, sold, and/or distributed for sale by Pier 1 in California, identified as:
22 *Placemat SKU #2654234, #2491305, #2654338, #2654300, #2335830, #2335843 and #2335869*
23 (collectively "Products").

24 **1.6 Notice of Violation**

25 On or about August 31, 2012, Moore served Pier 1 and certain requisite public enforcement
26 agencies with a "60-Day Notice of Violation" ("Notice") alleging that Pier 1 was in violation of
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1 Proposition 65 for failing to warn its customers and consumers in California that the Products expose
2 users to DEHP.

3 **1.7 Complaint**

4 On or about January 3, 2013, Moore filed a complaint in the Superior Court in and for the
5 County of Alameda against Pier 1 Imports, Inc., Pier 1 Imports (U.S.), Inc. and Does 1-150 et al.,
6 Case No. RG13662038 ("Complaint") for the alleged violations of Health and Safety Code
7 section 25249.6 that are the subject of the Notice.

8 **1.8 No Admission**

9 Pier 1 denies the material, factual, and legal allegations contained in the Notice and
10 Complaint, and it maintains that all of the products that it has manufactured, imported, sold and
11 distributed in California, including the Products, have been, and are, in compliance with all laws.
12 Nothing in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion
13 of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute
14 or be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of
15 law. This Section shall not, however, diminish or otherwise affect Pier 1's obligations,
16 responsibilities, and duties under this Consent Judgment.

17 **1.9 Consent to Jurisdiction**

18 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over Pier 1 as to the allegations in the Complaint, that venue is proper in Alameda
20 County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
21 Judgment.

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term "Effective Date" shall mean August 19,
24 2013.

25 **2. INJUNCTIVE RELIEF: REFORMULATION**

26 Commencing on September 30, 2013 and continuing thereafter, Pier 1 shall only manufacture,
27 import, sell, offer for sale or distribute for sale in California "Reformulated Products." For purposes
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1 of this Consent Judgment, Reformulated Products are Products that contain a maximum of 1,000
2 parts per million (0.1%) DEHP content in any accessible component (i.e., any component that may be
3 touched or handled during a reasonably foreseeable use) when analyzed pursuant to EPA testing
4 methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies
5 for the purpose of determining DEHP content in a solid substance.

6 **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

7 In settlement of all claims referred to in this Consent Judgment, Pier 1 shall pay a total of
8 \$43,500.00 in civil penalties in accordance with this Section. Each penalty payment will be allocated
9 in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds
10 remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the
11 remaining 25% of the penalty remitted to Moore, as follows:

12 **3.1 Initial Civil Penalty**

13 Pier 1 shall pay an initial civil penalty in the amount of \$12,000.00 on or before fifteen (15)
14 business days after the Effective Date. Pier 1 shall issue two separate checks to: (a) "The Chanler
15 Group in Trust for OEHHA" in the amount of \$9,000.00; and (b) "The Chanler Group in Trust for
16 John Moore" in the amount of \$3,000.00. All penalty payments shall be delivered to the addresses
17 listed in Section 3.3 below.

18 **3.2 Final Civil Penalty**

19 Pier 1 shall pay a final civil penalty of \$31,500.00 on or before December 1, 2013; provided,
20 however, the final civil penalty shall be waived in its entirety if, no later than November 15, 2013, an
21 officer of Pier 1 provides Moore with written certification that, as of the date of such certification and
22 continuing into the future, Pier 1 has met the reformulation standard specified in Section 2 above,
23 such that all Products manufactured, imported, distributed, sold and offered for sale in California by
24 Pier 1 are Reformulated Products. Moore must receive any such certification on or before
25 November 15, 2013. The certification in lieu of a final civil penalty payment provided by this
26 Section is a material term, and time is of the essence. If the final civil penalty is not waived as
27 provided herein, Pier 1 shall issue two separate checks for its final civil penalty payments to: (a)
28

1 "OEHHA" in the amount of \$23,625.00; and (b) "The Chanler Group in Trust for John Moore" in the
2 amount of \$7,875.00.

3 **3.3 Payment Procedures**

4 **3.3.1. Issuance of Payments.** All payments made under this Consent Judgment
5 shall be held in trust until the Court approves the settlement.

6 Payments shall be delivered as follows:

7 (a) All payments owed to Moore, pursuant to Sections 3.1 and 3.2, and owed
8 to OEHHA pursuant to Section 3.1, shall be delivered to the following
9 payment address:

10 The Chanler Group
11 Attn: Proposition 65 Controller
12 2560 Ninth Street
13 Parker Plaza, Suite 214
14 Berkeley, CA 94710

15 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
16 Section 3.2, (unless waived) shall be delivered directly to OEHHA
17 (Memo line "Prop 65 Penalties") at the following addresses:

18 For United States Postal Service Delivery:

19 Mike Gyrics
20 Fiscal Operations Branch Chief
21 Office of Environmental Health Hazard Assessment
22 P.O. Box 4010
23 Sacramento, CA 95812-4010

24 For Non-United States Postal Service Delivery:

25 Mike Gyrics
26 Fiscal Operations Branch Chief
27 Office of Environmental Health Hazard Assessment
28 1001 I Street
Sacramento, CA 95814

with a copy of the checks payable to OEHHA mailed to The Chanler
Group at the address set forth above in 3.3.1(a), as proof of payment to
OEHHA.

3.3.2 Issuance of 1099 Forms. After each penalty payment, Pier 1 shall issue

1 separate 1099 forms for each payment to Moore, whose address and tax identification
2 number shall be furnished upon request after this Consent Judgment has been fully
3 executed by the Parties, and OEHHA at the addresses listed in Section 3.3.1 above.

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

5 The Parties acknowledge that Moore and his counsel offered to resolve this dispute without
6 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
7 issue to be resolved after the material terms of the agreement had been settled. Moore then expressed
8 a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized.
9 The Parties then attempted to (and did) reach an accord on the compensation due to Moore and his
10 counsel under general contract principles and the private attorney general doctrine codified at
11 California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of
12 this agreement. Pier 1 shall pay \$44,000.00 for fees and costs incurred as a result of investigating,
13 bringing this matter to Pier 1's attention, and negotiating a settlement in the public interest. Pier 1
14 shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the check payable to
15 "The Chanler Group in Trust" and shall deliver payment on or before the Effective Date, to the
16 address listed in Section 3.3.1(a) above.

17 **5. CLAIMS COVERED AND RELEASED**

18 **5.1 Moore's Public Release of Proposition 65 Claims**

19 Moore, acting on his own behalf and in the public interest, releases Pier 1 and its parents,
20 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
21 attorneys ("Releasees") and each entity to whom they directly or indirectly distribute or sell the
22 Products, including but not limited to its downstream distributors, wholesalers, customers, retailers,
23 franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for any
24 violations arising under Proposition 65 for unwarned exposures to DEHP contained in the Products
25 sold by Pier 1 prior to the Effective Date, as set forth in the Notice. Compliance with the terms of
26 this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to
27 DEHP from the Products sold by Pier 1 before the Effective Date, as set forth in the Notice.
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1 **5.2 Moore's Individual Release of Claims**

2 Moore, in his individual capacity only and *not* in his representative capacity, also provides a
3 release to Pier 1, Releasees, and Downstream Releasees which shall be effective as a full and final
4 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
5 attorneys' fees, damages, losses, claims, liabilities and demands of Moore of any nature, character
6 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
7 exposures to DEHP in the Products sold or distributed for sale by Pier 1 before the Effective Date.

8 **5.3 Pier 1's Release of Moore**

9 Pier 1, on its own behalf, and on behalf of its past and current agents, representatives,
10 attorneys, successors, and assignees, hereby waives any and all claims against Moore and his
11 attorneys and other representatives, for any and all actions taken or statements made by Moore and
12 his attorneys and other representatives, whether in the course of investigating claims, otherwise
13 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

14 **6. COURT APPROVAL**

15 This Consent Judgment is not effective until it is approved and entered by the Court and shall
16 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
17 has been fully executed by the Parties, in which event any monies that have been provided to Moore
18 or his counsel under Sections 3 and 4 above shall be refunded within fifteen (15) days after receiving
19 written notice from Pier 1 that the one-year period has expired and the Consent Judgment has not
20 been approved by the Court.

21 **7. SEVERABILITY**

22 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
23 provision is deemed by a court to be unenforceable, the validity of the remaining provisions shall not
24 be adversely affected.

25 **8. GOVERNING LAW**

26 The terms of this Consent Judgment shall be governed by the laws of the State of California
27 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is
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1 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Pier 1 may
2 provide written notice to Moore of any asserted change in the law, and shall have no further
3 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
4 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Pier 1 from any
5 obligation to comply with any pertinent state or federal toxics control laws.

6 **9. NOTICES**

7 Unless specified herein, all correspondence and notices required by this Consent Judgment
8 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
9 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

10 For Pier 1:

11 Michael A. Carter, General Counsel
12 Pier 1 Imports (U.S.), Inc.
13 100 Pier 1 Place
Fort Worth, TX 76102-2600

14 with a copy to:

15 Steven P. McDonald, Esq.
16 The McDonald Law Firm, LC
7855 Fay Ave., Ste. 250
17 La Jolla, CA 92037

18 For Moore:

19 The Chanler Group
20 Attn: Proposition 65 Coordinator
2560 Ninth Street
21 Parker Plaza, Suite 214
Berkeley, CA 94710

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

24 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

28 *mtc*

1 **11. POST EXECUTION ACTIVITIES**

2 Moore agrees to comply with the reporting form requirements referenced in Health and Safety
3 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
4 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
5 furtherance of obtaining such approval, Moore and Pier 1 agree to mutually employ their best efforts,
6 and that of their counsel, to support the entry of this agreement as judgment, and to obtain judicial
7 approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall
8 include, at a minimum, cooperating on the drafting and filing of the necessary moving papers, and
9 supporting the motion for judicial approval.

10 **12. MODIFICATION**


11 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
12 upon entry of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or
13 application of any Party and the entry of a modified consent judgment by the Court.

14 **13. AUTHORIZATION**

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

17 **AGREED TO:**


18
19 Date: 8/26/13

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21 By: 
22 JOHN MOORE

AGREED TO:

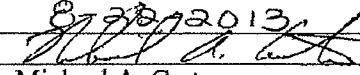
Pier 1 Imports, Inc.

23 Date: 8-22-2013

24 By: 
25 Michael A. Carter
26 SR VP and General Counsel, Secretary

Pier 1 Imports, (U.S.), Inc.

27 Date: 8-22-2013

28 By: 
Michael A. Carter
SR VP and General Counsel, Secretary

