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2 THE CHANLER GROUP  
3 2560 Ninth Street  
4 Parker Plaza, Suite 214  
5 Berkeley, CA 94710  
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8 Attorneys for Plaintiff  
9 JOHN MOORE

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

13 JOHN MOORE

14 Plaintiff,

15 v.

16 PIER 1 IMPORTS (U.S.), INC.; and DOES 1  
17 through 150, inclusive,

18 Defendants.

Case No. RG10525094

**[PROPOSED] CONSENT JUDGMENT**

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent Judgment is entered into by and between Plaintiff John Moore (“Moore”  
4 or “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  
12 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,  
13 California Health & 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  
19 Imports has manufactured, distributed and/or sold, in the State of California, travel bags with  
20 zipper pulls which expose users to di(2-ethylhexyl)phthalate (“DEHP”), without first providing  
21 “clear and reasonable warning” under Proposition 65. DEHP is listed as a reproductive toxicant  
22 under 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 containing lead, including, but not limited to, the product identified as the *Tape*  
27 *Measure, Pink Metallic, SKU 2443441* (“Lead Products”) and travel bags with zipper pulls  
28 containing DEHP, including, but not limited to, the *Zebra Travel Set, SKU 2341881*, (“DEHP

1 Products”) manufactured, imported, distributed and/or sold in California by Pier 1 Imports  
2 (hereinafter collectively referred to as the “Products”).

3 **1.6 Notices of Violation**

4 On December 15, 2009, Moore served Pier 1 Imports and various public enforcement  
5 agencies with a document entitled “60-Day Notice of Violation” that provided the recipients with  
6 notice of alleged violations of Proposition 65 for failing to warn consumers that the travel bags  
7 with zipper pulls that Pier 1 Imports distributed and/or sold exposed users in California to DEHP.  
8 On June 3, 2010, Moore served Pier 1 Imports and various public enforcement agencies with a  
9 document entitled “Supplemental 60-Day Notice of Violation” that provided the recipients with  
10 notice of alleged violations of Proposition 65 for failing to warn consumers that the Products that  
11 Pier 1 Imports distributed and/or sold exposed users in California to the Listed Chemicals  
12 (including both DEHP and lead). No public enforcer has diligently prosecuted the allegations set  
13 forth in the Notice or Supplemental Notice.

14 **1.7 Complaint**

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

22 **1.8 No Admission**

23 This Consent Judgment resolves claims that are denied and disputed by Pier 1 Imports.  
24 The Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all  
25 claims between the Parties for the purpose of avoiding prolonged litigation. Pier 1 Imports denies  
26 the material factual and legal allegations contained in the Notice and Complaint and maintains  
27 that all Products it has manufactured, distributed and/or sold in California have been and are in  
28 compliance with all applicable laws. Nothing in this Consent Judgment shall be construed as an

1 admission by Pier 1 Imports, its parents, subsidiaries, affiliates, sister and related companies,  
2 employees, shareholders, directors, insurers, attorneys, successors or assigns of any fact, finding,  
3 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be  
4 construed as an admission by Pier 1 Imports, its parents, subsidiaries, affiliates, sister and related  
5 companies, employees, shareholders, directors, insurers, attorneys, successors or assigns of any  
6 fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Pier 1  
7 Imports. However, this Section shall not diminish or otherwise affect Pier 1 Imports' obligations,  
8 responsibilities, and duties under this Consent Judgment.

9 **1.9 Consent to Jurisdiction**

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

14 **2. INJUNCTIVE RELIEF: REFORMULATION**

15 Commencing on October 15, 2011 (the "Effective Date"), Pier 1 Imports shall not have  
16 manufactured or shipped to it Products for sale in California unless such Products are Lead Free  
17 and Phthalate Free, as further defined below; provided, however, that Products manufactured or  
18 shipped, if any, in fulfillment of purchase orders executed prior to April 13, 2011 shall not be  
19 deemed to be a violation of this section 2. For purposes of this Consent Judgment, "Lead Free"  
20 Products shall mean Products containing components that may be handled, touched or mouthed  
21 by a consumer, and which components yield less than 1.0 microgram of lead when using a wipe  
22 test pursuant to NIOSH Test Method 9100, and yield less than 100 parts per million ("ppm") lead  
23 when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent  
24 methodologies utilized by federal or state agencies for the purpose of determining lead content in  
25 a solid substance. Additionally, for purposes of this Consent Judgment, "Phthalate Free" shall  
26 mean Products containing less than or equal to 1,000 ppm of DEHP, when analyzed pursuant to  
27 any testing methodology selected by Pier 1 Imports that is acceptable to state or federal  
28

1 government agencies in determining compliance with phthalate standards. Products that are Lead  
2 Free and Phthalate Free are referred to hereinafter as “Reformulated Products.”

3 Pier 1 Imports hereby commits that 100% of the Products that it will have manufactured  
4 or shipped to it for sale in California after the Effective Date shall be Reformulated Products.

5 This Consent Judgment shall have no effect on Products sold or offered for sale by Pier 1  
6 Imports to retail customers outside of California.

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

8 **3.1 Civil Penalty**

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

21 The payments shall be delivered to Moore’s counsel on or before the Effective Date and  
22 Defendants shall deliver the payments to the following address:

23 The Chanler Group  
24 Attn: Proposition 65 Coordinator  
25 2560 Ninth Street  
26 Parker Plaza, Suite 214  
27 Berkeley, CA 94710  
28

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 fees  
17 and costs associated with all appellate work defending the entry of judgment pursuant to CCP  
18 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 respective Listed Chemical contained in the Lead Products and the DEHP  
11 Products that were manufactured, distributed 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 respective Listed  
21 Chemical in the Lead Products and DEHP Products sold by Defendant (collectively “claims”),  
22 against Defendant and Releasees.

23 **5.3 Plaintiff’s Individual Release of Claims.**

24 Plaintiff also, in his individual capacity only and not in his representative capacity,  
25 provides a release herein which shall be effective as a full and final accord and satisfaction, as a  
26 bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses,  
27 claims, liabilities and demands of plaintiff of any nature, character or kind, whether known or  
28

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 Defendant.

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  
28 inapplicable by reason of law generally, or as to the Listed Chemicals and/or the Products, then

1 Pier 1 Imports shall have no further obligations pursuant to this Consent Judgment with respect  
2 to, and to the extent that, the Products are so affected.

3 **9. NOTICES**

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

6 To Pier 1 Imports:

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

12 With copy to:

13 Christopher Martin  
14 The McDonald Law Firm  
15 7855 Fay Ave., Suite 250  
16 La Jolla, CA 92037

17 To Moore:

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

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

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

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

11. **MODIFICATION**

12 This Consent Judgment may be modified only: (1) by written agreement of the Parties;  
13 or (2) upon a successful motion of any party and entry of a modified Consent Judgment by the  
14 Court. The Attorney General shall be served with notice of any proposed modification to this

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

20 **12. ADDITIONAL POST-EXECUTION ACTIVITIES**

21 The Parties agree to mutually employ their, and their counsel’s, reasonable best efforts  
22 to support the entry of this agreement as a Consent Judgment and obtain approval of the  
23 Consent Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to  
24 California Health and Safety Code section 25249.7, a noticed motion is required to obtain  
25 judicial approval of this Consent Judgment, which Moore shall file, and which Pier 1 Imports  
26 shall not oppose. If any third party objection to the noticed motion is filed, Moore and Pier 1  
27 Imports shall work together to file a joint reply and appear at any hearing before the Court. This  
28 provision is a material component of the Consent Judgment and shall be treated as such in the

1 event of a breach. If the Superior Court does not approve the motion to approve this Consent  
2 Judgment, and the Parties choose not to pursue a modified Consent Judgment within 30 days of  
3 said denial, or in the event that the Superior Court approve this Consent Judgment and any  
4 person successfully appeals that approval, all payments made pursuant to this Consent Judgment  
5 will be returned to Pier 1 Imports.

6 **13. ENTIRE AGREEMENT**

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

13 **14. COUNTERPARTS, FACSIMILE SIGNATURES**

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

17 **15. AUTHORIZATION**

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

20 **AGREED TO:**

**AGREED TO:**

21 Date: October 14, 2011

Date: \_\_\_\_\_

22  
23 By:   
24 Plaintiff John Moore

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

25  
26 **IT IS SO ORDERED.**

27 Dated: \_\_\_\_\_

By \_\_\_\_\_  
Judge of the Superior Court

1 event of a breach. If the Superior Court does not approve the motion to approve this Consent  
2 Judgment, and the Parties choose not to pursue a modified Consent Judgment within 30 days of  
3 said denial, or in the event that the Superior Court approve this Consent Judgment and any  
4 person successfully appeals that approval, all payments made pursuant to this Consent Judgment  
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7 This Consent Judgment contains the sole and entire agreement and understanding of the  
8 Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
9 negotiations, commitments, and understandings related hereto. No representations, oral or  
10 otherwise, express or implied, other than those contained herein have been made by any party  
11 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed  
12 to exist or to bind any of the parties.

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

17 **15. AUTHORIZATION**

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

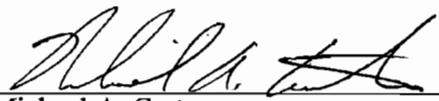
20 **AGREED TO:**

21 Date: \_\_\_\_\_

22  
23 By: \_\_\_\_\_  
24 Plaintiff John Moore

**AGREED TO:**

21 Date: 18 Oct 2011

22  
23 By:   
24 Michael A. Carter  
25 Sr. Vice President and General Counsel  
26 Pier 1 Imports. (U.S.), Inc.

26 **IT IS SO ORDERED.**

27 Dated: \_\_\_\_\_

27 By \_\_\_\_\_  
28 Judge of the Superior Court