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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA - UNLIMITED CIVIL JURISDICTION
10

11 JOHN MOORE)
12 Plaintiff,)
13 v.)
14 COSTCO WHOLESALE CORPORATION;)
et al.,)
15 Defendants.)
16)
17)
18)

Case No. RG 13672233

Assigned for All Purposes to
Judge George C. Hernandez, Jr.,
Department 17

**[PROPOSED] CONSENT JUDGMENT AS
TO DEFENDANT PIER 1 IMPORTS, INC.**

(Health & Safety Code § 25249.6 et seq.
First Amended Complaint Filed: April 12, 2013)

1 **1. INTRODUCTION**

2 **1.1 Parties**

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

6 **1.2 John Moore**

7 John Moore is an individual residing in the State of California who seeks to promote
8 awareness of exposures to toxic chemicals and to improve human health by reducing or
9 eliminating hazardous substances contained in consumer and commercial 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, California Health &
13 Safety Code § 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 1.4.1 Moore alleges that Pier 1 manufactured, imported, sold and/or distributed
16 for sale in California, padded upholstered furniture including ottomans and chair cushions
17 containing tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”) without the requisite Proposition 65
18 health hazard warnings.

19 1.4.2 Pursuant to Proposition 65, on October 28, 2011, California identified and
20 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and
21 reasonable warning” requirements of Proposition 65 one year later on October 28, 2012. Cal.
22 Code Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b). Moore
23 alleges that TDCPP escapes from foam padding, leading to human exposures.

24 **1.5 Product Description**

25 The products that are covered by this Consent Judgment as to Pier 1 are identified on
26 Exhibit A (hereinafter “Products”). Polyurethane foam that is supplied, shaped or manufactured
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1 for use as a component of a product, such as upholstered furniture, is specifically excluded from
2 the definition of Products and shall not be identified by Pier 1 on Exhibit A as a Product.

3 **1.6 Notice of Violation**

4 On January 2, 2013, Moore served Pier 1 and certain requisite public enforcement agencies
5 with a "60-Day Notice of Violation" ("Notice") that provided the recipients with notice of alleged
6 violations of Proposition 65 based on the alleged failure to warn customers, consumers, and
7 workers in California that the Products expose users to TDCPP.

8 To the best of the Parties' knowledge, no public enforcer has commenced or is diligently
9 prosecuting the allegations set forth in the Notice.

10 **1.7 Complaint**

11 On April 12, 2013, Moore filed a First Amended Complaint in the Superior Court in and
12 for the County of Alameda against Pier 1, among others, and Does 1 through 150, *Peter*
13 *Englander, et al. v. Costco Wholesale Corporation, et al.*, Case No. RG 13672233, alleging
14 violations of Proposition 65, based in part on the alleged unwarned exposures to TDCPP contained
15 in the Products ("Complaint").

16 **1.8 No Admission**

17 Pier 1 denies the material factual and legal allegations contained in Moore's Notice and
18 Complaint and maintains that all products that they have manufactured, imported, distributed,
19 and/or sold in California, including the Products, have been and are in compliance with all laws.
20 Nothing in this Consent Judgment shall be construed as an admission by Pier 1 of any fact, finding,
21 conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment
22 constitute or be construed as an admission by Pier 1 of any fact, finding, conclusion, issue of law,
23 or violation of law. However, this section shall not diminish or otherwise affect Pier 1's
24 obligations, responsibilities, and duties under this Consent Judgment.

25 **1.9 Consent to Jurisdiction**

26 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
27 jurisdiction over Pier 1 as to the allegations contained in the Complaints, that venue is proper in
28



1 the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of
2 this Consent Judgment pursuant to Proposition 65 and California Code of Civil Procedure § 664.6.

3 **2. DEFINITIONS**

4 **2.1 California Customers**

5 “California Customer” shall mean any customer that Pier 1 reasonably understands is
6 located in California, has a California warehouse or distribution center, maintains a retail outlet in
7 California, or has made internet sales into California on or after January 1, 2011.

8 **2.2 Detectable**

9 “Detectable” shall mean containing more than 25 parts per million (“ppm”) (the equivalent
10 of .0025%) of any one chemical in any material, component, or constituent of a
11 subject product, when analyzed by a NVLAP accredited laboratory pursuant to EPA testing
12 methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies
13 to determine the presence, and measure the quantity, of TDCPP and/or tris(2-chloroethyl)
14 phosphate (“TCEP”) in a solid substance.

15 **2.3 Effective Date**

16 “Effective Date” shall mean December 13, 2013.

17 **2.4 Private Label Covered Products**

18 “Private Label Covered Products” means Products that bear a brand or trademark owned or
19 licensed by a Retailer or affiliated entity that are sold or offered for sale by a Retailer in the State
20 of California.

21 **2.5 Reformulated Products**

22 “Reformulated Products” shall mean Products that contain no Detectable amount of
23 TDCPP or TCEP.

24 **2.6 Reformulation Standard**

25 The “Reformulation Standard” shall mean containing no more than 25 ppm for each of
26 TDCPP and TCEP.



1 **2.7 Retailer**

2 “Retailer” means an individual or entity that offers a Product for retail sale to consumers in
3 the State of California.

4 **3. INJUNCTIVE RELIEF: REFORMULATION**

5 **3.1 Reformulation Commitment**

6 Commencing on May 31, 2014, Pier 1 shall not manufacture or import for distribution or
7 sale to California Customers, or cause to be manufactured or imported for distribution or sale to
8 California Customers, any Products that are not Reformulated Products.

9 **3.2 Vendor Notification/Certification**

10 On or before the Effective Date, Pier 1 shall provide written notice to all of its then-current
11 vendors of the Products that will be sold or offered for sale in California, or to California
12 Customers, instructing each such vendor to use reasonable efforts to provide only Reformulated
13 Products for potential sale in California. In addressing the obligation set forth in the preceding
14 sentence, Pier 1 shall not employ statements that will encourage a vendor to delay compliance with
15 the Reformulation Standard. Pier 1 shall subsequently obtain written certifications, no later than
16 April 1, 2014, from such vendors, and any newly engaged vendors, that the Products manufactured
17 by such vendors are in compliance with the Reformulation Standard. Certifications shall be held
18 by Pier 1 for at least two years after their receipt and shall be made available to Moore upon
19 request.

20 **3.3 Products No Longer in Pier 1’s Control**

21 No later than 45 days after the Effective Date, Pier 1 shall send a letter, electronic or
22 otherwise (“Notification Letter”) to: (1) each California Customer and/or Retailer which it, after
23 October 28, 2011, supplied the item for resale in California described as an exemplar in the Notice
24 received by Pier 1 from Moore (“Exemplar Product”); and (2) any California Customer and/or
25 Retailer that Pier 1 reasonably understands or believes had any inventory for resale in California of
26 Exemplar Product as of the relevant Notice’s dates. The Notification Letter shall advise the
27 recipient that the Exemplar Product “contains TDCPP, a chemical known to the State of California
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1 to cause cancer,” and request that the recipient either: (a) label the Exemplar Products remaining
2 in inventory for sale in California, or to California Customers, pursuant to Section 3.5; or (b)
3 return, at Pier 1’s sole expense, all units of the Exemplar Product held for sale in California, or to
4 California Customers, to Pier 1 or a party Pier 1 has otherwise designated. The Notification Letter
5 shall require a response from the recipient within 15 days confirming whether the Exemplar
6 Product will be labeled or returned. Pier 1 shall maintain records of all correspondence or other
7 communications generated pursuant to this Section for two years after the Effective Date and shall
8 promptly produce copies of such records upon Moore’s written request.¹

9 **3.4 Current Inventory**

10 Any Products in, or manufactured and en route to, Pier 1’s inventory as of or after
11 December 31, 2013, that do not qualify as Reformulated Products and that Pier 1 has reason to
12 believe may be sold or distributed for sale in California, shall contain a clear and reasonable
13 warning as set forth in Section 3.5 below unless Section 3.6 applies.²

14 **3.5 Product Warnings**

15 **3.5.1 Product Labeling**

16 Any warning provided under Section 3.3 or 3.4 above shall be affixed to the packaging,
17 labeling, or directly on each Product. Each warning shall be prominently placed with such
18 conspicuousness as compared with other words, statements, designs, or devices as to render it
19 likely to be read and understood by an ordinary individual under customary conditions before
20 purchase. Each warning shall be provided in a manner such that the consumer or user understands
21 to which specific Product the warning applies, so as to minimize the risk of consumer confusion.

22 A warning provided pursuant to this Consent Judgment shall state:

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24
25
26 ¹ Paragraph 3.3 does not apply to Pier 1.
27 ² This shall not apply to Products which are Private Label Covered Products in Pier 1s’
28 inventory as of December 31, 2013.

WARNING: This product contains TDCPP, a flame retardant chemical known to the State of California to cause cancer.³

Attached as Exhibit B are template warnings developed by Moore that are deemed to be clear and reasonable for purposes of this Consent Judgment. Provided that the other requirements set forth in this Section are addressed, including as to the required method of transmission as set forth above, Pier 1 remains free not to utilize the template warnings.

3.5.2 Internet Website Warning

A warning shall be given in conjunction with the sale of the Products to California, or California Customers, via the internet, which warning shall appear on one or more web pages displayed to a purchaser prior to the checkout process. The warning statement required by Section 3.5.1 shall be used and shall: (a) appear adjacent to or under the display, description, details, or price section of the Product; (b) appear as a pop-up box; or (c) otherwise appear automatically to the customer. The warning text shall be the same type size or larger than the Product description text.

3.6 Alternatives to Interim Warnings

The obligations of Pier 1 under Section 3.4 shall be relieved provided Pier 1 certifies on or before December 15, 2013 that, after June 30, 2014, it will only distribute or cause to be distributed for sale in, or sell in, California, or to California Customers for sale in California, Products (i.e., the Products beyond the Exemplar Product) meeting the Reformulation Standard. The certifications provided by this Section are material terms and time is of the essence.

³ The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be used if Pier 1 had begun to use it, prior to the Effective Date. If Pier 1 seeks to use alternative warning language, other than the language specified above or the safe harbor warning specified in 27 CCR § 25603.2, or seeks to use an alternate method of transmission of the warning, it must obtain the Court's approval of its proposed alternative and provide all Parties and the Office of the Attorney General with timely notice and the opportunity to comment or object before the Court acts on the request. The Parties agree that, as to the Products listed in Exhibit A only, the following hybrid warning language shall not be deemed to meet the requirements of 27 CCR § 25601 *et seq.*, and shall not be used pursuant to this Consent Judgment: (a) "cancer or birth defects or other reproductive harm"; and (b) "cancer, birth defects or other reproductive harm."



1 **4. MONETARY PAYMENTS**

2 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

3 In settlement of all the claims referred to in this Consent Judgment, Pier 1 shall pay
4 the civil penalties shown for it on Exhibit A in accordance with this Section. Each penalty
5 payment will be allocated in accordance with California Health & Safety Code
6 § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental
7 Health Hazard Assessment (“OEHHA”), and 25% of the penalty remitted to “The Chanler Group
8 in Trust for Moore.” Each penalty payment shall be made within two business days of the date it
9 is due and be delivered to the addresses listed in Section 4.5 below. Pier 1 shall be liable for
10 payment of interest, at a rate of 10% simple interest, for all amounts due and owing under this
11 Section that are not received within two business days of the due date.

12 4.1.1 Initial Civil Penalty. On or before the Effective Date, Pier 1 shall make an
13 initial civil penalty payment in the amount identified on Pier 1’s Exhibit A.

14 4.1.2 Second Civil Penalty. On or before January 15, 2014, Pier 1 shall make a
15 second civil penalty payment in the amount identified on Pier 1’s Exhibit A. The amount of the
16 second penalty may be reduced according to any penalty waiver Pier 1 is eligible for under
17 Sections 4.1.4(i) and 4.1.4(iii), below.

18 4.1.3 Third Civil Penalty. On or before November 30, 2014, Pier 1 shall make a
19 third civil penalty payment in the amount identified on Pier 1’s Exhibit A. The amount of the third
20 penalty may be reduced according to any penalty waiver Pier 1 is eligible for under Sections
21 4.1.4(ii) and 4.1.4(iv), below.

22 4.1.4 Reductions to Civil Penalty Payment Amounts. Pier 1 may reduce the
23 amount of the second and/or third civil penalty payments identified on Pier 1’s Exhibit A by
24 providing Moore with certification of certain efforts undertaken to reformulate their Products or
25 limit the ongoing sale of non-reformulated Products in California. The options to provide a written
26 certification in lieu of making a portion of Pier 1’s civil penalty payment constitute material terms
27 of this Consent Judgment, and with regard to such terms, time is of the essence.

1 4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation of**
2 **Products Sold or Offered for Sale in California.**

3 As shown on Pier 1's Exhibit A, a portion of the second civil penalty shall be waived, to
4 the extent that it has agreed that, as of December 15, 2013, and continuing into the future, it shall
5 only manufacture or import for distribution or sale to California Customers or cause to be
6 manufactured or imported for distribution or sale to California Customers, Reformulated Products.
7 An officer or other authorized representative of Pier 1 that has exercised this election shall provide
8 Moore with a written certification confirming compliance with such conditions, which certification
9 must be received by Moore's counsel on or before December 15, 2013.

10 4.1.4(ii) **Partial Penalty Waiver for Extended Reformulation.**

11 As shown on Pier 1's Exhibit A, a portion of the third civil penalty shall be waived, to the
12 extent that it has agreed that, as of March 31, 2014, and continuing into the future, it shall only
13 manufacture or import for distribution or sale in California or cause to be manufactured or
14 imported for distribution or sale in California, Reformulated Products which also do not contain
15 tris(2,3-dibromopropyl)phosphate ("TDBPP") in a detectable amount of more than 25 parts per
16 million ("ppm") (the equivalent of .0025%) in any material, component, or constituent of a subject
17 product, when analyzed by a NVLAP accredited laboratory pursuant to EPA testing methodologies
18 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to determine the
19 presence, and measure the quantity, of TDBPP in a solid substance. An officer or other authorized
20 representative of Pier 1 that has exercised this election shall provide Moore with a written
21 certification confirming compliance with such conditions, which certification must be received by
22 Moore's counsel on or before November 15, 2014.

23 4.1.4(iii) **Partial Penalty Waiver for Withdrawal of Unreformulated**
24 **Exemplar Products from the California Market.**

25 As shown on Pier 1's Exhibit A, a portion of the second civil penalty shall be waived, if an
26 officer or other authorized representative of Pier 1 provides Moore with written certification, by
27 January 31, 2014, confirming (i) that each individual or establishment in California to which it
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1 supplied the Exemplar Product after October 28, 2011, has elected, pursuant to Section 3.3, to
2 return all Exemplar Products held for in California to which it supplied the Exemplar Product after
3 October 28, 2011, or (ii) that Pier 1 has either sold, disposed of, or destroyed all Exemplar
4 Products in its possession.⁴

5 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**
6 **California of Unreformulated Inventory.**

7 As shown on Pier 1's Exhibit A, a portion of the third civil penalty shall be waived, if an
8 officer or other authorized representative of Pier 1 provides Moore with written certification, on or
9 before November 15, 2014, confirming that, as of July 1, 2014, it has and will continue to
10 distribute, offer for sale, or sell in California, or to California Customers, only Reformulated
11 Products.

12 **4.2 Representations**

13 Pier 1 represents that the sales data and other information concerning its size, knowledge of
14 TDCPP, and prior reformulation and/or warning efforts, it provided to Moore was truthful to its
15 knowledge and a material factor upon which Moore has relied to determine the amount of civil
16 penalties assessed pursuant to Health & Safety Code § 25249.7 in this Consent Judgment.

17 If, within nine months of the Effective Date, Moore discovers and presents to Pier 1,
18 evidence demonstrating that the preceding representation and warranty was materially inaccurate,
19 then Pier 1 shall have 30 days to meet and confer regarding Moore's contention. Should this 30
20 day period pass without any such resolution between Moore and Pier 1, Moore shall be entitled to
21 file a formal legal claim including, but not limited to, a claim for damages for breach of contract.

22 Pier 1 further represents that in implementing the requirements set forth in Sections 3.1 and
23 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to achieve
24 reformulation of its Products and Additional Products on a nationwide basis and not employ
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26 ⁴ For purposes of this Section, the term Exemplar Products shall further include Products
27 for which Plaintiff has, prior to August 31, 2013, provided Pier 1 with test results from a NVLAP
28 accredited laboratory showing the presence of a Listed Chemical at a level in excess of 250 ppm
pursuant to EPA testing methodologies 3545 or 8270C.

1 statements that will encourage a vendor to limit its compliance with the Reformulation Standard to
2 goods intended for sale to California Consumers.

3 4.3 **Stipulated Penalties for Certain Violations of the Reformulation**
4 **Standard.**

5 If Moore provides notice and appropriate supporting information to Pier 1 that levels of a
6 Listed Chemical in excess of the Reformulation Standard have been detected in one or more
7 Products labeled or otherwise marked in an identifiable manner as manufactured or imported after
8 a deadline for meeting the Reformulation Standard has arisen for Pier 1 under Sections 3.1 or 3.6
9 above, Pier 1 may elect to pay a stipulated penalty to relieve any further potential liability under
10 Proposition 65 or sanction under this Consent Judgment as to Products sourced from the vendor in
11 question.⁵ The stipulated penalty shall be \$1,500 if the violation level is below 100 ppm and
12 \$3,000 if the violation level is between 100 ppm and 249 ppm, this being applicable for any
13 amount in excess of the Reformulation Standards but under 250 ppm.⁶ Moore shall further be
14 entitled to reimbursement of his associated expense in an amount not to exceed \$5,000 regardless
15 of the stipulated penalty level. Pier 1 under this Section must provide notice and appropriate
16 supporting information relating to the purchase (e.g. vendor name and contact information
17 including representative, purchase order, certification (if any) received from vendor for the
18 exemplar or subcategory of products), test results, and a letter from a company representative or
19 counsel attesting to the information provided, to Moore within 30 calendar days of receiving test
20 results from Moore's counsel. Any violation levels at or above 250 ppm shall be subject to the full
21 remedies provided pursuant to this Consent Judgment and at law.

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24 ⁵ This Section shall not be applicable where the vendor in question had previously been
25 found by Pier 1 to have provided unreliable certifications as to meeting the Reformulation
26 Standard in its Products on more than one occasion. Notwithstanding the foregoing, a stipulated
27 penalty for a second exceedance by Pier 1's vendor at a level between 100 and 249 ppm shall not
28 be available after July 1, 2015.

⁶ Any stipulated penalty payments made pursuant to this Section should be allocated and
remitted in the same manner as set forth in Sections 4.1 and 4.5, respectively.



1 **4.4 Reimbursement of Fees and Costs**

2 The Parties acknowledge that Moore and his counsel offered to resolve this dispute without
3 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
4 reimbursement issue to be resolved after the material terms of the agreement had been settled.
5 Shortly after the other settlement terms had been finalized, Pier 1 expressed a desire to resolve the
6 fee and cost issue. Pier 1 then agreed to pay Moore and his counsel under general contract
7 principles and the private attorney general doctrine codified at California Code of Civil Procedure
8 section 1021.5 for all work performed through the mutual execution of this agreement, including
9 the fees and costs incurred as a result of investigating, bringing this matter to Pier 1's attention,
10 negotiating a settlement in the public interest, and seeking court approval of the same. In addition,
11 the negotiated fee and cost figure expressly includes the anticipated significant amount of time
12 Moore's counsel will incur to monitor various provisions in this agreement over the next two
13 years, with the exception of additional fees that may be incurred pursuant to Pier 1's election in
14 Section 11. Pier 1 more specifically agreed, upon the Court's approval and entry of this Consent
15 Judgment, to pay Moore's counsel the amount of fees and costs indicated on Pier 1's Exhibit A.
16 Pier 1 further agreed to tender and shall tender its full required payment under this Section to a
17 trust account at The Chanler Group (made payable "In Trust for The Chanler Group") within five
18 business days of the Effective Date. Such funds shall be released from the trust account upon the
19 Court's approval and entry of this Consent Judgment.

20 **4.5 Payment Procedures**

21 4.5.1 Issuance of Payments.

22 (a) All payments owed to Moore and his counsel, pursuant to Sections
23 4.1, 4.3 and 4.4 shall be delivered to the following payment address:

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



1 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
2 Section 4.1, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at one
3 of the following addresses, as appropriate:

4 For United States Postal Service Delivery:

5 Mike Gyurics
6 Fiscal Operations Branch Chief
7 Office of Environmental Health Hazard Assessment
8 P.O. Box 4010
9 Sacramento, CA 95812-4010

8 For Non-United States Postal Service Delivery:

9 Mike Gyurics
10 Fiscal Operations Branch Chief
11 Office of Environmental Health Hazard Assessment
12 1001 I Street
13 Sacramento, CA 95814

12 4.5.2 Proof of Payment to OEHHA. A copy of each check payable to OEHHA
13 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth
14 in Section 4.3.1(a) above, as proof of payment to OEHHA.

15 4.5.3 Tax Documentation. Pier 1 shall issue a separate 1099 form for each
16 payment required by this Section to: (a) John Moore, whose address and tax identification
17 number shall be furnished upon request after this Consent Judgment has been fully
18 executed by the Parties; (b) OEHHA, who shall be identified as "California Office of
19 Environmental Health Hazard Assessment" (EIN: 68-0284486) in the 1099 form, to be
20 delivered directly to OEHHA, P.O. Box 4010, Sacramento, CA 95814; and (c) "The
21 Chanler Group" (EIN: 94-3171522) to the address set forth in Section 4.3.1(a) above.

22 **5. CLAIMS COVERED AND RELEASED**

23 **5.1 Moore's Release of Proposition 65 Claims**

24 Moore, acting on his own behalf and in the public interest, releases Pier 1, its parents,
25 subsidiaries, affiliated entities under common ownership, directors, officers, agents employees,
26 attorneys, and each entity to whom Pier 1 directly or indirectly distribute or sell Products,
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1 including, but not limited, to downstream distributors, wholesalers, customers, retailers,
2 franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for
3 violations of Proposition 65 through the Effective Date based on unwarned exposures to the Listed
4 Chemicals in the Products, as set forth in the Notice. Compliance with the terms of this Consent
5 Judgment constitutes compliance with Proposition 65 with respect to exposures to the Listed
6 Chemicals from the Products, as set forth in the Notice. The Parties further understand and agree
7 that this Section 5.1 release shall not extend upstream to any entities, other than Pier 1, that
8 manufactured the Products or any component parts thereof, or any distributors or suppliers who
9 sold the Products or any component parts thereof to Pier 1, except that entities upstream of Pier 1
10 that is a Retailer of a Private Labeled Covered Product shall be released as to the Private Labeled
11 Covered Products offered for sale in California, or to California Customers, by the Retailer in
12 question.

13 5.2 Moore's Individual Releases of Claims

14 Moore, in his individual capacity only and *not* in his representative capacity, provides a
15 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
16 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
17 liabilities, and demands of Moore of any nature, character, or kind, whether known or unknown,
18 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP,
19 TCEP, and/or TDBPP in the Products or Additional Products (as defined in Section 11.1 and
20 delineated on Pier 1's Exhibit A) manufactured, imported, distributed, or sold by Pier 1 prior to the
21 Effective Date.⁷ The Parties further understand and agree that this Section 5.2 release shall not
22 extend upstream to any entities that manufactured the Products or Additional Products, or any
23 component parts thereof, or any distributors or suppliers who sold the Products Additional
24 Products, or any component parts thereof to Pier 1, except that entities upstream of Pier 1 that is a
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26 ⁷ The injunctive relief requirements of Section 3 shall apply to Additional Products as
27 otherwise specified.

1 Retailer of a Private Labeled Covered (or Additional) Product shall be released as to the Private
2 Labeled Covered (or Additional) Products offered for sale in California by the Retailer in question.
3 Nothing in this Section affects Moore's right to commence or prosecute an action under
4 Proposition 65 against a Releasee that does not involve Pier 1's Products or Additional Products.

5 **5.3 Pier 1's Release of Moore**

6 Pier 1, on behalf of itself, its past and current agents, representatives, attorneys, successors,
7 and assignees, hereby waives any and all claims against Moore and his attorneys and other
8 representatives, for any and all actions taken or statements made (or those that could have been
9 taken or made) by Moore and his attorneys and other representatives, whether in the course of
10 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
11 respect to the Products or Additional Products.

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 in its entirety and entered by the Court
15 within one year after it has been fully executed by all Parties. If the Court does not approve the
16 Consent Judgment, the Parties shall meet and confer as to whether to modify the language or
17 appeal the ruling. If the Parties do not jointly agree on a course of action to take, then the case
18 shall proceed in its normal course on the Court's trial calendar. If the Court's approval is
19 ultimately overturned by an appellate court, the Parties shall meet and confer as to whether to
20 modify the terms of this Consent Judgment. If the Parties do not jointly agree on a course of
21 action to take, then the case shall proceed in its normal course on the Court's trial calendar. In the
22 event that this Consent Judgment is entered by the Court and subsequently overturned by any
23 appellate court, any monies that have been provided to OEHHA, Moore or his counsel pursuant to
24 Section 4, above, shall be refunded within 15 days of the appellate decision becoming final. If the
25 Court does not approve and enter the Consent Judgment within one year of the Effective Date, any
26 monies that have been provided to OEHHA or held in trust for Moore or his counsel pursuant to
27 Section 4, above, shall be refunded to Pier 1 within 15 days.

1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
4 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
5 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
6 rendered inapplicable by reason of law generally as to the Products, then Pier 1 may provide
7 written notice to Moore of any asserted change in the law, and shall have no further obligations
8 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so
9 affected. Nothing in this Consent Judgment shall be interpreted to relieve Pier 1 from any
10 obligation to comply with any pertinent state or federal law or regulation.

11 **8. NOTICES**

12 Unless specified herein, all correspondence and notices required to be provided pursuant to
13 this Consent Judgment shall be in writing and sent by: (i) personal delivery, (ii) first-class
14 registered or certified mail, return receipt requested; or (iii) overnight courier to any party by the
15 other party at the following addresses:

16 To Pier 1:

17 At the address shown on Exhibit A

To Moore:

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

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

23 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

24 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,
25 each of which shall be deemed an original, and all of which, when taken together, shall constitute
26 one and the same document. A facsimile or pdf signature shall be as valid as the original.
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1 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

2 Moore and his attorneys agree to comply with the reporting form requirements referenced
3 in California Health & Safety Code § 25249.7(f).

4 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

5 11.1 In addition to the Products, where Pier 1 has identified on Exhibit A additional
6 products that contain TDCPP and that are sold or offered for sale by it in California, or to
7 California Customers, (“Additional Products”), then by no later than October 15, 2013, Pier 1 may
8 provide Moore with additional information or representations necessary to enable them to issue a
9 60-Day Notice of Violation and valid Certificate of Merit therefore, pursuant to Health & Safety
10 Code § 25249.7, that includes the Additional Products. Polyurethane foam that is supplied, shaped
11 or manufactured for use as a component of a product, such as upholstered furniture, is specifically
12 excluded from the definition of Additional Products and shall not be identified by Pier 1 on Exhibit
13 A as an Additional Product. Except as agreed upon by Moore, Pier 1 shall not include a product,
14 as an Additional Product, that is the subject of an existing 60-day notice issued by Moore or any
15 other private enforcer at the time of execution. After receipt of the required information, Moore
16 agrees to issue a supplemental 60-day notice in compliance with all statutory and regulatory
17 requirements for the Additional Products. Moore will, and in no event later than October 1, 2014,
18 prepare and file an amendment to this Consent Judgment to incorporate the Additional Products
19 within the defined term “Products” and serve a copy thereof and its supporting papers (including
20 the basis for supplemental stipulated penalties, if any) on the Office of the California Attorney
21 General upon the Court’s approval, and finding that the supplemental stipulated penalty amount, if
22 any, is reasonable, the Additional Products shall become subject to Section 5.1 in addition to
23 Section 5.2. Pier 1 shall, at the time it elects to utilize this Section and tenders the additional
24 information or representations regarding the Additional Products to Moore, tender to The Chanler
25 Group’s trust account an amount not to exceed \$8,750 as stipulated penalties and attorneys’ fees
26 and costs incurred by Moore in issuing the new notice and engaging in other reasonably related
27 activities, which may be released from the trust as awarded by the Court upon Moore’s application.



1 Any fee award associated with the modification of the Consent Judgment to include Additional
2 Products shall not offset any associated supplemental penalty award, if any (Any tendered funds
3 remaining in the trust thereafter shall be refunded to Pier 1 within 15 days). Such payment shall be
4 made to “in trust for The Chanler Group” and delivered as per Section 4.5.1(a) above.

5 11.2 Moore and Pier 1 agree to support the entry of this agreement as a Consent
6 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The
7 Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed
8 motion is required to obtain judicial approval of this Consent Judgment, which Moore shall draft
9 and file. If any third party objection to the noticed motion is filed, Moore and Pier 1 shall work
10 together to file a reply and appear at any hearing before the Court. This provision is a material
11 component of the Consent Judgment and shall be treated as such in the event of a breach.

12 **12. MODIFICATION**

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

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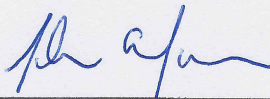
1 **13. AUTHORIZATION**

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

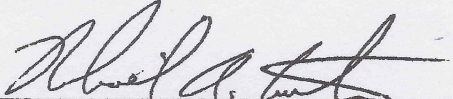
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6 AGREED TO:

AGREED TO:

7 Settling Defendant:
8 Pier 1 Imports, Inc.

9 

10 _____
11 Plaintiff, John Moore

By: 

12 Name: Michael A. Carter
13 It's: SR VP and General Counsel, Secretary

14 Date: December 19, 2013

15 Date: December 4, 2013



1 EXHIBIT A

2 I. Name of Settling Defendant: PIER 1 IMPORTS, INC.

3 II. Names of Releasees (optional/partial):

4 III. Products (including Exemplar Products) Covered by this Consent Judgment:

5 a) Chair cushions identified by SKU 2652577 and the Exemplar Product SKU
6 2510225.

7 b) Padded upholstered ottomans identified by SKUs 2523384, 2600542, 26500555
8 and the Exemplar Product SKU 2600570.

9 IV. Types of Additional Products Pier 1 Imports Elects to Address (if any): None

10 V. Pier 1 Imports' Required Settlement Payments

11 A. Penalties of \$90,000, as follows:

12 \$24,000 initial payment due on or before the Effective Date;

13 \$42,000 second payment due on or before January 15, 2014, of which \$
14 23,000 may be waived pursuant to Section 4.1.4(i) and \$19,000 may be
waived pursuant to Section 4.1.4(iii); and

15 \$24,000 third payment due on or before November 30, 2014, of which
16 \$14,000 may be waived pursuant to Section 4.1.4(ii) and \$10,000 may be
waived pursuant to Section 4.1.4(iv).

17 B. Payment to The Chanler Group for reimbursement of attorneys' fees and costs
18 attributable to Pier 1 Imports, Inc.: \$44,000.

19 VI. Person(s) to receive Notices pursuant to Section 8

20 Kevin C. Mayer

Name

21 Attorney

Title

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

23 Company/Firm Name

24 Address Crowell & Moring LLP

25 515 South Flower Street, 40th Floor

26 Los Angeles, CA 90071

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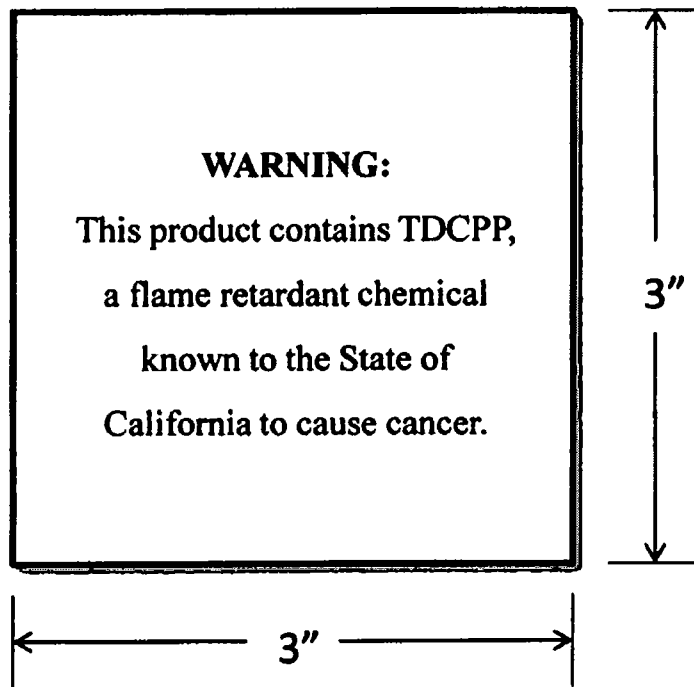
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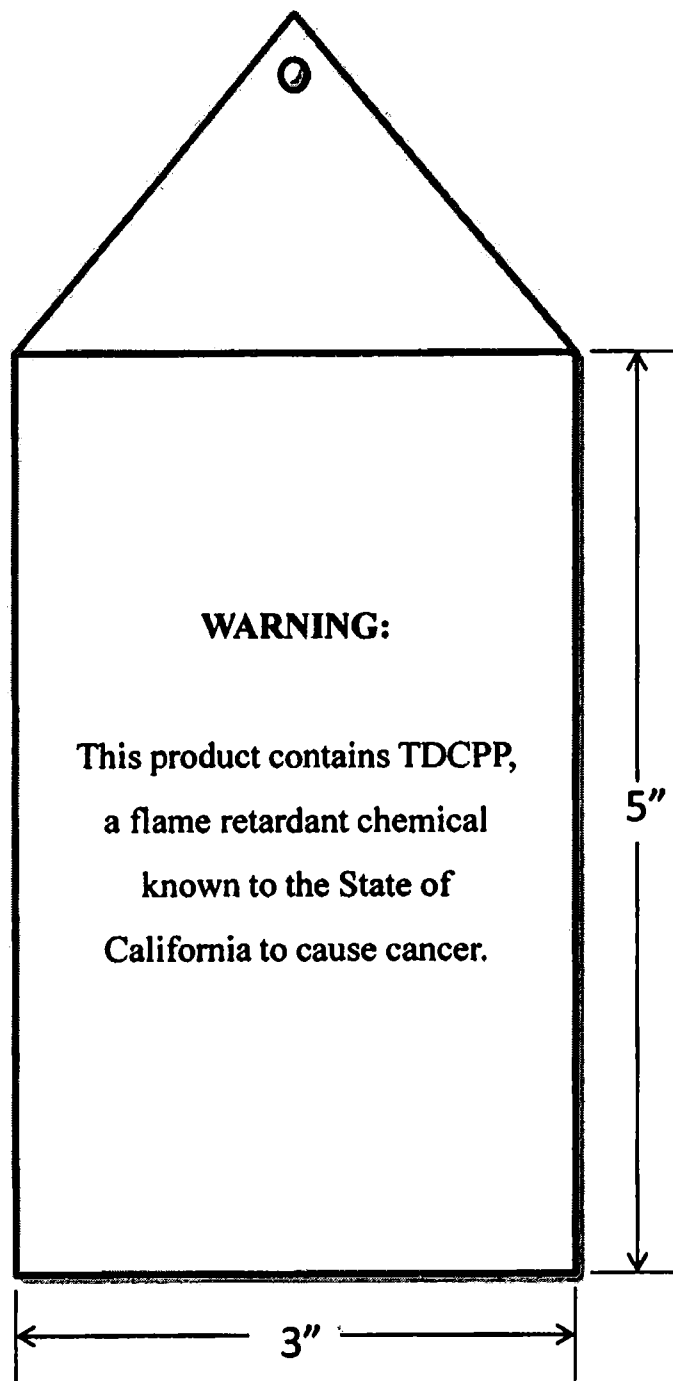
EXHIBIT B
(ILLUSTRATIVE WARNINGS)

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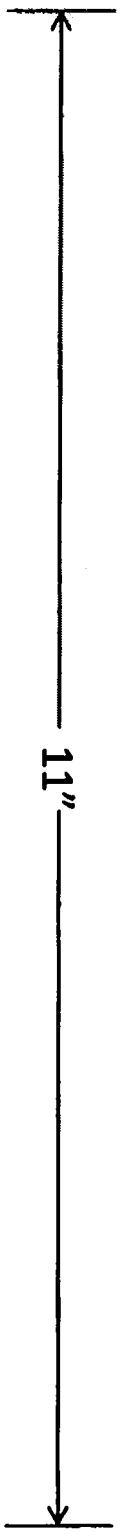
INSTRUCTIONS: Minimum 12 pt. font. "WARNING:" text must be bold.



INSTRUCTIONS: Print warning on each side of hang tag.
Minimum 12 pt. font. "WARNING:" text must be bold.

WARNING:

This product contains TDCPP, a flame retardant
8.5"
chemical known to the State of California to
cause cancer.



INSTRUCTIONS: Minimum 32 pt. Font. "WARNING:" text must be bold and underlined.