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CLERK - SUPERIOR COURT
SAN DIEGO COUNTY, CA

FILED
Clerk of the Superior Court

JAN 19 2018

By: A. Wagoner

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2 **LAW OFFICES OF STEPHEN URE, PC**
3 11622 El Camino Real, Suite 100
4 San Diego, CA California 92130
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6 *Attorneys for Plaintiff, EVELYN WIMBERLEY*

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO**

10 **UNLIMITED CIVIL JURISDICTION**

11
12
13 **EVELYN WIMBERLEY,**)

CASE NO.:

37-2017-00003677-CU-NP-NC

14)
15 **Plaintiff**)

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

16)
17 **AND**)

18 **TARGET CORPORATION**)
19 **BLACK DIAMOND INTERNATIONAL**)
20 **FOREST GROUP, LLC**)
21 **AND DOES 1-25 INCLUSIVE**)

Date: January 19, 2018

Time: 01:30 PM

Dept. N-29

RONALD F. FRAZIER

Hon. Robert P. Dahlquist

Action Filed: January 31, 2017

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23)
24)
25)
26)
27 **///**

28 **//**

1 Plaintiff, EVELYN WIMBERLEY and Defendant, Target Corporation, having agreed
2 through their respective counsel that judgment be entered pursuant to the terms of the Stipulation
3 and Order Re: Consent Judgment entered into by the parties, and attached to the Judgment
4 pursuant to the terms of the Stipulation and Order Re: Consent Judgment as Exhibit 1. After
5 consideration of the papers submitted and arguments presented, the Court finds that the
6 settlement agreement set out in the attached Consent Judgment meets the criteria established by
7 Health & Safety Code §25249.7, in that:
8

- 9
- 10 a) the health hazard warning required by the Stipulation and Order Re: Consent
11 Judgment complies with Health & Safety Code §25249.7;
 - 12 b) the reimbursement of fees and costs to be paid pursuant to the parties'
13 Stipulation and Order Re: Consent Judgment is reasonable under California
14 law; and
 - 15 c) the civil penalty amount to be paid pursuant to the parties' Stipulation and
16 Order Re: Consent Judgment is reasonable

17
18 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that pursuant to Code of Civil
19 Procedure §664.6, judgment is entered in accordance with the Consent Judgment attached hereto
20 as Exhibit 1.

21
22 **IT IS SO ORDERED.**

23 **Dated:** JAN 19 2017

24 RONALD F. FRAZIER

25 **JUDGE OF THE SAN DIEGO SUPERIOR COURT**

Exhibit "1"

1 STEPHEN URE, ESQ.
2 LAW OFFICES OF STEPHEN URE, PC
3 11622 El Camino Real, Suite 100
4 San Diego, CA 92130
5 Telephone: 619-235-5400

6 Attorneys for Plaintiff Evelyn Wimberley

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

11

COUNTY OF SAN DIEGO

12 EVELYN WIMBERLEY,

Case No. 37-2017-00003677-CU-NP-NC

13 Plaintiff,

14 v.

**STIPULATION FOR ENTRY OF
CONSENT JUDGMENT AS TO
DEFENDANT TARGET
CORPORATION**

15 TARGET CORPORATION., et al.

16 Defendants,

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1. INTRODUCTION

1.1 **The Parties.** This Consent Judgment is entered into by and between Evelyn Wimberley acting on behalf of the public interest (hereinafter "Wimberley"), and Target Corporation (hereinafter "Target"), with Wimberley and Target collectively referred to as the "Parties" and each of them as a "Party." Wimberley is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Target employs ten or more persons and is a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

1.2 **Allegations and Representations.** Wimberley alleges that Target has offered for sale in the State of California and has sold in California, Black Diamond Charwood Charcoal that exposes individuals to carbon monoxide and soot, and that such sales have not been accompanied by Proposition 65 warnings. Carbon monoxide and soot are listed under Proposition 65 as chemicals known to the State of California to cause birth defects or other reproductive harm.

1.3 **Target's Sale of the Covered Products.** Target maintains that it last sold any Covered Products in California on or about November, 2016.

1.4 **Notice of Violation/Complaint.** On or about April 18, 2016 Wimberley served Target and various public enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that Target was in violation of Proposition 65 for failing to warn consumers and customers that the Covered Products exposed users in California to carbon monoxide and soot. The Covered Products sold by Target are manufactured by Black Diamond International Forest Group, LLC. No public enforcer diligently prosecuted the claims threatened in the Notice within sixty days plus service time relative to the provision of the Notice to them by Wimberley, such that Wimberley filed a complaint in the matter as captioned above on January 31, 2017 .

1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Target as to the allegations contained in the complaint filed in this matter,

1 that venue is proper in the County of San Diego, and that this Court has jurisdiction to approve,
2 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
3 of all claims which were or could have been raised in the Complaint based on the facts alleged
4 therein and/or in the Notices.

5 1.6 Target denies the material allegations contained in Wimberley's Notice and
6 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent
7 Judgment shall be construed as an admission by Target of any fact, finding, issue of law, or
8 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as
9 an admission by Target of any fact, finding, conclusion, issue of law, or violation of law, such
10 being specifically denied by Target. However, this section shall not diminish or otherwise affect
11 the obligations, responsibilities, and duties of Target under this Consent Judgment.

12 **2. DEFINITIONS**

13 2.1 **Complaint.** The term "Complaint" shall have the meaning given in Section 1.4.

14 2.2 **Covered Products.** The term "Covered Products" refers to: Black Diamond
15 Charwood UPC 862238000128 sold to Target by Black Diamond International Forest Group,
16 LLC.

17 2.3 **Effective Date.** The term "Effective Date" shall mean the date this Consent
18 Judgment is entered as a Judgment of the Court.

19 2.4 **Listed Chemicals:** The term "Listed Chemicals" shall mean carbon monoxide and
20 soot.

21 2.5 **Notice.** The term "Notice" shall have the meaning given in Section 1.4.

22 2.6 **Releasees.** The terms "Defendant Releasees" and "Downstream Defendant
23 Releasees" shall have the meanings given in Section 5.1.

24 2.7 **Execution Date.** The term "Execution Date" shall mean the date this Consent
25 Judgment is signed by the parties
26

1 **3. INJUNCTIVE RELIEF: WARNINGS**

2 3.1 After the Effective Date, Target shall not sell or offer for sale in California any
3 Covered Product, unless the Covered Product is accompanied by the following warning:
4 **“WARNING: Burning of this product produces chemicals known by the State of California**
5 **to cause cancer and birth defects or other reproductive harm.”**

6 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
7 Covered Product’s packaging, labeling, or instruction booklet and displayed with such
8 conspicuousness, as compared with other words, statements, or designs as to render it likely to be
9 read and understood by an ordinary individual under customary conditions of purchase or use. A
10 warning may be contained in the same section of the packaging, labeling, or instruction booklet
11 that states other safety warnings, if any, concerning the use of the product and shall be at least the
12 same size as those other safety warnings.

13 **4. MONETARY TERMS**

14 4.1 **Civil Penalty.** Target shall pay a civil penalty of \$1,000.00 pursuant to Health and
15 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
16 Code § 25192, with 75% of these funds remitted to the State of California’s Office of
17 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to
18 Wimberley, as provided by California Health & Safety Code § 25249.12(d).

19 4.2 **Attorney Fees.** Target agrees to pay and will not oppose an application made by
20 Wimberley’s counsel for an award of attorney fees, inclusive of all expenses and costs incurred as
21 a result of investigating, bringing this matter to Target attention, litigating and negotiating and
22 obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil
23 Procedure section 1021.5, in an amount of \$31,000.00 Other than the payment required
24 hereunder, each side is to bear its own attorneys’ fees and costs.

25 4.3 Target shall mail or wire Wimberley’s counsel the total sum of \$32,000.00
26 representing the civil penalty and attorney fees in Sections 4.1 and 4.2 within ten business days
27
28

1 following the Effective Date and upon receipt of W-9 and wire instruction information from
2 Wimberley's counsel.

3
4 **5. RELEASE OF ALL CLAIMS**

5 5.1 This consent judgment is a full, final, and binding resolution between Wimberley
6 acting in the public interest, and Target, it's parents, shareholders, divisions, subdivisions,
7 subsidiaries, partners, sister companies, and affiliates, and their successors and assigns
8 ("Defendant Releasees"), and all entities from whom they obtain and to whom they directly or
9 indirectly distribute or sell Covered Products, including but not limited to manufacturers,
10 suppliers, distributors, wholesalers, customers, licensors, licensees retailers, franchisees, and
11 cooperative members, ("Downstream Defendant Releasees"), of all claims for violations of
12 Proposition 65 based on exposure to Listed Chemicals from Covered Products as set forth in the
13 Notice, with respect to any Covered Products sold by Target prior to the Effective Date.
14 Compliance with the terms of this consent judgment constitutes compliance with Proposition 65
15 with regard to the Covered Products. Black Diamond International Forest Group, LLC is
16 specifically excluded from this release.

17 5.2 In addition to the foregoing, Wimberley, on behalf of herself, her past and current
18 agents, representatives, attorneys, and successors and/or assignees, and not in her representative
19 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
20 legal action and releases any Defendant Releasees, and Downstream Defendant Releasees from
21 any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
22 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
23 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or
24 contingent, now or in the future, with respect to any alleged violations of Proposition 65 related to
25 or arising from Covered Products sold by Target or Defendant Releasees. With respect to the
26 foregoing waivers and releases in this paragraph, Wimberley hereby specifically waives any and
27

1 all rights and benefits which she now has, or in the future may have, conferred by virtue of the
2 provisions of Section 1542 of the California Civil Code, which provides as follows:
3

4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
5 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR
6 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY
7 HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH
8 THE DEBTOR.

9 5.3 Target waives any and all claims against Wimberley, her attorneys and other
10 representatives, for any and all actions taken or statements made (or those that could have been
11 taken or made) by Wimberley and her attorneys and other representatives, whether in the course
12 of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this
13 matter, and/or with respect to Covered Products.

14 **6. INTEGRATION**

15 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
16 any and all prior negotiations and understandings related hereto shall be deemed to have been
17 merged within it. No representations or terms of agreement other than those contained herein
18 exist or have been made by any Party with respect to the other Party or the subject matter hereof.

19 **7. GOVERNING LAW**

20 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
21 California and apply within the State of California. In the event that Proposition 65 is repealed or
22 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
23 Target shall provide written notice to Wimberley of any asserted change in the law, and shall
24 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
25 that, Covered Products are so affected.

26 **8. NOTICES**

27 8.1 Unless specified herein, all correspondence and notices required to be provided
28 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)

1 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any
2 party by the other party at the following addresses:

3 For Target:

4 Katherine E. Graf, Director, Counsel – Regulatory, Operations and Investigations
5 Target Corporation
6 1000 Nicollet Mall, TPS-3122
7 Minneapolis, MN, 55403

8 With copy to:

9 Jeffery B. Margulies
10 Norton Rose Fulbright US LLP
11 555 South Flower Street
12 Forty-First Floor
13 Los Angeles, CA

14 and

15 For Wimberley:

16 Stephen Ure
17 Law Offices of Stephen Ure, PC.
18 11622 El Camino Real, Suite 100
19 San Diego, California 92130

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

22 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

23 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
24 which shall be deemed an original, and all of which, when taken together, shall constitute one and
25 the same document.

26 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**

27 **APPROVAL**

28 10.1 Wimberley agrees to comply with the requirements set forth in California Health
& Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent
Judgment and Target agrees it shall support approval of such Motion.

10.2 This Consent Judgment shall not be effective until it is approved and entered by
the Court and shall be null and void if, for any reason, it is not approved and entered by the Court

1 within twelve months after it has been fully executed by the Parties. In such case, the Parties
2 agree to meet and confer on how to proceed and if such agreement is not reached within 30-days,
3 any monies that have been paid pursuant to Section 4 shall be refunded and the case shall proceed
4 on its normal course.

5 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
6 appellate court, the Parties shall meet and confer as to whether to modify the terms of this
7 Consent Judgment. If the Parties do not jointly agree on a course of action to take, any monies
8 that have been paid pursuant to Section 4 shall be refunded within 15 days after remittitur to the
9 trial court, and the case shall proceed on its normal course on the trial court's calendar.

10 **11. MODIFICATION**

11 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
12 and the approval of the Court or upon the granting of a motion brought to the Court by either
13 Party.

14 **12. ATTORNEY'S FEES**

15 12.1 A party who unsuccessfully brings or contests an action arising out of this Consent
16 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs
17 unless the unsuccessful party has acted with substantial justification. For purposes of this
18 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
19 Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

20 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
21 pursuant to law.

22 **13. RETENTION OF JURISDICTION**

23 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
24 Consent Judgment.



25 **14. AUTHORIZATION**

26 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of
27 their respective Parties and have read, understood and agree to all of the terms and conditions of
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this document and certifies that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

1 **APPROVED AS TO FORM:**

3 AGREED TO:	3 AGREED TO:
4 Date: <u>October 6</u> , 2017	4 Date: <u>10/6</u> , 2017
5 By: 	5 By: 
6 On Behalf of Evelyn Wimberley	6 On Behalf of Target Corporation
7 Stephen Ure,	7 Lauren A. Shoor
8 Law Offices of Stephen Ure, PC	8 Norton Rose Fulbright US LLP

9 **IT IS HEREBY SO STIPULATED:**

11 AGREED TO:	11 AGREED TO:
12 Date: <u>10/6/17</u>	12 Date: <u>10/6/17</u>
13 By: 	13 By: 
14 EVELYN WIMBERLEY	14 TARGET CORPORATION