

1 CHRIS AMANTEA (State Bar No. 147339)  
2 CHRISTOPHER DACUS (State Bar No. 238000)  
3 McDERMOTT WILL & EMERY LLP  
4 2049 Century Park East  
5 34th Floor  
6 Los Angeles, CA 90067-3208  
7 Telephone: 310.277.4110  
8 Facsimile: 310.277.4730

9 Attorney for Defendant  
10 IGLOO PRODUCTS CORPORATION

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF SAN FRANCISCO

13 CENTER FOR ENVIRONMENTAL  
14 HEALTH, a non-profit corporation,

15 Plaintiff,

16 v.

17 IGLOO PRODUCTS CORPORATION,  
18 and Defendant DOES 1 through 200,  
19 inclusive,

20 Defendants.

CASE NO. CGC 05-444523

**[PROPOSED] CONSENT JUDGMENT**

McDERMOTT WILL & EMERY LLP  
ATTORNEYS AT LAW  
LOS ANGELES

1     **1. INTRODUCTION**

2           **1.1**     On August 31, 2005, plaintiff the Center for Environmental Health ("CEH"),  
3 a non-profit corporation acting in the public interest, filed a complaint in San Francisco  
4 County Superior Court, entitled *Center for Environmental Health v. Igloo Products*  
5 *Corporation, et al.*, San Francisco County Superior Court Case Number 05-444523 (the  
6 "CEH Action"), for civil penalties and injunctive relief pursuant to the provisions of Cal.  
7 Health & Safety Code §25249.5 et seq. ("Proposition 65"). On June 6, 2006, the Court  
8 entered an order consolidating this case with other related cases filed by CEH. The  
9 consolidated case is denominated *Center for Environmental Health v. Ross Stores, et al.*,  
10 San Francisco County Superior Court Case Number 05-444522.

11           **1.2**     Defendant Igloo Products Corporation ("Defendant") is a corporation that  
12 employs 10 or more persons and manufactured, distributed and/or sold soft food and  
13 beverage containers in the State of California, such as lunchboxes and coolers, that may  
14 contain materials containing lead and/or lead compounds (the "Products"). The term  
15 "Products" encompasses only products designated for sale or distribution within the  
16 United States.

17           **1.3**     Beginning on or about May 19, 2005, CEH served Defendant and the  
18 appropriate public enforcement agencies with the requisite 60-day notice alleging that  
19 Defendant was in violation of Proposition 65. CEH's notice and the Complaint in this  
20 Action allege that Defendant exposes people who use or otherwise handle the Products to  
21 lead and/or lead compounds (referred to interchangeably herein as "Lead"), chemicals  
22 known to the State of California to cause cancer, birth defects and other reproductive  
23 harm, without first providing clear and reasonable warning to such persons regarding the  
24 carcinogenicity and reproductive toxicity of Lead. The notice and Complaint allege that  
25 Defendant's conduct violates Health & Safety Code §25249.6, the warning provision of  
26 Proposition 65.

27           **1.4**     For purposes of this Consent Judgment only, the parties stipulate that this  
28 Court has jurisdiction over the subject matter of the violations alleged in CEH's Complaint

1 and personal jurisdiction over Defendant as to the acts alleged in CEH's Complaint, that  
2 venue is proper in the County of San Francisco, and that this Court has jurisdiction to  
3 enter this Consent Judgment as a full and final resolution of all claims which were or  
4 could have been raised in the Complaint based on the facts alleged therein.

5       **1.5** The Parties enter into this Consent Judgment pursuant to a settlement of  
6 certain disputed claims between the Parties as alleged in the Complaint. By executing this  
7 Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the  
8 parties' intent that nothing in this Consent Judgment shall be construed as an admission by  
9 the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall  
10 compliance with the Consent Judgment constitute or be construed as an admission by the  
11 Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this  
12 Consent Judgment shall prejudice, waive or impair any right, remedy, argument or  
13 defense the Parties may have in this or any other or future legal proceedings.

14 **2. COMPLIANCE - REFORMULATION**

15       **2.1 Level.** Within 180 days of entry of this Consent Judgment (the  
16 "Compliance Date"), Defendants shall not manufacture, distribute, ship, or sell, in  
17 California or cause to be manufactured, distributed, or sold, in California any Product that  
18 is comprised of any interior lining material that contains Lead in concentrations that  
19 exceed 200 parts per million ("ppm") or of which the exterior of the Product contains  
20 Lead exceeding 600 ppm.

21       **2.2 Certification of level from suppliers.** Defendant shall obtain written  
22 certification from its suppliers of the Products certifying that neither the Products nor any  
23 materials of which the Products are comprised contain Lead concentrations exceeding the  
24 standards set forth in paragraph 2.1, above.

25       **2.3 Testing.** In order to ensure compliance with the requirements of Section  
26 2.1, Defendant shall conduct (or cause to be conducted) testing to confirm that the  
27 Products contain Lead concentrations which satisfy the standards set forth in Section 2.1.

28 At all times Defendant uses PVC for the interior lining of its Products, testing shall be

1 conducted in compliance with Section 2.3.1. All testing pursuant to this section shall be  
2 performed by an independent laboratory in accordance with the testing methodology and  
3 standards set forth in EPA Method 3050B for the interior lining and for any PVC material  
4 used in the exterior of the Product, and either EPA Method 3050B or ASTM F-963 for the  
5 exterior surface coating (the "Test Protocol"). At the request of CEH, the results of all  
6 testing performed pursuant to this section shall be made available to CEH on a  
7 confidential basis and shall be maintained as confidential by CEH, except that CEH may  
8 provide the information to its consultants or other experts solely for the purpose of  
9 evaluating compliance with the terms of this Consent Judgment.

10 **2.3.1 Testing Where Interior Lining Contains PVC.** For each of the  
11 first two shipments of Products purchased from Defendant's suppliers after the  
12 Compliance Date, Defendant shall randomly select and test the greater of 0.1% (one-tenth  
13 of one percent) or two, but in no case more than four units, of the total Products purchased  
14 from each supplier of the Products intended for sale in California. For purposes of this  
15 Agreement, a shipment is any order that contains 5,000 pieces or more, in which the lining  
16 is made from the same lot of raw materials. Following the first two orders, Defendant  
17 shall test the Products in accordance with Section 2.3.2.

18 **2.3.2 Random Testing.** Testing pursuant to this Section 2 shall be  
19 performed on randomly selected units in accordance with Defendant's usual testing  
20 practices. Defendant's usual testing practices include testing as required by its various  
21 retailers. At a minimum, during each of the first two calendar years following the  
22 Compliance Date, Defendant shall randomly select and test the greater of 0.1% (one-tenth  
23 of one percent) or two, but in no case more than four, of the total Products from each  
24 supplier of the Products intended for sale in California.

25 **2.3.3 Products That Exceed Stipulated Levels Pursuant To**  
26 **Defendant's Testing.** If the results of the testing required pursuant to Section 2.3 show  
27 levels of lead exceeding 200 ppm for the interior lining of a Product, 600 ppm for the  
28 exterior of a Product, Defendant shall: (1) not sale or distribute within the State of

1 California any of the Products that were purchased under the particular purchase order; (2)  
2 send a notice to the supplier explaining that such Products do not comply with the  
3 supplier's certification; and (3) apply the testing frequency set forth in 2.3 as though the  
4 next shipment from the supplier were the first one following the Compliance Date.

5       **2.4 Confirmatory Testing By CEH.** CEH intends to conduct periodic testing  
6 of the Products. Any such testing will be conducted by CEH at an independent  
7 laboratory, in accordance with the test protocol set forth in Exhibit A attached. In the  
8 event that CEH's testing demonstrates Lead levels in excess of the standards set forth in  
9 Section 2.3.1, for two or more Products, CEH shall inform Defendant of the test results,  
10 including information sufficient to permit Defendant to identify the Product(s). Defendant  
11 shall, within 30 days following such notice, provide CEH, at the address listed in section  
12 12, with its supplier certification and testing information demonstrating its compliance  
13 with sections 2.2 and 2.3 of this Consent Judgment. Defendant shall then have the  
14 opportunity to conduct its own independent testing of the Products from the same lot to  
15 confirm or deny CEH's tests. If Defendant's independent testing confirms CEH's test  
16 results, Defendant shall apply the definition of representative sample set forth in section  
17 2.3.1, above, in determining the number of units to be tested for the two shipments  
18 following the Product test exceeding 200 ppm (for the interior) or 600 ppm (for the  
19 exterior) from that supplier. In addition, if Defendant's independent testing verifies  
20 CEH's test results and Defendant fails to provide CEH with information demonstrating  
21 that it complied with Section 2.2 or 2.3 (as the case may be) for the particular shipment(s)  
22 at issue, Defendant shall also be liable for stipulated payments in lieu of penalties for  
23 Products for which CEH produces tests demonstrating Lead levels exceeding 200 ppm for  
24 the lining or 600 ppm for the exterior surfaces as set forth below. These payments shall  
25 be made to CEH and used for the purposes described in section 3.1

26       **2.4.1 Stipulated Payments In Lieu of Penalties.** If stipulated payments  
27 in lieu of penalties are warranted under section 2.4, the stipulated payment amount shall  
28 be as follows for each unit of Product for which CEH produces a test result with Lead

1 levels exceeding 200 ppm for the lining or 600 ppm for the exterior:

2 First Occurrence: \$1,250

3 Second Occurrence: \$1,500

4 Third Occurrence: \$1,750

5 Thereafter: \$2,500

6 Notwithstanding the foregoing, the maximum stipulated penalty amount in a  
7 calendar year, regardless of the number of units of Product tested by CEH with  
8 exceedances of the Lead levels set forth in this Consent Judgment, shall be \$3,500.

9 **2.5 Products in the stream of commerce.** Defendant's Products that have  
10 been manufactured, shipped, sold, or that otherwise are in the stream of commerce prior to  
11 the Compliance Date shall be released from any claims that were brought or that could  
12 have been brought by CEH in its Complaint, as though they were Covered Claims within  
13 the meaning of Section 7.1, below, and shall also be released from any stipulated  
14 payments in lieu of penalties, as set forth in section 2.4.1, above .

15 **2.6 Alternative Technology.** Defendant, without obligation to discontinue the  
16 use of PVC lining, is evaluating the use of alternative materials, such as PEVA or a  
17 similar material which is PVC free, for the interior lining of its products. If Defendant  
18 decides to phase-out PVC lining from its Products manufactured, sold, and/or distributed  
19 in California, Defendant will notify CEH of its decision and its timetable for  
20 implementing the phase-out. After the phase-out is completed (assuming that the Phase-  
21 out occurs subsequent to the Compliance Date), Defendant will not be required to comply  
22 with the testing provisions set forth in paragraphs 2.3.2 through 2.3.3, above, for the  
23 interior lining.

24 **3. SETTLEMENT PAYMENTS**

25 **3.1 Monetary Payment in Lieu of Penalty:** Defendant shall pay twenty  
26 thousand dollars (\$20,000) to CEH in lieu of any penalty pursuant to Health and Safety  
27 Code § 25249.7(b). CEH shall use such funds to continue its work protecting people from  
28

1 exposures to toxic chemicals. As part of this work, CEH intends to conduct periodic  
2 testing of the Products as set forth in section 2.4.

3       **3.2 Attorneys' Fees and Costs:** Defendant shall pay forty thousand dollars  
4 (\$40,000) to The Lexington Law Group, counsel for CEH, to reimburse The Lexington  
5 Law Group and CEH for their reasonable investigation fees and costs, attorneys' fees, and  
6 any other costs incurred as a result of investigating, bringing this matter to Defendant's  
7 attention, litigating and negotiating a settlement in the public interest.

8       **3.3 Timing of payments.** The payments required under Sections 3.1 and 3.2,  
9 above, shall be delivered to the address set forth in Section 12, below, within 15 days of  
10 entry of this Consent Judgment by the Court.

11 **4. MODIFICATION OF CONSENT JUDGMENT**

12       **4.1** This Consent Judgment may be modified by written agreement of CEH and  
13 Defendant, or upon motion of CEH or Defendant as provided by law.

14       **4.2** CEH intends to enter into agreements with other entities that manufacture,  
15 distribute and/or sell Products. CEH will provide Defendant with a copy of any Consent  
16 Judgment involving soft food and beverage containers to which CEH is a party. Should  
17 Defendant determine that provisions of any such Consent Judgment with a similarly  
18 situated manufacturer or distributor of products are less stringent, Defendant may request  
19 a modification of this Consent Judgment to conform with the terms of the later entered  
20 Consent Judgment. Upon 30 days prior written notice of Defendant's request for a  
21 modification, CEH shall inform Defendant whether it will agree to such modification. If  
22 CEH does not agree, Defendant may move the Court for a modification pursuant to this  
23 section.

24 **5. ENFORCEMENT OF CONSENT JUDGMENT**

25       **5.1** CEH may, by motion or application for an order to show cause before the  
26 Superior Court of the County of San Francisco, enforce the terms and conditions  
27 contained in this Consent Judgment. The prevailing party on any motion or application  
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1 under this section shall be entitled to its reasonable attorneys' fees and costs associated  
2 with such motion or application.

3 **6. APPLICATION OF CONSENT JUDGMENT**

4 **6.1** This Consent Judgment shall apply to and be binding upon the parties  
5 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any  
6 of them.

7 **7. CLAIMS COVERED**

8 **7.1** This Consent Judgment is a full, final and binding resolution between CEH  
9 and Defendant of any violation of Proposition 65 that was or could have been asserted in  
10 the Complaint against Defendant (including any claims that could be asserted in  
11 connection with any of the Products covered by this Consent Judgment) or its parents,  
12 subsidiaries, affiliates, directors, officers, employees, agents, attorneys, distributors, or  
13 customers (collectively, "Defendant Releasees") based on failure to warn about alleged  
14 exposure to Lead contained in the Products, with respect to any Products manufactured,  
15 distributed or sold by Defendant on or prior to the date of entry of this Consent Judgment.  
16 Compliance with the terms of this Consent Judgment constitutes compliance with  
17 Proposition 65 for the purposes of Lead exposures from the Products.

18 **7.2** Further, CEH hereby releases all retailers, distributors, and licensors of  
19 Defendant's products from any claims related to the Notice, the Complaint, and this  
20 Judgment and CEH agrees to dismiss any such claims that it has asserted or could assert  
21 against any retailers, distributors, or licensors of Defendant's Products. If CEH has filed a  
22 complaint against a retailer, distributor, or licensor of Defendant's Products, then CEH  
23 shall within 10 days of entry of this Consent Judgment file a dismissal, with prejudice, as  
24 to those claims relating to Defendant's Products. CEH shall provide Defendant with a  
25 confirmed copy of the dismissal. CEH further agrees to provide Defendant with a letter  
26 substantially similar to the one attached hereto as Exhibit B, stating that it has released all  
27 of Defendant's distributors, retailers, and licensors from any liability relating to sales of  
28 Products manufactured and/or sold by Defendant. As to each of Defendant's retailers,

1 distributors, or licensors which have not been served with a 60-day notice or a complaint  
2 by CEH, CEH agrees not to serve a 60-day notice on said retailer, distributor, or licensor  
3 which includes within its scope, directly or indirectly, any of Defendant's Products. If  
4 CEH has served a 60-day notice letter on any retailer, distributor, or licensor of  
5 Defendant's Products, but not yet filed a complaint, then, CEH will not file a complaint  
6 against such retailer, distributor, or licensor that includes Defendant's Products. For  
7 purposes of the release provided in this Section 7.1, the term "retailer, distributor, and/or  
8 licensor" shall include their respective related entities, predecessors, successors, assigns,  
9 parents, subsidiaries, affiliates, officers, partners, directors, stockholders, shareholders,  
10 attorneys, representatives, agents and employees, past, present and future.

11 **8. SEVERABILITY**

12 **8.1** In the event that any of the provisions of this Consent Judgment are held by  
13 a court to be unenforceable, the validity of the enforceable provisions shall not be  
14 adversely affected.

15 **9. SPECIFIC PERFORMANCE**

16 **9.1** The parties expressly recognize that Defendant's obligations under this  
17 Consent Judgment are unique. In the event that any Defendant is found to be in breach of  
18 this Consent Judgment for failure to comply with the provisions of Section 2 hereof, the  
19 parties agree that it would be extremely impracticable to measure the resulting damages  
20 and that such breach would cause irreparable damage. Accordingly, CEH, in addition to  
21 any other available rights or remedies, may sue in equity for specific performance, and  
22 Defendant expressly waive the defense that a remedy in damages will be adequate.

23 **10. GOVERNING LAW**

24 **10.1** The terms of this Consent Judgment shall be governed by the laws of the  
25 State of California.

26 **11. RETENTION OF JURISDICTION**

27 **11.1** This Court shall retain jurisdiction of this matter to implement and enforce  
28 the terms this Consent Judgment.

1    **12.    PROVISION OF NOTICE**

2           **12.1** All notices required pursuant to this Consent Judgment and correspondence  
3 shall be sent to the following:

4 For CEH:

5                   Mark N. Todzo  
6                   Lexington Law Group, LLP  
7                   1627 Irving Street  
8                   San Francisco, CA 94122

9 For Defendant:

10                   Chris M. Amantea, Esq.  
11                   McDermott Will & Emery  
12                   2049 Century Park East, Suite 3400  
13                   Los Angeles, CA 90067-3208

14    **13.    COURT APPROVAL**

15           **13.1** CEH will comply with the settlement notice provisions of Section  
16 25249.7(f) of the California Health and Safety Code and Section 3003 of Title 11 of the  
17 California Code of Regulations.

18           **13.2** If this Consent Judgment is not approved by the Court, it shall be of no  
19 further force or effect. If this Consent Judgment is appealed, with the exception of the  
20 injunctive relief provisions in Section 2, above, which remain in effect during any appeal,  
21 it does not become effective and has no force or effect until all issues on appeal are  
22 resolved.

23    **14.    EXECUTION AND COUNTERPARTS**

24           **14.1** The stipulations to this Consent Judgment may be executed in counterparts  
25 and by means of facsimile, which taken together shall be deemed to constitute one  
26 document.

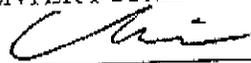
27    **15.    AUTHORIZATION**

28

1           15.1 Each signatory to this Consent Judgment certifies that he or she is fully  
 2 authorized by the party he or she represents to stipulate to this Consent Judgment and to  
 3 enter into and execute the Consent Judgment on behalf of the party represented and  
 4 legally bind that party. The undersigned have read, understand and agree to all of the  
 5 terms and conditions of this Consent Judgment. Except as explicitly provided herein,  
 6 each party is to bear its own fees and costs.

7 AGREED TO:

8 CENTER FOR ENVIRONMENTAL HEALTH      Dated: 6/29/2006

9   
 10 ~~Michael Green~~, Executive Director  
 Center for Environmental Health

11 ~~CHARLIE FIZMO~~  
 IGLOO PRODUCTS CORPORATION      Dated: \_\_\_\_\_

12 \_\_\_\_\_

13 \_\_\_\_\_  
Printed Name

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MCDERMOTT WILL & EMERY LLP  
 ATTORNEYS AT LAW  
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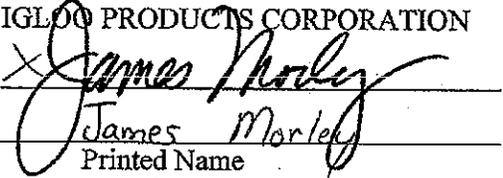
15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the party represented and legally bind that party. The undersigned have read, understand and agree to all of the terms and conditions of this Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and costs.

AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH Dated: \_\_\_\_\_

Michael Green, Executive Director  
Center for Environmental Health

IGLOO PRODUCTS CORPORATION Dated: 6-27-07

  
James Morley  
Printed Name

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**ORDER AND JUDGMENT**

Based upon the stipulated Consent Judgment between CEH and Igloo Products Corporation, the settlement is approved and judgment is hereby entered according to the terms herein.

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

\_\_\_\_\_  
Judge, Superior Court of the State of California

MCDERMOTT WILL & EMERY LLP  
ATTORNEYS AT LAW  
LOS ANGELES

## **Exhibit A**

### **(Test Methodology)**

The following protocol shall be applied separately to the interior and exterior material of a finished Product.

1. Cut 5 small, discreet portions of the material to be analyzed.
2. Combine the portions into a composite sample.
3. Prepare the sample for analysis using microwave digestion. Microwave digestion protocols from the following two methods may be used provided that the samples are completely digested:
  - a. AOAC Official Method 999.10 (Lead, Cadmium, Zinc, Copper, and Iron in Foods)
  - b. NIOSH 7082 (Lead by Flame AAS) Appendix – Microwave Digestion for Lead in Paint Chips (and other matrices)
4. Analyze the sample for total Lead (Pb) content using Graphite Furnace Atomic Absorption Spectrophotometry (GFAAS) or Inductively Coupled Plasma Mass Spectrometry (ICP-MS) using standard operating procedures.
5. Lead content shall be expressed in parts per million (ppm).

**Exhibit B**

(Release Letter)

April \_\_, 2007

Chris Amantea, Esq.  
McDermott Will & Emery LLP  
2049 Century Park East, Suite 3400  
Los Angeles, CA 90067

**Re:** CEH v. Igloo Products Corporation, Case No. CGC-05-444523;  
Consolidated Case No. CGC-05-444522

Dear Mr. Amantea:

Pursuant to Section 7.2 of the consent judgment ("Consent Judgment") entered into in the above-referenced matter between the Center for Environmental Health ("CEH") and Igloo Products Corporation ("Igloo"), CEH hereby confirms that it has released all of Igloo's distributors, retailers, and licensors from any liability relating to sales of soft food and beverage containers such as lunch boxes, water bottles, coolers, and similar products manufactured and/or sold by Igloo ("Products") and from any claims related to or referenced in the 60-day Notice or the Consent Judgment (collectively, "Claims") and any 60-day notices issued to Igloo or any of its retailers, distributors or licensors. For purposes of the release contained in the Consent Judgment and this letter, the term "retailers, distributors, and licensors" shall include their respective related entities, predecessors, successors, assigns, parents, subsidiaries, affiliates, officers, partners, directors, stockholders, shareholders, attorneys, representatives, agents and employees, past, present and future.

This letter acts as a retraction of all 60-day notices related to Igloo's products in lieu of sending separate letters to each enforcement agency. If CEH has filed a complaint against any retailer, distributor, or licensor of Igloo's Products, then CEH shall within 10 days of the entry of the Consent Judgment file a dismissal, with prejudice, as to those Claims relating to Igloo's Products.

Sincerely,

---

Mark N. Todzo, Esq. for  
Center for Environmental Health