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11 Attorneys for Defendants
12 TIGERDIRECT, INC.; SYSTEMAX, INC.

13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 FOR THE COUNTY OF ALAMEDA

16 UNLIMITED CIVIL JURISDICTION
17

18
19 MICHAEL DIPIRRO,

20
21 Plaintiff,

22 v.

23 TIGERDIRECT, INC.; SYSTEMAX, INC.;
24 and DOES 1 through 150, inclusive,

25 Defendants.

Case No. RG-07-334997

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

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff, Michael DiPirro
4 ("DiPirro"), and defendants TigerDirect, Inc. and Systemax, Inc. ("defendants"), with DiPirro and
5 the defendants referred to as the "parties."
6

7 **1.2 Plaintiff**

8 DiPirro is an individual residing in San Francisco County in the State of California who
9 seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing
10 or eliminating hazardous substances contained in consumer products.
11

12 **1.3 Defendants**

13 Defendants employ ten or more persons and are persons in the course of doing business for
14 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
15 Safety Code §§ 25249.6 *et seq.* ("Proposition 65").
16

17 **1.4 General Allegations**

18 Plaintiff alleges that defendants have manufactured, distributed, and/or sold motherboards
19 with solder containing lead in the State of California without the requisite health hazard warnings.
20 Lead is a substance known to cause birth defects and other reproductive harm and is listed
21 pursuant to Proposition 65. Lead shall be referred to hereinafter as the "listed chemical."
22

23 **1.5 Product Description**

24 The products that are covered by this Consent Judgment are defined as follows:
25 motherboards with solder containing lead, such as the *Albatron K8SLi NVIDIA Socket 939 ATX*
26 *Motherboard, Item No. A261-2206 (#8 77574 0008 4)*, and components utilized with
27 motherboards with solder containing lead. Examples of forms of solder include, but are not
28

1 limited to, solder, solder balls, solder spheres, solder paste, wave solder, solder joints, die bumps,
2 and flip-chip bumps. All such motherboards with solder containing lead and components utilized
3 with such motherboards that contain lead solder shall be referred to hereinafter as “products.”
4 Products that are integrated into a desktop computer system as a component thereof, prior to the
5 sale or acquisition of the computer system, shall be referred to hereinafter as “integrated products.”
6 Products that are sold individually and not as a component integrated into a computer system shall
7 be referred to hereinafter as “non-integrated products.”
8

9
10 **1.6 Notice of Violation**

11 On April 30, 2007, DiPirro served defendants and various public enforcement agencies
12 with a document entitled "60-Day Notice of Violation" (“Notice”) that provided defendants and
13 such public enforcers with notice that alleged that defendants were in violation of California
14 Health & Safety Code §25249.6 for failing to warn consumers, workers and others that the
15 products that defendants sold exposed users in California to the listed chemical.
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17 **1.7 Complaint**

18 On July 11, 2007, DiPirro, who is acting in the interest of the general public in California,
19 filed a complaint (“Complaint” or “Action”) in the Superior Court in and for the County of
20 Alameda against TigerDirect, Inc., Systemax, Inc., and Does 1 through 150, *DiPirro v.*
21 *TigerDirect, Inc.; Systemax, Inc.; and DOES 1 through 150, inclusive, Alameda Superior Court*
22 *Case No. RG-07-334997*, alleging violations of California Health & Safety Code §25249.6, based
23 on the alleged exposures to the listed chemical contained in the products defendants sold.
24

25 **1.8 No Admission**

26 Defendants deny the material factual and legal allegations contained in DiPirro’s Notice
27 and Complaint and maintains that all products that they have sold and distributed in California
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1 have been and are in compliance with all laws. Nothing in this Consent Judgment shall be
2 construed as an admission by defendants of any fact, finding, issue of law, or violation of law, nor
3 shall compliance with this Consent Judgment constitute or be construed as an admission by
4 defendants of any fact, finding, conclusion, issue of law, or violation of law, such being
5 specifically denied by defendants. However, this Section shall not diminish or otherwise affect
6 defendants' obligations, responsibilities and duties under this Consent Judgment.
7

8 **1.9 Consent to Jurisdiction**

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

14 **1.10 Effective Date**

15 For purposes of this Consent Judgment, the term "effective date" shall mean May 30, 2008.
16

17 **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

18 **2.1 Product Warnings**

19 After June 30, 2008, defendants shall not sell, ship, or offer to be shipped for sale in
20 California products containing the listed chemical unless such products are sold or shipped with
21 the clear and reasonable warning set out in this Section 2.1, comply with the reformulation
22 standards set forth in Section 2.3 or are otherwise exempt pursuant to Section 2.2.
23

24 Any warning issued for products pursuant to this Section 2.1 shall be prominently placed
25 with such conspicuousness as compared with other words, statements, designs, or devices as to
26 render it likely to be read and understood by an ordinary individual under customary conditions
27 before purchase or, for products shipped directly to an individual in California or used in the
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1 workplace, before use. Any warning issued pursuant to this Section 2.1 shall be provided in a
2 manner such that the consumer or user understands to which *specific* product the warning applies,
3 so as to minimize if not eliminate the chance that an overwarning situation will arise.
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5 Sections 2.1(a)-(c) describe defendants' options for satisfying their warning obligations
6 depending, in part, on the manner of sale. The warning requirement of Section 2.1(d) shall apply
7 regardless of the manner of sale. The following warnings will be applicable when the product is
8 sold either to consumers or in a business-to-business transaction:
9

10 **(a) Mail Order Catalog and Internet Sales of Non-Integrated Products.**

11 Defendants shall satisfy their warning obligations for non-integrated products that are sold
12 by mail order catalog or from the Internet to California residents by providing a warning: (i) in the
13 mail order catalog; (ii) on the website; and/or (iii) with the product when it is shipped to an
14 address in California. Warnings given in the mail order catalog or on the website shall identify the
15 specific product to which the warning applies as further specified in Sections 2.1(b)(i), (ii), and/or
16 (iii) as applicable:
17

18 **(i) Mail Order Catalog Warning.** Any warning provided in a mail
19 order catalog must be in the same type size or larger as the non-integrated product description text
20 within the catalog. The following warning shall be provided on the same page and in the same
21 location as the display and/or description of the non-integrated product:
22

23 **WARNING:** The materials used in this product contain lead, a
24 chemical known to the State of California to
cause birth defects and other reproductive harm.

25 Please wash hands after handling and avoid
26 inhalation of fumes if heating the solder on the
27 product.
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1 Where it is impracticable to provide the warning on the same page and in the same location
2 as the display and/or description of the non-integrated product, defendants may utilize the
3 designated symbol provided below to cross reference the example warning and shall define the
4 term “designated symbol” with the following language on the inside of the front cover of the
5 catalog or on the same page as any order form for the non-integrated product(s):
6

7 **WARNING:** The materials used in certain products identified
8 with this symbol ▼ and offered for sale in this
9 catalog contain lead, a chemical known to the
10 State of California to cause birth defects and
11 other reproductive harm.

12 Please wash hands after handling and avoid
13 inhalation of fumes if heating the solder on the
14 product.

15 The designated symbol must appear on the same page and in close proximity to the display
16 and/or description of the non-integrated product. On each page where the designated symbol
17 appears, defendants must provide a header or footer directing the consumer to the warning
18 language and definition of the designated symbol.

19 If defendants elect to provide warnings in the mail order catalog, then the warnings must be
20 included in all catalogs offering to sell one or more non-integrated products printed after June 30,
21 2008.

22 (ii) **Internet Website Warning.** A warning may be given in
23 conjunction with the sale of the non-integrated product via the Internet, provided it appears either:
24 (a) on the same web page on which the non-integrated product is displayed; (b) on the same web
25 page as the order form for the non-integrated product; (c) on the same page as the price for any
26 non-integrated product; or (d) on one or more web pages displayed to a purchaser during the
27 checkout process. The following warning statement shall be used and shall appear in any of the
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1 above instances adjacent to or immediately following the display, description, or price of the non-
2 integrated product for which it is given in the same type size or larger as the product description
3 text:
4

5 **WARNING:** The materials used in this product contain lead, a
6 chemical known to the State of California to cause
7 birth defects and other reproductive harm.

8 Please wash hands after handling and avoid
9 inhalation of fumes if heating the solder on the
10 product.

11 Alternatively, the designated symbol may appear adjacent to or immediately following the
12 display, description, or price of the non-integrated product for which a warning is being given,
13 provided that the following warning statement also appears elsewhere on the same web page:

14 **WARNING:** Products identified on this page with the
15 following symbol use materials that contain lead,
16 a chemical known to the State of California to
17 cause birth defects and other reproductive harm:



18 Please wash hands after handling and avoid
19 inhalation of fumes if heating the solder on the
20 product.

21 **(iii) Package Insert or Label Warning.** For all products sold by
22 catalog or via the Internet, a warning may be provided with the non-integrated product when it is
23 shipped directly to an individual in California by either: (a) affixing the following warning
24 language to the packaging, labeling, or directly to a specific non-integrated product; (b) inserting a
25 warning card measuring at least 4" x 6" in the shipping carton which contains the following
26 warning language; or (c) placing the following warning statement on the packing slip or customer
27 invoice on the line directly below the description of the non-integrated product on the packing slip
28 or customer invoice:

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WARNING: The materials used in this product contain lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

Please wash hands after handling and avoid inhalation of fumes if heating the solder on the product.

Alternatively, defendants may place the following language on the packing slip or invoice and specifically identify the non-integrated product in lettering of the same size or larger as the description of the product:

WARNING: The materials used in the following product(s) contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm.

Please wash hands after handling and avoid inhalation of fumes if heating the solder on the product.

[list products for which warning is given].

Defendants shall, in any of these instances, in conjunction with providing the warning, also inform the consumer, in a conspicuous manner, that he or she may return the non-integrated product for a full refund (including shipping costs for both the receipt and the return of the product) within thirty (30) days of his or her receipt of the product.

2.2 Exceptions To Warning Requirements

The warning requirements set forth in Section 2.1 shall not apply to:

- (i) Any product manufactured and received in inventory before the effective date, subject to Section 2.5; or

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(ii) Any product in which the only possible point of exposure to the listed chemical is embedded in a manner that a consumer or worker would not come into contact with the listed chemical under any reasonably anticipated use.

2.3 Public Information Commitment

In a good faith effort to inform the public about the risk of exposure to lead in defendants' products sold before the Effective Date, defendants hereby commit to provide the following warning on their web site for a period of three years:

WARNING: Certain desktop motherboards sold in California prior to May 30, 2008, contain lead solder. Lead is a chemical known to the State of California to cause birth defects and other reproductive harm.

Please wash hands after handling those motherboards that utilize lead solder and avoid inhalation of fumes if heating the solder on the product.

Defendants shall provide a hyperlink from the product order page titled "California Sales Information" which will link to a web page that defendants shall create and maintain for a period of three years. On that page, defendants shall provide the following warning:

WARNING: The following desktop motherboards sold in California prior to May 30, 2008, contain lead solder. Lead is a chemical known to the State of California to cause birth defects and other reproductive harm.

Please wash hands after handling these motherboards that utilize lead solder and avoid inhalation of fumes if heating the solder on these products.

1 Immediately following that warning, defendants shall list all products that contain lead solder
2 which defendants sold in California before the Effective Date. Defendants shall identify each
3 product by name and model number.
4

5 **3. MONETARY PAYMENTS**

6 **3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)**

7 Pursuant to Health & Safety Code §25249.7(b), the total civil penalty assessed shall be
8 \$45,000, which shall be apportioned as follows:

9 (a) Defendants shall receive a credit of \$29,000 in light of their prompt
10 cooperation with DiPirro in resolving this matter and their commitment to
11 sell only reformulated products in California;

12 (b) Defendants shall pay \$11,000 in civil penalties on or before June 13, 2008;
13 and
14

15 (c) Defendants shall pay \$5,000 in civil penalties on or before June 30, 2008.

16 This payment will be waived provided that defendants comply with the
17 public information commitment on or before the Effective Date, as set forth
18 in Section 2.5 and submit a compliant web link to DiPirro for his review.
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20 All payments made pursuant to this Section 3.1 shall be payable to the "HIRST &
21 CHANLER LLP in Trust For Michael DiPirro" and shall be delivered to plaintiff's counsel at the
22 following address:
23

24 HIRST & CHANLER LLP
25 Attn: Proposition 65 Controller
26 2560 Ninth Street
27 Parker Plaza, Suite 214
28 Berkeley, CA 94710-2565

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1 **3.2 Apportionment of Penalties Received**

2 All penalty monies received shall be apportioned by DiPirro in accordance with Health &
3 Safety Code §25192, with 75% of these funds remitted by DiPirro to the State of California's
4 Office of Environmental Health Hazard Assessment and the remaining 25% of these penalty
5 monies retained by DiPirro as provided by Health & Safety Code §25249.12(d). DiPirro shall bear
6 all responsibility for apportioning and paying to the State of California the appropriate civil
7 penalties paid in accordance with this Section.
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9 **4. REIMBURSEMENT OF FEES AND COSTS**

10 The parties acknowledge that DiPirro and his counsel offered to resolve this dispute
11 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
12 this fee issue to be resolved after the material terms of the agreement had been settled. Defendants
13 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
14 been finalized. The parties then reached an accord on the compensation due to DiPirro and his
15 counsel under the private attorney general doctrine codified at California Code of Civil Procedure
16 §1021.5 for all work performed through the Court's approval of this agreement. Under the private
17 attorney general doctrine, defendants shall reimburse DiPirro and his counsel for fees and costs
18 incurred as a result of investigating, bringing this matter to defendants' attention, litigating, and
19 negotiating a settlement in the public interest and seeking the Court's approval of the settlement
20 agreement. Defendants shall pay DiPirro and his counsel \$29,500 for all attorneys' fees, expert
21 and investigation fees, litigation and related costs. The payment shall be made payable to HIRST
22 & CHANLER LLP and shall be delivered on or before June 13, 2008, at the following address:
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24
25

26 HIRST & CHANLER LLP
27 Attn: Proposition 65 Controller
28 455 Capitol Mall, Suite 605
 Sacramento, CA 95814

1 **5. RELEASE OF ALL CLAIMS**

2 **5.1 Release of Defendants and Downstream Customers**

3 In further consideration of the promises and agreements herein contained, and for the
4 payments to be made pursuant to Sections 3 and 4, DiPirro, on behalf of himself, his past and
5 current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the
6 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form
7 of legal action and releases all claims, including, without limitation, all actions, and causes of
8 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,
9 losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys'
10 fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively
11 "claims"), against defendants and each of their downstream wholesalers, licensors, licensees,
12 auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies,
13 corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,
14 shareholders, agents, and employees, sister and parent entities, and original equipment
15 manufacturers and distributors (collectively "releasees"). This release is limited to those claims
16 that arise under Proposition 65, as such claims relate to defendants' alleged failures to warn about
17 exposures to the listed chemical contained in the products.

18 The parties further understand and agree that this release shall not extend upstream to any
19 entities that manufactured the products or any component parts thereof, or any distributors or
20 suppliers who sold the products or any component parts thereof to defendants. This settlement
21 does not release any downstream party (including integrators and retailers) that either caused
22 exposure to lead from components not supplied by defendants or, as to the future, alters the
23 product purchased from defendants in such a way as to cause it to violate the reformulation

1 standards or fails to transmit the requisite warnings provided by defendants in paragraph 2.1 set
2 forth in this Consent Judgment.

3 **5.2 Defendants' Release of DiPirro**

4 Defendants waive any and all claims against DiPirro, his attorneys, and other
5 representatives for any and all actions taken or statements made (or those that could have been
6 taken or made) by DiPirro and his attorneys and other representatives, whether in the course of
7 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
8 and/or with respect to the products.
9

10 **6. COURT APPROVAL**

11 This Consent Judgment is not effective until it is approved and entered by the Court and
12 shall be null and void if, for any reason, it is not approved and entered by the Court within one
13 year after it has been fully executed by all parties, in which event any monies that have been
14 provided to plaintiff or his counsel, pursuant to Section 3 and/or Section 4 above, shall be
15 refunded within fifteen (15) days after receiving written notice from defendants that the one-year
16 period has expired.
17

18 **7. SEVERABILITY**

19 If, subsequent to court approval of this Consent Judgment, any of the provisions of this
20 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
21 provisions remaining shall not be adversely affected.
22

23 **8. ATTORNEYS' FEES**

24 In the event that, after Court approval: (1) the defendants or any third party seeks
25 modification of this Consent Judgment pursuant to Section 14 below; or (2) DiPirro takes
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1 reasonable and necessary steps to enforce the terms of this Consent Judgment, DiPirro shall be
2 entitled to his reasonable attorneys' fees and costs pursuant to CCP §1021.5

3
4 **9. GOVERNING LAW**

5 The terms of this Consent Judgment shall be governed by the laws of the State of
6 California and apply within the State of California. In the event that Proposition 65 is repealed or
7 is otherwise rendered inapplicable by reason of law generally, or as to the products, then
8 defendants shall provide written notice to DiPirro of any asserted change in the law, and shall have
9 no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
10 products are so affected.
11

12 **10. NOTICES**

13 Unless specified herein, all correspondence and notices required to be provided pursuant to
14 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
15 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
16 other party at the following addresses:
17

18 To Defendants:

19 Howard Churchill
20 LEWIS BRISBOIS BISGAARD
& SMITH LLP
21 One Sansome St., Suite 1400
22 San Francisco, CA 94104

23 To DiPirro:

24
25 Proposition 65 Coordinator
HIRST & CHANLER LLP
26 2560 Ninth Street
Parker Plaza, Suite 214
27 Berkeley, CA 94710-2565
28

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

3 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

4 This Consent Judgment may be executed in counterparts and by facsimile, each of which
5 shall be deemed an original, and all of which, when taken together, shall constitute one and the
6 same document.
7

8 **12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

9 DiPirro agrees to comply with the reporting form requirements referenced in Health &
10 Safety Code §25249.7(f).
11

12 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

13 DiPirro and defendants agree to mutually employ their best efforts to support the entry of
14 this Agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court
15 in a timely manner. The parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a
16 noticed motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the
17 parties agree to file a Motion to Approve the Agreement (motion). Defendants shall have no
18 additional responsibility to plaintiff's counsel pursuant to Code of Civil Procedure §1021.5 or
19 otherwise with regard to reimbursement of any fees and costs incurred with respect to the
20 preparation and filing of the motion or with regard to plaintiff's counsel appearing for a hearing
21 thereon.
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23 **14. MODIFICATION**

24 This Consent Judgment may be modified only: (1) by written agreement of the parties and
25 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
26 of any party and entry of a modified Consent Judgment by the Court. The Attorney General shall
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1 be served with notice of any proposed modification to this Consent Judgment at least fifteen (15)
 2 days in advance of its consideration by the Court.

3 **15. AUTHORIZATION**

4 The undersigned are authorized to execute this Consent Judgment on behalf of their
 5 respective parties and have read, understood, and agree to all of the terms and conditions of this
 6 Consent Judgment.
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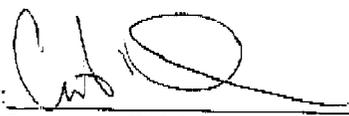
<p>8</p> <p>9</p> <p>10 AGREED TO:</p> <p>11 Date: <u>6/16/08</u></p> <p>12</p> <p>13 By: <u><i>M Dipirro</i></u></p> <p>14 Plaintiff, MICHAEL DIPIRRO</p>	<p>10 AGREED TO:</p> <p>11 Date: _____</p> <p>12</p> <p>13 By: _____</p> <p>14 Defendant, TIGERDIRECT, INC.</p>
<p>17</p> <p>18 AGREED TO:</p> <p>19 Date: _____</p> <p>20</p> <p>21 By: _____</p> <p>22 Defendant, SYSTEMAX, INC.</p>	<p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>

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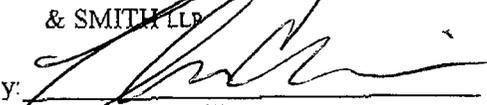
1 be served with notice of any proposed modification to this Consent Judgment at least fifteen (15)
2 days in advance of its consideration by the Court.

3
4 **15. AUTHORIZATION**

5 The undersigned are authorized to execute this Consent Judgment on behalf of their
6 respective parties and have read, understood, and agree to all of the terms and conditions of this
7 Consent Judgment.

<p>10 AGREED TO:</p> <p>11 Date: _____</p> <p>12</p> <p>13 By: _____</p> <p>14 Plaintiff, MICHAEL DIPIRRO</p>	<p>10 AGREED TO:</p> <p>11 Date: <u>June 17, 2008</u></p> <p>12</p> <p>13 </p> <p>14 Defendant, TIGERDIRECT, INC.</p>
<p>18 AGREED TO:</p> <p>19 Date: <u>June 17, 2008</u></p> <p>20</p> <p>21 </p> <p>22 Defendant, SYSTEMAX, INC.</p>	

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APPROVED AS TO FORM:	APPROVED AS TO FORM:
Date: <u>6/16/08</u>	Date: <u>6-19-08</u>
HIRST & CHANLER LLP	LEWIS BRISBOIS BISGAARD & SMITH LLP
By: <u></u>	By: <u></u>
Christopher M. Martin Attorneys for Plaintiff MICHAEL DIPIRRO	Howard Churchill Attorneys for Defendants TIGERDIRECT, INC.; SYSTEMAX, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT