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6 Attorneys for Plaintiff
CENTER FOR ENVIRONMENTAL HEALTH
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF MARIN
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12 CENTER FOR ENVIRONMENTAL HEALTH,)
a non-profit corporation,)
13 Plaintiff,)
14)
15 v.)
16)
17 TARGET CORPORATION; and Defendant)
DOES 1 through 200, inclusive,)
18 Defendants.)
19 _____)

Case No. CIV-086363

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1** On December 30, 2008, plaintiff the Center for Environmental Health
3 (“CEH”), a non-profit corporation acting in the public interest, filed a complaint in Marin
4 County Superior Court, entitled *Center for Environmental Health v. Target Corporation*, Marin
5 County Superior Court Case Number CIV-086363 (the “CEH Action”), for civil penalties and
6 injunctive relief pursuant to the provisions of Cal. Health & Safety Code §25249.5 *et seq.*
7 (“Proposition 65”). On or about May 15, 2009, CEH filed a “Doe” amendment naming
8 Defendant International A.I.M. Corp. (“Defendant”) as a defendant in the CEH Action.

9 **1.2** Defendant is a corporation that employs 10 or more persons and
10 manufactured, distributed and/or sold faux leather furniture made of materials containing lead
11 and/or lead compounds in the State of California. For purposes of this Consent Judgment, the
12 term “Products” shall mean faux leather furniture manufactured, distributed or sold by
13 Defendant.

14 **1.3** On or about March 3, 2009, CEH served Defendant and the
15 appropriate public enforcement agencies with the requisite 60-day notice alleging that Defendant
16 was in violation of Proposition 65. CEH’s notice and the Complaint in this Action allege that
17 Defendant exposes people who use or otherwise handle the Products to lead and/or lead
18 compounds (referred to interchangeably herein as “Lead”), chemicals known to the State of
19 California to cause cancer, birth defects and other reproductive harm, without first providing
20 clear and reasonable warning to such persons regarding the carcinogenicity and reproductive
21 toxicity of Lead. The notice and Complaint allege that Defendant’s conduct violates Health &
22 Safety Code §25249.6, the warning provision of Proposition 65.

23 **1.4** For purposes of this Consent Judgment only, the parties stipulate that this
24 Court has jurisdiction over the subject matter of the violations alleged in CEH’s Complaint and
25 personal jurisdiction over Defendant as to the acts alleged in CEH’s Complaint, that venue is
26 proper in the County of Marin, and that this Court has jurisdiction to enter this Consent
27 Judgment as a full and final resolution of all claims which were or could have been raised in the
28 Complaint based on the facts alleged therein.

1 **1.5** The Parties enter into this Consent Judgment pursuant to a settlement of
2 certain disputed claims between the Parties as alleged in the Complaint. By executing this
3 Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the parties'
4 intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of
5 any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the
6 Consent Judgment constitute or be construed as an admission by the Parties of any fact,
7 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
8 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or
9 any other or future legal proceedings.

10 **2. COMPLIANCE - REFORMULATION**

11 **2.1 Level.** Within thirty days of entry of this Consent Judgment (the
12 “Compliance Date”), Defendant shall not manufacture, distribute, ship, or sell, or cause to be
13 manufactured, distributed, or sold:

- 14 (A) Any Product that is comprised of any material that contains Lead in
15 concentrations that exceed 100 parts per million (“ppm”);
16 (B) Any Product that is also a “Children’s Product” as defined in the
17 Consumer Products Safety Improvement Act of 2008 (the “Act”) with lead
18 concentrations exceeding any more stringent levels required by the Act, as
19 may from time to time be modified.

20 These standards are individually and collectively referred to herein as the “Reformulation
21 Standard.” Notwithstanding any other provision of this Consent Judgment, the Reformulation
22 Standard shall not apply to any Product manufactured, distributed, shipped or sold by Defendant
23 prior to the Compliance Date.

24 **2.2 Certification of level from suppliers.** Defendant shall issue
25 specifications to its suppliers requiring that neither the Products nor any materials of which the
26 Products are comprised contain Lead in concentrations exceeding the Reformulation Standard.
27 Defendant shall obtain written certification with corresponding test results from its suppliers of
28 the Products certifying that neither the Products nor any materials of which the Products are

1 comprised contain Lead in concentrations exceeding the Reformulation Standard.

2 **2.3 Pre-market testing.** On or before the Compliance Date, Defendant shall
3 test each design of Product it is currently offering for sale to ensure that neither the Products nor
4 any materials of which the Products are comprised contain Lead in concentrations exceeding the
5 Reformulation Standard. Such testing shall be conducted by an independent laboratory using the
6 most recent version of United States Environmental Protection Agency Method 3050B or any
7 replacements thereof (the “Test Protocol”). Defendant shall conduct such testing each time it
8 offers a new design of Product for sale or changes suppliers or ingredients with respect to an
9 existing design of Product.

10 **2.4 Ongoing testing.** After the Compliance Date, Defendant shall, at least
11 once every 3 months, test one randomly selected unit of each design of the Products. Such
12 testing shall be conducted by an independent laboratory using the Test Protocol.

13 **2.4.1 Phase-Down Of Ongoing Testing.** If the results of the testing
14 required pursuant to this Section show levels of Lead that are in compliance with the
15 Reformulation Standard for a period of two consecutive years, Defendant shall only be required
16 to test one randomly selected unit of each design of the Products once every 6 months.

17 **2.4.2 Exceedances.** If the results of the testing required pursuant to this
18 Section shows levels of Lead exceeding the Reformulation Standard for a Product, Defendant
19 shall return all of the Products still in its custody that were purchased under the particular
20 purchase order to the supplier with a letter explaining that such Products do not comply with the
21 supplier’s certification. In addition, Defendant shall increase the frequency of testing of the
22 design of Product that exceeded the Reformulation Standard.

23 If the exceedance occurs while Defendant is conducting quarterly testing
24 in accordance with Section 2.4, Defendant shall thereafter test 3 randomly selected units of that
25 design of the Products from that supplier at least once every 3 months for the 6 months following
26 a Product test exceeding the Reformulation Standard. Following that 6 month period, Defendant
27 shall resume testing one randomly selected unit of each design of the Products once every 6
28 months until such time as the results of the testing required pursuant to this Section show levels

1 of Lead that are in compliance with the Reformulation Standard for a period of two consecutive
2 years.

3 If the exceedance occurs after Defendant has phased down the frequency
4 of its testing pursuant to Section 2.4.1, Defendant shall thereafter resume testing one randomly
5 selected unit of that design of the Products from that supplier at least once every 3 months in
6 accordance with Section 2.4 until such time as Defendant's testing required pursuant to this
7 Section shows levels of Lead that are in compliance with the Reformulation Standard for a
8 period of two consecutive years. If the results of the testing required pursuant to this Section
9 show levels of Lead that are in compliance with the Reformulation Standard for a period of two
10 consecutive years, Defendant shall only be required to test one randomly selected unit of each
11 design of the Products once every 6 months pursuant to Section 2.4.1.

12 **2.5 Confirmatory testing by CEH.** CEH intends to conduct periodic
13 testing of the Products. Any such testing will be conducted by an independent laboratory using
14 the Test Protocol. In the event that CEH's testing demonstrates Lead levels in excess of the
15 Reformulation Standard, CEH shall inform Defendant of the test results, including information
16 sufficient to permit Defendant to identify the Product(s). Defendant shall, within 20 days
17 following such notice, and subject to section 2.6 below, provide CEH, at the address listed in
18 section 12, with its supplier certification and testing information demonstrating its compliance
19 with sections 2.2, 2.3, and 2.4 of this Consent Judgment with respect to the Product identified by
20 CEH. The Parties shall then meet and confer in good faith regarding Defendant's alleged
21 violation of the Consent Judgment. If the Parties are unable to resolve their disagreement
22 informally, CEH may file a motion to enforce this Consent Judgment pursuant to Section 5.

23 **2.6 Documentation.** Any documentation required by this Consent Judgment
24 (including but not limited to supplier certifications and the results of all testing) shall be retained
25 for a period of three years and shall be made available to CEH upon request.

26 **3. SETTLEMENT PAYMENTS**

27 **3.1** Within five days of entry of this Consent Judgment, Defendant shall pay a total of
28 \$25,000 as a settlement payment. This total shall be paid in three separate checks delivered to

1 the offices of the Lexington Law Group, LLP at the address set forth in section 12 below and
2 made payable and allocated as follows. Any failure by Defendant to comply with the payment
3 terms herein shall be subject to a stipulated late fee in the amount of \$100 for each day after the
4 delivery date the payment is received. The late fees required under this section shall be
5 recoverable, together with reasonable attorneys' fees, in an enforcement proceeding brought
6 pursuant to section 5 of this Consent Judgment.

7 **3.1.1 Penalty:** The sum of \$1,000 in penalties pursuant to Health and
8 Safety Code § 25249.7(b). This payment shall be made by check payable to Center for
9 Environmental Health. CEH shall apportion the penalties in accordance with Health and Safety
10 Code § 25249.12.

11 **3.1.2 Monetary Payment in Lieu of Penalty:** \$7,850 shall be paid to
12 CEH in lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). This payment
13 shall be made by check payable to Center for Environmental Health. CEH shall use such funds
14 to continue its work protecting people from exposures to toxic chemicals. As part of this work,
15 CEH intends to conduct periodic testing of the Products as set forth in section 2.5.

16 **3.1.3 Attorneys' Fees and Costs:** \$16,150 shall be used to reimburse
17 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any
18 other costs incurred as a result of investigating, bringing this matter to Defendant's attention,
19 litigating and negotiating a settlement in the public interest. This payment shall be made by
20 check payable to Lexington Law Group, LLP.

21 **4. MODIFICATION OF CONSENT JUDGMENT**

22 **4.1** This Consent Judgment may be modified by written agreement of
23 CEH and Defendant, or upon motion of CEH or Defendant as provided by law.

24 **5. ENFORCEMENT OF CONSENT JUDGMENT**

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

1 application.

2 **6. APPLICATION OF CONSENT JUDGMENT**

3 **6.1** This Consent Judgment shall apply to and be binding upon the
4 parties hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any
5 of them.

6 **7. CLAIMS COVERED**

7 **7.1** This Consent Judgment is a full, final and binding resolution
8 between CEH and Defendant of any violation of Proposition 65 that was or could have been
9 asserted in the Complaint against Defendant (including any claims that could be asserted in
10 connection with any of the Products covered by this Consent Judgment) or its parents,
11 subsidiaries, affiliates, directors, officers, employees, agents, attorneys, downstream distributors,
12 or customers (collectively, "Defendant Releasees") based on failure to warn about alleged
13 exposure to Lead contained in the Products, with respect to any Products manufactured,
14 distributed or sold by Defendant on or prior to the date of entry of this Consent Judgment. This
15 release does not limit or effect the obligations of any party created under this Consent Judgment.

16 **8. SEVERABILITY**

17 **8.1** In the event that any of the provisions of this Consent Judgment are
18 held by a court to be unenforceable, the validity of the enforceable provisions shall not be
19 adversely affected.

20 **9. SPECIFIC PERFORMANCE**

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

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1 **10. GOVERNING LAW**

2 **10.1** The terms of this Consent Judgment shall be governed by the laws of
3 the State of California.

4 **11. RETENTION OF JURISDICTION**

5 **11.1** This Court shall retain jurisdiction of this matter to implement and
6 enforce the terms this Consent Judgment.

7 **12. PROVISION OF NOTICE**

8 **12.1** All notices required pursuant to this Consent Judgment and
9 correspondence shall be sent to the following:

10 For CEH:

11 Howard Hirsch
12 Lexington Law Group, LLP
13 1627 Irving Street
14 San Francisco, CA 94122

13 For Defendant:

14 Richard A. Ergo
15 Cathleen S. Huang
16 Bowles & Verna LLP
17 2121 N. California Blvd., Suite 875
18 Walnut Creek, CA 94596

17 **13. COURT APPROVAL**

18 **13.1** If this Consent Judgment is not approved by the Court, it shall be of
19 no further force or effect.

20 **14. EXECUTION AND COUNTERPARTS**

21 **14.1** The stipulations to this Consent Judgment may be executed in
22 counterparts and by means of facsimile, which taken together shall be deemed to constitute one
23 document.


24 **15. AUTHORIZATION**

25 **15.1** Each signatory to this Consent Judgment certifies that he or she is
26 fully authorized by the party he or she represents to stipulate to this Consent Judgment and to
27 enter into and execute the Consent Judgment on behalf of the party represented and legally bind
28 that party. The undersigned have read, understand and agree to all of the terms and conditions of

1 this Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees
2 and costs.

3
4 **AGREED TO:**

5 CENTER FOR ENVIRONMENTAL HEALTH

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7 
8 _____
9 Michael Green, Executive Director
Center for Environmental Health

Dated: 5/27/09

10 INTERNATIONAL A.I.M. CORP.

11 _____
12 _____
13 _____
14 Printed Name

Dated: _____

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1 this Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees
2 and costs.

3
4 **AGREED TO:**

5 CENTER FOR ENVIRONMENTAL HEALTH
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8 _____
9 Michael Green, Executive Director
Center for Environmental Health

Dated: _____

10 INTERNATIONAL A.I.M. CORP.

11 _____
12 *Charlotte Chen*
13 _____
14 Charlotte Chen
15 Printed Name

Dated: May 27th 2009

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between CEH and International A.I.M. Corp., the settlement is approved and judgment is hereby entered according to the terms herein.

Dated: _____

Judge, Superior Court of the State of California