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7 Attorney for Plaintiff, Isabel Novak

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10 ISABEL NOVAK, an individual,)
11)
12 Plaintiff,)
13 v.)
14 TARGET CORPORATION, a corporation,)
15 and DOES 1 through 100, inclusive,)
16 Defendants.)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

CASE NO. BC523095
[PROPOSED] CONSENT JUDGMENT
Judge: Hon. Frederick C. Shaller
Dept.: "46"
Compl. Filed: October 1, 2013
Unlimited Jurisdiction

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1 **1. RECITALS**

2 **1.1 The Parties**

3 This Consent Judgment is entered into by and between Plaintiff, Isabel Novak
4 (“Plaintiff”) and Defendant, IQ Accessories, Inc. (“Defendant”). Plaintiff and Defendant shall
5 hereinafter collectively be referred to as the “Parties.”

6 **1.2 Allegations**

7 Plaintiff is a citizen of the state of California with an interest in protecting the
8 environment, improving human health and the health of ecosystems, and supporting
9 environmentally sound practices, which includes promoting awareness of exposure to toxic
10 chemicals and reducing exposure to hazardous substances found in consumer products. Plaintiff
11 alleges that Defendant manufactured, distributed, supplied, and/or sold the “Pickles” ceramic
12 bowl with exterior decorations (SKU 8-72197-62903-2) (hereinafter, the “Products”) in the State
13 of California causing users in California to be exposed to hazardous levels of lead and lead
14 compounds (collectively, “Listed Chemicals”) without providing “clear and reasonable
15 warnings”, in violation of Proposition 65. The Listed Chemicals are potentially subject to
16 Proposition 65 warning requirements because they are listed as known to cause cancer, birth
17 defects and other reproductive harm.

18 On July 27, 2013, a sixty-day notice of violation (“60-Day Notice”), along with a
19 Certificate of Merit, was provided by Plaintiff to Target Corporation and various public
20 enforcement agencies regarding the alleged violation of Proposition 65 with respect to the
21 Products. On October 1, 2013, in the interest of the general public, Plaintiff filed the instant
22 action in the Superior Court for the County of Los Angeles, alleging violation of Proposition 65
23 with respect to the Products. On February 26, 2014, a supplemental sixty-day notice of violation
24 (“Supplemental 60-Day Notice”), along with a Certificate of Merit, was provided by Plaintiff to
25 Defendant, Target Corporation, and various public enforcement agencies regarding the alleged
26 violation of Proposition 65 with respect to the Products. On May 16, 2014, Plaintiff filed an
27 amendment to the Complaint replacing Doe 1 with Defendant.

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1 not apply to any Products manufactured, decorated, or imported for Defendant's potential sale in
2 California after the Effective Date if they meet the Reformulation Standards as described in
3 subsection 2.2 below.

4 **2.2 Reformulation Standards**

5 The Product must produce a test result no higher than 1.0 microgram (ug) of lead using
6 EPA Test Method 3050(b) based on a wipe sample collected using NIOSH Method 9100 as
7 applied specifically to a 100 square centimeter area of the Product that contains the majority of
8 the Exterior Decorations. ("*Exterior Decorations*" is defined as all colored artwork, designs
9 and/or markings on the exterior surface of the Products.)

10 **3. PAYMENTS**

11 **3.1 Civil Penalty Pursuant To Proposition 65**

12 In settlement of all causes of action in Plaintiff's Complaint, Defendant shall pay a total
13 civil penalty of three thousand dollars (\$3,000.00) to be apportioned in accordance with *Health*
14 *and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$2,250.00) paid to State of California
15 Office of Environmental Health Hazard Assessment, and the remaining 25% (\$750.00) paid to
16 Plaintiff.

17 Defendant shall issue two (2) checks for the civil penalty: (1) a check or money order
18 made payable to "Law Offices of Lucas T. Novak in Trust for Office of Environmental Health
19 Hazard Assessment" in the amount of \$2,250.00; and (2) a check or money order made payable
20 to "Law Offices of Lucas T. Novak in Trust for Isabel Novak" in the amount of \$750.00.

21 Defendant shall remit the payments within five (5) business days of the Effective Date, to:

22 Lucas T. Novak, Esq.
23 LAW OFFICES OF LUCAS T. NOVAK
24 8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

25 **3.2 Reimbursement Of Plaintiff's Fees And Costs**

26 Defendant shall reimburse Plaintiff's reasonable experts' and attorney's fees and costs
27 incurred in prosecuting the instant action, for all work performed through execution of this
28 agreement and entry of this Consent Judgment, in the total amount of seventeen thousand dollars

1 (\$17,000.00). Said payment shall be made in four (4) monthly installments, as follows:
2 Defendant shall remit the first installment of \$3,000.00 within five (5) business days of the
3 Effective Date; Defendant shall remit the second installment of \$5,000 within the next thirty (30)
4 calendar days; Defendant shall remit the third installment of \$5,000 within thirty (30) calendar
5 days following the second installment; and Defendant shall remit the fourth installment of \$4,000
6 within thirty (30) calendar days following the third installment. For each installment, Defendant
7 shall issue a check or money order made payable to “Law Offices of Lucas T. Novak” in the
8 applicable amounts, and remit each payment to:

9 Lucas T. Novak, Esq.
10 LAW OFFICES OF LUCAS T. NOVAK
11 8335 W Sunset Blvd., Suite 217
12 Los Angeles, CA 90069

12 **4. RELEASES**

13 **4.1 Plaintiff’s Release Of Defendant**

14 Plaintiff, acting in her individual capacity, her past and current agents, representatives,
15 attorneys, successors, and/or assignees, and in the interest of the general public, in consideration
16 of the promises and monetary payments contained herein, hereby releases Defendant, its parents,
17 subsidiaries, shareholders, directors, members, officers, employees, and attorneys, and
18 Defendant’s downstream retailers, including Target Corporation, and their parents, subsidiaries,
19 shareholders, directors, members, officers, employees, and attorneys from the claims asserted in
20 Plaintiff’s Complaint, 60-Day Notice, and Supplemental 60-Day Notice regarding violation of
21 Proposition 65 with respect to the Products. Within ten (10) business days after the receipt of all
22 payments described in Section 3 above, counsel for Plaintiff will file a Stipulation for Dismissal
23 without prejudice directing the Court to dismiss the remaining action without prejudice and
24 without costs.

25 **4.2 Defendant’s Release Of Plaintiff**

26 Defendant, its parents, subsidiaries, shareholders, directors, members, officers,
27 employees, and attorneys, and Defendant’s downstream retailers, including Target Corporation,
28 and their parents, subsidiaries, shareholders, directors, members, officers, employees, and

1 attorneys, by this Consent Judgment, waive all rights to institute any form of legal action against
2 Plaintiff, her past and current agents, representatives, attorneys, experts, successors, and/or
3 assignees, for actions or statements made or undertaken, whether in the course of investigating
4 claims or seeking enforcement of Proposition 65 against Defendant in this matter.

5 **4.3 Waiver Of Unknown Claims**

6 Each of the Parties acknowledges that it is familiar with Section 1542 of California *Civil*
7 *Code* which provides as follows:

8 “A general release does not extend to claims which the creditor does not know or
9 suspect to exist in his or her favor at the time of executing the release, which if
10 known by him or her must have materially affected his or her settlement with the
11 debtor.”

12 Each of the parties waives and relinquishes any right or benefit it has or may have under
13 Section 1542 of California *Civil Code* or any similar provision under the statutory or non-
14 statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights
15 and benefits pertaining to the claims in this Consent Judgment. The Parties acknowledge that
16 each may subsequently discover facts in addition to, or different from, those that it believes to be
17 true with respect to the claims released herein. The Parties agree that this Consent Judgment and
18 the releases contained herein shall be and remain effective in all respects notwithstanding the
19 discovery of such additional or different facts.

20 **5. COURT APPROVAL**

21 Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed
22 Motion for Approval & Entry of Consent Judgment in the above-entitled Court. This Consent
23 Judgment is not effective until it is approved and entered by the Court and shall be null and void
24 if, for any reason, it is not approved and entered by the Court within one (1) year after its full
25 execution by all Parties. It is the intention of the Parties that the Court approve this Consent
26 Judgment, and in furtherance of obtaining such approval, the Parties and their respective counsel
27 agree to mutually employ their best efforts to support the entry of this agreement in a timely
28 manner, including cooperating on drafting and filing any papers in support of the required

1 motion for judicial approval.

2 **6. SEVERABILITY**

3 Subsequent to Court approval of this Consent Judgment, should any part or provision of
4 this Consent Judgment, for any reason, be declared by a Court to be invalid, void or
5 unenforceable, the remaining portions and provisions shall continue in full force and effect.

6 **7. GOVERNING LAW**

7 The terms of this Consent Judgment shall be governed by the laws of the State of
8 California.

9 **8. NOTICES**

10 All correspondence and notices required to be provided under this Consent Judgment
11 shall be in writing and delivered personally or sent by first class or certified mail addressed as
12 follows:

13 TO DEFENDANT:

14 Steve L. Reitenour, Esq.
15 BOWMAN AND BROOKE LLP
16 150 South Fifth Street, Suite 3000
Minneapolis, MN 55402

TO PLAINTIFF:

Lucas T. Novak, Esq.
LAW OFFICES OF LUCAS T. NOVAK
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

17
18 **9. INTEGRATION**

19 This Consent Judgment constitutes the entire agreement between the parties with respect
20 to the subject matter hereof and may not be amended or modified except in writing.

21 **10. COUNTERPARTS**

22 This Consent Judgment may be executed in counterparts, each of which shall be deemed
23 an original, and all of which, when taken together, shall constitute the same document. Execution
24 and delivery of this Consent Judgment by e-mail, facsimile, or other electronic means shall
25 constitute legal and binding execution and delivery. Any photocopy of the executed Consent
26 Judgment shall have the same force and effect as the originals.

27 **11. AUTHORIZATION**

28 The undersigned are authorized to execute this Consent Judgment on behalf of their

1 respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions
2 of this Consent Judgment. Each Party warrants to the other that it is free to enter into this
3 Consent Judgment and not subject to any conflicting obligation which will or might prevent or
4 interfere with the execution or performance of this Consent Judgment by said party.

5
6 **AGREED TO:**

7 Date: 6-19-14

8
9 By:  _____

10 Authorized Agent of Defendant, IQ Accessories, Inc.

11
12 **AGREED TO:**

13 Date: _____

14
15 By: _____

16 Plaintiff, Isabel Novak

17
18 **IT IS SO ORDERED.**


19
20 Dated: _____

21 JUDGE OF THE SUPERIOR COURT

1 respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions
2 of this Consent Judgment. Each Party warrants to the other that it is free to enter into this
3 Consent Judgment and not subject to any conflicting obligation which will or might prevent or
4 interfere with the execution or performance of this Consent Judgment by said party.

5
6 **AGREED TO:**

7 Date: _____

8
9 By:  _____

10 Authorized Agent of Defendant, IQ Accessories, Inc.

11
12 **AGREED TO:**

13 Date: 6/21/14 _____

14
15 By:  _____

16 Plaintiff, Isabel Novak

17
18 **IT IS SO ORDERED.**

19
20 Dated: _____

21 JUDGE OF THE SUPERIOR COURT