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TARGET CORPORATION (erroneously sued and
6 served as Target Stores, Inc., and Dayton Hudson
Corporation)

ENDORSED
FILED
ALAMEDA COUNTY

MAR 30 2001

CLERK OF THE SUPERIOR COURT
By CHRISTINE MARKS Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ALAMEDA

10
11 MICHAEL DIPIRRO,

12 Plaintiff,

13 vs.

14 TARGET STORES, INC.; and DAYTON
HUDSON CORPORATION,

15 Defendants.
16

) Case No. H211392-2

) **CONSENT JUDGMENT**

) Complaint Filed: January 26, 2000

17 **1 INTRODUCTION.**

18 1.1 Michael DiPirro (DiPirro) is an individual residing in San Francisco who
19 seeks to promote awareness of exposures to toxic chemicals and improve human health by
20 reducing or eliminating exposures to hazardous substances produced by consumer and
21 industrial products;

22 1.2 Target Corporation (erroneously sued and served as Target Stores, Inc. and
23 Dayton Hudson Corporation) a Minnesota corporation ("Target") allegedly sells fishing
24 tackle products that contain lead, a chemical listed pursuant to Proposition 65 (California
25 Health & Safety Code § 25249.5 et seq.) ("Covered Products");

26 1.3 On September 27, 1999, DiPirro first served Target and all of the requisite
27 public enforcement agencies with a document entitled "Supplemental 60-Day Notice"
28 which provided such public enforcers with notice that Target was allegedly in violation of

1 Health & Safety Code section 25249.6 for failing, to warn purchasers that the use of
2 Covered Products it sells in California exposes users to lead;

3 1.4 On January 26, 2000, Michael DiPirro filed his complaint, naming Target as
4 a defendant and alleging violations of Business & Professions Code § 17200 ("the Unfair
5 Competition Act") and Health & Safety Code § 25249.6 on behalf of individuals in
6 California who allegedly have been exposed to lead from the use of the Covered Products;

7 1.5 Target at all times has denied the material factual and legal allegations
8 contained in the 60-Day Notice and the complaint. Nothing in this agreement shall be
9 construed as an admission by Target of any fact, finding, issue of law, or violation of law,
10 nor shall compliance with this Agreement constitute or be construed as an admission by
11 Target of any fact, finding, conclusion, issue of law, or violation of law. However, this
12 paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties
13 of Target under this Agreement;

14 1.6 For purposes of this Consent Judgment only, the parties stipulate that this
15 Court has jurisdiction over the allegations of violations contained in the plaintiff's
16 complaint and personal jurisdiction over defendant as to the acts alleged in the complaint,
17 that venue is proper in the county of Alameda, and that this court has jurisdiction to enter
18 this Consent Judgment as a resolution of all claims which were, or could have been, raised
19 in the complaint based on the facts alleged therein; and

20 1.7 For the purpose of avoiding prolonged litigation, the parties enter into this
21 Consent Judgment as of March 12, 2001 (the "Effective Date") as a full settlement of all
22 claims that were or could have been raised in the complaint based upon the facts alleged
23 therein, or which could have been raised in the complaint arising out of the facts alleged
24 therein.

25 **2 INJUNCTIVE RELIEF.**

26 2.1 As the current manufacturers of Covered Products offered for sale by Target
27 have agreed to be bound by consent judgments including injunctive relief requiring that
28 Proposition 65 warnings be given for such products, said consent judgments identified on

1 Exhibit A, the parties agree that Target is not required to provide any further warnings for
2 Covered Products manufactured by any party bound by such consent judgments, whether
3 under Proposition 65 or the Unfair Competition Act.

4 2.2 Target asserts that it does not offer any unpackaged Covered Products for
5 sale. If, in the future, Target offers any unpackaged Covered Products for sale in
6 California, the following message shall be used:

7 **“WARNING:**

8 **This product contains lead, a chemical known to the State of California**
9 **to cause cancer and birth defects (or other reproductive harm).”**

10 2.3 The warning statement required under Paragraph 2.2 shall be prominently
11 displayed next to the unpackaged Covered Products on a sign with such conspicuousness,
12 as compared with other words, statements, or designs as to render it likely to be read and
13 understood under ordinary conditions of purchase.

14 2.4 In the event that Target receives a notice from plaintiff that any packaged
15 Covered Product is being sold at any of Target’s outlets without the required warning in
16 paragraph 2.2 above, Target shall contact (in writing via certified mail) the manufacturer(s)
17 of the Covered Product to instruct such manufacturer(s) to provide the requisite warnings
18 within 30 days of Target’s written notice. (Target shall provide DiPirro with a copy of the
19 certified letter). If, within the 30-day period, there is no written representation by the
20 manufacturer(s) of the Covered Product subject to the notice that it will promptly provide
21 the requisite warnings, Target shall notify DiPirro of such fact within 15 days after the 30-
22 day period has expired.

23 **3 MONETARY PAYMENTS.**

24 3.1 In consideration of the monetary payments made by the vendors pursuant to
25 the Consent Judgments, and of Target’s assumption of the obligations identified in
26 Paragraph 2, above, DiPirro waives any claim for monetary payments, including but not
27 limited to civil penalties under Proposition 65, or restitution or other relief under the
28 Unfair Competition Act.

1 3.2 The parties acknowledge that DiPirro offered to resolve the dispute without
2 reaching terms on the amount of fees and costs to be reimbursed, thereby leaving this open
3 issue to be resolved after the material terms of the agreement had been reached, and the
4 matter settled. Target then expressed a desire to resolve the fee and cost issue concurrently
5 with other settlement terms, so the parties tried to reach an accord on the compensation due
6 to DiPirro and his counsel under the private attorney general doctrine codified at C.C.P.
7 §1021.5.

8 3.3 Target shall reimburse DiPirro for his fees and costs, incurred as a result of
9 investigating, bringing this matter to Target's attention, litigating and negotiating a
10 settlement in the public interest. Target shall pay the total sum of \$2000 for investigation
11 fees, attorneys' fees and litigation costs. Target agrees to pay \$2000 within five (5)
12 calendar days of the Effective Date of this Consent Judgment. Payment should be made
13 payable to the "Chanler Law Group," and shall be held in trust by DiPirro until entry of
14 this Consent Judgment by the court.

15 **4 MATTERS COVERED BY THIS CONSENT JUDGMENT.**

16 4.1 This Consent Judgment is a full, final and binding resolution between
17 DiPirro, acting on behalf of the public interest pursuant to Health and Safety Code §
18 25249.7(d) and the general public pursuant to Business and Professions Code § 17204, on
19 the one hand, and Target, on the other hand, of any violation of Proposition 65 and/or the
20 Unfair Competition Act, of all claims made or which could have been made in the Notice
21 and/or the Complaint, and of any other statutory or regulatory claim that have been
22 asserted against Target and/or its subsidiaries, divisions, successors, assigns, and/or
23 customers for its alleged failure to provide clear and reasonable warnings of exposure to
24 lead contained in or otherwise associated with Covered Products sold by Target.
25 Compliance with the terms of this Consent Judgment resolves any issue, now and in the
26 future, concerning past compliance by Target and/or its subsidiaries, divisions, successors,
27 and assigns with the requirements of Proposition 65 and the Unfair Competition Act with
28 respect to the Covered Products.

1 **5 ENFORCEMENT OF CONSENT JUDGMENT.**

2 5.1 The parties may, by motion or order to show cause before the Superior Court
3 of the County of Alameda, enforce the terms and conditions of this Consent Judgment, but
4 notice must be given to each party unless such party has waived the notice requirement. In
5 any action brought by any party to enforce this Consent Judgment, the prevailing party
6 may seek any fines, costs, penalties or remedies provided by law. Additionally, the
7 prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

8 5.2 The parties may enforce the terms and conditions of this Consent Judgment
9 pursuant to paragraph 5.1 only after the complaining party first provides a 14-day notice to
10 the party failing to comply with the terms and conditions of this Consent Judgment and
11 attempts to resolve such party's failure to comply in an open and good faith manner.

12 **6 RELEASE OF CLAIMS.**

13 6.1 DiPirro, by this agreement, on behalf of himself, his agents, representatives,
14 attorneys, assigns and the citizens of the State of California, waives all rights to institute
15 and participate in, directly or indirectly, any form of legal action, and releases all claims,
16 liabilities, obligations, losses, attorney's or investigation fees, costs, expenses, fines, and
17 damages, against Target and its customers, directors, officers, employees, successors and
18 assigns, whether under Proposition 65 or the Unfair Competition Act, or any other statute
19 or regulation, based on Target's alleged failure to warn about exposure to lead from the
20 normal and foreseeable use of the Covered Products.

21 6.2 Target, by this Agreement, waives all rights to institute any form of legal
22 action against DiPirro and his attorneys or representatives, for all actions or statements
23 made by DiPirro, and his attorneys or representatives, in the course of seeking enforcement
24 of Proposition 65 or the Unfair Competition Act against Target with respect to the matters
25 alleged in the complaint or covered by the Consent Judgment.

1 **7 SEVERABILITY.**

2 7.1 In the event that any of the provisions of this Consent Judgment are held by a
3 court to be unenforceable, the validity of the enforceable provisions shall not be adversely
4 affected.

5 **8 ATTORNEY'S FEES.**

6 8.1 Each party is to bear its own attorneys fees and costs. In the event that a
7 dispute arises with respect to any provision(s) of this Consent Judgment, the prevailing
8 party shall be entitled to recover costs and reasonable attorneys' fees.

9 **9 GOVERNING LAW.**

10 9.1 The laws of the State of California shall govern the terms of this Consent
11 Judgment.

12 **10 NOTICES.**

13 10.1 All correspondence to Michael DiPirro shall be mailed to:

14 David Bush
15 Jennifer Henry
16 Bush & Henry
17 Attorneys At Law
4400 Keller Avenue, Suite 200
Oakland, CA 94605
(510) 577-0747

18 All correspondence to Target shall be mailed to:

19 Peg Schoenfelder
20 22301 Foothill Blvd
MS4135
Hayward, CA 94541-2771

21 **11 COMPLIANCE WITH REPORTING REQUIREMENTS.**

22 11.1 The parties agree to comply with the reporting form requirements referenced
23 in Health & Safety Code § 25249.7(f). As of the Effective Date, the California Attorney
24 General's reporting forms are not available. DiPirro shall serve a copy of this Consent
25 Judgment on the California Attorney General's Office fourteen days prior to filing of the
26 Consent Judgment with the Alameda Superior Court, to allow for the Attorney General to
27 comment upon the contents of this Consent Judgment.
28

1 **12 COUNTERPARTS.**

2 12.1 This Consent Judgment may be executed in counterparts and/or facsimile,
3 each of which shall be deemed an original, and all of which, when taken together, shall
4 constitute one and the same document.

5 **13 MODIFICATION.**

6 13.1 Notwithstanding any other provision herein, this Consent Judgment may be
7 modified by written agreement of the parties, after noticed motion and upon entry of a
8 modified Consent Judgment by the court thereon, or upon motion of any party as provided
9 by law and upon entry of a modified Consent Judgment.

10 **14 ENTIRE AGREEMENT**

11 14.1 This Consent Judgment contains the sole and entire, agreement and
12 understanding of the parties with-respect to the entire subject matter hereof, and any and all
13 prior discussions, negotiations, commitments and understandings related hereto. No
14 representations, oral or otherwise, express or implied, other than those contained herein
15 have been made by any party hereto. No other agreements not specifically referred to
16 herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

17 **15 COURT APPROVAL**

18 15.1 If the court does not approve this Consent Judgment, it shall be of no force or
19 effect and cannot be used in any proceeding for any purpose.

20 **16 AUTHORIZATION.**

21 16.1 The undersigned are authorized to execute this Agreement on behalf of their
22 respective parties and have read, understood and agree to all of the terms and conditions of
23 this Agreement.

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AGREED TO:

Dated: March 9, 2001

By: Michael DiPirro
Michael DiPirro
PLAINTIFF

AGREED TO:

Dated: March 9, 2001

By: Target Corporation
Target Corporation
DEFENDANT

APPROVED AS TO FORM:

BUSH & HENRY

By: David Bush
David Bush
Attorneys for Plaintiff
MICHAEL DIPIRRO

APPROVED AS TO FORM:

Dated: March 9, 2001 HAIGHT, BROWN & BONESTEEL, L.L.P.

By: Jeffrey B. Margulies
Jeffrey B. Margulies
Attorneys for Defendant
TARGET CORPORATION

AGREED TO:

Dated: March 9, 2001

By: _____
Michael DiPirro
PLAINTIFF

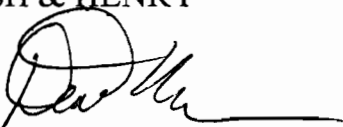
AGREED TO:

Dated: March 9, 2001

By:  _____
Target Corporation
DEFENDANT


APPROVED AS TO FORM:

BUSH & HENRY

By:  _____
David Bush
Attorneys for Plaintiff
MICHAEL DIPIRRO

APPROVED AS TO FORM:

Dated: March 9, 2001 HAIGHT, BROWN & BONESTEEL, L.L.P.

By:  _____
Jeffrey B. Margulies
Attorneys for Defendant
TARGET CORPORATION